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

RESOLUTION OF CENSURE

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

The text of the motion reads as follows:

I move to suspend the following:

Rule VII, paragraph 2 the phrase “upon the calendar”, and;

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

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

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

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

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

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

Mr. GRAMM addressed the Chair.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I send a motion to the desk, a motion to indefinite postponement of the Feinstein motion.

The PRESIDING OFFICER. The motion to indefinite postponement is so ordered.

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

The yeas and nays were ordered.

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

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

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 Two-thirds of the Senators not having voted in the negative, the motion to suspend is withdrawn and the Feinstein point of order is sustained.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

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

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

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

For almost two years, the President of the United States was engaged in what he has come to describe as an “inappropriate intimate” relationship with a young woman who came to his attention as a White House intern. He then lied about their relationship, publicly, privately, formally, informally, to the press, to the country, and under oath, for a period of about a year.

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

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

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

Third, are obstruction of justice and perjury high Crimes and Misdemeanors under the Constitution?

And, fourth, even if the acts of the President are high Crimes and Misdemeanors, are they of sufficient gravity to warrant his conviction if it allows of no alternative other than his removal from office?

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

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

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

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

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

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

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

All the material allegations of Article II seem to me to be well founded. Four of them, however, those regarding the president’s encouraging Miss Lewinsky to file a false affidavit and then to give false testimony, those regarding the president’s failure to correct his attorney’s false statements to the Jones court, and those bearing upon the disposal of his gifts to her are not, in my mind, proven beyond a reasonable doubt. Again, I do not believe this standard to be required in impeachment trials, but because I believe that the other three factual allegations of Article II do meet that standard, I adopt it for the purposes of this discussion.

(1) From the time she was transferred to the Pentagon in April, 1996, Miss Lewinsky had pressed the President about returning to work at the White House, and, other than some vague referrals, until October 1, 1997, the President had done nothing to make this
On the first of October, 1997, the president was served with interrogatories in the Jones case asking about his sexual relationships with women other than his wife, and during the first week of October the President and his agents stepped up their efforts to find Miss Lewinsky a job. Three weeks later, on October 21, the United States Ambassador to the United Nations, Bill Richardson, personally called Miss Lewinsky personally to schedule an interview in her apartment complex, though apparently he interviewed no one else. Shortly after this unusual interview, the Ambassador created a new position in New York and offered it to Miss Lewinsky.

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

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

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

Fully appreciative of the higher stakes, the President redoubled his efforts and those of his agents to find Miss Lewinsky a job and keep her in his camp. In the weeks after Miss Lewinsky’s name appeared on the witness list, Mr. Jordan kept the President apprised of his efforts to find work for her in the private sector. He called his contacts at American Express, Young & Rubicam, and MacAndrews & Forbes (Revlon’s parent corporation). When Miss Lewinsky was subpoenaed on December 19, 1997, to be deposed in the Jones case, Mr. Jordan oversaw the preparation of the affidavit that the President had suggested she file in lieu of testifying. On January 7, 1997, Miss Lewinsky signed the affidavit, which she later admitted was false, denying that she had a “sexual relationship with the President” and during the time she was interviewed with MacAndrew & Forbes.

When she told Mr. Jordan that she had done poorly, he called the Chairman of the Board, Ronald Perelman, to recommend Miss Lewinsky, whom he commended as “this bright young girl, who I think is terrific.” As a result of this conversation, Miss Lewinsky was called back for another interview with MacAndrews the following day and given an informal offer. On January 9, she rejected the offer, which she called Mrs. Currie with the message, “mission accomplished” and then called the President himself to share his success.

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

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

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

“I was never really alone with Monica, right?"
“Monica came on to me, and I never touched her, right?"
“She wanted to have sex with me, and I cannot do that.”

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

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

There is no reasonable explanation of this incident other than it is the President’s clear attempt to obstruct justice, both in the Jones case and in the subsequent grand jury investigation. The President’s attempt to derail the Independent Counsel’s inquiry—an inquiry the very purpose of which was to discover whether the President gave false testimony and committed perjury by lying to his colleagues, his cabinet, his confidantes, the media, the American people, and ultimately, the grand jury, is—beyond a reasonable doubt—a wide-ranging and highly publicized attempt to influence the President’s desire to influence the judicial fabric of the United States.

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

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

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

This is the easiest of the four questions to answer. Perjury and crimes less serious than obstruction of justice have long been considered high Crimes and Misdemeanors.

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

Most of the Senate’s precedents, of course, are based on the impeachment trials of judges. President Clinton argues that those precedents should not apply; that presidents, who hold the highest office in the land, should benefit from a lower standard for removal than the judges they appoint and the military officers they command. This President would have presidents remain in office for acts that have resulted in the dismissal of military officers under his command, in the removal of judges, and for acts that would have resulted in the removal of Senators like Bob Packwood, who, like the President, are popularly elected for a fixed term. The House Managers, however, argue that removal comes from a different source, the constitutional provision that, with the advice and consent of the Senate, he is subject to removal for ``high Crimes and Misdemeanors.”

One other reflection must precede a decision based on the belief that removal is too drastic a sanction. Nevertheless, I am convinced that one other reflection must precede a decision based on the belief that removal is disproportionate to the gravity of the offenses established here, and that is: what are the consequences of a not guilty finding by the Senate? The consequences are, of course, no sanction whatsoever.

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

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

The drafters did not intend to allow Congress to choose among a range of punishments analogous to those available in the Constitution. Mr. Hamilton described impeachable offenses as “those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which must in every instance be considered as grounds for punishment elsewhere than in the ordinary course of judicial proceedings.”

It is not always been considered inevitable, as Mr. Hamilton clearly stated, that the President committed perjury and obstruction of justice. The personal cost was far worse than those visited upon Alexander Hamilton. But it is our duty to determine whether he merits a drastic public sanction—or none at all.

In No. 65 of the Federalist Papers, Mr. Hamilton described impeachable offenses as “those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which must in every instance be considered as grounds for punishment elsewhere than in the ordinary course of judicial proceedings.”

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

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

The author of Federalist No. 65 knew very well the distinction between a private scandal and the profound embarrassment arising out of its publication—and the violation of a public duty in an attempt to avoid that embarrassment. He chose not to use his Treasury position in a way that would justify an impeachment. The personal cost was immense and he assumed it without blinking.

President Clinton could hardly have chosen a more different course of action. He chose to violate both his oath of office and his oath as a witness, using his office, his staff and his position to try to avoid personal embarrassment. In any event, even the personal consequences for him have been far worse than those visited upon Alexander Hamilton. But it is our duty to determine whether he merits a drastic public sanction—or none at all.
Some will say that the President can be charged with crimes related to this affair after his term of office is over. First, such charges lie outside our jurisdiction or duty.

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

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

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

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

The Republic will not be weakened if we convict. The policies of the presidency will not change. The Administration will not change.

But if we acquit; if we say that some perjuries, some obstructions of justice, some clear and conscious violations of a formal oath are free from our sanction, the Republic and its institutions will be weakened. One exception or excuse will lead to another, the right of the more powerful of our leaders to act outside the law—or in violation of the law—will be established. Our republican institutions will be seriously undermined. They have been undermined already. The damage accrues to all equally—Republicans, Democrats, liberals, and conservatives.

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

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

Our vote in this case is as unpleasant as it was unsought. But our duty is clear. It was imposed on us, by history, without equivocation, 212 years ago. It requires us to convict the President of Article II of these Articles of Impeachment, the only one that is how we vote, with clear conscience and a saddened heart.

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

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

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

But as we get to the final stage and get immersed in the law and facts of this case, it is too easy to forget the most important fact of all: this is the case. We have been an unfortunate historical precedent. I found the video testimony helpful. I didn't enjoy it, but I found it helpful in clarifying some of the things that I was thinking about. So I am glad that the majority of the committee had that opportunity, that we did not dismiss the case at the time it was first suggested.

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

Finally, I was very concerned about the hiding of the gifts. And maybe every one will disagree with me on this. But when I watched their testimony, I thought Ms. Lewinsky was the most important witness. If she said she had gotten that call from Ms. Currie, there is no other part of her testimony, I happen to believe that Ms. Lewinsky was the one who was the most concerned about the gifts. And I believe a showing beyond a reasonable doubt has not been made that the President masterminded the hiding of the gifts.

So I cannot deny what Representative W. Grimes said: If you call somebody up at 2:30 in the morning you are probably up to no good. But if you call somebody up at 2:30 in the morning you have not necessarily accomplished the crime of obstruction of justice. I recently asked the separate question of whether these same acts by the President, apart from the Federal criminal law, constitute high crimes and misdemeanors. I do not. I will discuss that in more detail in a future statement in this case.

But I would like to conclude by just talking a little bit about this impeachment issue in the modern context. When I say that the vote in 1996 is the primary factor, I don't just mean that in terms of the rights of people. I mean it in terms of the goal of the Founding Fathers, and our goal today: that is, political stability in this country. We don't want a parliamentary system. And we don't want an overly partisan system. I see the 4-year term as a unifying force of our Nation. Yet, this is the second time in my adult lifetime that we have had serious impeachment proceedings only 45 years old. This only occurred once in the entire 200 years prior to this time. Is this a fluke? Is it that we just happened to have had two “bad men” as Presidents? I doubt it. How will we feel if sometime in the next 10 years a third impeachment proceeding occurs in this country so we will have had three within 40 years?

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

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

Let me conclude by quoting James W. Grimes, one of the seven Republican Senators who voted not to acquit Andrew Johnson. I discovered this speech, and found out that the Chief Justice had already discovered and quoted him, and said he was one of the three of the ablest of the seven. Grimes said this in his opinion: “I would not convict President Johnson: I cannot agree to destroy the harmonious working of the Constitution for the sake of getting rid of an unacceptable President. Whatever may be the outcome of the incour- dent, I cannot consent to trifling with the high office he holds. I can do nothing which, by implication, may be construed as an approval of impeachment as a part of future political machinery.”

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

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

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

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

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

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

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

The President had it solely within his power to keep the country from the course on which it has been for the past year. First, of course, he could have simply acknowledged his actions and accepted the consequences. This could have been an honorable resignation, or an admission, contrition, and a firm resolve to take responsibility; with a request for resolution in a manner short of impeachment and trial.

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

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

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

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

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

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

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

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

As a result of these choices by the President of the United States, the Supreme Court left with no choice other than to confront the charges and hear the case pursuant to the President’s impeachment in the House of Representatives.
In many ways, obstruction of justice is even more corrosive than perjury to the machinery of our legal system. As the target of a grand jury and an independent prosecutor, the President has defended himself against charges of perjury by claiming he was caught off guard, was attempting to mislead but not lie. Obstruction of justice, though, is a quite different matter. It is an affirmative act that occurs at the person's own initiative; in this case, the President. It involves actions taken that were not instigated by anyone else.

It has been said in his defense that the President did not initiate his perjury in that he was led to it by the prosecutor. But there is no similar argument regarding Article II, the Obstruction of Justice. Without the affirmative actions of the President, there would have been no Article II. The President sought out Mr. Blumenthal to tell his misleading story of a nonexistent sexual relationship and the character of Ms. Lewinsky. Separately, the President enlisted his personal secretary to further his obstruction of justice. He asked Ms. Currie to retrieve the gifts. He summarily dismissed the perjury proceedings under the guise of "trying to figure out what the facts were." He did so within hours after coming back to the White House on January 17th from his deposition in the civil sexual harassment lawsuit. He met face-to-face with her the next day, a Sunday. It couldn't be done over the phone, and it couldn't wait until Monday. It was clear he needed her to reaffirm his false testimony. This is obstruction of justice.

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

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

The oath is how we defend ourselves against those who would subvert our system by breaking our laws. There are many ways to do that. But those who violate that oath. Others have prevailed at the bar of justice because of that oath.

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

I cannot make that choice. I cannot look away. I vote "Guilty" on Article I, Perjury. I vote "Guilty" on Article II, Obstruction of Justice.
In the course of preparing for the trial of the Arkansas case, the plaintiff, with the consent of the presiding Federal Judge, attempted to develop evidence that defendant Clinton had, before and afterward, used patterns of conduct that were similar to the allegations of the plaintiff in the case. In December, 1995, the plaintiff subpoenaed President Clinton to give his testimony before the Federal grand jury. The subpoena was issued on the basis of a sworn affidavit of the plaintiff, which was supported by the affidavit of the Arkansas Senator, and supported by the affidavit of the Arkansas Governor. President Clinton did not appear before the grand jury, and the case was dismissed.

It is important to note that President Clinton did not appear before the grand jury, and the case was dismissed. However, it is also important to note that the President did not deny the allegations, and the case was dismissed due to a lack of evidence.

In the course of preparing for the trial of the Arkansas case, the plaintiff, with the consent of the presiding Federal Judge, attempted to develop evidence that defendant Clinton had, before and afterward, used patterns of conduct that were similar to the allegations of the plaintiff in the case. In December, 1995, the plaintiff subpoenaed President Clinton to give his testimony before the Federal grand jury. The subpoena was issued on the basis of a sworn affidavit of the plaintiff, which was supported by the affidavit of the Arkansas Senator, and supported by the affidavit of the Arkansas Governor. President Clinton did not appear before the grand jury, and the case was dismissed.
PERJURY, OBSTRUCTION OF JUSTICE, AND WITNESS TAMPERING AS IMPEACHABLE OFFENSES

The two Articles of Impeachment before the Senate proceeding do in fact accuse the President of committing three actual crimes, "perjury before the grand jury," "obstruction of justice," and "witness tampering," that meet the requirements for conviction of an indicted defendant in a criminal case brought under Federal law. The House Managers and Counsel for the President, and the public office clearly can reach the level of intensity that would justify the impeachment and removal of a leader. One of the Articles of Impeachment "perjury," as defined in English law on which portions of our Constitution were founded, included the crimes of "obstructing the execution of the lawful process" and of "witness tampering," by James Madison as "a book which is in every man's hand." See article entitled "Treatise on High Crimes and Misdemeanors," by Gary L. McDowell, Director of the Institute of United States Studies at the University of London, appearing in the Wall Street Journal, January 25, 1999.

Some argue that the President in the second example should not be impeached because the whole thing is about a cherry tree. If, on the other hand, President Washington, as a child, cut down a cherry tree and lied about it, he would be guilty of "lying," but would not be guilty of "perjury." If, on the other hand, President Washington, as an adult, had been warned not to cut down a cherry tree, but he cut it down anyway, with the tree falling on a man and severely injuring or killing him, with President Washington later on oath that it was he who cut down the tree, that would be "perjury." Because it was a material fact in determining the criminality of the actions.

Some would argue that the President in the second example should not be impeached because the whole thing is about a cherry tree, and lying is a perjurious lie, but would not be guilty of "witness tampering." If, on the other hand, President Washington, as an adult, had been warned not to cut down a cherry tree, but he cut it down anyway, with the tree falling on a man and severely injuring or killing him, with President Washington later on oath that it was he who cut down the tree, that would be "witness tampering." Because it was a material fact in determining the criminality of the actions.

Lying is a moral wrong. Perjury is a lie told under oath that is legally wrong. To be illegal, the lie must be willfully told, must be believed to be untrue, and must relate to a material matter. Title 18, Section 1521 and 1623, U.S.C. Code. If President Washington, as a child, had cut down a cherry tree and lied about it, he would be guilty of "lying," but would not be guilty of "perjury." If, on the other hand, President Washington, as an adult, had been warned not to cut down a cherry tree, but he cut it down anyway, with the tree falling on a man and severely injuring or killing him, with President Washington later on oath that it was he who cut down the tree, that would be "witness tampering." Because it was a material fact in determining the criminality of the actions.

One of the Articles of Impeachment presented by the House Judiciary Committee to the full House of Representatives in this case charged the President with precisely such an offense. The House Managers and Counsel for the President did not approve that Article, and such a charge is, therefore, not before us in this proceeding.

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

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

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

Section 4 of Article II of our Constitution provides:

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

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

The Supreme Court of the United States has observed that there is an occasional mis-understanding to the effect that the crime of "perjury" is somehow distinct from "obstruction of justice." North vs. Norris, 300 U.S. 564, 574 (1937). They are not. While different elements make up each crime, each is calculated to prevent a court and the public from discovering the truth and achieving justice in our judicial system. Moreover, it is obvious that "witness tampering" is simply another means employed to obstruct justice. This Senate on numerous occasions has convicted impeached Federal judges on allegations of perjury. Moreover, the historical fact is that "high crimes and misdemeanors," as defined in English law on which portions of our Constitution were founded, included the crimes of "obstructing the execution of the lawful process" and of "witness tampering." Commentaries on the Laws of England, a treatise described by James Madison as "a book which is in every man's hand." See article entitled "Treatise on High Crimes and Misdemeanors," by Gary L. McDowell, Director of the Institute of United States Studies at the University of London, appearing in the Wall Street Journal, January 25, 1999.

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My Votes on the Articles of Impeachment

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

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

(ii) The President of the United States engaged in a pattern of conduct, performed acts of willful corruption and deliberate falsehoods, and disseminated massive falsehoods, including lies told directly to the American people, that were designed and corruptly calculated to interfere with the judicial process and the administration of justice by giving false and perjurious testimony about his relationship with the White House Intern, about his January 20, 1998, deposition testimony in the Arkansas sexual harassment case, and about his role in developing and tendering to the Federal Judge in the Arkansas case an affidavit that was knowingly false while giving his deposition in that case, and about his attempts to influence the testimony of White House employees and other witnesses in the Arkansas case who were at the time also subject to the jurisdiction of the grand jury.

In reaching my decision with respect to this Article, I have concluded beyond a reasonable doubt that the President gave false and misleading testimony in the Arkansas sexual harassment case and in his appearance before the Federal grand jury. At the Senate, the President's Counsel argued that, even if it were to be admitted that the testimony in both instances were false and misleading, the testimony would not amount to perjury because it does not reach the level of "materiality" that is required for a lie to rise to the level of a crime under Federal law.

They attempt to trivialize the issues raised by Article I by reference to such questions as "Who touched whom, and where," and to answers to questions by the President such as "It depends on what the meaning of 'is' is." The false testimony complained of in Article I of the Articles of Impeachment relates to testimony before a grand jury, and only indirectly in the Arkansas case. The Federal grand jury was investigating broad issues and many persons at the time the President gave false and misleading testimony before it.

Willful, corrupt, and false sworn testimony before a Federal grand jury is a separate and distinct applicable legal standard. For testimony to be perjurious it must be "capable" of influencing the grand jury in any matter before it, including any collateral matters that it may be investigating, and it must be material and perjurious if it is "capable" of influencing the grand jury in any matter before it, including any collateral matters that it may be investigating. Whether or not the President's Counsel is correct that the President had "no one to lie to," the Constitution of the United States states that the President is subject to the jurisdiction of the grand jury.

The President's testimony before the Federal grand jury was not "capable" of influencing the grand jury's investigation and was clearly perjurious.

When, on January 20, 1998, the President of the United States pointed his finger at the White House Intern and said "I didn't have sexual relations with that woman," the President perjured himself. There is evidence that he was the victim of lies and not their perpetrator, he lied to America. The evidence is overwhelming that he did so because of willful corruption. The White House Intern had executed a false affidavit; subpoenaed gifts had been hidden; his own false deposition had been arranged; other information had been presented falsely based upon his own false representations to them; retribution against the White House Intern had been programmed should she testify; and the President had been advised falsely by a friend of the President, "Missions accomplished." Then came the dress, the tapes, and the Federal grand jury. The attempt to obstruct and cover-up grew, expanded, and developed a life of its own. It overpowered the underlying offense itself. A new strategy was required, fast: The President was advised: "Admit it, you lies." Shift the blame; change the subject. Blame it on the plaintiff in the Arkansas case. Blame it on her lawyers. Blame it on the Independent Counsel. Blame it on the majority of the House Judiciary Committee. Blame it on the process.

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

Concluding Statement

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

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

In the middle of the century, our Country and our courts began to recognize the inherent dignity of every American, regardless of race and national origin. In the last two decades, we have begun to address issues of gender. We have enacted sexual harassment laws that have restricted both moral and legal standards of our Country. They permit half of our citizens to work freely among us without fear of harm and sexual abuse. It has been said by many, in attempts to demean this proceeding, that this case is, simply, "all about sex." In some ways, it is. It is about the right of the weakest and most vulnerable of us in this country to equal access to our system of justice in order to pursue legal and Constitutional rights.

The President has told us that the President is guilty of obstructing justice beyond a reasonable doubt. The constitutional standard for removing a President from office is that the President is guilty of obstruction of justice beyond a reasonable doubt. The question is whether that conduct meets the Constitutional standard for removing a President from office.

That requires us to make a profound judgment on whether we should overturn the results of a national election. 67 members in this chamber can nullify the votes of the 47 million Americans who voted for President Clinton. That is an awesome power. It must be used with great restraint. There are three questions we must answer in the affirmative to remove a President: First, did the President commit the crimes he is charged with? Second, are these crimes properly addressed by impeachment, or would they be better left to the criminal justice system? Third, do the crimes rise to the level of high crimes and misdemeanors and justify the removal of the President of the United States?

The Sufficiency of the Evidence

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

Five experienced Federal prosecutors representing both Republican and Democratic Administrations concluded that the President's conduct would bring perjury charges based on the facts in this case.

The President in his grand jury testimony acknowledged an intimate and inappropriate relationship with Monica Lewinsky. The details of that relationship are in conflict. But I do not believe relatively minor differences in the details of that relationship would result in a perjury conviction.

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

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

Mr. CONRAD. Mr. Chief Justice, I have served twelve years in the United States Senate.

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

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

There is one thing on which we all agree: The President's conduct was wrong. In fact, it was very wrong. But the question before us is not whether the President's conduct was wrong. The question is whether that conduct meets the Constitutional standard for removing a President from office.
Ms. Lewinsky has testified that no one ever asked her to lie or promised her a job for her silence. Ms. Lewinsky further testified she never discussed the contents of her testimony with the President, ever. Finally, she also testified that she believed she could file a truthful affidavit.

But there are two elements of the obstruction of justice charges that do trouble me.

One is the transfer of gifts from Ms. Lewinsky to Betty Currie. That could constitute concealment of evidence. But Betty Currie has testified five times that Ms. Lewinsky called her to arrange for the transfer of gifts. And both the President and Betty Currie have denied that the President initiated the transfer.

The second troubling charge is the questioning of Betty Currie by the President after his deposition in the Jones case. I find it hard to believe the President was just refreshing his memory on two occasions he put the same set of questions to Ms. Currie. That could constitute witness tampering.

But at the time of these conversations, Betty Currie was not a witness in any proceeding. And she has testified that she did not feel pressured to agree with the President.

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

IMPEACHABLE CRIMES

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

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

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

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

James Wilson, a nineteenth century constitutional scholar has written that impeachment was designed for “great and public [sic] offences by which the Commonwealth was brought into danger.”

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

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

William Rawles, a contemporary of the Founders and a distinguished commentator on the Constitution wrote: “In general, those offenses which may be committed by a private person as a public officer, are not the subject of impeachment ... [A]ll offenses not immediately connected with office, except the two expressly mentioned, are left to the ordinary course of judicial proceedings. I do not argue that no private wrongs can rise to the level of impeachable offense, but they must be heinous crimes.

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

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

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

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

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

Offensive as they were, the President’s obstruction of anything to do with his official duties, or do they constitute the most serious of private crimes. In my judgment, these are matters best left to the criminal justice system.

REMOVAL FROM OFFICE

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

Our Founding Fathers told us two things about impeachment. First, the matter at hand had better be a very significant crime—a “high crime” that threatens our fundamental freedoms. These alleged crimes do not rise to that standard. Second, they told us that it better not be partisan. That’s why they required a 2/3 vote in the Senate to remove a President.

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

But Betty Currie has testified five times that Ms. Lewinsky promised her a job for her silence. Ms. Lewinsky has testified that she did not feel pressured to agree with the President.

That could constitute witness tampering. But Betty Currie has testified five times that Ms. Lewinsky called her to arrange for the transfer of gifts. And both the President and Betty Currie have denied that the President initiated the transfer.

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Although I am not certain that there was no wrongdoing, I do conclude that the charges have not been proven beyond a reasonable doubt.
Hattie Caraways, the John McClellans, and j.w. fulbrights. But never before has an Arkansan reached the presidency. I, with all of Arkansas, was proud. We knew William Jefferson Clinton’s intellect, his grasp of policy issues. We knew not about his charisma. We had seen for years his remarkable political skills, his uncanny ability to connect with people. I believe I’m like most Arkansans—deeply conflicted—pride mixed with embarrassment, and most of all pain.

This is not a personal matter, it is not about the President’s personal behavior. We are all sinners. We are all flawed human beings. The President’s personal life is his personal life. It’s his business, not mine. The facts that are relevant are those relating to law.

This trial is not about process. It seems to me that throughout this long drama, many have sought to put Ken Starr on trial or the House managers on trial. But not the President. Frankly, both sides wanted to win, both sides were fervent in their presentations, and I’m glad we didn’t hear half-hearted arguments. A vigorous prosecution and defense is the basis of a successful adversarial system. Argumentation is important. I’m glad they believe in what they are doing, but in the end it’s the facts, the evidence, with which we must grapple. The process with all its flaws is secondary. The reality is, we are faced with a body of evidence.

This trial is not about punishment. It’s not about getting our pound of flesh from the Democrats. It’s not about getting our retribution on the President. It’s not political vengeance. It’s self-preservation. If polls have failed, Andrew Johnson would have been removed, and that would have been wrong. To argue that a popular President should not be removed regardless of his actions, merely because he is popular, is to lower our Constitutional Republic to a meaningless level. To say popularity should be a factor in our decision is to say that bad poll numbers and unpopularity is an argument for removal of a President. How contrary to our constitutional system. The popularity of our President should never been mentioned, in my opinion. Nor should political consequences of our votes be the basis for our decision of whether to remove this President.

What I have done is weigh the evidence. What we are doing is try to remove a President—the very thought soberes and humbles me. But the facts are so inescapable, the evidence so powerful.

I am convinced beyond a reasonable doubt that Bill Clinton committed perjury and obstructed justice. When he told Sidney Blumenthal that Ms. Lewinsky was a stalker and he was a victim, he was not being truthful. He was trying to destroy her reputation and he would have, had it not been for the direct, uncorroborated lie he told about his relationship with the grand jury.

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

If this trial was only about one man’s actions, it might be easier. But this trial is about the whole presidency—the office of the presidency, the precedent of lowering the bar on the importance of our nation’s rule of law. It’s about the oath Bill Clinton took when he was sworn in as our President, to uphold our nation’s laws. The oath the President took when he swore to tell the truth, the whole truth and nothing but the truth before the grand jury. The sanctity of the oath is the basis of our judicial system. To lessen the significance of violating the oath is in fact an attack on our legal system and the rule of law.

There are men and women across America who languish behind bars today because they committed the crime of perjury. It is a crime of integrity, the fundamental core of our system. It is not about polls or popular support. Our founders were wise. They knew that the President would be imperfect. They created a theory. We have to decide if this President’s behavior is so much more reprehensible than the rest of us. Whatever the government’s role in a government of laws, is a despotism, but it be called what it may."

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

Mrs. MURRAY. Mr. Chief Justice, this past year certainly has been a difficult time for America. I have to say, as a citizen, as a woman, and as a parent, I have often to describe how deeply disappointed and angry I am with the President.

I came to Washington, D.C. in 1992. Over the last 6 years I have worked very closely with him. I thought I knew him. I refused to believe he would demean the presidency in the way that he has. His behavior was appalling and has hurt us all.

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

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

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

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

We must also ask ourselves how it would affect the country to remove this President after such a partisan process. A conversation I had with a constituent not long ago really struck a chord with me. He said to me, "I am old enough to remember President Nixon’s resignation. I know how deeply it affected the psyche of an entire generation. I know it made many of us cynical of politics for a long, long time. Please don’t put us all through that turmoil again. This country would be punished and hurt by a presidential removal. This country doesn’t deserve to be punished for this President’s behavior."

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

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

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

This President’s behavior was reprehensible, but it does not threaten our nation. In the past year, despite the scandal that ran on the front page nearly every day, our country has prospered. Our economy is growing. Our government is strong. Our communities are safer. Our education system is stronger. America is not poised on the brink of disaster. Our democracy is safe.
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As my colleagues across the aisle have so often reminded me, the country does not want the President re
moved. And, they ask, are we not, first and foremost, servants of the public will? Even if we believe the President was charged, and even if we believe those offenses rise to the level of impeachment, should we risk the national trauma of forcing his removal against the clearly expressed desire of the vast majority of Americans that he should not be removed even if he is guilty of perjury and obstruction of justice?

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

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

This, too, is an appealing rationalization for acquittal. But it is just that, a rationalization. Nowhere in the Constitution or in the expressed views of our forefathers are crimes intended to conceal the President’s character flaws distinguished from crimes intended to subvert democracy. The President thwarted justice. No matter how unfair he or we may view a process that forces a President to disclose his own failings, we should not excuse or fail to punish in the constitutionally prescribed manner evidence that the President has deliberately thwarted the course of justice.

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

All of my life, I have been instructed never to swear an oath to my country in vain. In my former profession, those who refuse their oaths were punished severely and considered outcasts from our society. I do not hold the President to the same standard that I hold military officers to. I hold him to a higher standard. Although I may not have faith in private life, I have at all times, and to the best of my ability, kept faith with every oath I have ever sworn to this country. I have known some men who kept that faith at the cost of very private nature. I cannot—not in deference to public opinion, or for political considerations, or for the sake of comity and friendship—I cannot agree to expect less from the President.

I offer to defend him against both articles I would have resigned their commission had they been discovered violating their oath. The President did not choose that course of action. He has left it to the Senate to determine his fate. And the Senate, I now, is going to acquit the President. As much as I would like to, I cannot join in his acquittal.

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

The tortured explanations with which the President’s attorneys have tried to defend him against both articles fail to raise reasonable doubts about his guilt. It seems clear to me, and to most Americans, that the President deliberately lied under oath, and that he tried to encourage others to lie under oath on his behalf. Some of these offenses may not be excused from such an abuse no matter how intrusive, how unfair, how distasteful are the judicial proceedings they attempt to subvert. The President’s defenders want to know how can I be certain that the offenses, even if true, warrant removal from office. They are not expressly mentioned in the Constitution as impeachable offenses. Nor did the founding fathers identify perjury as high crimes or high misdemeanors. Were an ordinary citizen accused of perjury in a civil proceeding he or she would in all likelihood not be prosecuted or forced out of political necessity into a perjury trap.

No, an ordinary citizen would not be treated as the President has been treated. But ordinary citizens don’t enforce the laws for the rest of us. Ordinary citizens do not have the world’s mightiest armed forces at their command. Ordinary citizens do not usually have the opportunity to be figures of historical importance.
Presidents are not ordinary citizens. They are extraordinary, in that they are vested with so much more authority and power than the rest of us. We have a right; indeed, we have an obligation, to hold them strictly accountable to the people. Are perjury and obstruction of justice expressly listed as high crimes and misdemeanors? No. Why? Because they are self-evidently so. Just as the President is self-evidently the nation’s chief law enforcement officer, despite his attorneys’ quibbling to the contrary. It is self-evident to us all, I hope, that we cannot overlook, dismiss or diminish the obstruction of justice by the very person we charge with taking care that the laws are faithfully executed. It is self-evident to me. And accordingly, I must vote to convict the President, and urge my colleagues to do the same.”

Mr. J O H N S O N. Mr. Chief J ustice, the great question now before the Senate is not whether the rule of law will prevail—it surely will—both by the actions of this body and by possible proceedings within the judicial system. The question before the Senate is whether the Articles of Impeachment can be taken against the President beyond that allowed for in our nation’s courts. We are, I believe, confronted by two threshold questions which must first be resolved before consideration can or need be given to the evidence presented by the House Managers. First, is whether the Articles of Impeachment have been adequately drawn to allow the accused to know with precision the wrong-doing to which he is accused, and to require that a majority vote of the Senate be secured upon a single act of wrong-doing in order to convict. As a second threshold matter, if the Articles are at least adequately drawn, do they, if true, allege wrong-doing of sufficient import to justify for the very first time in our nation’s long history, the over-turning of the people’s will as expressed in a free, fair and democratic national election? I am troubled by the adequacy of the articles, but even accepting them, the second threshold question of impeachability is simply not met.

Only if these threshold questions are adequately met in the mind of an individual Senator, can that Senator proceed to determine whether the weight of the evidence is sufficient to convict. And even if both threshold questions are ignored, it is impossible for me to say that the circumstantial evidence presented reaches a “beyond a reasonable doubt” standard on either article. Reasonable doubt means that if there are multiple reasonable theories as to what occurred—if one of the reasonable theories is consistent with innocence, then an acquittal must follow. Espe-

cifically relative to article two—I can understand the law of some sort of sal-

tible scenario of obstruction was estab-

lished. Some may even believe that the President was more likely than not ob-

structing justice. But the evidence is
clearly not so powerful as to lead any-
one to believe that no reasonable and
innocent scenario remains.

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

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

My humble reading of history leads me to believe that the only fair and bipartisan honoring of national presidential elections over these past two centuries has been one of the greatest sources of our national success. While holding a president accountable to all the same civil and criminal laws that apply to the rest of us is absolutely essential, the writers of our Constitution properly intended for the reversal of fair elections at the hands of Congress to be exceedingly rare and difficult.

The learned opinions of our nation’s leading scholars overwhelmingly support the understanding that presidents should not be removed from office by Congress short of some horrific personal misconduct or misconduct which arises from the President’s actions and threatens the nation—such as treason or bribery. By requiring a 2/3 vote for the over-turning of presidential elections, the founders of our nation also made it crystal clear that such an extraordinary step should not and cannot be taken unless there is an overwhelming bipartisan outcry against the President’s actions.

The American public and most Members of Congress, including myself, have been treated to a pernicious and personal attack—this understanding about the need for stability, for proportionality, for continuity, is a natural and a deeply conservative inclination on the part of our citizenry. The writers of our Constitution wanted some degree of proportionality between a president’s conduct and the penalties applied—otherwise they would have made impeachment appli-
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would be subject to discipline in the courts. While there are divided opinions on its wisdom, it is possible that some sort of collective censure may be agreed upon by the Senate, and certainly individual Senators are free to place resolutions of the President’s personal behavior in the CONGRESSIONAL RECORD. The House impeachment of the President, the public humiliation of Bill Clinton and his family, as well as the great private fortune he will have the time and money will also serve as punishment enough. But, I think it is also important for this Senate to understand that the writers of our Constitution did not create an impeachment process as one more form of punishment, but exclusively to protect the viability of our nation.

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

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

I will vote not guilty on both Article one and Article two.

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

From the beginning of the consideration of impeachment last year, many Members of Congress in both parties have made public statements expressing the view that the President was guilty of the impeachable offenses. I am not among those. When my service in this body is done, I want my children, my family and the great private fortune he will have the time and money to serve as punishment enough. But, I think it is also important for this Senate to understand that the writers of our Constitution did not create an impeachment process as one more form of punishment, but exclusively to protect the viability of our nation.

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their stewardship for the security of our country at the Senate door as they entered into an impeachment trial.

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

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

We have been fortunate that this damaged presidency has occurred during a time of relative peace and prosperity. In times of war or national emergency it is often necessary for the President to call upon the nation to make great economic and personal sacrifices. In these occasions, our President had best be trustworthy—a truth-teller whose life of principled leadership and integrity we can count upon.

Some commentators have suggested that the President lies more because he is an incompetent. But even more significant is the message that his lying sends abroad. It means that the President does not trust the American people, that he is not trustworthy, that he is not a leader, and that he is not a friend who admires him and yearned for his success.

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

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

The impeachment trial must come to an end. The Presidency will be strengthened and our ability as Americans to meet important challenges will be strengthened if we begin to restore reverence for the office and the respect we must have for the rule of law. The House Managers have built a case that is sufficient for us to conclude that we would not trust him with our daughters and not invite him home for dinner in order to convict.

Spare me from those who would tell the American people what standard they must apply when they enter the voting booth to vote—it is not when we rise on this floor to vote.

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

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

It is very important—both for history's sake and for fairness' sake—that we keep our eye on the ball. When I tried cases, I learned from a man named Sid Balick—he used to say at the outset to the jury: "Keep your eye on the ball. The issue is not whether my client is a man you would want your daughter to date—a man you would invite home to dinner. The issue is did my client kill Cock Robin—period."

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

Spare me from those who would tell the American people what standard they must apply when they enter the voting booth to vote—it is not when we rise on this floor to vote.

Our only job is to decide whether or not to remove the President. The House set the standard we must repair; the Articles did he commit a criminal offense? That is what they allege; that is what they must prove.

The Managers keep saying that this case is about what standards we want our President to meet. We hear FNanderson's Fields intoned—the honor of our most decorated heroes. How incredibly self-serving and autocratic such a plea is. The American people are fully capable—without our guidance or advice—to determine what standards they want our President to meet. That is an appropriate question to ask ourselves when we enter the voting booth to vote—it is not when we rise on this floor to vote.

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

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

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

It is the Constitution that supplies the standards to use in deciding whether or not to remove the President and—in my view, this case does not meet that standard, for two reasons.
First, the facts do not sustain the House Managers’ case. According to the House’s own theory, we must find that the President has violated federal criminal statutes—not just that he did bad things. In all good conscience, I just can’t find a single one that any jury would have difficulty convicting the President of among the criminal charges on these facts. I also believe that it is our constitutional duty to give the President the benefit of the doubt on the facts. To me, the allegations that the President violated Title 18 were left in a shambles on this floor.

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

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

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

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

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

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

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

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

Hamilton had the word “political” typed in all capital letters to emphasize that this is the central, defining element of any impeachable offense. Hamilton did not provide specific categories of offenses. Using Hamilton’s terms, these are offenses committed by “public men” who “violat[e] some public trust” cause “injuries done immediately to the society itself.” The public trust that resides in, to use Hamilton’s hoary phrase, “public men” is what we would call today the public interest.

What other construction can be given these words? Hamilton did not define an impeachable offense to be any offense committed by public men. He did not define an impeachable offense to be any reprehensible act committed by a bad man. Only those acts that abuse public office and so harm the public directly and politically are impeachable. While I would like to take credit for this insight into Hamilton’s meaning, I feel bound in a line of interpretation that stretches back to the founding era. William Rawle wrote the first distinguished commentary on the Constitution, “A View of the Constitution of the United States of America.” In this treatise, he came to precisely the same interpretation I have described. He said, “The causes of impeachment can only have reference to public character and official duty… In general those which may be committed equally by a private person as a public officer are not the subject of impeachment.”

Joseph Story was not only a long-service and important Just. The Supreme Court of the United States, he was a preeminent constitutional scholar and author of a treatise that remains an important source for understanding the Constitution’s meaning. He too emphasized that “it is not every offense that by the Constitution is… impeachable.” Which offenses did he regard as impeachable? “Such kinds of misconduct or sufficiently independent? What other body would be likely to feel confidence in its own neutral? Only the United States Senate as the only body that could possibly hear a presidential impeachment. “Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence in its own neutrality to preserve, unawed and uninfluenced the necessary impartiality between an individual accused and… his accusers?”

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

Charles Black, the renowned constitutional law professor from Yale, boiled down the attitude that we as Senators must adopt in order to achieve an impartiality and independence sufficient to the responsibilities of impeachment. He said we must act with a “principled political neutrality.” That is a tough standard to meet. In the Johnson impeachment, for example, James Blaine originally voted for the impeachment of the President in the House. Y ears later he admitted his mistake, saying that “the sober reflection of after years has persuaded many who favored Impeachment that it was not justifiable on the charges made,
and that its success would have re- 
sulted in greater injury to free institu-
tions than Andrew Johnson in his ut-
most endeavor was able to inflict.

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

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

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

In reaching a final decision, the ques-
tion I wish to pose to my colleagues is 
this: Can you legitimately conclude that 
the public interest would be served by 
removing the President if he were a person to-
wards whom you felt oppositely than 
you do toward Bill Clinton?

Given the essentially anti-demo-

cratic nature of impeachment and the 
great dangers inherent in the too ready 
exercise of that power, impeachment 
has no place in our system of constitu-
tional democracy except as an extreme 
measure—reserved for breaches of the 
public trust by a President who so vio-
lates his official duties, misuses his of-

cicial powers or places our system of 
government at such risk that our con-
stitutional government is put in imme-
diate danger by his continuing to serve 
out the term to which the people of the 
United States elected him.

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

I ask unanimous consent that the 
text of my statement be printed in the 
RECORD.

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

SENATOR JOSEPH R. BIDEN’S COMPREHENSIVE STATEMENT OF IMPEACHMENT DELIBERATIONS

There are no good guys in this sordid af-
fair. Rightly or wrongly, the public has con-
cluded that the President is an adulterer 
and liar. Ken Starr has abused his authority by 
unfair tactics born out of vindictiveness. The 
House Managers have acted in a narrowly 
partisan way and are now desperately at-
tempts to support their actions with lin-

er自己的 political reputation and that Monica 
Lewinsky was both used and a user, while 
Linda Tripp, Lucianne Goldberg, Paula 
Jones and her official and unofficial legal 
teams are part of a larger political plot to 
“get the President”.

At this point, all that occurred before this 
is beyond my ability to assess. My job as a 
United States Senator hearing an impeach-
ment trial is not to dissect the motives 
or even the tactics of Ken Starr, the trial 
lawyers, the House Managers, or others. My only job 
is to determine whether the President of the 
United States, by his conduct committed the 
acts alleged in the articles of Impeach-
ment adopted by the House. Generally, but specif-
cally, did he do what is alleged—and if he 
did, do these actions rise to the level of high 

When the Framers designed our elected 
branches of government, they established 
a system of separate but equal branches. The 
independence of the President from the Con-
gress, and this fact stands anchored in the fact 
that each answers directly to the people through the ballot box. The 
people determine who will serve in either branch.

As I said in a speech last September at 
Syracuse Law School and in another on the 
floor of the United States Senate, the inde-
pendence of the President is a primary 
principle in the American system of govern-
manship. It is the belief by the House of Representa-
tives that the President has so breached the public trust that 
our system of government is put in danger 
by his continuing to serve out the term to which 
the people of the United States elected him.

Have the House Managers presented a case 
of sufficient severity, and have they proved 
it with sufficient clarity, to justify the dras-
tic and awesome step of convicting a duly 

elected President?

On January 12, when the House Managers 
walked across the rotunda to the Senate and 
openly read their charges against the President, 
the country moved from the realm of sound 
judgment of each Senator to decide whether 
the President is a serial perjurer and 

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

Second, they said that failing to remove 
the President will also condone his plot or 
scheme to deny a specific civil rights plain-
tiff—Paula Jones—one of a full opportunity 
to redress her rights. And the President 
guaranteed that the President. Regardless of the ripple effects of 
his actions, the acts themselves were viola-
tions of law that amounted to a failure of 
the President to “faithfully execute,” in 
violation of his oath of office.

MULTIPLE VIOLATIONS OF THE CRIMINAL LAW 
NECESSARY

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

In this case, however, the House Managers 
have made it quite clear that their case against the 
President depends entirely on proving that he has committed crimes, and 
the few crimes they assert constitute a scheme that included “lots and lots of 
perjury” and “many obstruction of justice,” to 
quote Mr. McCollum. The dangers the Presi-
dent supposedly poses to the 
President’s reprehensible conduct, or 
from the fact that he misled his family, his aides, his 
cabinet and the nation about that con-
duct. This impeachment is not about sex, 

I asked Mr. Barr about this during the 
trial, and he said “What brings us here . . . 
is the President?” The House Managers quite correctly 
represented the public vote that this President vio-

lated, in numerous respects, his oath of of-

fice and the Criminal Code of the United States of America—particularly, that he 
committed perjury and obstruction of jus-
tice.” Mr. McCollum made the same point in 
his opening presentation, when he said, “The 
first thing you have to determine is whether or 
not the president committed crimes. It’s 
only if you determine he committed the 
crimes of perjury, obstruction of justice and 
the other crimes that you ever move on to 
the question of whether he is removed from office. . . . None of us would argue to 

that the President should be removed from office unless you conclude he committed the 
crimes that he is alleged to have committed.”

THE BURDEN OF PROOF IN ASSESSING THE 
HOUSE’S CASE

So the question before the Senate is 
whether the President is a serial perjurer and 

a massive obstructor of justice.

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

For this Senator, fundamental fairness as 
well as the nature of the House’s case dictate 
that I ought to be convinced beyond a rea-
sonable doubt that the President violated 
the laws that the House alleges. Proof be-
yond a reasonable doubt is the same stan-
dard applied in criminal cases—it is the stan-

ard that would apply if the President were
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tried in a criminal court for perjury or obstruction of justice.

It seems to me that fundamental fairness counsels that I apply the same standard as a criminal trial. Nonpartisan faithfulness to the Constitution must strike while the iron is hot. The strength of that argument is quite clear, and I have said as much on prior occasions—that the Senate does not sit as a court of law when it tries an impeachment. As Alexander Hamilton stated in Federalist No. 65, impeachment is a political process.

"Political" in Hamilton’s usage had two meanings as it relates to impeachments. First, it refers to the political nature of impeachments—very different institutional and long traditions of, say, the English House of Commons and political parties to the US Senate. The problem in applying the standard of proof in an impeachment trial is ultimately political in a second sense, too. It is political in the sense that the Senate has the responsibility to weigh the doctrines of separation of powers and the rule of law against the claims of the public that the President is guilty of impeachable conduct. What is the nature of the allegations and what the standard of proof must be? What is the role of evidence in an impeachment? For me, the role of evidence is to support or undermine the standards I have applied in the discussion above.

One can then apply the standard of proof on that basis, I have reached the conclusion that the Senate should not convict President Bill Clinton of perjury or obstruction of justice. The Senate would therefore return the President to his office, and the public would see that the country’s political institutions are able to handle the challenging tasks that confront it.

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HARMFUL CONSEQUENCES RECONSIDERED

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

The House Managers warn that failure to remove the President would destroy or undermine the sound administration of justice and threaten the rule of law. If true, that would be a big deal. But I see from that perspective, it is hard for me to see how the harms flowing from keeping Bill Clinton in office outweigh the harms to our constitutional democracy that would result from removing him.

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

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

This was my view of my role in 1974, when I rose on the floor of the United States Senate and opposed holding the impeachment trial of President Richard Nixon. And it was my view last year, when I urged restraint and bipartisanship as the attitude I hoped my colleagues would adopt. And it remains my view.

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

The constitutional balance the Senate must strike

While I believe that I must apply a standard of proof beyond a reasonable doubt because of the nature of the charges that the House has brought against him, it is also quite true—and I have said as much on prior occasions—that the Senate does not sit as a court of law when it tries an impeachment. As Alexander Hamilton stated in Federalist No. 65, impeachment is a political process.

"Political" in Hamilton’s usage had two meanings as it relates to impeachments. The first is the political nature of impeachments—very different institutional and long traditions of, say, the English House of Commons and political parties to the US Senate. The problem in applying the standard of proof in an impeachment trial is ultimately political in a second sense, too. It is political in the sense that the Senate has the responsibility to weigh the doctrines of separation of powers and the rule of law against the claims of the public that the President is guilty of impeachable conduct.

What is the nature of the allegations and what the standard of proof must be? What is the role of evidence in an impeachment? For me, the role of evidence is to support or undermine the standards I have applied in the discussion above.

One can then apply the standard of proof on that basis, I have reached the conclusion that the Senate should not convict President Bill Clinton of perjury or obstruction of justice. The Senate would therefore return the President to his office, and the public would see that the country’s political institutions are able to handle the challenging tasks that confront it.
That same calmer judgment ought to apply to the administration of justice and the rule of law. The House Managers presented no evidence whatsoever of the dire consequences. All and any likelihood simply wash up harmlessly on the shores and be forgotten forever. I, frankly, do not see how failing to remove the President will alter the conduct determinative of whether the President got away with it. The jury should acquit his client. The fact of the matter is, lots of perjury trials result in acquittals without impacting his ability to commit the criminal justice system to bring such charges where appropriate.

The House Managers’ cry of alarm ignores the fact that the President is on trial, not in an impeachment trial. This is not a criminal proceeding and thus the manner in which the Senate deals with the question has no implications at all for how it should deal with the question in a trial. The Constitution is very clear about this. In Article I, §3, cl. 7, the Constitution provides that whether or not a person is removed from office through impeachment that party “shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.” If the evidence was overwhelming as the Managers say, the President can be prosecuted for perjury and obstruction after he leaves office.

The House Managers have a very technical understanding that impeachment is a political process—and a particularly clear understanding that this impeachment has been thoroughly political. You may find there is no easy way before the Senate—I don’t think anyone is confusing it with a legal process. No one, therefore, will take any solace from the President’s acquittal in terms of their ability to commit perjury or obstruct justice and thereby avoid criminal charges.

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

The House Managers have also warned that failing to remove the President will continue his plot or scheme to deny a specific wrong or injury to Paula Jones. The President knew something else, as well. He knew that his illicit relationship with Monica Lewinsky was a political assault on him, not a legal assault. The House Managers have also warned that he acted to prevent the president’s political adversaries from using the Jones discovery process to pry open that secret relationship and expose it, all to the political damage of the President.

In this context, it is understandable that the President wanted to frustrate the Jones litigation. What is more, the President can hardly be said to have prevented Paula Jones from prevailing in the civil lawsuit. There was no meritorious case to present. So keeping Lewinsky out of the politically venomous context of a potentially meritorious lawsuit was a political objective, not a legal one. Indeed, it was not justifiable on the charges made, and that its success would have resulted in greater injury to free institutions that Andrew Johnson in his utmost endeavor was able to inflict.

And in our contemporary situation, former President Ford and our distinguished colleague and former majority leader, Robert Dole, have both urged us not to go down the road to impeachment, but to seek other means to express our displeasure. We ought to follow these lessons, and to be alert to the dangers arising from a duly elected President on these charges that will inflect on our system of government.

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

CONCLUSION

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

The President deserves our condemnation. He has brought shame upon himself and our country. But we have not reached this point due to its failings alone. It has taken the volatile combination of his blamedness and the infallibility of its institutions to bring him to the brink of a profound constitutional moment.

But I am saying, first, that the President has not been harmed in any way in her job, and the President had never repeated anything remotely close to the impeachment evidence on the witness stand after she again. She had received merit pay raises in her state employment and she had received good job performance reviews. She won a settlement in her lawsuit—she had nothing to fear in any way by the President’s actions.

Actually, what damages she did assert—what caused her to file the lawsuit, according to the testimony—was the result of the publication of a hatchet-job article against President Clinton run in the American Spectator. The article was one salvo in an ongoing campaign of harassment of Mr. Clinton’s sister-in-law, Mrs. Kimiyi in Arkansas, aimed simply at digging up anything that could be politically damaging to the President. When the American Spectator published the article, Mrs. Kimiyi found a lawyer to file suit in order to “reclaim her good name.” The lawyers Paula Jones eventually found were also underwritten by right-wing conservative Republican money. In fact, investigative reporters as recently as this past week have found more details of the tightly knit web of conservative lawyers and conservative financial backers who have hounded this President relentlessly since the day he took the office.

Now the President knew that the lawsuit was without merit—he might have behaved obnoxiously with Paula J ones, but he did not do so. He also knew something else: that the real motivation of the lawsuit, the motivation that funded it and kept it going, was a political assault on him, not a legal assault. The lawsuit was small, at first. Paul Jones never had any hope of discovery, were being used to engage in a fishing expedition throughout Arkansas in search of political dirt. Leads to the discovery appeared in the regular print press. The President knew something else, as well. He knew that his illicit relationship with Monica Lewinsky was a political assault on him, not a legal assault. The House Managers have also warned that he acted to prevent the president’s political adversaries from using the Jones discovery process to pry open that secret relationship and expose it, all to the political damage of the President.

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The President deserves our condemnation. He has brought shame upon himself and our country. But we have not reached this point due to its failings alone. It has taken the volatile combination of his blamedness and the infallibility of its institutions to bring him to the brink of a profound constitutional moment.
Given the essentially anti-democratic nature of impeachment and the great dangers inherent in the too ready exercise of that power, impeachment has no place in our system of democracy. Even as an extreme measure—reserved for breaches of the public trust by a President who so violates his official duties, misuses his official power, and violates the system of governmental checks at such risk that our constitutional government is put in immediate danger by his continuing to serve out the term to which the people have elected him—I urge my colleagues to remain faithful to the constitutional design and to our obligation to do impartial justice.

Before we lack issues of constitutional law, positive law, or Senate procedure that have arisen during the impeachment trial of President Clinton. As the impeachment process moved forward in a very public way, the question was not as politically intense—and not necessarily beneficial. My legal training combined with more than a quarter century of experience in the United States Senate has taught me several important lessons. Two of these lessons are appropriate now.

First, an ordered society must first care about justice. Second, a process that is constitutionally permissible may not be just or wise. And it is with these two very important lessons guiding me, that I embark upon a consideration of the policy of our country, our Constitution, and our President.

The power to overturn and undo a popular election of the people, for the first time in our nation's history, must be exercised with great care and sober deliberation. We should not forget that 47.4 million American voters, Henry Clay, President, 1846. 0.2 million more than voted for the President’s opponent.—[Speech, 10/29/98]

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

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

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

History tells us that John Tyler was an enormously unpopular president, facing a hostile Congress dominated by his arch political enemies: he signed an important bill raising tariffs and increased our trade deficit. He also vetoed several other bills of his choosing—failing to win either chamber approval. This was the lesser action of a “want of confidence” vote rather than formal impeachment proceedings. In early 1843, the resolution actions, such factional considerations did not dominate decision making.

Political friends and foes of the president agreed that the charges against the president were serious, but actions would not be taken unless there was further inquiry and, once there was definitive evidence of serious complicity and wrongdoing, a consensus emerged that impeachment should be invoked. The president resigned after the House Judiciary Committee voted out articles of impeachment by a 29-10 vote.

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

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

Many scholars who have studied the Constitution have concluded that it should be reserved for offenses that are abuses of the public trust or abuses that relate to the public welfare of the President. To me, what is impeachable is not necessarily criminal and what is criminal is not necessarily impeachable.—[Speech, 10/29/98]

I am here today to call for bipartisanship in the impeachment process. It is a concept many will say they agree with. But actions speak louder than words. This article from the New York Times and from the commentaries on the Constitutional Convention that the framers were concerned that
anything less than bipartisanship could, and would, do great damage to our form of government. They knew that to contemplate an action as profound as undoing a popular election result, from which both major parties find that the alleged wrong is grave enough to overturn the will of the majority of the American people.

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

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

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

Yet the vast majority of historians and legal scholars have concluded—and stated publicly—that nothing that President Clinton has done rises to the standard of an impeachable offense. The hearing was a political charade. We are told that ultimately, this is a political process. Ultimately, this is a question of whether the President's actions are impeachable.

That may not be fair, but I believe that is how they will judge it. Therefore, it seems clear to me that for history's sake, and with the Committee's legacy in mind, Chairman Hyde and the Republican majority in the Judiciary Committee are unable to demonstrate that they have conducted this proceeding based on principle, not politics. There is yet another issue where public opinion really comes into play. It is simply the question of whether the President's transgressions warrant impeachment. We know from survey after survey that the American people believe the President's actions do not justify impeaching him.

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

But I believe it is a serious mistake to take the position that public opinion should have no bearing on how we act and what we do. Let me explain. Many people—and many legal scholars—have said that impeachment should be reserved for grave breaches of the public trust. If we try to decide whether an offense is a breach of the public trust, it is important to know what the public thinks. If the American people believe the President's actions warrant impeachment, we should listen to their views, and take them seriously. It would be a serious mistake to ignore public opinion for another, more fundamental reason. This is that the American people are talking about. The President of the United States doesn't serve at the pleasure of the President. He is elected directly by the people of the United States.

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

This was brought home to me several weeks before the elections at a filling station in Wilmington. The woman working the cash register looked up at me with something of a scowl on her face. I assumed—in the context of the other events going on in the country—that she wanted to take my vote away. I said, "You're Joe Biden, aren't you?" I nodded. She said, "What are you going to do to President Bill Clinton?" I started to give her a noncommittal answer about the process needing to go forward, but she brought me up short. "Don't you or anyone else take my vote away, Joe. He's my President! If you remove him, I will never vote again." The woman—and the American people—understand the genius of the American system in their bones. They know that the President and the Congress are separate branches of government. They know that each branch is responsible to them, not the other branch of government. Just as they know that the Senators from their states and districts, and the Representatives from their district is theirs, they know that the President is theirs, too.

To put that in the context of what impeach Bill Clinton needs to keep in mind what the American people think about it, because he is their President. The answer is absolutely clear. This does not mean just doing what the opinion polls say. It means proceeding in a manner that the American people understand to be fair. In the case of an impeachment, fair means bipartisan. It means putting aside the disagreements that stem from partisan factions. The time for partisan factions to play partisan politics is over. This is in the process of elections, where candidates advance competing policies and platforms and the people vote. Once the election is held, our leaders hold office until the next election. It is simply the constitutional democracy to use impeachment to overturn an election on partisan grounds. It violates the independence of the President and it usually results in a political charade. The Framers saw this danger when they wrote the impeachment power into the Constitution. Hamilton warned that an impeachment was not merely a "necessary evil," but would be a "serious mistake" to ignore. Black later warned that impeachment in the face of the public's contrary opinion bear a special obligation and confront a special risk. The obligation they face is that they must proceed in a bipartisan manner, so that we can defend the Constitution's actions as fair and consistent with the constitutional framework—so that if impeachment goes forward, those who support it can look my constituent, or their constituent, straight in the eyes and defend their actions as fair and consistent.

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

So we must be prudent. Otherwise we will succumb to the danger the Framers warned against. We will subject the President to what amounts to a vote of no confidence. If you disapprove of his presidency and its policies, or if you do not like the man, vote to remove him. But if you disapprove of his presidency and his policies, or if you disapprove of the man, vote to acquit. But that is not how impeachment is supposed to operate.

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

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

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

So the system the Framers established is utterly incompatible with the idea that sharp partisan divisions could be sufficient to impeach the president. What the Framers meant by the impeachment power was a safeguard of the institution of the Presidency during the electoral process.

As for the Johnson impeachment itself, according to the history of the Republican House members who voted for impeachment, he and others came in time to regret the effort. In private correspondence, Blaine wrote, a few years after the 1868 impeachment of Andrew Johnson, that in retrospect, he had alreadied the need for new laws to create a "chain reaction of necessity". As it was, the impeachment of Johnson was a "necessary evil".

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

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Thus far, the House Judiciary Committee has proceeded without dignity, causing the American people to lose respect for the Constitution. It is a way to punish the President without doing damage to the system of separated powers or overrunning the judgment of the American people.

Failure to impeach, even failure to proceed with a criminal trial, does not mean that the President has not paid for his immoral behavior or that the trial does not have the weight of centuries. The Conventee who imposed a penalty of a hundred years of shame in the history books, which is not an insignificant penalty.

I say to my colleagues in the House, do you want a "Proclamation of Political Neutrality"? For if you do, history will judge you kindly. And if you do not, it will judge you otherwise.

And for those of us who hold high public office and the public trust, history is a judgment. --[Speech, 11/13/98]

BURDEN OF PROOF

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

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

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

This issue may not have any jurisprudential significance for the impeachment trial of President Clinton. These standards are meant to guide juries in their fact-finding capacity. Insofar as the trial focuses on the question whether the President's conduct justifies conviction and removal from office, the proceedings will call on the Senate in its judicial character. Resolution of the question requires the Senate to exercise its legal and political judgment in order to determine whether the constitutional judgment fits the misconduct. It does not call upon the Senate to make a factual determination about what conduct actually occurred.—[Memorandum, 12/29/98]

THE BURDEN OF PROOF IN ASSESSING THE HOUSE

But can the President rightly be charged with having committed the massive number of crimes that the House Managers allege? As Mr. McCollum said, if we cannot conclude that the President has committed even one of the crimes that the House Managers would agree that he should not be removed from office. Even if
In recent days, some have suggested that because the Starr report provides prima facie evidence of what are arguably impeachable offenses, the Senate has a constitutional responsibility to see the impeachment process through to its conclusion. In my view, the constitutional history that I have sketched shows this position to be entirely mistaken. Indeed, if anything, history shows a thoroughly understandable reluctance to have the procedure invoked.

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

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

Of course, impeachment ought to be used if the breach of duty is serious enough—the Congress, in the words of the Constitution, is empowered to remove him. As others have pointed out, in the case of Richard Nixon was the correct course of action. However, nothing in the Constitution precludes the Congress from resolving this conflict in a manner short of impeachment. The crucial question—the question with which the country is currently struggling—is whether the President's breaches of conduct—which are now well-known and which have been universally condemned—warrant the ultimate political sanction. Are they serious enough to be punished?

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

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

Whatever the outcome of the present situation, I am confident that our form of government and the strength of our country can weather this critical crisis, but rather with the constitutional framework and flexibility to deal responsibly with the decisions we face in the coming months. —[Speech, 10/2/98]

CRIMES AND MISDEMEANORS, HIGH

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

Let me also say that I have not made any decision as to what I shall do. I have not come to any conclusion as to what consequences the President should face for his harmful behavior. I believe the oath I have taken precludes me from making the decision from prejuring, as I may be required to serve as a judge and juror in the trial of the century.

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

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

The framers of the Constitution who met in Philadelphia in the summer 1787 considered offering the country a constitution that did not include the power to impeach the president. After all, any wrongs against the President are those of the President. If the Congress then removed the President, it would place the president under the thumb of a hostile congress, thereby weakening the independence of the office and threatening the separation of powers. According to James Madison's notes, Pinckney called impeachment a "rod" that congress would hold over the President.

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

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

The framers were concerned that any process whereby the legislative branch could sit in judgment of the president would make the president vulnerable to abuse by partisan factions. Federalist No. 65 begins its defense of the impeachment process by warning of the dangers of abuse. It argues that impeachments: "will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side or the other; so that there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence.

So the framers were fully aware that impeachment proceedings could become partisan politics, and that all the animosities generated by all manner of prior struggles and disagreements, over executive branch decisions, over policy disputes, over ideology, and all the rest, could be brought together with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side or the other; so that there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence."
was also true when Richard Nixon faced impeachment in 1974. In fact, it would have been wrong for Richard Nixon to have been removed from office based upon a purely partisan cause. The president should be removed from office merely because one party enjoys a commanding lead in either house of the Congress. Yet while the framers knew that impeachment proceedings could become partisan, they needed to deal with strong anti-federalist factions.

The anti-federalists strenuously argued that the federal government would quickly get out of step with the sentiments of the people and become vulnerable to corruption and licentiousness. This charge proved close to fatal as the ratifying conventions in the states took up the proposed constitution.

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

James Madison's notes of the Philadelphia constitutional convention record his observations of the debate. He: "Thought it indispensable that some provision should be made for deciding the competency, and eventual incapacity of the chief magistrate [that is, the president]. The limitation of the period of his service was not a sufficient security. He might live in the community after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers."

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

Once the decision to include the power of impeachment had been made, the remainder of debate on the impeachment clauses focused on two issues: 1. What was to constitute an impeachable offense or what were the standards to be? 2. How was impeachment to work or what were the procedures to be?

As we shall see, the framers proved unable to separate these two issues entirely. Understanding the intertwined logic that helps us to understand the full implications of the power.

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

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

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

The second was the framers substantive understanding of the impeachment power. It was a power to hold accountable government officers who had, in Hamilton's terms, committed "an abuse or violation of some public trust" thereby committing an injury "done immediately to the society itself." If the gravamen of an impeachment is the breach of the public's trust, no branch of the federal government could have seemed more appropriate for such a purpose than the House, which was conceived and designed as the chamber most in tune with the people's sympathies and hence most appropriate to reflect the people's views.

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

This language underwent several changes during that summer of 1787. In initial drafts, the grounds for impeachment were restricted to treason and bribery alone. When the convention met on September 8, 1787, George Mason of Virginia inquired as to why the grounds should be restricted to these two provisions. He argued that "the constitution may not be treason as above defined." Accordingly, he moved to add "mal-administration".

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

The objection apparently proved effective because Mason subsequently withdrew the motion and substituted the phrase "or other high crimes and misdemeanors." What does the phrase mean? It is clear the framers had in mind a scope smaller than the term will be equivalent to a tenure during the pleasure of the senate. But beyond this, constitutional scholars have been debating the meaning of this phrase from the very early days of the republic.

Yet despite this ongoing dialogue, I believe there are two important points of agreement as to the original understanding of the phrase. First, that the phrase which the framers used in the Constitution must refer to public character and official duties. Second, a great deal of evidence from outside the Constitution shows that both the framers and ratifiers saw "high crimes and misdemeanors" as pointing off to offenses that are serious, not petty, and offenses that are public or political, not private or personal.

In William Rawle's commentaries on the Constitution, Wilson wrote that "at both the convention and the conventions that ratified it, the essence of an impeachable offense was thought to be breach of trust and abuse of the criminal law. And this was in keeping with the primary function of impeachment, removing public officers."

If you put the notion that an impeachable offense must be a serious breach of an official trust or duty, together with the point that this offense must be a public offense, violative of the public's trust, you reach the conclusion that not all crimes, impeachable or not, are impeachable offenses. Wong告诉大家 more extended considerations. The leading explanation for the scope as to which gentlemen may not have adverted: if the President should be removed from office, and disqualification from political duties, in other words, is limited to removal from that office and disqualification from holding future offices. Remedies that I might add, correspond nicely to the public nature of the offenses in the first instance.

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

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

The third point to make about the scope of the impeachment power is this: to be impeachable, the president must have been a breach of the criminal law. The renowned constitutional scholar and personal friend and advisor, the late Phillip Kurland, wrote that "at both the convention that framed the constitution and at the conventions that ratified it, the essence of an impeachable offense was thought to be breach of trust and abuse of the criminal law. And this was in keeping with the primary function of impeachment, removing public officers."

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

I submit that this is more an extended consideration. The leading explanation for the scope as to which gentlemen may not have adverted: if the President should be removed from office, and disqualification from political duties, in other words, is limited to removal from that office and disqualification from holding future offices. Remedies that I might add, correspond nicely to the public nature of the offenses in the first instance.

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

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

Mr. MADISON, advertling to Mr. Mason's objection to the President's power of pardon, said, it would be a power to invest it in the House of Representatives, and not much less so to place it in the Senate. . . . There is one security in this case to the President from abuse, of the power of pardoning, if he be impeached, and convicted, that the President be connected, in some suspicious manner, with any person, and there
be grounds to believe he will shelter him, the House of Representatives can impeach him. . . . This is a great security." [Memorandum, 29/99]

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

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

While the Constitution calls upon each Senator to bring his or her good faith political judgment to bear on the meaning of the constitutional phrase, "other high Crimes and Misdemeanors," it does not abandon us to an ad hoc or partisan exercise of our discretion. Indeed, the framers strongly urged the federal government to endure for centuries and the Constitution itself, and the state ratifying conventions that the constitutional standard is not properly understood to allow impeachment to be used as a tool for political advantage. Thus, the framers understood that the government whose charter they were about to write would have to be entrusted with broad coercive powers to act directly upon American citizens. At the same time, the framers warned of the danger that the government would place the president under the thumb of a hostile congress, thereby weakening the separation of powers and the independence of the office and threatening the judicial review. One delegate to the constitutional convention, Charles Pinckney of South Carolina, worried that the threat of impeachment was such that "the power of the judicial department is armed to defend itself against encroachments by the others. As Justice Robert J. Jackson observed, "The power to remove the president is a power that must be exercised to the last extremity. When the power of impeachment is used, it must be used to vindicate the right of the nation and the office against encroachments that are so serious as to imperil the security of the republic." Even the most powerful means for protecting individual liberty, because it prevented government power from being concentrated in any single branch of government. To make the separation of powers work properly, each branch must be sufficiently strong and independent from the others. The framers' worry was largely anticipated by the concern that any process whereby the legislative branch could sit in judgment over the president would be vulnerable to abuse by partisan factions. Federalist No. 65 begins its defense of the impeachment process by warning of its potential for abuse. It argues that impeachment "will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side or the other. In all cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real merits of the case." The framers were fully aware that impeachment proceedings could become partisan affairs, convulsed with animosities generated by all manner of personal grudges and disagreements over executive branch decisions, over policy disputes, over resentment at losing the prior election. Federalist No. 65 expresses the view that the use of impeachment to vindicate these animosities would actually be an abuse of that power. Although the framers were concerned about impeachment proceedings becoming partisan, they needed to deal with serious wrongs. James Madison's notes of the Philadelphia Constitutional Convention record his observations of the debate where he urged that some provision should be made for defending the community against the incapacity, negligence or corruption of the chief magistrate. The limitation of the period of his service was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers." So in the end, the framers of the Constitution risked the abuse of power by the Senate to gain the advantages of impeachment.

B. THE CONSTITUTION'S TEXT AND STRUCTURE

The Constitution does not define impeachable offenses, yet its text and structure provide clear manifestation that these words refer to official misconduct causing grave harm to our constitutional government. The starting point for any analysis of the Constitution's meaning must be its text, which in relevant part reads, "the President shall be removed from Office on Impeachment for and Conviction of Treason, Bribery, or other high Crimes and Misdemeanors." Every criminal offense, including such trivial infractions as parking offenses, involves public or societal harm. It is for this reason that criminal cases are titled, "The State versus . . ." or "The Government versus . . ." Each of the definite impeachable offenses, treason and bribery, are distinct in that they cause grave harm to the public not in some undefined but significant way. That is why every one of them is an impeachable offense. In describing the common characteristics of treason and bribery, Professor Charles Black of Yale Law School explained that each offense involves the most serious offense against our system of government. Similarly, bribery inescapably involves a serious invasion of the public trust. In describing the common characteristics of treason and bribery, Professor Charles Black of Yale Law School explained that each offense involves the most serious offense against our system of government. Similarly, bribery inescapably involves a serious invasion of the public trust.
President Andrew Johnson that “treason and bribery . . . these are offenses which strike at the existence of [the] government. ‘Other high crimes and misdemeanors.’ Noscitur a socia. High crimes and misdemeanors: those crimes and misdemeanors of a public nature, and for which the public are the ultimate sufferers. If they are too petty or insignificant to constitute an indictment for either of those offenses, they do not involve official conduct.”

In the immediate constitutional setting, the terms treason and bribery take on a second distinctive aspect. As used in Article II, Section 4, each term involves official misconduct. Bribery, but not treason, is punishable only when the official undertakes an official act in return for payment or some other corrupt consideration. Likewise, treason necessarily involves official misconduct as defined in the Constitution. To be sure, it is possible for a private citizen to commit treason by giving aid and comfort to the enemies of the United States. It must be understood that impeachment proceedings may be pursued only against civil officers of the United States. By limiting impeachable treason to civil officers, the Constitution expressly contemplates that treason will provide a grounds for impeachment and conviction only where a civil office is used to adhere to or aid the enemies of the United States.

The textual construction expressed above—that high crimes and misdemeanors refer to grave high crimes and misdemeanors: those crimes and misdemeanors of a public nature, and for which the public are the ultimate sufferers. If they are too petty or insignificant to constitute an indictment for either of those offenses, they do not involve official conduct. In responding to Madison’s concern, Mason pressed the important concern that the executive branch not be accorded primacy; their experience with the tyranny of the British government too recently permitted them to accept executive supremacy. Instead, the Constitution establishes three branches that are independent, strong, and co-equal. Construing the category of high crimes and misdemeanors too broadly would threaten the independence of the executive and judicial branches. This specific concern animated James Madison in the Philadelphia Convention and moved him to object to vague and potentially expansive formulations of the grounds upon which the President could be impeached and removed from office.

The formulation of high crimes and misdemeanors is also consistent with the Constitution’s overall structure. In as much as the Constitution’s structure specifical draws significant support from the Constitution’s structure. The text reflects the framers’ conscious decision not to adopt a parliamentary system of government, in which the executive power is subordinate and to be controlled by the legislature. The structure also reflects the framers’ judgment that the executive branch not be accorded primacy; their experience with the tyranny of the British government too recently permitted them to accept executive supremacy. Instead, the Constitution establishes three branches that are independent, strong, and co-equal. Construing the category of high crimes and misdemeanors too broadly would threaten the independence of the executive and judicial branches. This specific concern animated James Madison in the Philadelphia Convention and moved him to object to vague and potentially expansive formulations of the grounds upon which the President could be impeached and removed from office.

The purpose of Madison’s motions was to include all offenses that pose a threat to our system of government. Similarly to that posed by treason, Madison expressed the important concern that the expansion not be left so far open as to erode the executive’s independence. In response Madison withdrew his own original motion and moved to add “or other high Crimes and Misdemeanors.” His motion was quickly approved.

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The textual construction expressed above—that high crimes and misdemeanors refer to grave high crimes and misdemeanors: those crimes and misdemeanors of a public nature, and for which the public are the ultimate sufferers. If they are too petty or insignificant to constitute an indictment for either of those offenses, they do not involve official conduct. In responding to Madison’s concern, Mason pressed the important concern that the executive branch not be accorded primacy; their experience with the tyranny of the British government too recently permitted them to accept executive supremacy. Instead, the Constitution establishes three branches that are independent, strong, and co-equal. Construing the category of high crimes and misdemeanors too broadly would threaten the independence of the executive and judicial branches. This specific concern animated James Madison in the Philadelphia Convention and moved him to object to vague and potentially expansive formulations of the grounds upon which the President could be impeached and removed from office.

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

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

At least one important treatise writer, William Rawle, concluded that only official misconduct could provide a basis for impeachment. He contended that “the causes of impeachment can only have reference to public and official duty. Any general crime which may be committed by a private person as a public officer is not within the provisions of the impeachment. Additional support for this proposition comes from the renowned constitutional scholar, Philip Kurland who wrote that “at both the convention that framed the Constitution and at the conventions that ratified it, the existence of an impeachable offense was thought to be breach of trust and not violation of the criminal law. It was in keeping with the primary function of impeachment, removal from office.” Finally, additional support for this proposition comes from the United States Department of Justice. In a memorandum produced by the Justice Department’s Office of Legal Counsel during impeachment proceedings against President Nixon observed, “[t]he underlying purpose of impeachment can only have reference to public and official duty. . . . In fact, the misconduct in question raised by not adopting the Federal Rules of Evidence, although it would establish an important precedent in favor of economy and efficiency in impeachment proceedings. The committee accepted DeWine’s argument and received the trial record as substantive evidence. In Judge Claiborne’s case, the committee agreed to receive evidence that had been subject to cross-examination by Judge Claiborne’s attorneys. If the President’s counsel objects to the Senate receiving the Starr report and supporting materials, he could distinguish the Claiborne case on the ground that the President’s lawyers had no opportunity to cross examine grand jury witnesses.

Evidence of Prosecutorial Misconduct Admissible? The President’s counsel may seek to introduce evidence of prosecutorial misconduct. The House Managers or Senators may object on the grounds that such evidence is irrelevant. Either the President committed high crimes or misdemeanors, or he did not; evidence relating to what the independent counsel may have done to introduce evidence is irrelevant. Either the President committed high crimes or misdemeanors, or he did not; evidence relating to what the independent counsel may have done to introduce evidence is irrelevant. Either the President committed high crimes or misdemeanors, or he did not; evidence relating to what the independent counsel may have done to introduce evidence is irrelevant. Either the President committed high crimes or misdemeanors, or he did not; evidence relating to what the independent counsel may have done to introduce evidence is irrelevant. Either the President committed high crimes or misdemeanors, or he did not; evidence relating to what the independent counsel may have done to introduce evidence is irrelevant.
Various proposals to have the Senate vote on "findings of fact" prior to a final vote on the articles of impeachment are circulating. The most onerous of these would ask the Senate to determine that the President had violated federal laws against perjury and obstruction of justice.

Under one presumed scenario, the findings of fact would be the subsequent substantive vote on the articles of impeachment would fail. Thus, while the President would remain in office, his legacy would be besmirched by an impeachment trial's findings of guilt.

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

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

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

One could even imagine a findings of fact procedure that was even more objectionable to the Constitution than the Senate impeachment trial itself. The procedure would be to find the President guilty of offenses that were insufficient to warrant conviction and removal, then to separate a vote on guilt or innocence from a vote on removal.

The idea that the House could routinely impeach the President would be beyond the pale in the eyes of the Founding Fathers, who viewed impeachment as being an institution designed to deal with the most serious breaches of public trust.

The consequences of sanctioning impeachment for "low" crimes and misdemeanors in this way are spelled out nicely in a draft op-ed article by the Wall Street Journal:

"The Senate proceeds with the proposed findings of fact, but the Senate then has taken another big step toward transforming impeachment, the Senate finds..."
the ultimate consequences that flow from those facts, taking into account both the costs of retaining the civil officer in office as well as the costs of removing him or her. It could be argued that, had the constitutional provisions been designed differently, the procedures would be just as well served if the basis for the final judgment was expressed in more discreet and articulated collective judgments of the Senate as a body, rather than in discrete factual findings.

This last point runs counter to the Senate’s current practices, however. Rule XXXII of the rules of impeachment provides that “an article of impeachment shall not be divisible for the purpose of voting thereon if supported by one or more of the enumerated specifications.” The proposal was adopted in 1986. Some of its legislative history is pertinent:

"The portion of the amendment effectively enjoining the Senate from dividing an individual article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard Nixon. The latter did not follow the more familiar pattern of impeachment trials..."...[Memorandum, 1/15/99]

Putting aside constitutional or rule-based arguments, it does seem inconsistent with the spirit of Rule XXXII and with its evident intention to avoid divisive preliminary votes of this kind.

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

A. Elements of the General Obstruction of Justice

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

1. That there was a pending judicial proceeding.
2. That the defendant knew that the proceeding was pending.
3. That the defendant used or threatened to use a government official or a person under the authority of the government in the course of proceeding under the statute.
4. That the government official or person under the authority of the government acted or was likely to act in accordance with the defendant’s request.
5. That the defendant was intend to mislead or misinform the witness or person under the authority of the government.
6. That the defendant’s conduct was a violation of law.

Under federal law, a witness commits perjury when, in answer to a question put to him under oath before a grand jury, he makes a knowingly false statement. The government must prove each of the following:

1. That there was a pending judicial proceeding.
2. That the defendant made a statement under oath.
3. That the statement was false.
4. That the defendant knew that the statement was false.

"Endeavor" means that the defendant also intended, by his or her conduct, to prevent the witness from testifying. The word "endeavor" is defined in 18 U.S.C. § 1515 to include (A) knowingly making a false statement; (B) intentionally omitting information from a statement and thereby causing a proceeding to be misleading or intentionally concealing a material fact, and thereby creating a false impression by such statement; (C) with intent to mislead, knowingly submitting false evidence or failing to submit evidence that is relevant and material to an investigation or trial; (D) making a materially false, fictitious, or fraudulent statement to a government official or person under the authority of the government, or causing such a statement to be made; (E) causing a government official or person under the authority of the government to make a false statement; (F) making a false statement to a grand jury; (G) making a false statement in any matter within the jurisdiction of the United States, or causing such a statement to be made; (H) using any false writing or record of any kind, or causing such a writing or record to be made.
Only unambiguous questions can form the basis of perjury convictions. If a question can reasonably be interpreted in multiple ways, perjury can not be based only on the question itself but must be evidence of what the person answering understood when responding.

Grand jury perjury can not be based on an answer that is literally true even if misleading and nonresponsive to the question asked. The burden is on the questioner to identify evasive answers and press for clarity at the time rather than let it pass and charge perjury later.

Grand jury perjury convictions can be based on the testimony of a single uncorroborated witness. And, even if no single statement can be shown to be knowingly false, perjury can be shown if the individual knowingly made multiple material declarata under oath that are "inconsistent to the degree that one of them is necessarily false."

A "material matter" for perjury convictions under federal law must have some bearing on the substantive elements of the issues that the grand jury was convened to investigate. Evidence of the precise issue in that case, Jones' lawyers could not have introduced evidence about her relationship with the President in order to attack her credibility in that suit, so that statements on the subject are not material under perjury law.—[Memorandum, 12/30/98]

PRESIDENT, INDICTMENT OF

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

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

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ROLE OF CHIEF JUSTICE

The Chief Justice of the United States is the Presiding Officer over the Senate's deliberations when the President has been impeached. He acts as the presiding officer during an impeachment trial, but with less ultimate authority. He directs preparations for the trial, as well as the trial proceedings themselves. Under the precedent of the Johnson trial, the Chief Justice can make rulings on all evidentiary and procedural motions and objections, although he can also refer them directly to the Senate. This was in fact Chief Justice Chase's practice on evidentiary motions made during the Johnson trial. His rulings can be overruled by majority vote of the Senators present and voting.

The Constitution dictates that the Chief Justice acts as the presiding officer during an impeachment trial of the President. The President's role is subject to determination by the Senate. There could be sentiment to expand his powers, such as by making him the chair of a Rule XI committee, on the theory that the Chief Justice will be non-partisan and impartial. Other powers that might reasonably be assigned to the Chief Justice include authority to conduct pre-trial proceedings or to oversee settlement negotiations. If the Chief Justice is perceived as impartial, his role as the House Managers would carry great weight and place a heavy burden on anyone seeking to overrule them. On the other hand, a determined majority could simply ignore any Chief Justice, thus undermining the effectiveness of the Chief Justice on the proceedings by reversing his rulings and refusing to grant him powers beyond the inherent powers of the presiding officer.

ROLE OF HOUSE MANAGERS

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

ROLE OF PRESIDENT'S COUNSEL

The President may choose an attorney or agent to present his defense. These attorneys perform the same functions as the House Managers. They highlight the articles of impeachment and perform all functions normally performed by a prosecutor. They make an opening and closing statement on the case, decide what evidence to present and what witnesses to call, subject to the Senate's decision to issue a subpoena to compel attendance of involuntary witnesses. The managers lead examination of witnesses they offer and cross-examine witnesses called by the President's counsel. They may also make procedural, evidentiary, and other motions. – Memorandum, 12/28/98

ROLE OF THE SENATE

[The constitutional text, the Frame's understanding of constitutional practices] Provide important anchors for any impeachment inquiry, but they do not resolve all questions of scope that may arise. Much remains gray, and many questions are worked out in the context of particular circumstances and allegations.

As Hamilton explained: The Federalist, No. 65, impeachment cannot be tied down by strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the judges.

After all of the legal research, we are still left with the realization that the power to convict for impeachment constitutes an "awfully" wide discretion.

The Senate has the power to try all impeachments. This power imposes upon the Senate a duty to act in every case in which the House of Representatives impeaches a civil officer of the United States. The framers were deeply concerned that impeachment could become a partisan tool used to gain control and influence over civil officers, and the President in particular. They entrusted to the Senate the role of adjudicating impeachments because the Senate's structurally conferred capacity for deliberation, independence, and impartiality would allow it to act as a check against partisanship. The Constitution for this reason assigns to the Senate the consideration of a motion to proceed to the impeachment trial, determining that conviction requires a vote of two-thirds of the members present.

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

Even if an impeachment meets all of the constitutional criteria to invoke a Senate
trial, evidentiary proceedings may be unnec-
nessary. It is well-established that the House
managers charged with prosecuting the im-
peachment may introduce the record of other
house proceedings that are relevant to the
Senate trial. The House managers have
independent discretion over their prosecu-
tion of the case, and may decide to rest their
case on the House record. In that event, the
impeached defendant may choose to
present no affirmative evidence in his de-
fense. Where the parties have decided that
the documentary record is sufficiently en-
compassing to allow adjudication, the Con-
stitution does not require the Senate to
retreat from this rule.
Strong support for summary adjudication as
a faithful discharge of the Senate's con-
stitutional duty to try impeachments may al-
so be found in the operation of the federal
judiciary. The Constitution guarantees "the
right of trial by jury" in "suits at common
law." There is a tension between the right
to trial by jury and summary adjudication by
the court. Where a federal court grants sum-
mmary judgment or dismisses a lawsuit, for
example because it fails to state a claim,
there is no trial at all, let alone a trial by jury.
As a result, there has been a demand that
the federal courts grant motions to dismiss
summary judgment so that the parties have
the opportunity to present their case under
strict time limits—although these
time limits would not prevent a determined
effort to prolong the trial through repeated
informal motions for continuance. The Senate
can act as a check against partisan abuse
of the authority of the federal courts to
grant motions to dismiss and motions for
summary judgment. There would seem to be
even more support for the Senate's right to
adjudicate in the context of a Senate impeach-
ment trial. This is because the Senate acts
as both judge (finder of law) and judge (finder
of facts), so there is no concern about the
allocation of the adjudicative function
between judge and jury. The Constitution
imposes upon the Senate a duty to try impeachments so that the Sen-
ate can act as a check against partisan abuse
of the impeachment process. Fidelity to the
Constitution requires the Senate to interpret the law of impeachment as set
forth in the Constitution and to apply that
law to the facts and circumstances of every
impeachment approved by the House of Rep-
resentatives. As with the federal judiciary,
this adjudicative duty, however, does not re-
quire the Senate to discover new evidence or
to hold evidentiary proceedings where the
record does not warrant.—[Memorandum, 12/
2298]
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I. THE HISTORY OF PRESIDENTIAL IMPEACHMENT TRIALS

We have had exactly one impeachment
trial of a President, Andrew Johnson, in 1868. This
resulted in his acquittal by a single
vote. In 1974, the House of Representatives voted to
send articles of impeachment with
impeachment proceedings sine die. The Senate voted on
the articles without debate or discussion. In the
impeachment trial. There is precedent for the Senate con-
didering dispositional motions that would
allow the Senate to render a judgment with-
out holding a trial. (In the impeachment pro-
cedings against Judge Harry Claiborne, and Nixon, the Senate entertained motions to
strike articles of impeachment or to sum-
madly adjudicate the matter.) Although
we have had a motion for summary judgment in
the impeachment rules, the Senate has not
viewed dispositional motions as seeking to sus-
pend, modify, or amend the rules. As a re-
sult, dispositional or ordinary trial
motions subject to the limits on debate set
forth in the impeachment rules and governed
by simple majority vote.
An additional reason is not available to resolve
the matter is adjournment sine die. In the
case of Andrew Johnson, the Senate voted on
three articles of impeachment, acquitting on
each. Rather than vote on the remaining
eight articles, the Senate simply adjourned
the impeachment proceedings sine die. The
impeachment rules allow for a vote to
adjourn sine die. Adjournment sine die does not
specifically pass judgment on the articles
of impeachment and so may not be satisfactory
to those who consider the Senate duty-bound
to try the impeachment trial of President
Clinton.
B. Different motions to adjudicate the
matter without an evidentiary trial. Several
different motions would seem possible, some
drawing on analogies to judicial proceedings.
1. A motion to dismiss would assert that
the articles of impeachment fail as a matter of
law to state actions upon which a conviction
may constitutionally be based. Such an
assertion could be based upon the claim that
the articles do not state "high crimes and
misdemeanors." The House managers charged
with impeaching President Clinton of committing perjury be-
fore a grand jury and of obstructing justice (among other things), a "motion to dismiss" would support conviction for high crimes or
misdemeanors. Additionally, a "motion to dis-
miss" could be a vehicle for the President to
contest the contention that the articles of
impeachment lapsed when the 105th Congress
adjourned sine die.
While there are no Senate rules governing
the timing of motions, analogy to the Fed-
eral Rules of Civil Procedure would require a
motion to dismiss to be made before the
President submits his answer to the sum-
mons, or along with his answer to the sum-
mans. In contrast to the motion to dismiss, a
motion for summary judgment asserts (1) that
the parties agree on all material facts and (2)
that those facts compel judgment for the
moving party. A party submitting a motion
for summary judgment is agreeing to have
their case disposed of on the basis of the facts asserted in his moving papers. The
opposing party has the option of filing a
motion for summary judgment or of
objecting that the summary judgment motion
as to all material facts and that a trial
is required on the disputed facts. If the
opposing party chooses the first course of
action (and this could be done by prior agree-
ment between the parties), then the Senate
could enter judgment in the case without
holding any evidentiary trial.
A motion for summary judgment is called
by the Senate by majority vote could issue a judg-
ment for the President if it concluded that
the undisputed facts fail to establish the ex-
istence of a high crime or misdemeanor war-
ranting the President's removal from office. Because this motion rests on a view of the
undisputed facts in the specific case, grant-
ing the President's motion for summary
judgment would mean only that the specific
perjury and obstructions charged in these ar-
ticles of impeachment do not warrant con-
viction. If the Senate remanded the case so
that the facts failed to establish that these offenses had actually been committed. It would
not imply that perjury or obstruction of justice
could not serve as grounds for impeach-
ment, convict, and remove a President from
office.
3. The trial might also be delayed by a
motion for a directed verdict. Civil litiga-
tion is brought after the plaintiff has
concluded his case, and before the defendant
mounts a defense. The motion asserts that
the plaintiff's evidence is insufficient to sus-
tain the claim, and that no reasonable fact
finder would disagree. Were the House Man-
gers to decide to submit the impeachment to
that magistrate, based on evidence already
gathered by Starr, the President could
bring a "motion for a directed verdict" prior
to an evidentiary trial involving any live
witness testimony.
4. Finally, the Senate's own precedents
supply the possibility of a fourth option, a
motion for summary disposition. Such a
motion might be entertained as an alternative
to any of the motions just discussed, in order
to avoid contending with the technicalities of
such motions.

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the facts warranted further evidentiary proceedings in the Senate or if the matter could be decided solely on the basis of J. I. Claiborne’s conviction for tax evasion. The Senate could also decide the matter without reference to judicial standards.

This approach is consistent with the Senate’s position that it is not bound by the federal rules of procedure. Removing the motion from the technical categories and requirements under those rules allows each Senator the discretion to consider whether additional evidentiary hearings involving live testimony or anyone giving testimony favorable to the President would come across as reliable, honest and trustworthy. Some people were convinced that in requiring the President to submit to judicial proceedings in a civil case and go through an entire civil trial would not so damage the President or to the President. If an indictment remains in the Senate, the Constitution permits the House of Representatives to act solely on the basis of Judge Clinton’s prior testimony, the Senate will certainly get the opportunity to observe their demeanor in a lower court. The President also has the constitutional and statutory right to present, in the full Senate, the same role within the committee that the Chief Justice fulfills in the full Senate. This may require that the Chief Justice preside. This may require that the Chief Justice act as chair chosen from the committee members in the majority party. The Chair exercises the same role within the committee that the Chief Justice exercises in the full Senate.

This is significant because the decisions of the chair may be reversed only by a majority vote. If the votes in committee are on straight party lines, the ruling of the chair will be upheld in every instance. A complicating factor in a presidential impeachment is the requirement that the Chief Justice preside. This may require that the Chief Justice serve as the chair of a rule XI committee if one is appointed. In this event, the rulings of the Chief Justice would be upheld on any party-line vote.—[Memorandum, 12/2898]

House Managers have asserted repeatedly that live witness testimony will resolve discrepancies in prior testimony of witnesses, and therefore they ought to be called. There are several points to be made against this point of view.

Democratic evidence is notoriously unreliable. Recall, for example, Alger HissWhittaker Chambers. Some people were convinced by one side, some people by the other. Denial is not necessarily positive, in any event. Both witnesses can come across as honest, reliable and trustworthy. Witnesses often give credible performances in court.

The House Managers are poorly situated to determine the necessity of hearing from live witnesses in order to resolve credibility issues. The House Managers have no right to hear live witnesses, except Ken Starr, and yet the managers have had no difficulty in deciding all credibility disputes against the President or anyone giving testimony favorable to the President’s position.

Any gains from live witness testimony need to be assessed against the costs. The costs will come to light in separate chambers that are into the facts of the case with the specificity that will come from live testimony.

For example, one prominent disagreement that the House Managers have cited is that between President Clinton and Ms. Lewinsky regarding whether the President ever had sexual relations with Ms. Lewinsky or genitalia. If both witnesses are called and reiterate their prior testimony, the Senate will certainly get the opportunity to observe their demeanor in a lower court. The President also has the constitutional and statutory right to present, in the full Senate, the same role within the committee that the Chief Justice fulfills in the full Senate. This may require that the Chief Justice act as chair chosen from the committee members in the majority party. The Chair exercises the same role within the committee that the Chief Justice exercises in the full Senate. This may require that the Chief Justice preside. This may require that the Chief Justice act as chair chosen from the committee members in the majority party. The Chair exercises the same role within the committee that the Chief Justice exercises in the full Senate. This may require that the Chief Justice act as chair chosen from the committee members in the majority party. The Chair exercises the same role within the committee that the Chief Justice exercises in the full Senate.

The Paula Jones suit threatened the President with nothing more than an assessment of monetary compensation. An adverse verdict at a civil trial threatens imprisonment. It is clear that the Constitution demands on the President’s time. Indictment alone imposes no demands on the President’s time.

An attempt to distinguish indictment could proceed on two fronts. First, the President is apt to be more concerned about being criminally convicted than found civilly liable. There can be a greater distraction from the President’s duties than is a civil suit. Second, criminal indictment, unlike filing a civil complaint, stigmatizes the President.

Each of these distinctions is subject to dispute. As the Paula Jones suit itself demonstrates, a civil case can be ex tremely distracting. It is more distracting and intimidating, it seems doubtful that it is so much more distracting as to be constitutionally significant. A distinction based on stigma seems particularly weak in this case.

President Clinton has been impeached. Correctly or not, the House of Representatives has construed this impeachment as analogously to a grand jury indictment. It is thus not obvious that an actual criminal indictment would add materially to the stigma the President has already suffered.

Even accepting the standards of distinction, the independent counsel may seek a sealed indictment. A sealed indictment would not be made known either publicly or to the President remains sealed until the President leaves office, it is difficult to see how it could either distract the President or stigmatize him.

Prosecution presents a different matter. Unlike an indictment with nothing more, proceeding to an actual prosecution would place significant physical and temporal burdens on the President. Preparing for trial and then actually presenting a defense would consume the President’s time and attention to such a degree that many other functions of criminal proceedings, the President would repeatedly face a choice between spending the time necessary to mount a meaningful defense conflicting with his constitutional and statutory duties. Even if the President were to choose to spend no time on his defense, it is difficult to imagine that this could be fully focused on his official duties.

To so stigmatize and distract the President would seriously undermine his ability to act as a check on the other branches. It would also impose significant costs in terms of the nation’s standing internationally.

The Supreme Court’s decision in Clinton v. Jones underscores the stark injustice of forcing the President to criminal prosecution while in office. In that case, the President had argued that the civil lawsuit should be stayed until the President’s term in office expired. He based this position on concerns that the demands of defending a civil lawsuit would seriously undermine his ability to act as a check on the other branches. It would also impose significant costs in terms of the nation’s standing internationally.

The Paula Jones suit threatened the President with nothing more than an assessment of monetary compensation. An adverse verdict at a civil trial threatens imprisonment. It is clear that the Constitution does not bar the judicial impeachment of the President. Thus, at the very least, sentencing would have to be stayed until the President leaves office.

Extending the holding in Clinton v. Jones to cover criminal prosecutions is subject to an additional objection. The course of events since the Court rendered that decision casts considerable doubt upon its conclusions. The Court drew in that case. In Clinton v. Jones, the Supreme Court doubted that the civil lawsuit would consume much time or attention of the President. Indictment alone imposes no demands on the President’s time. In that case, the President had already suffered.

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The President is not simply another individual. He is unique. He is the embodiment of the federal government and the head of a political party. If he is to be removed, the removal process will be far more painful, and the military or economic consequences to the nation could be severe. Those repercussions, if they are to occur, should not result from a single prosecutor—whether it be the Attorney General or a special counsel—and a single jury. Prosecution or nonprosecution of a President is, in short, inevitably and unavoidably a political act.

Thus, as the Constitution suggests, the decision about whether he is in fact should be made where all great national political judgments in our country should be made—in the Congress of the United States. There is an additional, closely related, consideration—protecting Congress's constitutional impeachment power. If an independent prosecutor instructs a sitting President, this act alone tends to force Congress's hand with respect to impeachment. The mere fact of an indictment is an additional factor that generates some pressure to impeach and convict a sitting President. That pressure is even more coercive in the context of a prosecution and verdict than of indictment alone.

VI. DEPARTMENT OF JUSTICE POLICY

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

Professor Strauss argues Judge Bork's Supervisorial Interpretation of the 1974 law established the Department's policy on indicting a sitting President and that this policy is confirmed in the practice of special counsel Archibald Cox. This is a strong argument, but there is a response: the brief in the Agnew case represents not a policy but an interpretation of the written or other established policies of the Department of Justice respecting enforcement of the criminal laws. The President's lawyers invoked this decision in the Agnew case to establish the Department's policy on indicting a sitting President and that this policy is confirmed in the practice of special counsel Archibald Cox. This interpretation is confirmed in the practice of special counsel Archibald Cox.

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Mr. ABRAHAM. In light of our time constraints, I would like to focus on the issue today primarily on the one issue—more than any other—that has arisen during our deliberations: namely, whether the President should be convicted if we find he committed the acts alleged in the Articles.

I believe that the principle is not only central to the case at hand, it is also central to all future evaluations and applications of what we do here.

In arguing for the President, White House lawyers have asserted that the threshold for removal should be very high—and I agree. At the same time, however, we must remember that there is an inverse relationship between the level at which we set the removal bar and the degree of Presidential misconduct we accept. So, then, where do we set the bar?

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

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

As we know, the Constitution says: The President may not be indicted except where not possible comply with the written or other established policies of the Department of Justice respecting enforcement of the criminal laws. Professor Ronald Rotunda represented not a policy but an interpretation of the written or other established policies of the Department of Justice respecting enforcement of the criminal laws.

I would like to focus my remarks today on the issue of whether a sitting President could be indicted or were disputed.

V. PRUDENTIAL CONSIDERATIONS

Even if the Constitution does not prohibit indictment, it does not mean there are not powerful prudential arguments against indictment. Brett Kavanaugh, who was Associate Independent Counsel in Ken Starr's office for this very argument, wrote succinctly in a recent article he published in the Georgetown Law Journal:
daily temptations to twist the laws for personal gain, for party benefit or for the advantage of friends.

To combat these temptations, the Constitution spells out—in no uncertain terms—that the President shall "take care that the laws be faithfully executed," and the President’s oath of office requires him to swear that he will do so.

If he obstructed justice and tampered with witnesses in the Jones case, a federal law he thought in which he was the defendant, the President violated his oath and failed to perform the bedrock duty of his office. He did not faithfully execute the laws.

A President who commits these acts thereby makes clear that he cannot be trusted to exercise the executive power lawfully in the future, to handle impartially such specific Presidential responsibilities as serving as the final arbiter on bringing federal civil or criminal cases or determining the conduct of federal agencies, especially if, as will often be the case, he has a personal or a political interest in the outcome.

Surely retaining a President in office under these circumstances constitutes exactly the type of threat to our government and its institutions so many have said must exist for conviction.

That brings the President’s alleged conduct squarely within the purview of our impeachment power, whose purpose, as described by Hamilton, is to deal with "the violation of some public trust."

Furthermore, if the Articles’ allegations are true, how can we leave the executive power in the hands of a President who, through his false grand jury testimony, even attempted to obstruct and subvert the impeachment process itself?

For this particular grand jury before which the President testified was not only conducting a criminal investigation; it was charged, under a congressional statute, with advising the House of Representatives as to whether it had received any substantial and credible information that might constitute grounds for impeachment.

The framers placed the impeachment power in our Constitution as the ultimate safeguard to address misuse of the executive power.

A President who commits perjury, intending to thwart an investigation that might otherwise lead to his impeachment, has, I believe, committed a quintessential "high Crime."

Such conduct of necessity impedes, and could even preclude, Congress from fulfilling its constitutional duty to prevent the President from usurping power and engaging in unlawful conduct.

To permit such behavior would set an unacceptable precedent, because it could, in the future, allow nullification of the impeachment process itself, rendering it meaningless.

I deeply regret that it is necessary for me to conclude that President William Jefferson Clinton obstructed justice and grand jury perjury as charged in the Articles of Impeachment brought by the House, that he violated his oath and committed other impeachable offenses, and that he committed perjury before a grand jury charged with investigating whether his previous conduct warranted prosecution or possible impeachment. It is our duty to determine whether the President did what the Articles of impeachment charge and, if so, whether his perjury was "high Crimes and Misdemeanors" under our Constitution, and that therefore I must vote to convict him on these charges.

The President has been impeached on the grounds that he obstructed justice and tampered with witnesses in connection with a federal civil rights suit in which he was the defendant, and that he committed perjury before a grand jury charged with investigating whether his previous conduct warranted prosecution or possible impeachment.

I have done my best to imagine that I was confronted with a grand jury of the opposing political party, with whom I disagree on many issues, but about a President of my own party. I have tried to imagine what I would do if confronted with the same evidence concerning a popular Republican President whose policies I strongly supported. I have tried to decide the case before me just as I would the case of such a President.

Let me start with the facts.

After a great deal of listening, research and contemplation, I am compelled by the evidence to conclude that the President did engage in the conduct charged in both Articles. In reaching this conclusion, I rely deliberately on those elements of the case that I believe have been proven beyond a reasonable doubt.

Because I believe these dictate my conclusion, I do not decide whether, in an impeachment trial, the Constitution requires or permits application of this highest of evidentiary standards, which governs in ordinary criminal cases, or whether it would also be proper for me to rely on any of the other conduct charged by the House, much of which might well find proven under either of the lower civil law standards.

In my view the evidence shows beyond a reasonable doubt that, for over eleven months, from December 6, 1997 to November 13, 1998, when the President agreed to pay Paula Jones $850,000 to settle her harassment lawsuit, the President engaged in a systematic course of obstructing justice and tampering with witnesses in Ms. Jones’s case. There is no room for reasonable doubt as to any part of this course of conduct. The President made statements to Ms. Monica Lewinsky and Ms. Betty Currie that were intended to cause them to validate,
through testimony he thought they could well be called upon to give, the false story he was planning to tell or had already told in his own deposition. These statements to Ms. Lewinsky and Ms. Currie constitute the second and sixth offenses and warrant the tampering charged by the House. There is also no room for reasonable doubt that the President supported efforts to conceal guilt he had given to Ms. Lewinsky after those gifts had been subpoenaed in his deposition. That constitutes the third act of obstruction charged by the House.

As to the first Article: I am convinced that the House has shown beyond a reasonable doubt that the President perjured himself before the grand jury in two instances. First, he stated that his only purpose in talking to Ms. Currie in the days following his Jones deposition was to refresh his own recollection, thereby falsely claiming to the grand jury that he did not intend to tamper with her potential testimony. If she were called as a witness in the Jones case. Second, he reaffirmed the veracity of his Jones deposition denial of "sexual relations" with Ms. Lewinsky, under the definition of that term in the court where the case was tried. This was not merely a "lie about sex" to protect his family. By the time of his grand jury appearance, the President had already acknowledged to his family his improper relationship with Ms. Lewinsky. Before the grand jury, the President falsely asserted the truth of his earlier sworn statements for the sole purpose of protecting himself from possible prosecution or impeachment.

In light of these conclusions, the final overriding issue is whether the President's actions constitute "high Crimes and Misdemeanors" requiring his removal from office under Article II, section 4 of the Constitution. As has been acknowledged on both sides, reasonably people can differ on this question. And indeed it is only on this issue, whether the President must be removed, that Americans are consequentially divided. A decided majority of Americans agree that the President committed the crimes alleged in at least one of the Articles. And in their hearts I believe a significant majority of my colleagues do as well.

The public, like us, is in disagreement over what the consequences should be. The House's resolution demands, but for a variety of reasons—ranging from a feeling that the President does not deserve to be removed, to a concern not to endanger current economic conditions, to a preference for the President over the Vice President, to the belief that, because the President has less than two years remaining in this term, removing his is not worth the disruption it would cause. These considerations would legitimize the President's refusal to deal with the impeachment proceedings, whether or not Congress seeks to remove him.

In arguing for the President, White House lawyers have asserted that the threshold for Presidential removal must be very high—and I agree. At the same time, however, we must remember that there is an inverse relationship between the level at which we set the removal bar and the degree of Presidential misconduct we will accept. If the President is allowed to tamper with the bar? What does the Constitution dictate? What precedent should we set for the ages?

Let us start with the text of the Constitution, which states simply: "The President, Vice President and all civil Officers of the United States shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors."

The first interpretation that has been suggested is that a "high Crime" must be a truly heinous crime. But that is obviously wrong. Treason is certainly among the most heinous crimes. But bribery is not.

Taking a bribe, like treason, is however uniquely serious misconduct by a public official. That suggests a different meaning for "high Crime," one that is linked somehow to the fact that the person committing it holds public office.

A comment by Alexander Hamilton in Federalist 65 provides the clue.

"In Federalist 65, speaking of impeachment, Hamilton says: "The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the violation of some public trust.""

The President's lawyers invoke this line, but they misread it. They argue that what it means is that to require removal, a President's conduct must involve misuse of official power. But that is not what the Constitution demands, or what Hamilton's comment fairly read suggests. Otherwise we would have to leave in office a President or a federal judge who committed murder, so long as they did not use any powers of their office in doing so. Rather, as Hamilton's language connotes, and our own precedents confirm, the Framers meant that the Constitution requires between the official's actions and functions is more a practical one: the official's conduct must demonstrate that he or she cannot be trusted with the powers of the office in question. This rule encompasses official acts demonstrating unfitness for the office in question, but it also reaches beyond such acts.

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

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

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

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

Surely retaining a President in office under these circumstances constitutes the type of threat to our government and its institutions so many have said must exist for conviction. That brings his conduct squarely within the purview of our impeachment power, whose purpose, as described by Hamilton, is to "take care that the laws be faithfully executed," and his oath of office requires him to swear that he will do so.

Obstruction of justice, witness tampering, and grand jury perjury are serious federal crimes. How do we explain the President's actions? There are many out of motives surely as understandable as the President's, that while the President stays in the White House, his Department of Justice is trying to send them to prison? How can we expect ordinary citizens to accept that the President can remove an officer after lying repeatedly under oath in court proceedings, but that it is still their duty to tell the truth?"
Finally, how can we leave the executive power in the hands of a President who, through his false grand jury testimony, has even attempted to obstruct and subvert the impeachment process itself? For the particular grand jury before which President Clinton testified falsely was not only conducting a criminal investigation; it was also charged, under Congressional statute, with advising the House of Representatives whether it had received any substantive and credible information that might constitute grounds for impeachment.

The framers placed the impeachment power in our Constitution as the ultimate safeguard to address misuse of the executive power. A President who commits perjury, intending to thwart an investigation that might otherwise lead to his impeachment, has committed a quintessential “high Crime.” This crime impeded, and could have even precluded, Congress from fulfilling its constitutional mandate to protect the system from usurping power and engaging in unlawful conduct. To permit such behavior could, in effect, allow nullification of the impeachment process itself, rendering it meaningless. Hence, a President should not be able to subvert what the Framers viewed as the ultimate Constitutional check on abuse of executive power, most certainly violates the public trust as defined by Hamilton.

To attempt to continue in office after committing these acts would place the Presidency above the law and grant the President powers close to those of a monarch. This, in turn, presents a clear and present danger to the rule of law, the birthright of all Americans. Indeed, we Americans take the rule of law so thoroughly for granted that while it has been much invoked in these proceedings, there has been little discussion of what it means or why it matters. Simply put, the rule of law guarantees our system makes to all of us that our rights and those of our countrymen will be determined according to rules established in advance. It is the guarantee that there will be no special rules, treatment, and outcomes for some, but that the same rules will be applied, in the same way, to everyone.

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

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

Mr. Chief Justice, my grandparents did not come to this country seeking merely a more convenient, profitable life. They came here seeking the freedoms that were given birth on Bunker Hill and in the Convention at Philadelphia.

I know some people mock as selfish—righteous or feckless the piety many Americans have toward their heritage and toward the Constitution that guards their freedom. But I will never forget that it is not the powerful or those favored by the powerful who need the law’s protection.

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

None of us asked for this task, but we must live with the consequences of our actions, not just on this administration, but on our nation for generations to come. That responsibility cannot be shirked. It has led me to a difficult but inexorable conclusion: it is necessary for me to conclude that President William J. Jefferson Clinton committed obstruction of justice and grand jury perjury as charged in the Articles of Impeachment brought by the House, that these are “high Crimes and Misdemeanors” under our Constitution, and that therefore I must vote to convict him on these charges.

Ms. MIKULSKI. Mr. Chief Justice, I will vote against the articles of impeachment accusing the President of the United States of perjury before a grand jury and obstruction of justice.

The Republican House Managers have asked the Senate to remove the President from office, overturning a free and fair election in which 100 million Americans cast their vote. Short of voting on whether or not to send our sons and daughters to war, I can envision no more profound decision.

I have taken this responsibility as seriously as anything I have done in my life. A little over a month ago, I escorted the Chief Justice into this chamber and stood with my colleagues when we took a collective oath, as an institution, to render impartial justice in this trial. Then, we individually signed our names and pledged our honor to faithfully fulfill our oath. That was an indelible and profound moment.

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

I have listened carefully, and with an open mind, to the presentations of the Republican House Managers and the President’s Counsel. I have reviewed the evidence. I have read all of the key witnesses’ testimony before the grand jury. I have intensely studied the law pertaining to perjury and obstruction of justice, discussed the issue with respected lawyers, developed an appropriate standard of proof, and reviewed the House testimony of Republican and Democratic former prosecutors for their views on the charges. Finally, I have read what our nation’s founders wrote about impeachment during those months in 1797 when the Constitution was formed, and considered the writings of many of today’s finest scholars.

As I reviewed the historical underpinnings of impeachment, I have reflected on the intentions of the Founding Fathers who developed our famed system of “checks and balances”—our Constitution. That system, designed with the precision of Swiss watchmakers and the concern of loving parents, has served our nation very well over the last 200 years and served as a guidepost for nations around the world as they struggled to establish democracies.

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

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

In coming to that conclusion, I have used the highest legal standard of proof—“beyond a reasonable doubt”—which is required in federal and state criminal trials. I believe that removing a president is so serious, and such an undeniably tumultuous precedent to set in our nation’s history, that we should act only when the evidence meets that highest standard. The United States Senate must not make the decision to remove a President based on a hunch that the charges may be true. The strength of our Constitution and the strength of our nation dictate that we be sure—beyond a reasonable doubt.

The House Managers’ case is thin and circumstantial. It doesn’t meet the standard of “beyond a reasonable doubt.”

The first article of impeachment, charging the president perjured himself before the grand jury, has not been proven beyond a reasonable doubt.
For instance, the House Managers claim that President Clinton committed perjury when he used the term “on certain occasions” to define the number of times he had inappropriate contact with Ms. Lewinsky. The Managers believe that a different definition of “on certain occasions” meant fewer than the 11 times that were counted by Federal investigators and they labeled it “a direct lie.”

But there is no clear numeric or legal definition of “on certain occasions.” It is not material whether it was 11 times or “on certain occasions.” President Clinton admitted the relationship, which was the material point.

The Republican House Managers also claimed President Clinton committed perjury by not recalling the exact date, time, or place of events that occurred two years before. This was because other witnesses recalled things slightly differently. They believe that President Clinton can be perjury because well-established court standards state that the “mere fact that recollections differ does not mean that one party is committing perjury.”

Overall, the House Manager’s assertions rest on Mr. Clinton’s vague and unhelpful responses to the Independent Counsel’s questions. While those responses may be frustrating to the Independent Counsel, the Republican House Managers, and perhaps the American public, they are not perjurious as defined by law.

Similarly, the case presented by the Republican House Managers has not presented sufficient direct evidence to prove beyond a reasonable doubt that the President obstructed justice. Instead, the House Managers relied on extensive conjecture about what the President may have been thinking. In fact, there is direct and credible testimony from witnesses that directly contrary to the House Managers’ conjecture, leaving ample room for doubt.

The Republican House Managers also did not prove beyond a reasonable doubt that there was a causal connection between Ms. Lewinsky’s job search and the affidavit she gave in the Jones deposition by multiple witnesses that is directly relevant to injuries done immediately to the society itself.

I believe it is clear from those words, and the words of others who drafted the Constitution, that impeachment was not intended to be used for an act that did not meet that standard it was not meant to be used for punishment of the president. I believe that the framers intended the last resort of impeachment to be used when a presidential action was a clear offense against the institution of government. I do not believe that President Clinton’s conduct, as wrong as it was, rises to that level.

I wish to choose my words judiciously for I believe the behavior of the President was wrong, reckless and immoral. President Clinton has acknowledged that his behavior has harmed his family and the nation, and that his behavior, in the end, is what brought us to this day. Mr. Clinton engaged in an illicit, inappropriate relationship and tried to hide it out of shame and the fear of disgrace. Those actions are clearly deplorable and should be condemned in the most unequivocal terms. But the evidence simply and profoundly does not prove criminal wrongdoing.

Certainly, the impeachment process has been a difficult period in our nation’s history. It has challenged the strength of our institutions and the strength of our nation. But, Mr. Chief Justice, I still find reason for tremendous hope.

First, I find hope in the unflagging commitment of the United States Senate to do the right thing for the right reason. I am proud to be a part of this historic trial. I listened to Mr. Lott and Mr. Daschle and conducted this trial in a serious, bipartisan, reflective, and cooperative spirit.

I am reassured that Alexander Hamilton and other constitutional Framers saw fit to charge the Senate with the responsibility to try such a case. I hope and believe that we have fulfilled our expectations to be a sufficiently dignified and independent tribunal, one that could preserve “unawed and unprejudiced responsibility to try such a case.”

I wish to choose my words judiciously for I believe the behavior of the President was wrong, reckless and immoral. President Clinton has acknowledged that his behavior has harmed his family and the nation, and that his behavior, in the end, is what brought us to this day. Mr. Clinton engaged in an illicit, inappropriate relationship and tried to hide it out of shame and the fear of disgrace. Those actions are clearly deplorable and should be condemned in the most unequivocal terms. But the evidence simply and profoundly does not prove criminal wrongdoing.

Finally, I also find tremendous hope in the growing national consensus that we must move forward together to address pressing problems in our neighborhoods, communities and cities. Over the last month, the nation has cried for a focus on education, preserving Social Security and Medicare, investing in our economy, and providing global leadership.

We should now heed those calls. I will not say that now we must “return to the nation’s business.” In fact, as difficult and time consuming as this process has been, I believe fulfilling our duty to “render impartial justice” has been the nation’s business. I am hopeful that with the conclusion of this trial, we may all return to the work of making our nation more prosperous, our families stronger, our children better educated, our communities more cohesive, and our world safer at home and abroad. I believe we will move on knowing that we have fulfilled our constitutional responsibilities with diligence and honor.

Thank you.

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

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

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

I leadaquитет presidential counsel Charles Ruff in his testimony before the House Judiciary Committee, and here during the Senate trial, that fair-minded people could draw different conclusions on the charges.
I disagree in one aspect, but agree in another. I personally feel there is no room to disagree on whether the President is guilty of the charges in both Article One and Article Two; he committed perjury and he clearly obstructed justice and many of these facts are well known. But I disagree on whether these charges rise to the level of high crimes which dictate conviction. Again, I believe they do and have voted yes, on both articles.

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

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

But remember, those who vote to acquit—that is, to not remove this President—will have the rest of their political lifetimes to explain their votes. They should do so.

Collectively too, we will have to await what history will say about this trial and how it was handled. Will this Senate be judged as having followed the rule of law, that is, deciding this case on the facts? Will we be remembered as the rule-making body who deferred to public sentiment? The polls say this President is too popular to remove. If we base our decision on his popularity rather than the rule of law, we would be condemning a society where a majority could impose injustice on a minority group, only because it has a larger voice. A rule of law is followed so that justice is done and our Constitution is respected, regardless of popularity polls.

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

The prospect of such a double standard was raised countless times by the House managers. Consider the FPGA, a case that was created by a two-tiered standard for perjury. A President commits perjury, yet remains in office. But would a cabinet member who committed perjury be allowed to keep his or her job? Would a military officer who committed perjury be allowed to continue to serve? Would a judge who committed perjury remain on the bench? They would not, and yet our President, the nation’s chief law enforcement officer, is allowed to keep his office after having committed a felony offense.

Again, in my view, this is a double standard and is completely unacceptable for a nation that prides itself on a legal system which provides equal justice under the law.

As to our final duty, the final vote, I believe the so-called “so what” defense has controlled the outcome. “He did it, but so what” we have heard it a thousand times from a hundred talking heads. We have heard it from our colleagues, too, in both chambers. Well, for this Senator, “so what” stops at perjury and obstruction of justice. I will cast my vote with sorrow for the day when I first have to toll the bell that this trial has taken on the nation, but with certainty that it is the only choice my conscience and the Constitution permits me to make.

Mr. BREAUX. Mr. Chief Justice and my colleagues. Thank you very much, Mr. Chief Justice, as so many people have said before, for serving with your patience and your fairness. If you care to extend your time with us, I would invite you to help preside over my Medicare commission—if you would like to hear this branch of government.

I also want to acknowledge and thank our two leaders for the fairness and the patience that they both have exhibited to all of us and the good job they have done keeping this body together. They should do some more.

I think it is always very difficult for us to sit in judgment of another human being, and particularly is that very difficult when it involves moral behavior, or moral misbehavior. It is the kind of case essentially is all about. I was always taught that there was a higher authority that made those types of decisions, but here we are, and that is part of our task.

I think it is also especially difficult to make those kinds of decisions when they involve someone you know and someone you actually deal with in a relatively close relationship, almost on a day-to-day basis. It is difficult when you know that you can joke with, or that you in private can joke with, as is the case for many of us with this accused whom we now sit in judgment of.

I know this President and he is someone I have admired for his political accomplishments and I have admired for what he has been able to do for this country, but also quite well recognize the human frailties that he has, as all of us have. If this were a normal trial, many of us would be here; we would have been excused a long time ago; we would never have been selected to sit in judgment of this President. We would have been excused because of friendship, we would have been excused because we know him, we would have been excused because we campaigned for him and with him, or we would have been excused for the opposite reasons—because he is a political adversary that we have campaigned against, that we have given speeches against, or we would have been excused on just about everything he stands for. None of us would find ourselves sitting in judgment of this individual if it were a normal trial. But, then again, it is not a normal trial, and these certainly are not normal times.

For many of us, this is the first time we have ever had a President who has sort of been a contemporary—certainly in political terms, and many of us are in that same category. I was here, as many of you in my generation, when President Johnson was here, and served throughout the time of President Johnson all the way through President Nixon. But President Nixon has taken them all to various degrees but never in the same way that I and many of us know this particular President, because he really is in the same generation as we are. I think we have that feeling, when we talk with him. I mean, many times I feel I know what I am going to say before I say it and he understands what I am trying to convey to him before I even have say anything about the subject matter.

I think that many of us have had, with him, the same type of life experiences, and that our lives have been shaped by similar events because we really are of the same generation. So it is very difficult, coming from that position and now sitting in judgment of a President for his misconduct. So I think we have to be extremely careful, those of us who come from this side with that personal friendship and relationship, as well as those who come from the opposite side, as a political adversary. I think we have to set those emotions aside and say I am going to be fair in judging someone I just cannot stand politically, that I don’t agree with on anything, and I wish he wasn’t my President; in fact, I supported someone else. So, it is very difficult for all of us to try to set that aside and come to an honest and fair and decent conclusion.

I think the American people have been able to do that. I think they have understood that this case is about from the very beginning. They understood what it was about before the trial ever started, they understood what it was about during the trial, and I think they understand what it is all about after the trial. I think they understand what happened. I think they know when it happened, they know where it happened, and they know what was said about it. I think that they were correct from the very beginning.

What we really have is a middle-aged man, who happens to be President of the United States, who has a sexual affair with someone in his office, and that when people started finding out about it, he lied about it, tried to cover it up, and tried to deny people what happened. I would dare say that this is not the first time in the history of the world that this has ever happened. I daresay it probably will not be the last time that it will happen. It is probably not the first time it has happened in this city.

All of that does not make it right; it does not make it acceptable. It does
President Nixon with was that he had, not once, but four times filed fraudulent income tax returns under the criminal penalty of perjury—that he deducted things that he should not have deducted and that he didn't report and that he had not been reported. By a 26-to-12 vote, the House Judiciary Committee said, among other things, that “the conduct must be seriously incompatible with either the constitutional form and principles of our Government or the proper performance of the duties of the President’s office.” They said that it did not demonstrate public misconduct, but rather private misconduct that had become public. I think the situation today is very similar.

These are clear examples both in the beginning of our country’s history and very recently about the need for this nexus or connection between the illegal acts and the duties of the office of the President.

I urge a “no” vote on conviction and removal and ask our colleagues to join in a bipartisan, strong, censure resolution and spell out what happened and where it happened and when it happened and what was said about what happened so that history will be able to, forever, look at that censure resolution and learn from what we do today. That, my colleagues, I think is an appropriate and a proper remedy.

Thank you.

Mr. DOMENICI. I have listened carefully to the arguments of the House Managers and the counter-arguments by the White House counsel during this impeachment trial. I have taken seriously my oath to render impartial justice.

While the legal nuances offered by both sides were interesting and essential, I kept thinking as I sat listening that the most obvious and important but unstated question was: What standard of conduct should we insist our President undertake?

Only by taking into account this question do I believe that we in the Senate can properly interpret our Founding Fathers’ impeachment criteria comprised of “bribery, treason or other high crimes and misdemeanors.” Clearly, the Constitution recognizes that a President may be impeached not only for bribery and treason, but also for other actions that destroy the underlying integrity of the Presidency or the “equal justice for all” guarantee of the Judiciary.

All reasonable observers admit that the President lied under oath and undertook a substantial and purposeful effort to hide his behavior from others in order to obstruct justice in a legal proceeding. My good friends and Democratic colleagues, Senators JOE LIEBERMAN, DANIEL PATRICK MOYNIHAN, BOB KERREY, DIANE FEINSTEIN, and BOB WYDEN, as well as the Republics—Mr. BYRD, Mr. KERREY, Ms. FEINSTEIN, and Ms. DUNCAN—have bluntly acknowledged publically that the President lied, misled, obstructed, and attempted in many ways to thwart justice’s impartial course in a civil rights case. The sticking point has been: Does this misbehavior rise to the level of impeachable offenses?

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

I am not a Constitutional scholar, as I have told you before. But, more than 200 years ago, Chief Justice of the Supreme Court John Jay summed up my feelings about lying under oath and its subversion of the administration of justice and honest government. Independent of the abominable insult which Perjury offers to the divine Being, there is no crime more pernicious to Society. It discourages and poisons the Streams of justice, and by subversion of the foundation of Truth, sap[s] the Foundations of personal and public rights.

How can anyone, after conceding that the President lied under oath and obstructed justice, listen to this quotation and not conclude that this President has committed acts which are clearly serious, which corrupt or subvert the political and government process, and which are plainly wrong to any honorable person or to a good citizen.

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

This trial has been about his failure to properly discharge his public responsibility. The President had a choice to make during this entire, lamentable episode. At a number of critical junctures, he had a choice either to tell the truth or to lie, first in the civil rights case, then before the grand jury and on national television. Each time he chose to lie. He made that fateful choice.

Truthfulness is the first pillar of good character in the Character Counts program of which I have been part of establishing in New Mexico. Many of you in this chamber have joined me in declaring the annual “Character Counts Weeks.” This program teaches grade school youngsters throughout America about six pillars of good character: truth, honesty, responsibility, respect, caring, and citizenship. I am the corner of my mouth teach children that character counts; character makes a difference; indeed, character makes all the difference.
Guess which one of these pillars comes first? Trustworthiness. Trustworthiness.

So what do I say to the children in my state when they ask, "Didn't the President lie? Doesn't that mean he isn't a good citizen, regardless of words on the statute books?"

Well, there you have it in my judgment. The President lied under oath in a civil rights case, he lied before a grand jury and he lied on national television to more than 100 million people.

Regarding Article II, obstruction of justice the House Managers proved to my satisfaction the following facts:

(1) The President encouraged Monica Lewinsky to prepare and submit a false affidavit; (2) He encouraged her to tell false and misleading cover stories if she were called to testify in a civil rights lawsuit; (3) He engaged in, encouraged or supported a scheme to conceal the facts of his relationship with Monica Lewinsky; (4) He had been subpoenaed in the civil rights lawsuit; (5) He intensified and succeeded in an effort to find Monica Lewinsky a job so that she would not testify truthfully in the civil rights lawsuit; (6) At his deposition in a Federal civil rights lawsuit he gave a false account of his relationship with Monica Lewinsky; (7) He lied under oath, to the judge characterizing an affidavit, in Ms. Currie's expected testimony in the civil rights lawsuit; (8) He lied to his assistant and to his legal advisors regarding his relationship with Monica Lewinsky to influence their expected testimony before the Federal grand jury.

In this day and age of public yearning for heroes, we criticize basketball, football and baseball players who commit crimes or otherwise fail to be "good role models." One of those celebrits said a few years ago that he was only a basketball player, not a role model. He said in essence, "I'm just a role model, look to the President." Do not underestimate, my friends, the corrupting and cynical signal we will send if we fail to enforce the highest standards of conduct on the most powerful man in the nation.

Finally, I want to address a question that my good friend, Senator Byrd, raised over the weekend in a television interview: "Didn't the President lie and obstructed justice, and after concluding these acts were impeachable offenses, Senator Byrd, whom for whom I have great respect, noted that it was very hard, in his judgment, to impeach a president who enjoyed the public popularity that this President enjoys.

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

What if a President committed the same acts as those alleged in this trial but he was presiding over a weak economy, a stock market at a three-year low, 12 percent unemployment, 16 percent inflation and a nation worried about the future and its families? I wonder if this would be a straight party line vote. I just wonder.

Conversely, I wonder if you had a President who committed one of the impeachable crimes enumerated in the Constitution. I can only imagine:

And the facts were obvious and clear: he gave a job to someone in exchange for a $5,000 bribe and the entire episode was on video tape. In this hypothetical, what if this bribery-perpetrating President was very popular but the House, nonetheless, impeached him. It would be the Senate's responsibility to hold a trial. In this example, economy is strong, the country is at peace, everyone's stock market investments are soaring. Would it be important to the Constitution to provide a popularity defense? Would we create a "booming economy exception" to the conviction and removal clause of the Constitution? I doubt it. I doubt it very much. Let me repeat, temporary popularity of a President cannot be a legitimate defense against impeachment.

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

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

Thank you, Mr. President.

Mr. SARBANES. Mr. Chief Justice and colleagues, in his award-winning book "The Making of the President," 1960," The New York Times referred to American Presidential election as "the most awesome transfer of power in the world."

He notes that:

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

And later in that opening chapter White observes:

Good or bad, whatever the decision, America will accept the decision and cut down any errors. Especially, if the decision goes against the people for millions the decision runs contrary to their own votes. The general vote is an expression of national will, the only substitute for violence and blood.

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

I do not line out a church or school or file of people fidgeting in the rain, waiting to enter the voting booths. No bands play on election day, no troops march, no guns are fired, no conspirators gather in secret headquarters.

Mr. President:

Impeachment is the heaviest piece of artillery in the congressional arsenal, but because it is so heavy, it is unfit for ordinary
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use. It is like a 100-ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at. Or to vary this simple, impeachment is like physicians calling toxic medicine, an extreme remedy proper to be applied against an official guilty of political crimes.

Let me turn next to the argument which seeks to draw an analogy between the impeachment of a President and the impeachment of judges, an argument that cites three recent cases in which judges have been removed from office. In my view, this analogy misses the mark.

Two of the judges that the Senate convicted and thus removed from office had been accused in a criminal case, tried before a jury, found guilty beyond a reasonable doubt, and were in jail. Until we removed them they were still drawing their salary. In the third case, the defendant had been acquitted of bribery, but a judicial inquiry found that he had perjured himself to cover up the bribery misdeeds. Difference No. 1: Judges can be criminally prosecuted while in office; the President cannot. (At least that has been the theory up to this point.)

Secondly, elected versus appointed. Judges are appointed to the bench for life. They can only be removed by impeachment. The President is elected by the people for a 4-year term and can only hold two such terms. As President Ford, when he was a Congressman, stated:

I think it is fair to come to one conclusion, however, from our history of impeachments. A higher standard is expected of Federal judges than of any other civil officers of the United States. The President and the Vice President and all persons holding office at the pleasure can be thrown out of office by the voters at least every 4 years.

Thirdly, one needs to consider the injury to the branch of Government which suffers from the removal of the officer. The removal of one judge out of hundreds and hundreds of judges does not significantly affect the operation of the judicial branch of our Government. The removal of the President, the head of the executive branch, obviously is in an entirely different category. The President, under our system, holds the executive power. In the end, executive branch decisions are his decisions.

In the minority report in the House Watergater proceedings, Republican Members stated:

The removal of a President from office would obviously have a far greater impact upon the equilibrium of our system of Government than removal of a single Federal judge.

The House Judiciary Committee majority report accompanying the article of impeachment against Judge Walter Nixon in 1969 similarly stated as follows:

Judges must be held to a higher standard of conduct than other officials. As noted by the House Judiciary Committee in 1970, Congress recognized that Federal judges must be held to a different standard of conduct than other civil officers because of the nature of their position and the tenure of their office.

In putting on their case, the House Managers sought to portray a simple logical progression—first that the material which they brought with them before the Senate was violations of the provisions of the Federal Criminal Code, i.e., perjury and obstruction of justice. Then they argued that if you find such crimes, you have high crimes and misdemeanors and, ergo, removal from office. Let us look at this supposed logical progression which I view as flawed at each step.

First, I do not believe the House Managers carried the burden of proof with respect to the commission of crimes. Since conduct in refinery in the Federal Criminal Code—charging crimes—in making their case, it is appropriate that they be held to the burden of proof beyond a reasonable doubt—the standard used in criminal cases.

In the House Judiciary Committee a panel of distinguished former Federal prosecutors testified that a responsible Federal prosecutor would not have brought a criminal prosecution on the basis of the case. In his capacity as P. Sullivan, a veteran of 40 years of practice in Federal criminal cases, and U.S. Attorney for the Northern District of Illinois from 1977 to 1981, stated the following:

If the President were not involved, if an ordinary citizen were the subject of the inquiry, no serious consideration would be given to a criminal prosecution arising from such conduct. In the Jones civil case having to do with an alleged cover-up of a private sexual affair with another woman or the follow-on testimony before the grand jury. The case simply would not be given serious consideration for prosecution.

Now, let me move beyond this question of proving the case and address the next step in the managers’ ostensibly logical progression that the crimes that they were trying to prove are high crime and misdemeanors and, therefore, a vote for conviction and removal must follow.

Actually, in considering this issue we must bear in mind the ultimate question: Does the conduct warrant removal from office? The House logic seems to be that any perjury, any obstruction of justice, warrants removal. As serious as those charges are, not all such conduct in all instances may rise to the level of an impeachable offense. In considering this matter, it is important to understand that the House articles included within them not only the charges but also the penalty. In the ordinary criminal case, there is a two-step judgment: the conviction and then sentence. In an impeachment case, the finding of guilty carries with it the remedy provided by the Constitution.

There is a point of view that, in certain circumstances offenses of the sort alleged here may not rise to the level of a high crime and misdemeanor. That precedent is found in the tax article of impeachment of Richard Nixon which was before the House Judiciary Committee in 1974. That article charged President Nixon with knowingly filing tax returns which fraudulently claimed that he had donated pre-Presidential papers before the Committee, and withholding such a charitable tax deduction. (It was worth $576,000 in deductions.) This deduction was claimed in tax returns that contained the following assertion just above the taxpayer’s signature:

In order to vary this simple, impeachment is like physicians calling toxic medicine, an extreme remedy proper to be applied against an official guilty of political crimes.

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

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

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

Secondly, the other day, in response to a reasonable request by the President’s lawyers on how the House would conduct the impeachment, we received excerpts, a House manager said, “I believe the appropriate legal response to your request is that it is none of your damn business what the other side is going to put on. This same attitude marked the treatment of President Clinton’s lawyers before the House Judiciary Committee.

Contrast this with the House Judiciary Committee’s conduct in the manner of the President’s impeachment. Whether the President’s lawyers sat in with the committee in its closed sessions when committee staff presented findings of fact. The President’s lawyers were able to challenge material,
to ask questions, to supplement all presentations. Fact witnesses were called in and were subjected to questions by all. There was an understanding of the gravity of the matter for the Nation and the absolute imperative of having a proper sense of what is at stake and what is at issue.

In this matter the House Judiciary Committee took only a few weeks to report impeachment articles. In the Nixon case the committee took 6 months. In the Judge Hastings case, the Senate Judiciary Committee received an 841-page report from the Judicial Conference as to why Hastings should be removed. Nevertheless, the committee undertook its own examination of the evidence. It heard 32 fact witnesses, deposed or interviewed 60 others, and held 7 days of hearings.

In closing, it is very important to keep in mind the distinction between the person who is President and the Office of the President of the United States provided for in our Constitution.

President Clinton has engaged in disgraceful and reprehensible conduct which has severely sullied and demeaned his tenure as President. Because of his conduct and recklessness he has brought dishonor upon himself, deeply hurt his family, and grievously diminished his reputation and standing now, and in history.

But the impeachment of Bill Clinton must not lead us to diminish the Presidency for his successors as our Nation moves into the new millennium. There is a danger to the Nation in deposing a political leader chosen directly by the people, and we must be wary of the instability it would bring to our political system.

In the report of the staff of the impeachment inquiry in 1974 on the constitutional grounds for Presidential impeachment, the authors of the United States:

Not all presidential misconduct is sufficient to constitute grounds for impeachment. There is a further requirement—substantiality. In deciding whether this further requirement is met, the facts may be considered as a whole in the context of the office, not in terms of separate or isolated events. Because impeachment of a President is a grave step for the Nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.

I do not believe the conduct examined here meets this test.

I will vote against removing the President.

Mr. CAMPBELL. Mr. Chief Justice and colleagues, my friends, I am not going to try to dazzle you with my knowledge of the law which is minimal, or the forty hand-written pages I've taken with me. And my facts are not set in the lock and key of academic knowledge. I signed the same oath you did with a pen that should have had on it "United States Senate," but did not. It said, "United States Senate."

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

And there you have it. An imperfect Senator being asked to judge an imperfect President.

One of our colleagues noted yesterday that we all come from different backgrounds. It's true and, perhaps, I am living proof of the greatness of this nation because I could be here at all.

The same body where someone named Daniel Webster, John F. Kennedy and Harry Truman once served welcomed a mixed blood kid from the wrong side of the tracks. The offspring of an alcoholic father and a tubercular mother; in and out of orphanages; a law breaker and high school drop out who lied, cheated, stole and did many other shameful things make me a poor judge indeed of someone else who used poor judgment.

I would rather take a beating than to judge someone else for their indiscretions. But, statements or the press nor would I be a party to the impeachment process going on in the other body.

As I look around this room, I see several others who subscribed to that conversation I had with the President right after he made his rather startling confession before this nation and a group of revolutionaries who I watched from my Denver office as millions of others were also watching at the same time.

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

As I sit right there in the back row fifteen feet from the cloakroom. But, at each recess by the time I walk to the cloakroom and glance at the TV, some of my colleagues have already sprinted pell mell to the cameras at each recess.

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about protecting the country. We punish a President who behaves immorally, lies and otherwise lacks the character we demand in public office with our votes. Presidents are also subject to criminal prosecution when they commit crimes. Impeachment must be reserved for extreme situations involving crimes against the state. Why? Because the founders of our country and the framers of our Constitution correctly placed stability of the republic as their paramount concern. They did not want Congress to be able to easily remove a popularly elected President. They made clear they intended a decision to impeach to be used to protect the nation against only the highest of crimes.

On December 19, 1998, the House of Representatives, on an almost straight party-line vote, approved and delivered to the Senate two articles of impeachment. The Constitution permits me to judge and decide upon only these articles. I have been authorized to review the President’s conduct looking for any reason for removal.

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

There was a letter to the editor in the Omaha World-Herald help make the point. The first, from a man in Kearney, says that by voting to dismiss the trial, I “voted to support sexual harassment,” among other things. A second, from Honey Creek, Iowa, raises allegations regarding the President and China, says he is “dangerous” and urges Senator Hagel and I to “oust him now.” The third, from Omaha, reminds readers of an often quoted comment from the able arguments made by the House managers and the President’s lawyers, discussing this case with prosecutors and reviewing the impeachment trial of U.S. District Judge Alcee Hastings, I have concluded the President did not commit the crime of perjury beyond a reasonable doubt. I frequently found the President’s testimony maddening and misleading, but I did not find it materially false. Article One accuses perjury and obstruction of justice as outlined in Articles I and II in the Articles of Impeachment of our President.

Nore it myself in making a judgment. The House managers were correct in saying the direct evidence, including the testimony of Monica Lewinsky herself, rebutted the circumstantial evidence. Second, while the House managers were correct in arguing that the President intended to obstruct justice, I could not find to a conclusion that the President intended to obstruct justice, common sense could also lead to other reasonable conclusions about the reasons for his actions. Third, with respect to the allegations of obstructing justice in the civil case, Paula Jones’ lawsuit was thrown out, then eventually settled. In the end, justice was done.

As reprehensible as I find the President’s behavior to be, I do not believe that the offenses as defined by the Framers have been proved beyond a reasonable doubt. Accordingly, I will vote to acquit on both Articles. My vote to acquit is not a vote to exonerate. While there is plenty of blame to go around in this case, the person most responsible for it going this far is the President of the United States. He behaved immorally, recklessly and reprehensibly. These were his choices. In the final analysis, they do not merit removal, but they do merit condemnation.

I am confident this vote is the right one—not just for this case, but as a precedent for future Congresses and Presidents too—I understand that reasonable people could reach the opposite conclusion. The bitterness in America on both sides of this debate has saddened me. I hope and pray that with this vote behind us the people’s Congress can return without rancor to the important work of our country.

Mr. Vice President, we are not here today because the President had a relationship that he himself has described as inappropriate and wrong. As House Manager James Rogan appropriately noted, “Had the President’s bad choice simply ended with this indiscretion, we would not be here today. Adultery may be a lot of things, but it is not an impeachable offense. Unfortunately, the President chose to lie, perjure, and mislead that brings us to this point.”

The very foundation of this nation is the rule of law not of men. The framers of our Constitution specifically provided Article II, Section 4 of the Constitution which states, “The President, Vice President, and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

On January 7, 1999, as one of my first official duties as a United States Senator, I took an oath to consider the allegations and arguments in the impeachment case against the President. We answered in the affirmative when the Chief Justice of the Supreme Court administered the following oath:

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

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

During my 33 years in public office, I have had to make some very difficult determinations on hundreds of requests for commutations and pardons. To my recollection, in no case have I labored more than I have over the Articles of Impeachment of our President.

After an exhaustive study, which included reading volumes of transcripts, watching the taped testimony and listening to the able arguments made by the House Managers, the White House counsel and my colleagues in the Senate, I have reached the conclusion that, beyond a reasonable doubt, the President committed both perjury and obstruction of justice as outlined in Articles I and II in the Articles of Impeachment.

I also have concluded that the President’s obstruction of justice was premeditated and undertaken over a long period of time beginning when he learned that Monica Lewinsky was placed on the witness list in the Jones case.

It is particularly disturbing that he used his brilliant mind and superb interpersonal skills to sweep other people into his scheme, thereby impairing
their credibility, all to extricate himself from taking responsibility for his conduct. But for a conclusive DNA analysis, he may have succeeded in that scheme.

By committing perjury and obstructing justice, the President is guilty of high Crimes and Misdemeanors. As constitutional scholar Charles Cooper said, “The crimes of perjury and obstruction of justice, like the crimes of treason and bribery, are quintessential offenses against our system of government, visiting injury immediately on society itself.”

He violated his oath of office and failed to fulfill his responsibility under the Constitution, which provides that the President “shall take Care that the Laws be faithfully executed.” Judge Griffin Bell has correctly noted, “A president cannot faithfully execute the laws if he himself is breaking them. The President has disqualified himself from serving as President, Commander-in-Chief, and chief law enforcement officer. The President also represents the personal embodiment of our constitutional system. He is a symbol of the greatness of the American people. Under the Constitution, every President is required to ‘take Care that the Laws be faithfully executed.’”

There is no way in good conscience that we as a nation can have a lawbreaker remain as President of the United States. His conduct has included the very same acts that have resulted in the impeachment of Federal judges and have sent hundreds of people to prison. Ours is a nation of equal justice under the law.

I believe the framers of the Constitution had a President like Bill Clinton in mind when they drafted the impeachment provisions in Article II, Section 4—a very popular, brilliant communicator with extraordinary interpersonal skills, who abuses his power, violates his oath of office, and evades responsibility for his actions because he believes he is above the law.

One who has committed high Crimes and Misdemeanors cannot be impeached from serving as President, Commander-in-Chief, and chief law enforcement officer. The President also represents much more than these titles and responsibilities. He is a symbol of the greatness of the American people. Presidential scholar Clinton Rossiter observed that the President of the United States is “the one-man distillation of the American people.” And, President William Howard Taft described the President as “the personal embodiment and representative of their dignity and majesty.”

By virtue of his own conduct, William Jefferson Clinton has forfeited his elected right to hold the office of president. Since we believe that this country can survive the removal of a popular president who has forfeited public trust, but our country cannot survive the abandonment of trust itself.

Mr. Chief Justice, the Senate must now fulfill a weighty and solemn duty. For only the second time in the more than two hundred years since our founding fathers established the Constitution, we must vote on Articles of Impeachment against a President.

When considering this issue, which goes to our core constitutional responsibilities as Senators, each of us must come to a conclusion based on his or her conscience. Guided by the Constitution, we must bring all of our moral beliefs, our education, our careers, and our experiences as public servants to the question. And we must try to reach a decision that will serve the best interests of the nation for generations to come.

As I reflect on the impeachment proceedings, I think first of the range of emotions I have felt. From the moment I realized that the President had engaged in this shameful relationship, I have struggled with my thoughts.

I was angry, of course. I was ashamed for the President, a talented man—someone I consider a friend. How could he risk so much with his disgraceful behavior?

And I was saddened. I do not know how the President will reconcile himself to his family. I could imagine the embarrassment and humiliation of the First Family and the First Lady. I pitied them as they felt the searing glow of the public spotlight.

I am sure that colleagues, on both sides of the aisle, have empathized with similar emotions. But now we must put those feelings aside. We have a very specific charge under the Constitution. That hallowed document delineates our duty. Under Article II, Section 4, we must determine whether the President has committed “high Crimes or Misdemeanors” requiring his removal from office.

In my view, our founding fathers meant to set a very high standard for impeachment. Clearly, the phrase “high Crimes or Misdemeanors” does not include all crimes. But what are the crimes that meet that standard? I find the words of George Mason to be compelling. He understood the phrase meant to set a very high standard for “great and dangerous offenses” or “attempts to subvert the Constitution.”

When applying this standard, we must also consider the national interest. The founding fathers vested the impeachment power in the Senate, and not the judiciary, precisely because this body would be accountable to the people.

In the words of Alexander Hamilton, only the Senate would “possess the degree of credit and authority” required to act on the weighty issue of whether a President should be removed. In my view, this means that we must look not just at the facts and the law, but we must also try to determine what is in the best interests of the nation.

But we should not read the polls, or some other measure of public opinion. Instead, we must look back through history, and toward the future, to reach a decision that will reflect well on the Senate and the nation for generations to come.

In my view, this case does not involve efforts to subvert the Constitution, and the national interest will not be served by removing the President from office.

Before turning to the evidence, I want to express my concern with the way in which the Articles of Impeachment are written. They do not specify which statements and actions by the President are impeachable. Instead, they take general allegations. With this approach, we cannot fulfill our duty to the American people. The American people must know specifically what Presidential conduct justifies overturning an election.

While the Articles could have been more clearly written, there is a more fundamental problem. There is simply insufficient evidence for a vote to convict. Whether you apply the standard of beyond a reasonable doubt, or even the lower standard of clear and convincing evidence, the House Managers have not proved their case.

With regard to Article I, the evidence does not support a charge of perjury. The President may have been uncooperative and evasive. He certainly was misleading. But he never committed perjury as that term is defined in the law. Consequently, the President should be acquitted on Article I.

There is also insufficient evidence to convict the President on Article II, which charges him with obstruction of justice. The main problem with this Article is that testimony from the principal witnesses will not support the allegations. Monica Lewinsky, Betty Currie, and Vernon Jordan testified that the President did not tamper with witnesses, conceal evidence, or take any other actions that would constitute obstruction of justice. All of the witnesses support the President’s version of events.

I realize that some of you may view the evidence differently. But I think we must still consider whether this is an appropriate case for the Senate to use the awesome power of impeachment to overturn a national election.

I further ask you to consider the precedent we would set with a conviction of this President. We risk making the impeachment power another political weapon to be wielded in partisan battles.

Our founding fathers warned against this. In the Federalist Papers, Number 65, Alexander Hamilton noted that the prosecution of impeachable offenses would “connect itself with the pre-exist- ing passion of party.” And he urged that “the greatest danger, that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.”

Prior to the present case, the House of Representatives had seriously considered Articles of Impeachment against only two Presidents—Andrew Johnson and Richard Nixon. In the more than two hundred years since the Constitution was established, the House set the impeachment machinery in motion in only two occasions.

Today, no one doubts that the serious abuses of our constitutional system by
the Nixon Administration warranted impeachment proceedings. And the bipartisan approach of Congress solidified President Nixon’s decision to resign. But history has not been kind to those who pushed the impeachment of Presidents without cause. It has been pointed out by the late Justice William Brennan that the Constitution does not give the President a “long shadow” to cast over the independence of the presidency.

So for most of our history, the fears of our founding fathers have not been realized. Congress has not resorted to impeachment even when previous administrations faces far-ranging scandals—the Whiskey Ring scandal during the tenure of President Grant; the Teapot Dome scandal in the Harding administration.

And more recently allegations that Presidents Reagan and Bush were not truthful regarding the Iran-Contra scandal.

Historically, Congress has held its hand when circumstances might have warranted a pull of the impeachment lever. But contrast that history with the circumstances surrounding this case.

President Clinton was a defendant in a civil lawsuit. In determining whether that lawsuit should be allowed to go forward while the President was in office, the Supreme Court of the United States noted that the case involved “unofficial conduct.” That case was eventually dismissed, and the plaintiff reached a settlement with the President.

But with that lawsuit in place, the plaintiff’s attorneys had license to probe into the President’s personal life. The private lives of many people were paraded through the press.

And then the Independent Counsel joined the hunt. Although he was originally appointed to investigate a real estate transaction in Arkansas, and even though he eventually cleared the President of any wrongdoing in that matter and other reckless accusations, the Independent Counsel turned his attention to a private affair.

I think this background considers against the use of the awesome and revocable power of impeachment. Think for a minute about how future partisans might proceed. We have a readily accessible legal system. Anyone with the filing fee can bring a lawsuit. And our laws provide great leeway in the discovery process.

If we take the wrong path now, we can expect to see future Presidents hauled into court. They will be questioned repeatedly. It will not be hard for skilled attorneys to hurl charges of perjury and obstruction of justice. We cannot allow the Presidency to be weakened in this way.

Once again, we find the wisdom of our founding fathers providing guidance.

James Wilson, who participated in the Philadelphia Convention at which the Constitution was drafted, observed that the President “[is] in law [his] private character as a citizen, and in his public character by impeachment.”

In other words, the legal system, our civil and criminal laws provide the proper venue for a President who has failed in his private character.

And in this case, the legal system can and will continue to address the President’s personal transgressions.

The Paula Jones lawsuit has been settled. When he leaves office, the President could be subject to further prosecution. But there is simply no injury to our constitutional system, no aspect of what James Wilson called the President’s public character, which must be remedied through a Senate conviction under the impeachment power. Of course, I understand the great pain inflicted by the President’s private character. As I said earlier, his behavior was reprehensible. He has shamed himself, his family, and the nation.

And I understand the desire to punish the President for his conduct. But we must remember the many ways in which the President has already been punished. He has suffered enormous embarrassment and humiliation. Beyond that personal pain, he has also been subject to public condemnation.

Every Member of Congress is on the record rebuking his behavior. Of course, this may not satisfy some. They may want more punishment. But please remember—the purpose of the impeachment power is not to punish. Instead, impeachment serves to protect the nation from corrupt officials.

So, to render a proper verdict, we must put aside the powerful desire to punish. And I submit that to impeach the President in this case would be a terrible use of the impeachment power, lacking proportionality and perspective.

Now, we must step back from the partisan precipice. We must not weaken the Presidency for future generations. We must reject these Articles of Impeachment and help restore the balance of power between the branches of the government.

Let us put this matter behind, heal the wounds inflicted by partisanship, and reeducate ourselves to the challenges facing our nation.

Mr. BOND. On Friday, February 12, 1999, I voted to convict President William Jefferson Clinton on both counts of the Impeachment Articles brought by the United States House of Representatives charging that he committed perjury and obstruction of justice.

My reasons follow.

Background

On January 16, 1998, at the request of the United States Attorney General Janet Reno, the three judges of the United States Court of Appeals for the District of Columbia Circuit expanded the previously entered Order authorizing the Office of Independent Counsel Kenneth W. Starr to look into certain matters relating to a lawsuit brought against President William Jefferson Clinton by former White House employee Paula J. Jones alleging sexual harassment. Pursuant to that Order, Ms. Jones’ attorneys issued subpoenas for evidence and deposed Mr. Clinton and others seeking information on a pattern of conduct that might be relevant to the issues in the Jones case. The President denied in a deposition in the Jones case and in a forceful statement to the American public that he had sexual relations with “that woman,” referring to Monica Lewinsky. Subsequently, however, Ms. Lewinsky turned over a stained blue dress that she had worn in an encounter with the President; a scientific examination revealed that the DNA on the dress was President Clinton’s DNA.

The Office of Independent Counsel convened a federal grand jury to look into the matter and deposed Mr. Clinton in The White House on August 17, 1998, about his participation in the Jones lawsuit.

The Office of Independent Counsel then referred the matters developed in the investigation to the United States House of Representatives, which on December 19, 1998, voted two Articles of Impeachment against Mr. Clinton alleging that he committed perjury before the federal grand jury in four instances and that on seven occasions he had obstructed justice by tampering with witnesses and evidence in the Jones case proceedings.

For the sake of brevity, I shall only cover several of the allegations and evaluate the evidence supporting them.

 Allegations

Counsel for the President has admitted that there was an inappropriate relationship between the President and Ms. Lewinsky and that they had concocted a cover story to conceal their relationship and activities. On December 17, 1997, at approximately 2 a.m., Mr. Clinton telephoned Ms. Lewinsky after he learned that she had been summoned for a deposition in the Jones case. According to this testimony he called to tell her about the death of the brother of Ms. Lewinsky’s landlord, who had been a close friend of Ms. Lewinsky states that he told her about the death of the brother, but that he also reminded her of their cover story and notified her that she was included on the witness list in the Jones case.

According to Ms. Lewinsky’s testimony, Mr. Clinton further stated that they might be able to avoid her testimony if she executed an affidavit. Although Mr. Clinton had also reminded Ms. Lewinsky of her cover story, the White House Counsel made much of the fact that Ms. Lewinsky said that the President did not tell her to file a false affidavit and did not link the cover story to the need to file an affidavit.
I do not believe it is at all inconsistent with a scheme or out of the ordinary to note that the President would not make such a connection. As an experienced attorney, the President would know he would be in grave danger if he explicitly asked anyone to file a false affidavit or to lie under oath. To paraphrase a statement made during the trial by Vernon Jordan, "He is no fool." He would have known that such a statement could be revealed by subsequent judicial inquiry.

Mr. Clinton did not have to tell Ms. Lewinsky expressly to execute a false affidavit. She knew that in the absence of contrary instructions she was to continue to follow their story. She was referred by the President's best friend, Vernon Jordan, to an attorney who drafted the affidavit for her. The President, through Mr. Jordan, was kept advised of the progress of the affidavit.

During the time that Mr. Jordan was serving as liaison between the attorney and the President in the preparation of the affidavit, he was also pursuing a job search for Ms. Lewinsky, which he admitted was under his control.

The President's lawyer was presented the affidavit and offered it into the evidence as the case in point. The President in the preparation of the affidavit was transmitting to Ms. Lewinsky to file an affidavit and take steps to be kept advised of the progress of the affidavit.

The President had knowledge that Ms. Lewinsky would be a prime subject of a federal grand jury on August 17, 1998, and he was aware of the affirmative action that Ms. Lewinsky devised. ImmediatelY after his trial on Saturday, January 17, 1998, he called Ms. Currie and summoned her to come into his office on a Sunday, January 18, 1998. There he stated five rhetorical questions to Ms. Currie: (1) "I was not even paying much attention . . . right?"; (2) "You were always there when Monica was there . . . right?"; (3) Monica came to see me and I never touched her right . . . right?"; (4) "She wanted to have sex with me and I can't think of the reason why not?"; (5) "You could see and hear everything . . . right?"

Each of these statements supported the position taken by the President in the Jones deposition, but each one of those statements was ultimately amended. The President was transmitting to Ms. Currie what he wanted her to say should she be called as a witness in this case. For good measure, he even went back to her a couple of days later and walked through the statements. It is uncontroversial that he made those statements, but he attempted to justify them on the basis that he was trying to refresh his memory.

His statements to Ms. Currie on January 18, 1998, and several days later constituted relating a false and misleading account of relevant events to influence corruptly the testimony of a witness in a federal civil rights action as alleged in Article II, paragraph 6, of the Articles of Impeachment.

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

The statements to his subordinates on January 21, 23, and 26, 1998, were false and misleading statements to potential witnesses in a federal grand jury proceeding to influence corruptly the testimony of those witnesses as alleged in Article II, section 7, of the Articles of Impeachment.

At his federal grand jury testimony on August 17, 1998, Mr. Clinton falsely and corruptly denied he had attempted to influence the witnesses and impede the discovery of evidence in civil rights actions as set out in the analysis above. Thus, the President engaged in a continuing scheme to fabricate and establish in federal court proceedings a false story about his relationship with Ms. Lewinsky and that
through circumstantial evidence, the direct testimony of Ms. Lewinsky, Ms. Currie, Mr. Blumenthal, and others, plus the corroborating evidence, he was shown to have committed the acts charged.

The totality of his actions can be judged in the success with which he maintained his cover story. Had it not been for the DNA on the stained dress, there is little likelihood that the false cover story would have been exposed for the lie that it was. In perpetrating that false and misleading story Mr. Clinton tampered with witnesses, obstructing justice in the civil rights lawsuit brought against him by Paula Jones. He also falsely misrepresented these acts in testimony before the grand jury August 17, 1998.

**HIGH CRIMES AND MISDEMEANORS**

Having resolved in my mind the question that clear and convincing evidence shows that William Jefferson Clinton obstructed justice and committed perjury in the Paula Jones sexual harassment case, the next issue is whether these activities rise to the level of offenses for which removal from office is the appropriate remedy. Defenders of the President have said that no one would press charges in a case like this, that it was not one that merited a criminal proceeding, and that it certainly was not sufficient to warrant removing the President from office.

With respect to the seriousness of the offenses charged, it is worthy of note that during the year 1997, 182 people were sentenced by federal judges for perjury and another 144 were sentenced for obstruction and witness tampering. These prosecutions were brought by Clinton Administration appointees and in many instances in front of Clinton-appointed judges.

The case of Dr. Barbara Battaglia is particularly compelling. In a law suit brought by a patient of a Veterans Administration hospital alleging sexual harassment, Dr. Battaglia was asked in a deposition if she had had consensual sex with the plaintiff. Her answer to that question was a simple, “No.” When that denial was shown to be a lie, she was convicted of a felony and sentenced to house arrest with an electronic monitoring device. She has lost her ability to practice medicine and also her ability to utilize her law degree to practice law.

The totality of these offenses is particularly clear when considered in the context of the proceedings. The United States Supreme Court had ruled unanimously that Mr. Clinton, as President, had to answer the lawsuit filed by Paula Jones. A federal judge was assigned to the suit and presided over the deposition in which Mr. Clinton testified and at which time he and his lawyer presented the false affidavit.

It is totally inconsistent within the context of this case, in the sound functioning of the judicial system to say that the Supreme Court meant that Mr. Clinton should respond to these charges but he was not bound to respond truthfully. His actions in procuring and using false affidavits, causing the hiding of subpoenaed evidence, and tampering with a potential witness by giving false information to use in any testimony effectively denied the plaintiff the civil rights the Supreme Court had ruled that the acts are not grave, not high-crimes, and not a threat to the judicial system, is untenable. No lawyer could make such a statement in open court and not be subjected to the loss of a license to practice law.

Likewise, his lies to a grand jury from his White House office were a serious challenge to the administration of justice.

Moreover, the debates of the authors of the Constitution showed that they considered obstructing justice would warrant the President’s impeachment and conviction. George Mason asked if the President could advise someone to commit a crime and then before an inquiry about it, he could use the power of a pardon to stop inquiry and prevent detection. James Madison responded that, “If the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will not suffer the representatives of the people to impeach him.” (See Elliott, Debates on the Adoption of the Federal Constitution, at 498.)

Another argument has also been made by the White House counsel and supporters of the President that to remove the President from office on impeachment would be to nullify the election. This argument suggests that impeachment is never an appropriate remedy, provided the President is popular and the country is enjoying good times. The Office of the Presidency is so brittle that it would be gravely damaged by removing the current President or any other President. The Founding Fathers certainly did not envision that impeachment would only apply to an unpopular President or one who was leading the country in hard-times.

At the height of a Cold War with United States forces engaged in Vietnam, impeachment proceedings against President Richard M. Nixon forced him to leave office. The country was not wounded, it did not lose its way; Vice President Gerald Ford assumed the Presidency and continued the course of government. In this case, Vice President Al Gore would assume office and would be expected to continue the policies of the Clinton Administration.

The United States Senate in recent years did not shirk from driving from office a colleague accused of obstructing justice in a sexual harassment case. No one objected that we had “nullified” the votes of the citizens of his state.

Some of my colleagues have argued that the President has been strong and forceful in foreign policy and conducted such wise relations with other nations that we could not afford to lose him. That argument, too, smacks of a referendum on the President’s conduct of office, not a judgment on his wrongfull acts. If we were to judge impeachment on the basis of the policies of the President, then impeachment could always be expected to be purely a partisan matter turned on the approval or disapproval of formulation or implementation of policy by the President. The framers rightfully dismissed any option that the proper or improper administration of the regular powers of the President would be involved in a decision on impeachment, either positively or negatively.

In addition, we have the precedents set by the removal by the Senate of judges who have been found to have committed perjury. During my tenure in the Senate we have twice removed judges for committing perjury because of the serious adverse impact that has on our judicial system. If a judge is removable for committing the significant act of perjury, can the one who appoints the judge be held to a lower standard?

The President not only appoints the judges, he appoints the Attorney General, the United States Attorneys, and the Supreme Court justices. Certainly we should impose no lower standard on the person with the ultimate responsibility for the proper administration of justice than on those he appoints.

**CONCLUSION**

It is precisely in good times, with the President high in the polls, that it is incumbent upon the Senate to exercise very thoroughly and carefully the responsibility under the Constitution to make the difficult decision on whether the President has committed high-crimes and misdemeanors warranting his removal from office. If we are to have a government of laws and not of men and not of public opinion polls, then we must judge the President on the evidence presented to us. I believe that the acts that he committed constitute high-crimes and misdemeanors warranting his conviction.

I should note that the Senate made a serious mistake in beginning the proceedings by limiting the ability of the House Managers to call witnesses. The absence of witnesses to testify to the acts alleged as the basis of impeachment charges significantly impeded the progress toward resolving the allegations against the President. I trust that the Senate will not make the same mistake in future impeachment proceedings.

Mr. ROBB, Mr. Chief Justice, colleagues, sitting in judgment that the President of the United States is not easy for any of us. It is particularly difficult for me because of the personal and political relationship I have had with this President over the last 20 years. We served together as Governors in the early eighties, as several of you did. We traveled together on foreign trade missions. We shared similar priorities for our States. At my urging, he
Alexander Hamilton defined impeachable activities as those that relate chiefly to the injuries done immediately to society itself. During the debate, Edmund Randolph, a Virginia Governor, reflected concerns. He stated that the Executive will have great opportunities to do wrong, particularly in time of war when the military force and, in some respects, the public's money will be in his hands. Clearly, our founders created impeachment not to punish the President, but to protect the people. They lived under a king and they didn't want another.

History and common sense tell us, therefore, that the threshold for impeachment should be high—very high. It should be difficult, not easy, to impeach a President of the United States because impeachment is the ultimate sanction for protecting the Republic. It is a weapon to be respected and feared, but wielded only under the most compelling circumstances. Similarly, history and common sense tell us that removing a President is not the same as removing a Federal judge. In James Madison's records of the debate at the Federal Constitution, he wrote, "The President did not hold his place for a limited time, but during good behavior." The Executive was to hold his place for a limited term, like the members of the legislature.

Like them—particularly the Senate, whose Members would continue in appointment in the same term of 6 years—he would periodically be tried for his behavior by his electors, who would continue or discontinue him in trust, according to the manner in which he had discharged it. Likewise, removing a President is not the same as removing a member of the Armed Forces for violating the military code of conduct. The Uniform Code of Military Justice is required to maintain the good order and discipline for wag-in and winding peace. And all of us who have served in the Armed Forces understood that we swore an oath to obey a code not required of any civilian, even those with the power to send us into harm's way—a civilian Commander in Chief, our Secretary of Defense, and Members of Congress. Finally, removing a President is not the same as punishing a citizen in a court of law. Like any citizen, a President could not be full discharged in court after he leaves office, and the failure to convict him in an impeachment trial in no way precludes a subsequent criminal prosecution.

If a President is subject to the law, then he is clearly not above it, as some have claimed.

Some also argued that since the President's oath requires him to faithfully execute the laws, any violation of those laws would thereby warrant his removal from office. If that argument may be appealing, it simply was not the standard adopted by the framers. Their standard was narrowly confined to treason, bribery, or other high crimes or misdemeanors. And it is against this standard that we are called upon to judge the conduct of this President.

I believe the President lied. When he came before the television cameras and wagged his finger and denying that he had sexual relations with a subordinate employee, he lied. This offensive public conduct, which has caused me the greatest personal anguish, is an act that will be forever seared into our Nation's memory. His testimony was calculated, politically motivated, and directed at each and every one of us.

Though clearly reprehensible, this lie did not violate any law and was not the subject of any article of impeachment. So, while I am convinced that the President lied to us, I am not convinced beyond a reasonable doubt that he lied to the grand jury, which is the sole basis for the first of the two impeachment articles.

Having weighed the apparent strength of the evidence, the House of Representatives defeated an article alleging perjury in the President's civil deposition. They voted to impeach the President for perjury based solely on his testimony before the grand jury. It alleges that the President willfully provided perjurious, false, and misleading testimony to the grand jury.

I listened intently to the arguments presented by both sides, and I have read the President's grand jury testimony carefully. In my judgment, the President's grand jury testimony ultimately boiled down to a few irreconcilable discrepancies, and while often slippery, hair-splitting, legalistic, and, in the words of the President's counsel, "maddening," was not perjurious beyond a reasonable doubt.

On article I, therefore, I will vote not guilty.

Article II alleges obstruction of justice, a crime difficult to prove because it requires a determination beyond a reasonable doubt about what a person intended by his words or deeds.

In this case, it is extremely difficult to determine whether the President's intentions were to obstruct justice in a civil or a criminal proceeding, or whether his intention was to mislead his family and the Nation about an embarrassing personal relationship. While his intent is difficult to prove, the obstruction of justice contained in article II is clear to me.

Article I, section 3, of the Constitution clearly requires that in an impeachment trial no person shall be convicted without the concurrence of two-thirds of the Members present. The rule of law requires concurrence by two-thirds.

While article I, in my judgment, violates this constitutional requirement, at least it focuses on a single event. Article II, on the other hand, is drafted in the disjunctive and containing 7 subparts each alleging a separate act of obstruction of justice, the bundling of these allegations would allow removal
of the President if only 10 Senators agreed on each of the 7 separate subparts. If, for example, 10 Senators voted to convict based solely on subpart 1 and a different group of 10 Senators voted to convict based on subpart 2, and the Senate had to somehow poison to reach a total of 70 votes for conviction. But that total would not have been reached with a two-thirds concurrence on any individual subpart.

Such a pleading is not allowed under the Federal Rules of Criminal Procedure. Neither is the Senate impeachment rules no more compelling since our rules cannot conflict with the Constitution. We simply cannot remove a President from office with an article of impeachment that so clearly violates constitutional standards that we are required by law to follow.

On article II, therefore, I will vote not guilty.

Thus, I will vote not to convict on both articles because the factual, legal, and constitutional standards for removal were not met.

I am not prepared to say, however, that perjury and obstruction of justice are not impeachable offenses, because I believe it would be a mistake to attempt to do that which the founders chose not to do—to define what is impeachable with specificity.

For impeachment to remain what our forefathers intended it to be—a deterrent to misconduct and a means to protect the Republic—future generations should be free in each case to examine the facts, apply the law, and follow the Constitution and to render impartial justice. That is the impeachment process we have inherited from those who came before us, and that is the precedent we bequeath to the ongoing chronicles of American history.

The legacy of this trial, I believe, is not what becomes of one man. This trial is larger than one man. The legacy of this trial is the Senate, sitting as a Court of Impeachment, proved worthy of the faith of our founders to render justice.

No matter what judgment is rendered, however, this trial cannot exonerate the President. A vote against conviction is not a vote to condone his lying to the American people, nor does it suggest that any Member of the U.S. Senate believes that perjury or obstruction of justice charges are anything but serious. They are very serious charges.

Sadly, the vote we are poised to take on these charges has divided our Nation. In the eyes of too many of our citizens, this vote will represent either a nonmilitary coup attempt against a duly elected President or a victory for those bent on accelerating the moral decline of the Nation. In truth, this vote represents neither. A vote for acquittal indicates nothing more and nothing less than the facts. The case to remove the President from office was not proven.

We sit in judgment today not because we are free from human failings—I certainly have my share—but because our forefathers have charged the Senate with the responsibility of protecting the Republic by judging the President when articles of impeachment are exhibited by the House of Representatives. In doing so, they carefully and deliberately limited the scope of our judgment.

We are judging the President in his capacity as President, and we are called upon to decide only one issue—whether he should be removed from office. The Senate was not called upon to judge him as husband and father, for that is the province of his family. We are not called upon to judge him as accused citizen, for that is the province of the courts. We are not called upon to judge him as sinner, for that is the province of God. And we are not called upon to judge his legacy, for that is the province of history.

Mrs. BOXER. Mr. Chief Justice, thank you for your dignity. And to both our leaders, thank you for your patience.

Colleagues, I will vote to acquit the President, and it is not because his poll numbers are high or because the economy is good. And it is not because Bill Clinton is a Democrat.

When I was in the House of Representatives, an impeachment resolution was filed against Republican President Ronald Reagan—an impeachment resolution because of Iran-Contra, which involved selling arms to a terrorist nation with the proceeds going to the Nicaraguan contra. This was against the law of the United States of America—against the law against the rule of law.

I voted for that law, but I never went on that impeachment resolution against Ronald Reagan because I felt it would have hurt the country and because there was no bipartisan support for it.

I think the same should be said of this impeachment. There is no bipartisan support for it and the President's removal would hurt the country.

One more preface: It has been said that what the President did in this case was worse than what Senator Packwood did.

In this case, we have a consensual affair, a scandal, not a crime. It was irresponsible and indefensible: a young woman, a relationship wrong in every way, a president trying desperately to hide the affair.

The young woman was secretly tape recorded and forced to testify. Her mother was forced to testify. The more than 20 women who complained about Senator Packwood alleged forced sexual misconduct against them. One victim was 17 years old. They wanted to tell their stories.

So each of us can decide for himself or herself the relationship of one case to the other. But surely that is not the issue before us.

Neither is the Paula Jones case, which was thrown out of court by a Republican female judge who ruled that there was no sexual harassment by the President. Testimony about a consensual sexual affair was immaterial.

Yes, the case was later settled, but that doesn't change its history: no sexual harassment, determined by a Republican female judge.

So, Senator Packwood is not before us, nor is Paula Jones. What is before us is the sanctity of the Constitution.

I believe it is our duty to our constituents for voting in favor of the Independent Counsel Law in its current form—a law that has given one person an unlimited budget, unlimited scope, unlimited time and an unlimited ability to hurt people, and to hurt them badly.

The Senate is now sitting as a court of impeachment, primarily because, for over four years, we had an Independent Counsel spending more than $42 million searching for an impeachment case.

And while I condemn the President's behavior, it was no excuse for the Ken Starr witchhunt, which went from a real estate deal, to several other fruitless investigations, to a sex deal built around illegally recorded phone conversations with someone named Linda Tripp. Linda Tripp, who says she's like all of us. Heaven help us if all of us act like Linda Tripp, secretly recording our dear friends. What a country this was, wasn't it?

I also want to comment on one other matter which is personal to me, and that is my daughter's family connection to the First Lady.

While none of my Senate colleagues questioned the propriety of my participation in the impeachment matter—for which I thank you all—I was the target of a barrage of questions by the media and others outside this body.

I just want to say that yes, my daughter is married to the First Lady's brother, a brother who loves and admires his sister and doesn't want to see her hurt. So, I am far from being a defender of the President's behavior.

But I am a fierce defender of our Constitution.

That is why I have joined a small number of senators, led by the distinguished senator from West Virginia, in fighting amendments to that precious document.

But while, being against the line-item veto and the balanced budget amendment were not popular positions in my state; my positions made my re-election tougher. But I have never
doubted that defending the Constitution is worth risking my Senate seat, which I cherish so much.

And it is because of my deep reverence for the Constitution that I believe we must reject the articles of impeachment today.

Why? Because the high crimes and misdemeanors constitutional requirement for removal has not been met—not even close.

The Constitution does not say remove the President if he fails to be a role model for our children. It does not say remove the President if he violates the military code of conduct, or the Senate Ethics Code. It does not say remove the President if he brings pain to his family.

It says very clearly that the President shall be impeached and removed from office only for committing treason, bribery or other high crimes and misdemeanors.

In his Commentaries on the Constitution, Justice Joseph Story endorsed the view that “those offenses which may be committed equally by a private person, and an officer not the subject of impeachment.” This means that presidential impeachable offenses are, generally, acts which could not be done by anyone other than the president.

Impeachment and removal from office was not meant to be a punishment of the President, but rather a protection of the country from a tyrant who would use his or her power against the people and the Constitution.

The President is not a tyrant who is threatening our democracy and freedom or the delicate balance of powers set up by our Constitution. So the “high crimes and misdemeanors,” standard established by the Constitution has not been met in my view.

We must also reject these articles because there is every reason to doubt the House managers’ case on perjury and obstruction of justice. They have presented a case of direct evidence for their claims, and the details of their circumstantial case have been decimated in many respects. As one manager said on national television, he couldn’t win the case in a court of law as it was presented in the House.

I don’t see how the case was strengthened in the Senate. In fact, I believe that it was weakened in the Senate.

When you have clear statements by Monica Lewinsky that the President never, ever told her to hide gifts and misleading statements by the President and Vernon Jordan saying she never felt intimated by the President and never discussed the contents of her affidavit—when you have Betty Currie saying she never felt intimated by the President and Vernon Jordan saying the júte was never connected to anything else—it seems to me there is substantial doubt on both counts.

That leads to another point. Rejecting these articles of impeachment does not placate this President above the law.

As the Constitution clearly says, he remains subject to the laws of the land just like any other citizen of the United States.

As Article I, Section 3 of the Constitution says, the President “shall... be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.” So it should be a comfort to those who believe the President committed crimes surrounding his affair with Ms. Lewinsky, in fact, is subject to the rule of law—our Founders made that certain.

At this point, I want to thank Senator Tom Harkin for his challenge to our nation and our Constitution. It was a disaster for democracy. I believe this was a disaster for democracy in that body.

Part of that picture is how the House of Representatives acted in this matter. I served in the House for ten years, and I never saw the minority party deny a vote on an alternative of their choosing in an important matter. Yet Democrats and moderate Republicans were denied a vote on censure, and I believe this was a disaster for democracy in that body.

Listen to what a Republican House Member who voted against impeachment wrote to a constituent:

I regret that Congressional Republicans were so blinded by their opposition to President Clinton that they voted to impeach him rather than stand by the traditional principles of their Party. I also regret that threats were made against me by the Republican leadership in an attempt to keep me from voting my conscience.

Those are the words of one of the five brave Republicans who voted against impeachment by the House. To me that speaks volumes about the kind of illegitimate process that got us here, and I believe in my heart that history will judge the House proceedings very harshly.

But I believe that the Senate, if it rejects the articles in a bipartisan way, will be viewed in a better light, and history will say that in 1999 the Senate decided that impeachment should not be used by one party to overturn the results of a presidential election that it did not like.

As Chief Justice Rehnquist wrote of the Senate acquittal of President Andrew Johnson in 1868:

The importance of the acquittal can hardly be overstated. With respect to the chief executive, it has meant that as to the policies he sought to pursue, he would be answerable only to the country as a whole in the quadrennial presidential elections, and not to Congress through the process of impeachment.

If I may, Mr. Chief Justice, I understand from your wise words that the President does not and should not serve at the pleasure of the House and Senate.

The Senate did the right thing in 1868—and by its decision not to remove the President, it brought stability to our nation. We should do no less now.

Voting against these articles of impeachment is the right thing to do to keep faith with our Constitution and to keep faith with our democracy for generations to come.

Mr. Mack. Mr. Chief Justice, today the Senate finds itself at an unlikely crossroads in American history. We have assembled as a court of impeachment to sit in judgement of our President, William Jeferson Clinton, on the charge of perjury and obstruction of justice. We have worked our will in this matter according to a process rooted in English common law, written by our Founders into the Constitution, and exercised against the Chief Executive only once before in American history.

This is not a task to be taken lightly, and we have not arrived easily at our decision. The Senate today is engaged in the weighty struggle that goes to the very heart of our private and public lives. We are at an unlikely juncture between principle and public opinion, repentance and the rule of law, perception and punishment, forgiveness and justice.

There has been much discussion about how we got here. And while the answer to that question may be varied in all its permutations, then amplified in the echo-chamber that is our modern public debate, it can be self-assured that this whole unseemly business began when the President, caught in an improper private act, took deliberate steps to conceal it. And for all the other parties blamed for our present troubles, the independent counsel, the political factions opposed to the President, the House of Representatives—must it be clearly understood that this process began with the deliberate and wilful acts of the United States to lie in a Supreme Court sanctioned civil rights inquiry and obstruct the due course of justice. It all started with the high-handed disregard for the law exhibited by the nation’s Chief Executive. It ends today.

Mr. Chief Justice, when the sound and fury of the moment has passed, and this episode can be observed with the objectivity that comes with the passage of time, I believe it will be self-evident that we have followed the Constitution to the best of our abilities. In a free, democratic society such as ours, the foundation of freedom is an independent judiciary, the rule of law, and an importantly independent Constitution. Our Constitution is the framework for American society, and I have been constantly reminded throughout these proceedings of the importance of our duty to honor the dignity of this document.

The magnitude of this undertaking deserves no less a sincerity of purpose and an absolute confidence in the wisdom of our Founders. The American people should not be swayed by those who argue the presence here today, in all its tawdry and unseemly detail—has made unnecessary a thorough process of determining the truth.
We stand in judgement of the President. Our decisions will be remembered throughout history. Our precedent may be followed by future Senates. Yet, still we have heard throughout this exercise the unfortunate call to end these proceedings. I am not naive. I accept the politics of expediency into a monumental Constitutional undertaking. I find these arguments display a remarkable lack of confidence in the sound and just system outlined by our Founders. The reasons are very serious. I charge the President with crimes and misdemeanors.

The impeachment of a President presents itself again, there is nothing restrict one another. As a result, no branch would be more powerful than the other. This structure is at the very core of our success as a Republic.

By obstructing justice and lying under oath, William J. Jefferson Clinton violated his duty as Chief Law Enforcement Officer of the nation. When the Founding Fathers established our tripartite system of government, it was decided that the three branches of government would operate as checks and balances on one another. This is the very mechanism that underpins the American Constitution.

Unfortunately, the simple fact is that the President’s actions did not constitute high crimes and misdemeanors. I would be asserting that the Executive Branch and the Office of the Presidency are more important than the Judicial Branch, and that the President of the United States is not obligated to abide by the rule of law. As a citizen and as a Senator, I have no greater responsibility than the Founding Fathers. Our precedent may be a case about depriving Paula Jones and others. The callous disregard for the character of Monica Lewinsky, Kathleen Willey and others. The callous disregard for the character of Monica Lewinsky, Kathleen Willey and others.

In that light, our official duties in this trial of this President were more powerful than the other. This structure failed to make these observations for future generations who reflect on this process simply to explain the mood of our nation and the political environment in which this proceeding occurred. As a result, I have allowed ourselves into believing that public opinion did not impair this process. I would like to believe, however, that the competing demands of expediting the process versus honoring our Constitutional duties created the most fair trial possible under the circumstances. Accordingly, the process followed and the rules complied with may not be appropriate for the next trial. The decisions made in this environment should not be considered set precedent that is inflexible. In fact, the precedent we set deserves thoughtful consideration and reasoned critique when reflected upon in the years and decades to come.

In the impeachment trial of William Jefferson Clinton, the Constitution provides that if a President is automatically removed from office. The Constitution provides if a President is found guilty of high crimes, then he or she is automatically removed from office. Our Constitution does not allow for finding the President guilty of high crimes and misdemeanors and warrant impeachment, conviction, and removal from office.

I am grateful the Senate rejected those calls and put in place a responsible mechanism for the thorough airing of fact and argument. I am confident our process during this trial, though far from perfect, was appropriate. We allowed time for detailed presentations on the part of the House of Representatives and the President. We held an extensive question-and-answer session to review and clarify matters presented by both sides. And we have allowed for the appropriate and necessary deposition of key witnesses.

I wish to address my remarks not so much to the people listening in this room today, but rather to those future generations who will look back at the record and transcripts for guidance, direction, and a more thorough understanding of the process that played out in this chamber during the first two months of 1999. I mentioned earlier the significance of the Constitution. I cannot stress enough the essential role that this historical document has played in the history of William Jefferson Clinton. This document laid the framework for what has taken place. It is understood, the Senate tried the President because the Constitution requires that we do so. There is no exception for popular Presidents, such as William Jefferson Clinton. The Constitution provides for this process to be applied to everyone evenhandedly.

Although the trial of this President was not a trial in the traditional sense, it is true that it and an impeachment of a President presents itself again, there is nothing restricting a more traditional trial from occurring. In fact, I would encourage future Senates to utilize a judicial proceeding more closely aligned to a typical courtroom trial. Every impeachment trial will have its own dynamic environment, determined by the political and social context in which it occurs. The trial of William Jefferson Clinton proceeded over a few weeks, and in this light, our conduct was not inappropriate.

It is true that private acts are the genesis of the matter before us. Had the acts stayed private, we would not be here today. The President, however, in that light, our constitutional right to a day in court, a right which nine justices of the Supreme Court unanimously decided that she deserved. And—almost unbelievably—on the heels of this Supreme Court mandate, the President seemed to strengthen his efforts to deny Paula Jones’ civil rights. Once these acts moved into the public arena, forming the basis for charges as serious as perjury and obstruction of justice, it is my opinion these acts became high crimes and misdemeanors as contemplated by the Framers of our Constitution. This topic has been the subject of much controversy in the past months.

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before me, it does permit me to translate
legal concepts into layman's terms. As I
worked my way through the voluminous
record and sat through
days of the trial, I found it easiest to
understand this case if I approached it
in chronological order. Given that,
I will discuss the Obstruction of Justice
count first, because in the course of
this tragic series of events, I believe the
President started down this slippery
slope by the actions he took, as opposed
to the words he spoke. Sadly, the
words, uttered under an oath to tell
the truth, came later.

**Obstruction of Justice**

I view obstruction of justice, in its
most simple terms, as actions that
somewhat interfere with the fact-find-
ing or truth-seeking mission of a law-
suit. The record before us is replete
with examples which, in my opinion,
prove that the President of the United
States intended to, and did in fact, ob-
struct justice. Specifically, the Presi-
dent obstructed justice by corruptly
engaging in, encouraging, and
supporting a scheme to conceal
evidence that had been subpoenaed
in the Jones case; by encouraging Ms.
Lewinsky to submit a false affidavit in
the Jones case to mislead the court and
to make false and misleading statements
to a federal court judge; by relating
false and misleading statements to Ms.
Currie and presidential aides in order
to influence their testimony; and by in-
terfering with and succeeding in an
effort to secure job assistance for Ms.
Lewinsky in order to encourage her
to testify favorably toward the President
in the Jones case.

I believe the first example of obstruc-
tion occurred when the President was
issued a subpoena in the Paula Jones
case. This case was a federal civil
rights action in which the President
was sued for sexual harassment, hostile
work environment harassment, and in-
tentional infliction of emotional distress.
As part of the discovery process in
the Jones case, subpoenas were
issued to several former state and fed-
eral employees suspected of having sex-
ual relations with the President. In-
cluded in these was a subpoena which
requested the President to produce the
gifts he had received from Monica
Lewinsky. This request was denied by
the President on five different occa-
sions, as ultimately five separate sub-
openas were issued. As a last resort, Mr.
Judge Wright granted Paula Jones' mo-
tion to compel the President to produce
gifts. The President, however, still
did not turn over the gifts and in-
stead replied that he had none. The
President's unwillingness to comply is
ironic given that later—in his grand
jury testimony—he stated that he re-
ceives and gives hundreds of gifts a
year, and that the whole gift-giving
concept is inconsequential to him. The
President's behavior belies his testi-
mony.

The gift concealment continued be-
yond the President refusing to turn
over the presents Ms. Lewinsky gave
him. Ms. Lewinsky was also subpoea-
naed in the Jones case and was asked to
turn over gifts the President had
given to her. According to Ms.
Lewinsky, when she suggested to the
President that the gifts be hidden, he
responded, "I don't think you should
provide me with something to think
about it." I am aware that the record
does not reflect a specific directive
by the President to Ms. Lewinsky to
hide the gifts. My reading of the rec-
ord and my interpretation of the
evidence led me to the inescapable
collection that the Chief
Law Enforcement Officer of the coun-
dy, and a well-educated lawyer to
boot, did not fulfill his duty to turn
gifts over himself and did not abide by
his duty again when Ms. Lewinsky
asked him what she should do with her
gifts.

There is some confusion over exactly
how the President's secretary, Ms.
Currie, came to be in possession of
the gifts that the President gave Ms.
Lewinsky. I find it compelling, how-
ever, that when the President and Ms.
Lewinsky met on the morning of De-
ember 28, Ms. Lewinsky suggested
that the gifts the President had given
to her should be hidden. A few hours
later, at 9:15 A.M., a phone call came
from Ms. Currie to Ms. Lewinsky. On
that same afternoon, Ms. Currie arrived
at Ms. Lewinsky's residence to pick up
the gifts, and ultimately, the gifts were
found under Ms. Currie's bed. In my
view, the President's conduct leads me
to connect the President's involvement
with the gift concealment. I find it hard to
believe that Ms. Currie would on her
own, without influence from the Presi-
dent, decide to hide Ms. Lewinsky's
gifts.

As an aside, I feel compelled to point
out a pattern that seems to have
evolved during this administration.
The hiding of evidence in a personal
residence harks back to the mysterious
reappearance of the Whitewater billing
records in the White House residence
several years ago. There seems, in my
mind, a proclivity on the part of the
President to cause the disappearance
of key evidence whenever wrongdoing is
alleged. Hence, gifts under the bed
equate to billing records in the White
House residence.

In view of the President's actions up
to this point, I am convinced the Presi-
dent was involved in Ms. Currie's re-
tention of the gifts. Ultimately true is
that, in spite of repeated requests, the
gifts the President received were never
produced and only some of the gifts
given to Ms. Lewinsky were produced.
In my view, it was no accident that
gifts which were not handed over were
instead hidden beneath the President's
secretary's bed.

As the Jones case progressed, so did
the President's determination to ob-
struct justice. As fate would have it,
Monica Lewinsky was named as a wit-
ness in the President's civil rights action.
Upset and scared, the President suggested
to Ms. Lewinsky that if she were subpoe-
naed she could file an affidavit in an ef-
fort to avoid testifying in a deposition.
Ms. Lewinsky did in fact file an affida-
vit. The affidavit was claimed by the
President to be truthful because of
what Ms. Lewinsky understood "sexual
relations" to mean at that time.

While the President maintains the
truth of the affidavit even until this
day, Ms. Lewinsky testified before the
grand jury that, in fact, it was not a
truthful affidavit. Specifically, she tes-
tified before the grand jury that she
had never even received the document
under the penalty of perjury because
she did not think that her affair with
the President was anyone's business. I
assume that we would still not have
Ms. Lewinsky's admission that the affi-
davit was false, but for the fact that
she was in fear of being prosecuted for
perjury herself.

I think the President's behavior in
regard to the affidavit of Ms. Lewinsky
day of the President's deposition in ob-
struction of justice. I am not impressed
with the President's argument that
this conduct became "irrelevant" when
Judge Wright determined that the
Lewinsky matter was not essential to
the Jones lawsuit.

On the contrary, I am compelled by
the fact that when the President was
weaving this contorted web, it was his
clear intent to conceal his relationship
with Ms. Lewinsky. At the time the
Lewinsky affidavit was prepared, the
President could not have known Judge
Wright would later determine that the
Lewinsky matter was unrelated to the
Jones lawsuit due to the consensual
nature of the President and Ms.
Lewinsky's relationship. Rather, the
President was making every effort to
see that nothing about his relationship
with Ms. Lewinsky was disclosed.

The next crucial event arrived on the
day of the President's deposition in the
Jones case. At the deposition, the
President's attorney, Bob Bennett,
claimed that Ms. Lewinsky's affidavit
was true. Specifically, Mr. Bennett
claimed that "there is no sex of any
type or shape or form," and that the
President claims, not surprisingly, that
he was not paying attention when his
attorney made these statements, and in addi-
tion, that the Lewinsky affidavit was
technically true because the word "is"
means "at this time."

My review of the President's
taped testimony leads me to believe
the President was paying attention
to Mr. Bennett. When watching the
tape, it is clear to me that the
President's attention is riveted on
every person who speaks. He is atten-
tive and his eyes track the speakers as
they engage in dialogue. I believe the
President purposely allowed Mr. Ben-
nett to mislead the court. Part of the
record before us includes a letter from
Mr. Bennett asking the trial court not
to rely on the affidavit or his com-
ments regarding the document. Thus,
it appears Mr. Bennett also believed
the President allowed him to mis-
lead the court.

Moreover, I am not persuaded by
the President's argument that the affidavit
The sum of this evidence convinces me the President was not only obstructing justice by tampering with a potential future witness, but also violating the gag order that had been put into effect by Judge Wright in the Jones case. It is beyond belief that the President repeatedly offered “you should ask Betty.” Then, on the very next day, he summoned Ms. Currie to the White House and asked and answered his own leading questions. Importantly, the following week, Ms. Currie was subpoenaed to testify in the J ones case. I have also concluded the President’s conversations with his aides concerning his relationship with Ms. Lewinsky constitute witness tampering. The President told his aides, John Podesta, Sidney Blumenthal, and Erskine Bowles, misleading and untrue statements about his relationship with Monica Lewinsky. In fact, Mr. Podesta testified in the grand jury proceedings that the President’s conversation with Ms. Lewinsky was explicitly about denying any physical relationship and any sexual contact with Ms. Lewinsky.

Although the President’s approach to this group of potential witnesses differed from President Clinton’s approach to Ms. Currie in that he did not ask this group to agree with his statements, I find these conversations equally disturbing. To mislead his key aides, who he admitted might be called to testify before the grand jury, that there are no bounds on the President’s attempts to protect himself. He was willing to mislead any person who might have blocked his intricate obstruction plan.

In addition, I believe that the President obstructed justice by intensifying and succeeding in an effort to secure job assistance for Ms. Lewinsky in order corruptly to prevent her from appearing as a witness in the Jones case. Although the President promised Ms. Lewinsky assistance with her New York job search prior to her name appearing on a witness list in the Jones case, it seems odd and much too coincidental that the President’s assistance intensified after he learned that Ms. Lewinsky was on the witness list.

In October, Ms. Lewinsky expressed her interest to the President in moving to New York and finding a job. In early November, she had a meeting with Vernon J. Jordan to discuss potential jobs in New York City. Ms. Lewinsky testified before the grand jury that this meeting resulted in no activity taking place. However, underwater, her job search would take a 360 degree turn in December. Possibly the most important day was December 6, 1997, when the President learned that Ms. Lewinsky was on the witness list in the Jones case. A little over a month later, Ms. Lewinsky was offered and accepted a job with Revlon in New York City.

The President is also charged with making perjurious, false, and misleading testimony to a Federal grand jury concerning his corrupt efforts to influence the testimony of potential witnesses to impede the discovery of evidence in the Jones civil rights action. My review of this charge, and the evidence offered,
leads me to conclude that the President engaged in several separate acts of perjury. Specifically, the President lied under oath regarding the nature and details of his relationship with Ms. Lewinsky; lied regarding his conversation with Ms. Ms. Currie on February 17, 1998, as I have previously testified in my deposition; lied regarding his knowledge of Ms. Lewinsky's affidavit in the Jones case; lied regarding statements made to aides about his relationship with Ms. Lewinsky; lied regarding prior false and misleading statements made to others; and lied by convening Bob Bennett to make to a federal judge in the Jones case; and lied when he denied engaging in a plan to hide gifts that had been subpoenaed in the Jones case.

After the Jones deposition, on January 26, 1998, the President went on national television and declared: "I did not have sexual relations with that woman, Ms. Lewinsky." In addition, he denied that he urged her to lie about the affair. Over the next seven months, the President continued to deny the relationship. In the face of mounting evidence to the contrary, the Office of the Independent Counsel sought and received permission from the Attorney General to expand its investigation to include whether the President lied under oath in his Jones deposition.

Seven months later, on August 17, 1998, the President appeared before a grand jury to answer questions regarding his Jones deposition and his alleged affair with Ms. Lewinsky. Prior to his testimony, the President took a solemn oath to tell the truth. Specifically, when asked during the grand jury proceedings what this oath meant to him, the President stated: "I have sworn on an oath to tell the grand jury the truth, and that's what I intend to do." Moreover, the President stated: "I will try to answer, to the best of my ability, other questions including questions concerning my relationship with Ms. Lewinsky; questions about my understanding of the term "sexual relations," as I understood it to be defined at my January 17, 1998 deposition; and questions concerning alleged subornation of perjury, obstruction of justice, and intimidation of witnesses.

In my opinion, however, the President violated his stated intention to answer questions honestly and to the best of his ability. Perjury is defined at my January 17, 1998 deposition. By referring to his prepared statement, the President asserted that his encounters with Ms. Lewinsky did not constitute "sexual relations," the contact between the President and Ms. Lewinsky, as testified to by Ms. Lewinsky, constituted sexual relations on the part of both parties. Before the grand jury, the President referred to his prepared statement nineteen times in order to avoid providing honest and complete answers to the questions posed. By referring to his prepared statement, the President asserted that his encounters with Ms. Lewinsky did not constitute "sexual relations," the contact between the President and Ms. Lewinsky, as testified to by Ms. Lewinsky, constituted sexual relations on the part of both parties.

To address part of the perjury charge creates the need to resolve the credibility conflict between the President and Ms. Lewinsky. By finding that the President committed perjury in regard to testimony concerning the nature and details of his relationship with Ms. Lewinsky, it is clear that I find the testimony of Ms. Lewinsky to be more honest and forthright. Some may question why I believe the testimony of Ms. Lewinsky over the testimony of the President. First and foremost, I believe the President was lying to cover up the facts that he obstructed justice. The President's grand jury testimony was simply a story concocted to cover up the fact that he obstructed justice. Thus, his grand jury testimony was perjurious.

In addition to making false statements with regard to the potential testimony of Ms. Lewinsky, the President also made false statements with regard to tampering with the potential testimony of Ms. Currie. The President testified to the grand jury that he said to his aides things that were true about his relationship with Ms. Lewinsky. In this statement, the President said, "I have not had sex with her as I defined it." This statement is, however, patent untruth, as White House
Deputy Chief of Staff John Podesta's testimony indicates that Mr. Podesta testified that the President was explicit in stating that no sexual contact of any kind occurred between the two parties. Furthermore, during the grand jury proceedings, President Clinton testified that when he was asking Ms. Currie about the times he was alone with Ms. Lewinsky, he was referring to 1997. The President stated: “Keep in mind, sir, I just want to make it clear—I was talking about occasions when I was trying to get Betty Currie to claim that on the occasions when Monica Lewinsky was there when she wasn't anywhere around, that she was. I would never have done that to her, and I don't think she thought about that. I don't think she thought I was referring to that.” The President was then asked: “Did you put a date restriction? Did you make it clear to Ms. Currie that you were only asking her whether you were together alone with her after 1996?” The President responded: “Well, I don’t recall whether I did or not, but I assumed—if I didn’t, I assumed she knew what I was talking about, because it was the point at which Ms. Lewinsky was out of the White House and had to have someone wave her in, in order to get in the White House.” In my view, this is just one more example of the President creating a false story to cover up the fact that his conversation with Betty Currie constituted witness tampering.

The President also provided perjurious, false, and misleading testimony to a Federal grand jury regarding his knowledge that the contents of an affidavit executed by Ms. Lewinsky were untrue. Attorneys for Paula Jones were seeking evidence of sexual relationships the President may have had with other state or federal employees. In this process, Ms. Lewinsky was subpoenaed as a witness. The President suggested that whatever Lewinsky should do is an affidavit to avoid having to testify. If the truth had been told in this affidavit, and if Ms. Lewinsky had been honest about the nature of her relationship with the President, Ms. Lewinsky indisputably would have been an important witness.

The President stated before the grand jury, when asked about the Lewinsky affidavit: “Did I hope [Monica Lewinsky] would be able to get to the bottom of the world. Absolutely ... Did I want her to execute a false affidavit? No, I did not.” The President’s testimony is not credible and is misleading in light of the fact that it was virtually impossible for Ms. Lewinsky to file a truthful affidavit that would have permitted the President to achieve his objective of not having Ms. Lewinsky testify. This is just one more instance were the President lied, misled, and violated his solemn oath to tell the truth.

In addition, the President gave perjurious testimony in regard to false and misleading statements he allowed his attorney Bob Bennett to make to a federal judge in the Jones case. When asked during his grand jury testimony how he could have lawfully sat silent while his attorney made a false statement, the President explained that he was not paying “a great deal of attention.” After reviewing the President’s videotaped deposition numerous times, I believe that it is apparent that the President was indeed paying attention when his attorney made these false statements.

Finally, in his grand jury testimony, the President stated he told Ms. Lewinsky that if the attorneys for Paula Jones asked for the gifts, she had to provide them. In light of the fact that all of the gifts the President gave Ms. Lewinsky were never produced and some of the gifts were found under Ms. Currie’s bed, I do not believe that the President’s grand jury testimony regarding his conversation with Ms. Lewinsky was truthful.

According to Article I of the Constitution, the Senate’s role during the impeachment proceedings is to conduct an impartial trial in the case of impeachment of the President. We are not here to determine, as the House of Representatives was, whether President Clinton is guilty of both Article I and Article II.

CONCLUSION

Mr. Chief Justice, the President of the United States is in a difficult position. His actions have caused all of us to examine the uncomfortable details surrounding his reckless affair with a young White House intern. But it was not his unfortunate actions with the White House intern that brought us to this moment. Rather, it was his wilful and deliberate attempt to cover it up in a judicial proceeding and then lie under oath to a Federal grand jury. We are not here because we disagree with the President’s politics. In fact, I happen to consider the President a very capable man, who has, by his own actions, destroyed his place in history. For me to watch someone strategically dismantle all they have worked for is disturbing, to say the least. However, in spite of the human side of this tragedy, there is no escaping that we are here simply because of the President’s intentionally deceptive behavior and his unwillingness to abide by the law.

We were handed very serious charges against the President by the House of Representatives. In disposing of this matter, we have followed the only template we have: the Constitution and the precedent of previous Senators. We have done our best to make the best of our abilities. Despite cries all around to end the trial and ignore our Constitutional mandate, the Senate allowed for a process rooted in the search for truth. All sides had an opportunity to make their case, question witnesses, and answer in, after considering all of the evidence, I believe that the President is guilty of both Article I and Article II.

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

Mr. FITZGERALD. As a freshman Senator, I am saddened that the first issue I confront in my service to the people of Illinois is the impeachment of a President of the United States. It is difficult to imagine a task less welcome and more awesome to me. As a newly elected Senator, I have barely begun to know the Senate, my colleagues, our rules and procedures, our precedents, or, finally, even our duty. I have watched you all so carefully—looking for examples, and guidance—wondering at the gravity of these days.

On a personal note, before I begin, I want to thank those on both sides of the aisle—Senators who, in difficult days, have been so gracious to a new Senator—thank you for the time, and making the effort, to welcome the newest among you. Through these hours, I have developed a deep respect for my new colleagues, for the Senate as an institution, and for the Constitution, which has anchored us for over two hundred years. I thank God for the wisdom of the Framers, and their ability to construct enduring institutions that allow us to confront, peacefully, the question of whether our President should be removed from office. We now come to the conclusion of this Constitutional process, itself an extraordinary example of the rule of law that makes our nation the envy of the world.

The people of Illinois have entrusted me with the duty to uphold the Constitution, a duty I share with all of you. In addition, we share the responsibility of abiding by the separate oath we took in coming to “do impartial justice according to the Constitution and the laws.” As a trier of fact and law, I find that the President has committed perjury and obstructed justice as charged in the two Articles of impeachment, and that those offenses constitute “high crimes and misdemeanors.” I will vote for conviction on both counts.
I reach this decision after detailed examination of the evidence presented, the arguments of counsel, Senate precedents, and the impeachment clause of the Constitution.

**THE STANDARD OF PROOF**

The important decision was to determine the appropriate burden of proof. Failure to impose a burden of proof on the House Managers would severely weaken the Presidency, a result the Founders feared and sought to avoid. The precedents of the Senate make clear that there is no single standard that each of us must apply.

The President has argued that we should apply the criminal standard of "proof beyond a reasonable doubt." In recent impeachment trials of federal judges, a number of Senators also argued that conviction was only appropriate if the proof met this standard. Some commentators have suggested that Senators could use the preponderance-of-the-evidence standard typically applied in civil cases, or some standard in between.

I have concluded that, to support a conviction, allegations must be proven by "clear and convincing" evidence. The criminal standard is too narrow a warrant for imposing the belief in this instance, i.e., the removal of the President, is not punitive, but remedial. In contrast, the civil standard would place the Presidency at too great a risk. The "clear and convincing" evidence standard strikes a prudent balance, providing sufficient protection for the authority of the Presidency and the expression of popular will represented by the President's election, while avoiding the risk of a President remaining in office despite clear and convincing evidence of impeachable offenses.

**ARTICLE I: PERJURY BEFORE A FEDERAL GRAND JURY**

The House has presented clear and convincing evidence that the President committed perjury when he testified before a Federal grand jury on August 17, 1998.

On January 17, 1998, President Clinton testified in a civil deposition in the Jones v. Clinton lawsuit, after the Supreme Court had ruled unanimously that a civil suit against a sitting President could proceed. After the deposition, the Independent Counsel secured the approval of the Attorney General, and a Federal grand jury was convened to which superintends the Independent Counsel law, to expand his jurisdiction to inquire into whether the President testified truthfully in his deposition. On August 17, 1998, the President, as the target of the investigation testified by video to a Federal grand jury in Washington, D.C.

The President's deposition testimony in the Jones case was false in numerous respects, and his grand jury statements were completely truthful in his deposition testimony cannot be accurate. [Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105-311, pp. 458-59] The falsehoods are of such a quantity and kind that a reasonable reading of the evidence suggests the President had to know at the time he gave his deposition in the Jones case that he was not being truthful. His testimony to the grand jury and perjury remained to be truthful at his deposition is false.

Example: the President had testified in his deposition that he believed that, in the preceding two weeks, no one had reported to him any conversations with Ms. Lewinsky about the Jones suit. [Jones Deposition of President Clinton, 1/17/98, S. Doc. 106-3, Vol. 22, p. 22] In testifying to the grand jury that he was truthful in his deposition, the President reaffirmed this portion of his deposition testimony. [Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105-311, p. 458] We know, however, that Vernon Jordan had, within the two weeks prior to the President's deposition, told the President that Ms. Lewinsky had signed her affidavit. [Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONGRESSIONAL RECORD S1241 (daily ed. Feb. 4, 1999)]

The President's grand jury testimony was material to the issue of whether the President had sought to influence the content of Ms. Lewinsky's affidavit and thereby obstruct justice.

The President again committed perjury before the Federal grand jury when he tried to explain why he made a series of false statements to his Secretary, Betty Currie, on two separate occasions. At his deposition, the President was questioned about Ms. Lewinsky. The President attempted to employ Ms. Currie as an alibi witness. In the wake of the deposition, the President asked Ms. Currie to come to the office on a Sunday. Once there, the President asked Ms. Currie a series of leading questions concerning her recollection of events regarding Ms. Lewinsky. [Grand Jury Testimony of Betty Currie, 10/5-10/6, pp. 559-60] A few days later, the President again queried Ms. Currie with leading questions. [Id. at p. 561]

When questioned during his grand jury testimony about the series of leading questions, he had directed to Ms. Currie, the President responded: "I was trying to figure out what the facts were. I was trying to remember." [Grand Jury Testimony of President Clinton, 8/17/98, H. Doc. 105-311, p. 591]

He also claimed that he was only trying to "ascertain what the facts were, trying to ascertain what Betty's perception was." [Id. at p. 593]

While Ms. Currie would not say she felt pressured by the President, she did testify that she believed that the President was seeking her agreement with those statements. [Grand Jury Testimony of Betty Currie, 1/17/98, H. Doc. 105-311, p. 559] It is unreasonable to conclude that the President was trying to depict events by making patently false statements to Ms. Currie, in the days immediately following his deposition for the Jones case. Ms. Currie could not possibly have known the answers to some of the President's "questions," and the President clearly already knew the answers to others.

We took an oath to do impartial justice. We did not take an oath to check our common sense at the door of this Chamber. The President's proffered explanation of the questions he directed to Ms. Currie defies common sense. I believe he sought, instead, to influence Ms. Currie's testimony by imparting to Ms. Currie his preferred version of the events. His false explanation was material to the grand jury's inquiry and constitutes perjury.

The President also committed perjury when he testified and then reiterated before the Federal grand jury, in answer to a question about false accounts he gave to his aides regarding Ms. Lewinsky, that "I said to them things that were true." [Grand Jury Testimony of President Clinton, 8/17/98, p. 106, H. Doc. 105-311, pp. 557-58]

In fact, the President said to his aides things that were false. Presidential aide Sidney Blumenthal testified in his Senate deposition that the President had told him that Ms. Lewinsky had threatened him, and that she was called "the stalker." [Deposition Testimony of Sidney Blumenthal, 2/3/99, 145 CONGRESSIONAL RECORD S1301 (daily ed. Feb. 6, 1999)].

Mr. Blumenthal testified he now knows that the President lied to him. [Id. at S1302] The President knew what he said to Mr. Blumenthal was false because the President knew the facts. The one fact the President did not know was that Ms. Lewinsky would produce DNA evidence that would provide incontrovertible physical evidence to contradict him.

The President's statements before a Federal grand jury regarding accounts he gave to his aides of Ms. Lewinsky were false, and the falsehoods were material to the grand jury's investigation into whether the President had testified falsely in the Jones deposition.

**ARTICLE II: OBSTRUCTION OF JUSTICE**

The House has presented clear and convincing evidence that President Clinton obstructed justice by engaging in a course of conduct designed to impede, cover up, and conceal evidence and testimony related to the Federal civil rights action brought against him.

The evidence shows that the President improperly influenced Ms. Lewinsky to file a false affidavit in the Jones suit. I believe that the only version of the evidence that makes sense is that offered by the House. Thus, I conclude that the President influenced the entire process that led to the filing of the false affidavit, from its inception to its conclusion. He did so through direct conversations with Ms. Lewinsky,
and through his close friend, Mr. J. Jordan, who was able to monitor the process through an attorney that he, Mr. Jordan, procured for Ms. Lewinsky.

Ms. Lewinsky admitted that on December 17, 1997, the President informed her by telephone at 2 a.m. that he was putting her on the witness list in the Jones case, and suggested that she might avoid testifying by filing an affidavit. [Deposition Testimony of Monica Lewinsky, 2/1/99, 145 CONGRESSIONAL RECORD S1218 (daily ed. Feb. 6, 1999)] Ms. Lewinsky told Mr. Jordan to call Betty Currie if she was subpoenaed. [Id.]

The President’s assertion that he thought Ms. Lewinsky could have avoided testifying by filing a truthful affidavit is unbelievable. I believe that the President knew that a truthful affidavit by Ms. Lewinsky would have ensured that she would have been called as a deposition witness, and that her subsequent truthful testimony would have been legally damaging to the President. In the conversation in which the President suggested that Ms. Lewinsky file an affidavit, they discussed the cover stories they could use to avoid public knowledge of the truth. [Id. at S1219]

Mr. Jordan was notified by his Senate deposition that he “was acting on behalf of the President to get Ms. Lewinsky a job.” [Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONGRESSIONAL RECORD S1233 (daily ed. Feb. 6, 1999)] Mr. Jordan confirmed in the deposition that “The President was obviously interested in her job search.” [Id. at S1314] It was Mr. Jordan—one of the President’s closest friends—whom Ms. Lewinsky called when she was subpoenaed. Mr. Jordan met with Ms. Lewinsky and arranged a lawyer for her. [Deposition Testimony of Vernon Jordan, 2/2/99, 145 CONGRESSIONAL RECORD S1234±36 (daily ed. Feb. 4, 1999)] Mr. Jordan delivered Ms. Lewinsky to the White House on a weekend and making false statements to her. Simple common sense tells us that the President knew what he had said in his deposition and that he was hoping that she would later corroborate his false account.

HIGH CRIMES AND MISDEMEANORS

Although I have determined that the House has proven the acts alleged in both Articles of Impeachment by clear and convincing evidence, the inquiry does not end here. I must also consider whether the acts constitute “high crimes and misdemeanors,” as required by the Constitution. The Constitution presents a singularly difficult question for this body, but I conclude that the President’s offenses rise to the level of “high crimes and misdemeanors” within the meaning of the Constitution.

The Framers of our Constitution provided that the Senate can only convict a President for “treason, bribery, or other high crimes and misdemeanors.” The Framers relied, in part, on William Blackstone’s Commentaries on the Laws of England. Blackstone addressed the criminal law. He distinguished between crimes that “are injurious to the public or commonwealth, taken in its collective capacity,” and “those which in a more peculiar manner injure individuals or private subjects.” [4 William Blackstone, Commentaries on the Laws of England 74, 776 (special ed., 1939)]

Within the latter category, Blackstone included crimes such as murder,
burglary, and arson. The former category of "public" crimes included offenses that were counted as "offenses against the public justice." Blackstone included within this category the crimes of perjury and bribery side-by-side. [45-126-36] Blackstone's formulation equating perjury and bribery as "public" offenses suggests that, within the definition of the Constitution, perjury may also be a high crime and misdemeanor.

Being, at its core, an effort to obstruct justice, other acts that obstruct justice may very well be considered "public" offenses as the Framers would have understood them. Indeed, Blackstone writes that "impeached..." or "high crimes" or "high misdemeanors." I have reservations about considering such acts "high crimes" or "high misdemeanors." But where, as here, the President committed perjury in a Federal grand jury investigation of which he was the target, I am convinced that his acts fall into the category that warrants removal from office.

Further support for this conclusion comes from Senate precedent in the impeachment, conviction, and removal from office of two Federal judges in the 1980s—Walter Nixon and Alcee Hastings. J udge Nixon was impeached for conduct lying to a grand jury that was investigating him, and J udge Hastings was impeached and convicted for making numerous false statements under oath in testimony in his own criminal trial.

Obstruction of justice is particularly serious. Two federal criminal statutes, Sections 1503 and 1512 of Title 18 of the U.S. Code, specifically prohibit corruptly influencing or obstructing the due administration of justice or the testimony of a person in an official proceeding.

Federal appellate courts have applied these statutes to individuals who provide misleading stories to a potential witness without explicitly asking the witness to lie. In 1988, a relevant statutory interpretation also states, in Article III, that the judicial character of the Senate "shall be by Jury." This Federal appellate court upheld the conviction of an individual for attempting to influence a witness even though that witness was not scheduled to testify before the grand jury nor ever appeared before it. The court held that a conviction under Section 1503 is appropriate so long as there is a possibility that the target of the defendant's activities will be called upon to testify in an official proceeding. [United States v. Shannon 836 F. 2d 1125, 1127 (8th Cir. 1988)]

The Supreme Court has called the President's responsibility to enforce the laws, "the Chief Executive's most important Constitutional duty." [Lujan v. Defenders of Wildlife, 504 U.S. 555, 577 (1992)] A President who obstructs the very laws he is called upon to enforce has committed high crimes and misdemeanors as set out in the impeachment clause of the United States Constitution.

CONCLUSION

As a trier of fact and law, I find that the President has committed perjury and obstructed justice as charged in the two Articles of Impeachment, and that those offenses constitute "high crimes and misdemeanors." I will vote to convict on both counts.

For me, this is not an easy verdict to reach, and comes after great deliberation. I am 38 years old. Today is my first day of serving as a Senator. Oh days feel like they have lasted my entire life. As a freshman, I have had to confront, very suddenly, difficult truths that at the very least have challenged the idealism that propelled me here in the first place. But through the din of argument and counter-argument, it has occurred to me that the President's acts, however serious, are not nearly as consequential as our response. I have listened to those who assert that perjury before the grand jury and obstruction of justice are not removable offenses—or that if they are, removal of a President, in this time, is too disruptive to contemplate.

And truly, the call to do nothing is seductive. I hear it, too. We are so comfortable—so prosperous—that it is difficult to be bothered with unpleasantness. But as the youngest member of this body, I believe we must hold firm to the oldest truths. The material comforts of prosperity are but the fruit of liberty that does not come without a price—a liberty sustained, only and finally, by the rule of law, and those willing to defend it. Our
commitment to impartial justice, now and forever, is an abhorrence more profound and precious than a soaring Dow and a plummeting deficit. I vote as I do because I will not stand for the proposition that a President can, with premeditated intent, and defiance, obstruct justice and commit perjury before a grand jury. It cannot be.

Mr. ROTH. Mr. Chief Justice, the House of Representatives presented to the Senate two Articles of Impeachment alleging that the President of the United States committed "high crimes and misdemeanors" in the form of perjury and obstruction of justice. These are serious offenses, not unlike those which in the past have been sufficient to remove other federal officials from office.

In deciding how to vote on the Articles of Impeachment, each Senator had to undertake a two-step analysis: first, to determine the facts—the conduct in which the accused engaged; and second, to determine whether that conduct constituted "treason, bribery, or other high crimes and misdemeanors", which, under the Constitution, require removal from office. This second step calls for the Senate to determine the facts relevant to the effect of the offense on the conduct of the office and on the operations of government.

Having listened to the presentations made to the Senate by the House Managers and by Counsel for the President, it is my opinion that the President committed perjury and obstruction of justice, and that this misconduct—based on constitutional definitions and historical precedents—meets the standard for convicting an official of an impeachable offense.

As the impeachment process is not a criminal proceeding, it is not necessary that the evidence shows that the accused is guilty of a criminal offense under the United States Code. The Framers sought to remove the President from office if the Constitution so provided. They did not need evidence of a criminal offense. The evidence is sufficient to establish the facts that the President committed perjury and obstruction of justice before Congress, and that in doing so the President violated the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.

In determining whether alleged conduct is a "high crime and misdemeanor", Senators must examine each case individually. They must consider the officerholder's position in government and look at the effect of the officerholder's conduct in light of the particular position he or she holds. The fact that the Senate has convicted and removed federal judges for committing perjury does not necessarily mean that it should automatically remove a President who commits perjury. The precedents regarding federal judges are instructive, but they are not conclusive.

The 1974 House Judiciary Committee Staff Report during the Nixon Impeachment Inquiry, drawing on two centuries of precedents, explains this concept in connection with a presidential impeachment. The report states that the impeachment of the President should be "predicated only upon grounds and circumstances which in the judgment of the House of Representatives are sufficient to constitute a high crime and misdemeanor, and which in the opinion of the House of Representatives, calls for the Senate to determine the facts—the conduct in question."

In other words, Congress must determine whether the particular misconduct in which President Clinton engaged is serious enough to warrant removal from that particular office. This is what I call the "incompatibility" test.

The "incompatibility" test requires Senators to exercise their expertise in interpreting the Constitution and using their best judgment, focusing on the offenses committed and the effect of those offenses on the office and on the operation of government. It is this kind of threat to the republic which we must evaluate as we determine the President's "incompatibility" test.

Accordingly, under this test we should focus on the unique nature of the Presidency and the offenses the President committed.

The Constitution created three separate branches of government in order to limit the powers of government and to enhance the liberty of the American people. Each branch is supreme in its own area but must respect and defer to the others, when they are operating in their assigned areas. Reduced to the simplest characterization, the legislature makes the laws, the executive executes the laws, and the judiciary interprets the laws and dispenses justice. As the head of the executive branch, the President is responsible alone as the official responsible for executing the laws of our country.

The duty of a branch to respect the other branches is a duty that can only be carried out by federal officeholders. It cannot be borne by private citizens. And it is fundamental to the operations of the federal government. Our government could not function if the branches did not respect one another, and I believe President Clinton violated this fundamental duty to respect the judicial branch and its function.

When a private citizen sued President Clinton under our civil rights statutes, the President took the position that he was unique in our system of law and could not be sued while President. When the Supreme Court ruled 9-0 that the President could be sued, the President decided to frustrate the judicial process while appearing outwardly to comply with the requirement of our constitutional plan. As a practical matter he sought to veto this Supreme Court decision.

The evidence shows that he undertook a deliberate and multifaceted plan to thwart the Supreme Court ruling. That plan included the commission of perjury and obstruction of justice, which are very serious and fundamental wrongs. Even worse is that his conduct was conscious and calculated. It was not a mistake of the moment. Rather, he deliberated and chose to commit perjury. He deliberated and chose to obstruct justice. In making these conscious and calculated choices, he placed his personal and political interests above his duties as President, he is not fit for the office he holds.

The President has, as one branch of the federal government, a duty to respect the requirements of the judicial branch and its proceedings. The President has, as the chief executive, an express duty to take care that the laws be faithfully executed. This includes that the President be predicated only upon grounds and circumstances which in the judgment of the House of Representatives are sufficient to constitute a high crime and misdemeanor, and which in the opinion of the House of Representatives, calls for the Senate to determine the facts—the conduct in question."

Ours is a nation ruled by law, not by men, and not by personalities. The judgment that we render here will set a precedent for the ages. If Congress concludes that the office of the Presidency should remain occupied by one who has sullied it with premeditated criminal conduct in violation of constitutional and legal duty, then it will have diminished America's right of self-defense against unfit officeholders, something that the Framers specifically provided for in the Constitution.

A President who commits perjury before a federal grand jury and obstructs justice is a threat to the system of checks and balances that is central to our constitutional government. This President should be removed from office, so that the President's duties as President, he is not fit for the office he holds.

As far as I am concerned, this is not just an empty question that has no relevance in today's society. Every day, in courtrooms and grand jury rooms across the country, witnesses are asked to hold up their right hand and take an oath to tell the truth. They are asked to swear under oath?
is the cornerstone of our system of justice. We simply cannot allow people across the country to look at the conduct of our President and raise legitimate questions about whether they need to comply with their solemn oath.

Moreover, how can judges refer violations of perjury or obstruction of justice to the executive branch for prosecution, when the chief executive himself has committed these offenses? On prior occasions, the Senate has removed a perjury conviction because it was “incompatible” to ask litigants not to commit perjury in a courtroom presided over by someone who had himself committed perjury. A similar “incompatibility” exists where the sanction for perjury or obstruction of justice must be applied by the executive branch presided over by someone who has likewise committed these violations.

The President must be removed before the corrosive effect of his conduct eats away at the rule of law and undermines the legal system. To imagine this President remaining in office brings to mind Alexander Pope’s troubling question: “If gold should rust, what is the use of a pure mint?” If our President commits perjury or obstruction of justice, what can we expect of our citizens?

The Senate should seek to protect the legal system from that threat. And that is why I voted to convict and remove William Jefferson Clinton from office.

Mr. BURNS. Mr. Chief Justice and my Senate colleagues, we now close one of the most serious chapters in the history of this Senate. While some may not agree with the outcome, and others may not like the way I voted, I am satisfied the Constitution has been followed. We must now accept this verdict and try to work together without talk of revenge.

In reaching my conclusions, I asked myself two questions: Were the articles of impeachment proven, and if so, should the President be removed from office?

I believe the President perjured himself before a grand jury. He put the protection of his presidency ahead of the protection of the institution of the presidency. He gave false testimony about his efforts to keep other witnesses from telling the truth. We already learned in our history that lies lead to more lies, and the pattern in this case led to perjury.

I also feel strongly that a case for obstruction of justice was proven conclusively. The Senate heard the many actions and motives of the president, and it was easy to connect the dots. Those dots reveal a clear and convincing case against the President.

I believe the President tampered with the investigation of the Lewinsky witness; that he allowed his lawyers to present false evidence on his behalf; that he directed a job search for a witness in exchange for false testimony; and that he directed the recovery and hiding of evidence under subpoena.

Does this warrant the President’s removal from office? I agree with my respected colleague, Senator BYRD, that this reaches the level of high crimes and misdemeanors, for a number of reasons: The President’s actions crossed the line between private and public behavior when those actions legally became the subject of a civil rights lawsuit. In his effort to undermine that lawsuit, his actions were an attack on the separation of powers between the executive and judicial branches when he abused his power in an effort to obstruct justice. Remember, he had filed a lawsuit at the highest court in our land allowed to proceed on a 9-0 vote.

It’s clear even to some of the President’s supporters that he committed many of the offenses he has been charged with. But given this outcome, I hope for our system of justice and for our character as a nation that these votes are never seen as treating actions such as perjury and obstruction of justice lightly, whether by a president or by any citizen.

Our new world of communications has made more information available to us than ever before. But it also contributed to the media overkill that jaded American people to this process long ago. When the Lewinsky story became public, the president conducted a poll in which he learned that Americans would tolerate a private affair, but not perjury or obstruction of justice. His goal from that point on was to poison the well of public opinion.

Once the focus shifted away from the facts and toward opinion, once the clutter and clutter echoed on 24-hour talk television, the President’s goal was reached. But the facts remain, and they are not in dispute.

Montanans didn’t send me to the Senate to be a weathervane, shifting in the wind, but to be a compass. It may be common to say the President’s offense is not to the level of high crimes and misdemeanors, but I believe that would ignore our history and what we stand for as a nation.

That’s why I also oppose censuring the President. The Constitution gives us one way to deal with impeachable offenses: a yes or no vote on guilt. Anything else would be like amending the Constitution on the fly and infringing on the separation of powers between the branches of government.

As we accept this outcome and move forward, we have plenty of time left ahead to help out Montana’s farm and ranch communities, which is my top priority. We have time to save Social Security, which does not fix the program without raising taxes. We have time to give control of education back to parents and teachers, and to give federal funds to classrooms, not bureaucrats. We have time to cut the record burden of taxation on Montanans, many of whom are forced to take more than one job to make ends meet.

We should all roll up our sleeves and get to work.

Mr. INHOFE. Mr. Chief Justice, in the absence of hearing something that I haven’t heard or seeing something that is unforeseen up to now, it is my plan to vote for conviction on the two Articles of Impeachment.

I think this is probably the most important vote I will cast during the course of my lifetime. I say it very sincerely. I believe we are going to rise to the occasion.

I had an experience back in 1975, 24 years ago. I was a member of the State Senate in Oklahoma. I can remember being called for jury duty, and I was very happy to find myself assigned to a murder case about which I had already expressed a definite opinion. I said I believed this defendant was surely guilty, and besides, I was the author of the capital punishment bill in the State legislature. So I thought for sure I wasn’t going to be qualified as a juror.

Well, he went through the qualification procedure and somehow they qualified me. Five days later, I was the foreman of the jury that acquitted accused murderer. This can happen. It is an experience that taught me a lot about our judicial system.

I sometimes say one of the few qualifications I have for the U.S. Senate is I am not a lawyer. So that when I read the Constitution, I know what it says; when I read the oath of office, I know what it says. When I read the law, I know what it says. I don’t have to clutter up my mind with what the definition of “is” is. So it makes it a little easier for me.

From a nonlawyer perspective let me share a couple of observations.

First, insofar as perjury is concerned—lying under oath—I might be wrong, but I don’t think there is a Senator in this Chamber who doesn’t believe the President lied under oath.

I quote from Senator CHUCK SCHUMER who said: “Reasonable people can believe the President lied under oath.”

I quote from Senator ROBERT WEXLER who said: “He lied under oath both in the Paula Jones deposition and what he said in the grand jury.”

I quote from Representative ROBERT WEXLER, a strong supporter of the President, who serves on the House Judiciary Committee, who said: “The President did not tell the truth. He lied under oath.”

I quote from former U.S. Senator Paul Simon, one of my favorite Democrat colleagues, who appeared with me on a television program before the trial, who said: “You have to be an extreme Clinton zealot to believe perjury was not committed.”

Second, as a non-attorney, I have a hard time reconciling the idea that there might be certain permissible exceptions to telling the truth under oath. Maybe you who are attorneys, and have a different background than mine, see it differently. But how can you reconcile this idea that under some
conditions—if the subject matter is sex or something else—you can lie under oath? I really have a hard time with this. I know that morality is not supposed to be the issue here. We are supposed to concentrate on the two specific Articles of Impeachment. However, I don’t think anyone can completely compartmentalize himself and totally disregard other things going on.

All of us get many, many letters from parents, teachers, and others who are deeply distressed about the President’s behavior and its impact on the moral health of the Nation. I think I am very fortunate because my kids are all in their upper thirties and my eight grandchildren (make that nine—I count them when they are conceived) are all under 6, so I don’t get those embarrassing questions. But I know many parents are struggling with this.

The other thing that concerns me is the reprehensible, consistent attitude this president has displayed over the years against women. Take Paula Jones as just one example. She may not win a popularity poll, but her civil rights have just as much standing as anyone else’s do they not? Is not our country based on the principle that even the least among us is entitled to equal treatment under the law?

It amazes me how these feminist organizations continue to hold this President in such high regard—groups such as the National Organization of Women. I went back and read their bylaws. They claim to want to protect women with regard to “equal rights and responsibilities in all aspects of citizenship, public service, employment . . . including freedom from discrimination.”

And here we have a president who not only misused his power to seduce a college-age intern, but who has also engaged in extensive similar misconduct outside of his marriage. It is not just Monica Lewinsky. There is Gennifer Flowers, Elizabeth Ward Gracen, Paula Jones, Kathleen Willey, Dolly Kyle Browning, Beth Coulson, Susan McDougal, Crissy Zercher—the list goes on and on.

This President has a consistent pattern of using and abusing women. You know that. I imagine most of you watched the Monica Lewinsky tapes as I did. Why did the House managers and the White House lawyers didn’t pick this up—somehow they let it slip through—about when she told this story concerning the two security badges. She came here to Washington, this wide-eyed kid, and there is a blue badge that lets you get into the White House proper and a pink badge that lets you only into the Old Executive Office Building. And she wanted to be in there—in the West Wing—where she could see what was going on.

She wore the pink badge so she had to be escorted to the West Wing by someone else. So the very first day she meets and talks to the President in person, he begins the relationship we’re talking about. He didn’t even know her name. And then he reached across and grabbed her pink badge, yanked it down, and said, “This is going to be a problem.” I don’t think there is anyone who doesn’t think he was referring to Monica Lewinsky when he was referring to. He was preparing to use this girl and abuse her and discard her like an old shirt. But I know that these are not things the lawyers expect us to consider.

I did not want to give another observation, though. I thought the playing field would be very uneven when this trial started. The members of the J udiciary Committee who are the House managers are all lawyers. But mostly, they are Congressmen first. Many of these Congressmen—lawyers had not been in a courtroom for literally years. And here they were taking on the most prestigious, the most prominent, the most skilled, the most experienced, the highest priced lawyers anywhere in America. And yet when they finished with their opening statements, there was no doubt the House managers had risen superbly to the occasion, and I believe they have done a great job throughout.

The White House lawyers are very skilled, very persuasive people. I would make this observation—again, a non-lawyer observation: I felt that three or four of them should have quit early, too, because at the very last thing they did. They had a tendency to close their presentations with arguments that undermined their credibility.

Cheryl Mills, for example, was really doing well, and she was very persuasive until she started at the very last talking about the President’s record on civil rights, as if the civil rights of a person his associates had dubbed as “trailer park trash” were not significant. Or the dignity of the intern he stood up for so eloquently when she could have a lower standard of conduct and behavior than we hold other people. I do not understand how they can come to any other conclusion.

My wife and I have been married 40 years. I have a thing called the wife test. You go home and when you want to get an opinion that is totally apolitical, you ask your wife. So I went home and I presented the case—as explained so eloquently by the White House lawyers and others—on why we could have a lower standard of conduct for a President than we have for a judge. And I know the argument. I expressed the argument to my wife in the kitchen. I said, there are a thousand judges, only one President. I went through the whole thing. Then she looked up and said, “I thought the President appointed the judges.” You know, my wife is so dumb, she is always asking me questions I can’t answer.

But I really believe that in this case we are getting at the truth. I really believe that the President of the United States should be held to the very highest of standards. You know, Winston Churchill said, “Truth is incontrovertible. Ignorance may forever it, panic may resent it, malice may destroy it, but there it is.” I think we have seen the truth. And I think the final truth is that this President should be held to the highest of standards.

Sometimes when I am not really sure I am right, I consult my best friend. His name is Jesus. And I asked that...
I cannot.

When my name is called in regular order for my vote on the articles of impeachment, I will vote "not guilty."

I have reached my decision after much effort. I have tried to keep an open mind. I have attempted to search the depths of American history and the lore of our English forebears for insight and guidance. I have counseled privately with experts on American history and with military men and with knowledgeable sources inside and outside the government. I have personally listened to constituents in my state and throughout the nation. I have talked to them on the phone, read their letters and scanned their e-mail. I have tried to weave an appropriate course through the barrage of media talk and the system of political reporters doing their duty.

I have given it my best shot. I undertook this inquiry with a personal view, this final oath, sealed with my character and my knowledge of military history. For me, Mason is a bridge of insight to our era.

This leads me to my most recent oath. I have sworn to uphold the Constitution for which my fellow defenders have suffered and died. I have sworn to defend that Constitution and to carry out my duties for which my fellow defenders have suffered and died. I have sworn to take care of its defenders. I have sworn to protect the Constitution for which my fellow defenders have suffered and died.

I have sworn to take care of its defenders.

I have sworn to uphold the Constitution for which my fellow defenders have suffered and died.

I have sworn to fulfill the solemn duties of my oath. I have sworn to conduct myself appropriately, and has complied with Hamilton's standards of conduct with an impeachment trial with "dignity and independence." I also believe the Senate should continue to follow the standards set by the Founding Fathers regarding the use of impeachment power. According to the Founding Fathers as articulated in the Constitution, the impeachment clearly should be reserved for "bribery, treason or other high crimes and misdemeanors." This language did not just turn up in the Constitution overnight. The language grew as a result of a period of months in Philadelphia in 1787.

One of the Founding Fathers who especially impressed me is George Mason. Mason had an interesting background. Like many of our country's early statesmen, he was from Virginia. For me, Mason is a bridge of insight into what the impeachment clause in the Constitution is all about.

Mason was a soldier. Indeed, he was an officer, a colonel. He, too, understood the gravity of military leadership, of leading men in combat and in caring for them afterwards. He certainly knew about the gravity of his own personal oath. It was Mason, then, who articulated during the Constitutional Convention that the phrase in the Constitution regarding impeachment must be fully fleshed out and should more appropriately read "... and other high crimes and misdemeanors against the state."

It is time to end this trial. It is time to let the President conclude the term he was elected to by the American people.

It is time to put an end to partisan bickering about the motives and conduct of all of those who have become involved in this sad episode.

It is time for us all to bind up the nation's wounds . . . ”

Mr. CLELAND. Mr. President, let me begin by saying that the reason the United States Senate is being asked to exercise what Alexander Hamilton
termed the “awful discretion” of impeachment, is because of the wrongful, reprehensible, indefensible conduct of one person, the President of the United States, William J. Jefferson Clinton, and to vote for the Senate resolution requiring the Senate to continue its necessary work for the American people.

To this very point, I have reserved my judgment on impeachment because my Constitutional responsibility and Oath to “render impartial justice” in this case. Most of the same record presented in great detail to the House of Representatives weeks ago has long been before the public, and indeed most of that public, including editorial boards, talk show hosts, and so forth, long ago reached their own conclusions as to the impeachment of President Clinton. But I have now heard enough to make my decision. With respect to the witnesses the House Managers wish to call before the Senate, the existing record represents multiple interrogations by the Office of the Independent Counsel and its Grand Jury, with not only no cross-examinations by the President’s counsel but, with the exception of the President’s testimony, without even the presence of the witnesses own counsel. It is difficult for me to see how that record would possibly be improved from the prosecution’s standpoint. Thus, I will not support motions to depose or call witnesses.

In reaching my decision on impeachment, I have reviewed the record, historical precedents, and consideration of the different roles of Presidents and federal judges.

I have concluded that there is indeed a different legal standard for impeachment of a President than the Senate impeachment trial, President Clinton's successors, Republican, Democrat or any other Party, who should be our concern.

The Republican Senator, Edmund G. Ross of Kansas, who “looked down into my open grave” of political oblivion when he cast one of the decisive votes, Andrew Johnson in spite of his personal dislike of the President, explained his motivation this way:

“In a large sense, the independence of the executive office as a coordinate branch of the government was on trial . . . If . . . the President, explained his motivation this way:

“I have full faith in the strength of our Constitution and in the intelligence of the American people.

The Republican Senator, Edmund G. Ross of Kansas, who “looked down into my open grave” of political oblivion when he cast one of the decisive votes, Andrew Johnson in spite of his personal dislike of the President, explained his motivation this way:

“Finally, I do not believe that perjury or obstruction of justice, which proceed from the misconduct of public men, or, in other words, from the abuse or
violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society in which they are committed. I have before said there exists some danger of conceiving instances in which both perjury and obstruction of justice would meet this test, and I certainly believe that most, if not all, constitutions, including that of the United States which has served us so well for over two hundred years, a system of checks and balances, with a strong and independent chief executive.

In closing, I wish to address those in the Senate and House, and among the American public, who have reached a different conclusion to what I have said in this case. I do not question the sincerity or legitimacy of your viewpoint. The process itself pushes us to make absolute judgments—yes or no to conviction or acquittal range office—and the nature of debate yields portraits of complex individuals. One cannot refresh one's memory or refresh one's recollection of instances in which both perjury and obstruction of justice would meet this test, and I certainly believe that most, if not all, constitutions, including that of the United States which has served us so well for over two hundred years, a system of checks and balances, with a strong and independent chief executive.

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the exact same manner: Once on January 18, 1998, and again on January 20 or January 21. He had just finished lying in his civil deposition on January 17, and he wanted to enlist her support for his lies if she was called by Paula Jones as soon as he was on January 22. Again, this issue was plainly material to an investigation into President Clinton's possible obstruction of justice.

Third, President Clinton lied to the grand jury about attempting to influence the testimony of his aides whom he knew would be called before the grand jury. These allegations are discussed later. For now, it is only important to note that he testified that he "said to them things that were true about this relationship . . . So, I said things that were true. That may have been misleading. . . ." In fact, he lied to his aides, as even Sidney Blumenthal stated in his videotaped deposition. It is undisputed that President Clinton would not admit to the grand jury that he lied to these aides, because to do so would admit that he obstructed justice. He could have asserted his fifth amendment privilege to self-incriminate, but, however, he chose to lie. He denied that he had lied to these aides. The Supreme Court has addressed just this sort of a lie, stating: "A citizen may decline to answer the question, or answer it honestly, but he cannot with impunity knowingly and willfully answer with a falsehood.''

**Obstruction of Justice**

The evidence establishes beyond a reasonable doubt that President Clinton obstructed justice. He suggested that Ms. Lewinsky submit a false affidavit denigrating or discrediting Monica Lewinsky, but President Clinton took affirmative action to prevent her from doing so. The United States Criminal Code makes it illegal for one to obstruct justice. The precise wording of the general obstruction of justice statute—Title 18, section 1503 of the United States Code—provides: "Whoever . . . corruptly . . . influences, obstructs, or impedes, or attempts to influence, obstruct, or impede, the due administration of justice, shall be punished. . . ."

Courts have interpreted the word "corruptly" to mean that the defendant had an intent to obstruct, impair, or impede the due administration of justice. In other words, one need not use threats of force or intimidation to obstruct justice. Thus, one who merely proposes to a potential witness that the witness lie in a judicial proceeding is guilty of obstructing justice.

Also, the additional federal statute, section 1512 of Title 18, deals specifically with witness tampering. It provides: "Whoever . . . corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person with intent to . . . influence, delay, or prevent the testimony of any person in an official proceeding. . . . shall be fined under this title or imprisoned. . . ."

Unlike section 1503, section 1512 has been interpreted as applying to more than just "pending" judicial proceedings; courts have found it adequate that a defendant "feared that such a proceeding might begin and sought to influence the testimony of those who may be witnesses in such a proceeding."

With this statutory backdrop in mind, I turn first to the allegation that President Clinton urged Ms. Lewinsky to submit a false affidavit and deny their sexual relationship. The evidence establishes that he telephoned her between 2:00 and 2:30 a.m. on December 17, 1997. According to Ms. Lewinsky, President Clinton informed her that she should say she visited the White House on January 17, 1998, and again on January 20 or January 21. He had just finished lying in his civil deposition on January 17, 1998. President Clinton's assertion that he that he had been asked questions the previous day about Ms. Lewinsky. According to Ms. Currie, he then said, "There are several things you may want to consider after that, he made a series of statements: "You were always there when she was there, right?"

"We were never really alone."

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

"You can see and hear everything, right?"

"Monica was always there with me, but I told her I couldn't do that."

Ms. Currie further testified that, although President Clinton did not "pressure" her, she observed from his demeanor and the way he said these things he was "sufficiently assurance that she agreed with those statements. She did agree with each statement, though she knew them to be false or beyond her knowledge.

There is no reasonable doubt that this was an attempt by President Clinton to coach Ms. Currie's probable testimony. In fact, during the previous day's deposition, President Clinton invoked Ms. Currie's name in relation to Ms. Lewinsky on at least six different occasions, even going so far as to tell Ms. Jones' lawyers that they would have to "ask Betty" whether he was ever alone with Ms. Lewinsky between midnight and 6:00 a.m. Simply put, he made her a potential witness in the Jones case. One who attempts to corruptly influence the testimony of a prospective witness has obstructed justice. (In fact, the Jones lawyers issued a subpoena for Ms. Currie a few days after President Clinton's deposition.)

President Clinton's assertion that he posed these statements to Ms. Currie merely to refresh his recollection and test her own memory of the events is undercut by his repetition of the coaching exercise a few days later. According to Ms. Currie, either two or three days later he called her in again, presented the same statements (with which she again agreed), and had the same "tone and demeanor" as he had during the Sunday coaching session. This amounted to egregious witness tampering.

Last, the unrefuted evidence establishes beyond a reasonable doubt that
President Clinton obstructed justice by giving a false account of his relationship with Ms. Lewinsky to aid that, by his own admission, he knew might be called by the grand jury. J ohn Podesta, then-Deputy Chief of Staff to President Clinton, testified before a grand jury about a conversation with President Clinton on January 23, 1998:

"He said to me he had never had sex with her [Ms. Lewinsky], and that—and that he never asked—you know, he repeated the denial. I believe he was explicit in saying he never had sex with her."

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

This, as we now know, was false. Yet, according to Mr. Podesta, President Clinton was very forceful. I believed what he was saying.

More important, on January 21, 1998, President Clinton told aide Sidney Blumenthal the following utterly false story:

"He said, 'Monica Lewinsky came at me and made demands on me to give her some gifts, and I rebuffed her. He said, 'I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.'"

She said that she told him that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or she had an affair then she wouldn't be a stalker any more.

This story is eerily reminiscent of President Clinton's coaching of Betty Currie ("Monica wanted to have sex with me, but I told her I couldn't do that."). President Clinton sought to portray himself as a victim of Ms. Lewinsky. At the time, Mr. Blumenthal "certainly believed his story. It was a very heartfelt story, he was pouring out his heart, and I believed him." Mr. Blumenthal admitted to the Senate that he now knows the President's story was a lie.

President Clinton does not deny the testimony of either Mr. Podesta or Mr. Blumenthal. Their testimony establishes a clear-cut case of obstruction. The President admitted knowing that both were likely to be called to testify before the grand jury. According to their testimony, he provided them with a false account of his relationship with Ms. Lewinsky—and President Clinton does not deny having a version of events. The unrebutted evidence establishes obstruction of justice. As the Second Circuit Court of Appeals has stated: "The most obvious example of a section 1512 (witness tampering) violation may be the situation where a defendant tells a potential witness a false story as if the story were true, intending that the witness believe the story and testify to it before the grand jury."

I did not vote to convict President Clinton of the high crimes and misdemeanors the House Managers. For example, though I was concerned that the intensification of efforts to secure Ms. Lewinsky a private sector job were undertaken to influence her testimony (and secure a false affidavit from her), I had reasonable doubt that there was a sufficiently direct nexus between the two to justify finding against President Clinton on that basis. The videotaped testimony of Mr. Podesta nearly made the case, but fell just short. Accordingly, I did not consider that element of the obstruction of justice case to be grounds for removing President Clinton.

Another serious allegation of obstruction of justice concerned the mysterious fact that subpoenaed gifts from President Clinton to Ms. Lewinsky were found underneath Ms. Currie's bed. The evidence tends to establish that President Clinton directed Ms. Currie to get gifts from Ms. Lewinsky; however, I cannot say that the proof establishes beyond a reasonable doubt that this occurred. In the absence of hearing directly from Ms. Currie as a witness, and having the chance to look her in the eye and gauge her credibility, I cannot resolve beyond a reasonable doubt the testimonial conflict between Ms. Lewinsky and Ms. Currie on the origin of the return of the gifts. The weight of the evidence suggests that Ms. Currie initiated the return on instructions from President Clinton; however, without Ms. Currie's testimony, I cannot say that case has been proven "beyond a reasonable doubt."

For this reason, I am disappointed that the Senate chose not to cut itself off from hearing from whatever fact witnesses either side wished to call. I voted to allow live testimony, but the motion was unsuccessful. Although there was ample evidence upon which to convict for many allegations, some allegations remain in doubt. Rather than have a traditional trial, we listened to lawyers argue, then argue some more, and then some more. The only time we actually had a chance to see witnesses was when we were allowed to see the videotapes of Ms. Lewinsky, Mr. Jordan, and Mr. Blumenthal. I learned from these witnesses that the President falsely claimed to have received gifts in accord with Senate precedent would have been helpful. I regret that the Senate chose not to allow live witnesses and that we did not see their cross-examination. We did not use the most powerful weapons in our 'truth seek' arsenal the adversarial "trial," which may have been politically expedient, but I doubt history will judge it kindly.

HIGH CRIMES AND MISDEMEANORS

Having found that President Clinton committed the crimes of perjury and obstruction of justice, my duty to uphold the Constitution of the United States made it clear that these offenses were high crimes and misdemeanors requiring his removal from office. There is no serious question that perjury and obstruction of justice are high crimes and misdemeanors. Blackstone's famous Commentaries—widely read by the framers of the Constitution—put perjury on equal footing with bribery as a crime against the state. Perjury was understood to be as serious as bribery, which is specifically mentioned in the Constitution as a ground for impeachment. Today, we punish perjury and obstruction of justice at least as severely as we punish bribery. Apparently, the seriousness of perjury and obstruction of justice has not diminished over time.

Indeed, our own Senate precedent establishes that perjury is a high crime and misdemeanor. The Senate has removed seven federal judges from office. During the 1980s, three judges were convicted for the high crime and misdemeanor of perjury. Federal judges are removed under the exact same Constitutional provision—Article II, section 4—upon which we remove presidents. To not remove President Clinton for grand jury perjury lowers uniquely the Constitution's removal standard, and thus requires less of the man who appoints all federal judges than we require of those judges themselves who will have no part in the creation of a constitutional double-standard to benefit the President. He is not above the law. If an ordinary citizen committed these crimes, he would go to jail. Many senators have voted to remove federal judges guilty of these crimes, and I have no doubt that the Senate would do so again. Those who by their votes today confer immunity on the President for the same crimes do violence to the core principle that we are all entitled to equal justice under law.

Moreover, I agree with the view of Judge Griffin Bell, President Jimmy Carter's Attorney General and a former Judge of the United States Court of Appeals, Fifth Circuit. Judge Bell has stated: "A President cannot faithfully execute the laws if he himself is breaking them." These offenses—perjury and obstruction of justice—are not trivial; they represent an assault on the judicial process. Again, Judge Bell's words are instructive:

"Truth and fairness are the two essential elements in a judicial system, and all of these statutes I mentioned, perjury, tampering with a witness, obstruction of justice, all [are] in the interest of truth. If we don't have truth in the judicial process and in the court system in our country, we don't have anything. So, this is serious business.

I agree. The crimes of perjury and obstruction of justice are public crimes threatening the administration of justice. They therefore fit Alexander Hamilton's famous description of impeachable offenses in Federalist No. 65: "[O]ffences which proceed from the misconduct of public men, or, in other words, from the abuse of public trust." The electorate entrusted President Clinton to enforce the laws, yet he chose to engage in a pattern of public crime against our system of justice. We must not countenance the commission of such serious crimes by the chief executive of our nation.

The President broke his oath to tell the truth, the whole truth, and nothing...
but the truth, so help him God. He likewise broke his oaths to take care that the laws be faithfully executed.

Just how important are oaths? We take oaths to substantiate the sanctity of some of our highest callings. Years ago, President and Hippocratic Oath: Swearing falsely is equally serious. I recall the conclusion of the Hippocratic Oath:

* "If I fulfill this oath and do not violate it, may it be granted to me to enjoy life and art, being honored with fame among all men for all time to come; if I transgress it and swear falsely, may the opposite of all this be my lot.

President Clinton broke his oaths; the opposite of honor and fame should be his lot.

Many of my colleagues have publicly expressed the belief that President Clinton broke his oaths and committed the crimes of perjury and obstruction of justice. Some have gone further and said that these are high crimes and misdemeanors. Yet they flinched from removing President Clinton from office, knowing that we could just move on, put this behind us, and “heal” the Nation.

Although our acquittal of President Clinton may bring initial relief at the end of this ordeal, it will also leave unfortunate lingering lessons for the American people: Integrity is a second-class value; the hard job of being truthful is to be left to others; and virtue is for the credulous. Though we do not know how these lessons will manifest themselves over time in our society, they will not be lost. Thus, I do not believe the acquittal of President Clinton will heal the wounds of this ordeal; rather, acquittal regrettably will inject a slow-acting moral poison into the American conscious.

**CONCLUDING THOUGHTS**

There is one aspect of the case that made me uncomfortable: The perjury and obstruction of justice arose out of an illicit sexual relationship between President Clinton and a young White House intern. President Clinton no doubt sought to shield the knowledge of that relationship from his family and staff, and that impulse is understandable. However reprehensible his affair might be, both it and his efforts to hide it were really of no concern to the public or the Senate. None of us can claim to be free from sin.

What began as an attempt to keep an affair secret from family and co-workers, however, escalated into illegal activity taking the affair to a level that threatened the civil rights of Paula Jones in order to keep her day in court. And, in turn, thwarted the investigation of a federal grand jury. President Clinton chose to cheat. Cheating the judicial process, whether to keep an ordinary citizen from having her day in court or to avoid criminal indictment, is wrong.

Dr. William Osler was a late 19th century physician and is regarded as the father of modern surgery. In a lecture to his medical students about the pursuit of truth, he said:

"Start with the conviction that absolute truth is hard to reach in matters relating to human affairs. Our fellow creatures are often sick or in pain, but the diagnosis of disease that slips in observation are inevitable even with the best trained faculties, that errors in judgment must occur in the practice of an art which consists largely in balancing probabilities."

"Start, I say, with this attitude of mind, and mistakes will be acknowledged and regretted, but instead of a slow process of self-deception, with ever-increasing inability to recognize truth, you will draw from your errors the very lessons which may enable you to avoid their repetition."

President Clinton’s repetition of wrong, often illegal choices most disturbs me. He faced a series of choices about his affair once our system of justice became involved with it. He could have come clean in the civil deposition and urged Ms. Lewinsky to do the same. He did not. When the story became public, he could have then come clean to the American public and revised his deposition testimony. Instead, he took a poll. Having learned that the American people would forgive him for adultery, but not for perjury or obstruction of justice, he declared that he would just have to “win.” He then wagged his finger at us on national TV and chided us for believing what has since proven true. He embarked on a quiet smear campaign against Ms. Lewinsky, calling her a “stalker” and sending aides into the grand jury to repeat that mean-spirited falsehood. Above all else, he could have come clean when he went before the grand jury. Indeed, the discovery of the infamous blue dress served as a powerful reminder to tell the truth. But he continued to lie.

The pattern of behavior is disturbing. That pattern is driven by President Clinton’s choice, on every occasion in this saga, to put his self-interest above the public interest. Indeed, President Clinton is well down the dangerous road Dr. Osler described to his students: “A slow process of self-deception.” To me, his perjury before the grand jury was defining. Some of my fellow senators urged him not to lie in that grand jury, lest he be impeached. He had a chance to try to set matters right by the American people and by our system of justice. Instead, he lied. He hid his finger at us on national TV and chided us for believing what he knew, President Clinton’s conduct has undermined all our efforts to instill in our children two most essential virtues: truthfulness and responsibility. If we allow a known perjurer and obstructor of justice to continue in the Office of President and lead us into the 21st Century, we set a sad example for future generations.

In a recent sermon on the topic, “What Do I Tell My Children about the Crisis in Washington?” a minister quoted from Michael Novak’s book The Experience of Nothingness:

"We young have a rare opportunity to learn a way of discriminating right from wrong, the posed from the authentic, the brilliant from the philistine, the genuine from the shoddy, the mediocre from the workmanlike, the mediocre, the brilliant from the philistine, the shoddy from the workmanlike. When no one with experience bothers to insist—on such discrimination, they rightly get the idea that discernment is not important, that no one can be sure about such things—or about them."

President Clinton committed perjury and obstructed justice. In so doing, he broke his oath of office and his oath to tell the truth. He broke the public trust which took an oath of impartial justice by the Constitution and laws of our country. I had a duty to the Constitution and laws of this nation to convict President Clinton, so I voted to remove him from office and restore the trust of the American people in the high Office of President. Prosperity is never an excuse to keep a President who has committed High Crimes and Misdemeanors.

Though many of my colleagues agreed with these conclusions, two-thirds of the Senate did not. I am concerned about the message this acquittal will send to our youth. So, I am convinced that you and I now have a shared duty: Rather than give in to easy cynicism, we should work toward integrity and responsibility in all that we do. We must remind our children that telling the truth and accepting responsibility for wrongdoing are virtues with currency. Our nation’s future depends on how earnestly we fulfill that shared duty.

Mr. BUNNING. This is my first speech on the floor of the U.S. Senate. I had hoped my opening speech would be about Social Security. This year, in my opinion, we have a golden window of opportunity to reform and strengthen this vital program and I had hoped to use my first comments on the Senate floor to help open the debate on real Social Security reform. Unfortunately, I found it necessary to turn out that way. Of necessity, my opening speech in this body is about the Articles of Impeachment against President Clinton. It was not my choice!
In fact, none of us have much choice in this matter. Here in the U.S. Senate, we have been charged with the responsibility of looking at the facts as presented by the managers from the House of Representatives. Each of us took an oath, and the penalty is removal from office. We have no other choice.

Because we are all political animals, I think it is natural that the legitimacy of this process and the outcome of this debate will be clouded to some degree by the perception that it is a partisan exercise.

Many of the President’s defenders and many of our friends in the media, in fact, have insisted all along that the whole case has been driven by partisan Republicans who are intent to removing a Democrat President they do not like from office.

The difficulty you run into when you start throwing around the term “partisan” is that it is seldom a one-way street.

Is it any more “partisan” to blindly support the impeachment of a President of the other party than it is to blindly support a President of your own regardless of the facts? Of course not. Just as each of us, in keeping with our oath to do impartial justice, must strive to avoid a partisan, knee-jerk solution to the process, we must also let ourselves be deterred from doing what we feel is right simply to avoid charges of partisanship.

So, hiding behind the charge that the process has been tainted by political partisanship gives us no relief from our responsibility to look at the facts nor does it change the choices.

So, it is the facts that matter. And each of us must weigh them individually. We are not taking about public opinion polls. They should have no bearing on the case at this point. It is a question of facts pure and simple.

Each of us must weigh those facts individually. We might reach different conclusions. But if I determine that the president is guilty, and if you determine that the president is guilty, based on the facts, we don’t have to have the same choices. We must vote to convict and to remove the President from office.

I am personally convinced that the President is guilty under both the Articles of Impeachment presented to us by the House Managers.

The managers from the House have presented a strong case that President Clinton committed perjury. The circumstantial and supporting evidence is overwhelming that Bill Clinton did lie under oath to the grand jury when he testified about his sexual relations with Miss Lewinsky. He lied under oath to the grand jury when he testified about the nature of his relationship with Miss Lewinsky. He lied under oath to the grand jury when he testified about what he told his aides about his relationship with Miss Lewinsky. He lied under oath to the grand jury when he testified about what he told his aides about his relationship with Miss Lewinsky. He lied under oath to the grand jury about his conversations with Betty Currie.

That is perjury. That is a felony. We cannot uphold our reverence for the rule of law and ignore it.

The circumstantial and supporting evidence is also overwhelming that the President did willfully obstruct justice when he encouraged Miss Lewinsky to file a affidavit in the Jones case; when he coached Betty Currie on how to respond to questions about his relationship with Miss Lewinsky; when he lied to aides whom he knew would be called as grand jury witnesses, when he promoted a job search for Miss Lewinsky, and when he encouraged Miss Lewinsky to return the gifts he had given her, he was attempting to obstruct justice.

After listening to the facts and the evidence, and after listening to the President’s defense team try to refute the charges, I have determined that he is guilty as charged.

I have tried to do the best of my ability to reach the determination impartially without being biased by my political affiliation. Have I been successful? I believe so.

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

The managers stated repeatedly that what is at stake in this trial is the rule of law and ignoring the Constitution. Not only did he break the law, he also violated the sacred trust of the office of the President. And in so doing, he violated his oath of office.

And that raises the two Articles of Impeachment to a level that definitely justifies his removal from office.

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

Mr. DURBIN. From the opening statement to the closing argument, Chairman Henry Hyde and the House managers stated repeatedly that what is at stake in this trial is the rule of law.

In a compelling reference to the life of Sir Thomas More, Mr. Hyde quoted from “A Man for All Seasons” by Robert Bolt to remind us that More was prepared to die rather than swear a false oath of loyalty to the King and his church. But Mr. Hyde did not read my favorite passage from that work. Let me share it with you and tell you why I think it is important to us in this deliberation.

MADAM CHAIRMAN: The law, Roper, the law. I know what’s legal and what’s not. And I’ll stick to what’s legal.

ROPER. Then you set Man’s law above God’s.

MORE. No fair, but: let me draw your attention to a fact—I’m not God. The current eddies of right and wrong, which you find such plain-sailing, I can’t navigate, I’m no voyager. But in the thickets of the law, oh there I’m a forester. I doubt if there’s a man alive who could follow me there, thank God.

ALICE. While you talk, he’s gone!

MORE. And go he should if he was the devil himself and he broke the law.

ROPER. So now you’d give the Devil benefit of law?

MORE. Yes. What would you do? Cut a great road through the law to get after the Devil?
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ROPER, I’d cut down every law in England to do that!

MORE. Oh? And when the last law was down, and the Devil turned round on you—where were you, Roper, the last time you were being flat? This country’s planted thick with laws from coast to coast—Man’s laws, not God’s—and if you cut them down—and you’re just too good to hold—and you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil benefit of law, for my own safety’s sake.

Sir Roger. These words remind us the law must be followed not only by the accused but also by the accusers.

And every day in America many who are accused of crimes are released because this government has violated their constitutional rights—denied them due process—forsaken the rule of law.

How American of us—we are prepared to release an accused because the accuser has not played by the rules * * * the rules of law.

The House managers built their case on one key question: Did the President respect the rule of law?

But the same managers who exalted the rule of law from their opening words reveal to us ignore the process which brought us to this moment:

An independent counsel in name only whose conduct before the House Judiciary Committee led Sam Dash, former Watergate counsel and Mr. Starr’s ethics advisor, to resign in protest.

Listen to Dash’s words to Kenneth Starr in his letter of resignation concerning Starr’s appearance and testimony:

In doing this you have violated your obligations under the Independent Counsel Statute and have unlawfully intruded on the power of impeachment, which the Constitution gives solely to the House. . . . By your willingness to serve in this improper role (advocating for impeachment) you have seriously harmed the public confidence in the independence and objectivity of your office.

Much has been made about the so-called “oversight” with which some House Democrats held for President Clinton at the White House after the impeachment vote. If you wonder how those members could act in such an apparently partisan manner after the historic vote on December 19, 1998, I hope you will recall that the Republican members of the House Judiciary Committee gave Mr. Starr nothing less than a standing ovation when he came to challenge the House’s charges.

And Betty Currie was critical to the managers’ case. She spent three solid days building their case. But I remember that the House managers claimed it was Lewinsky’s idea—neither of them claimed it was the President’s idea. On the affidavit issue—the House Managers could not produce one witness—not Lewinsky, not Jordan and not the President to support their charge of obstruction.

Time and again the House managers failed to prove their case—failed to produce testimony or evidence and at best played to a draw. I don’t need to remind my colleagues in the Senate that playing to a draw on this field comes down in favor of the President.

The House managers failed to meet their burden of proof.

And let me say a word about witnesses.

We have spent a lot of time on this issue. I do not know who came up with the limitation of three witnesses for the managers. But is there anyone in this chamber who believes that Sidney Blumenthal was a more valuable witness to this case than Betty Currie?

Surely my colleagues in the Senate remember that the House managers spent three solid days building their obstruction of justice case on concealing gifts and tampering with witnesses. And Betty Currie was critical to the most credible charges against the President.

When the House managers were given a chance to call this key witness, they refused.

And what can we conclude from this tactical decision? Let me read Rule 14.15 from Instructions for Federal Criminal Cases.

If it is peculiarly within the power of either the government or the defense to produce a witness who could give relevant testimony on an issue in the case, failure to call that witness may give rise to an inference that this testimony would have been unfavorable to that party or conclusion should be drawn by you, however, with regard to a witness who is equally available.

When I listen to Paul Sarbanes recount the painstaking efforts to avoid partisanship during the impeachment hearing on President Nixon, it is a stark contrast to the committee process which voted these articles of impeachment against President Clinton.

Did the House Judiciary Committee respect the rule of law?

And the House of Representatives, an institution which I was proud to serve in for 14 years, was so hellbent on impeachment that its blind rules, denied the regular order of business and refused the House a vote to censure this President so the Majority would have a better chance to visit the disgrace of impeachment on his record.

Did the House of Representatives respect the rule of law?

But it would be too facile to dismiss this case simply because the process which brought us to this point is so suspect—to easy to discard the fruit of this poisoned tree.

Justice and history will not give us this easy exit. We must ignore the birthing of this impeachment and judge it on its merits.

First, let me stipulate the obvious. The personal conduct of this President has been disgraceful and dishonorable. He has brought shame on himself and his Presidency. No one—not any Senator in this Chamber nor any person in this country—will look at this President in the same way again.

I have known Bill Clinton for 35 years. I remember him as a popular student when we both attended Georgetown. And I know despite all of the talk about “compartamentalization” that this man has suffered the greatest humiliation of any President in our history. I hope his marriage and his family can survive it.

But our job is not to judge Bill Clinton as a person, a husband, a father.

Our responsibility under the Constitution is to judge Bill Clinton as a President, not whether he should be an obstruction of justice perjury or obstruct justice, and for these acts should he be removed from office?

When this trial began I believed that President Clinton’s only refuge was in a strict reading of “high crimes and misdemeanors”—that James Madison, George Mason and Alexander Hamilton would have to serve as his defense team and save this President from removal.

The managers’ case was compelling, but as the defense team rebutted their evidence I saw the charges of perjury crack, obstruction of justice crumble and impeachment collapse.

The managers failed in Article I on perjury to meet the most basic requirement of the law: specificity. In the Andrew Johnson impeachment trial, Senator William Fessenden of Maine pointed out the unacceptability of failing to name specific charges:

It would be contrary to every principle of justice to the clearest dictates of right, to try and condemn any man, however guilty he may be thought, for an offense not charged, of which no notice has been given to him, and against which he has had no opportunity to defend himself.

Senator Fessenden understood the rule of law.

And by what standard should the President be judged?

When the House managers discussed the gravity of the case for impeachment, they said repeatedly: “These are crimes.” But when asked why they failed to meet the most basic criminal procedural requirements of pleading and proof, Mr. Canady said: “This proceeding is not a criminal trial.”

And what is the difference between charging a crime and proving something less than a crime? The difference is known as the rule of law—a rule which requires fair notice and due process whether the accused is President or penniless.

How many times have we seen the House managers run into the brick wall of sworn testimony contradicting their charges. On gifts—Monica Lewinsky said hiding them was Betty Currie’s idea—Betty Currie claimed it was Lewinsky’s idea—neither of them claimed it was the President’s idea. On the affidavit issue—the House Managers could not produce one witness—not Lewinsky, not Jordan and not the President to support their charge of obstruction.

The House managers failed to meet their burden of proof.

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to both parties or where the testimony of that witness would be merely cumulative.

The jury must always bear in mind that the law never imposes on a defendant in a criminal proceeding or duty of calling any witnesses or producing any evidence.

Betty Currie was no help to the House managers in her deposition and they clearly concluded she was more likely to hurt than help their case if called as a witness. The key witness in the obstruction of justice charge never materialized and neither did the proof the House managers needed.

How will history judge this chapter in our history?

The House managers and many of my colleagues believe an acquittal will violate the basic American principle of equal justice under the law—they argue that acquitting the President will cheapen the Presidency—and imperil our nation and its values.

I have heard my colleagues stand in disbelief that the American people could still want a man they find so lacking in character to continue as their President. William Bennett and his pharisaical followers have profited from books and lectures decrying the lack of moral outrage in our nation against Bill Clinton.

I hope my colleagues will pause and reflect on this conclusion that the American people somehow lost their moral compass—that the polls demonstrate our people have lost their soul—and that we, their elected leaders, have to impeach this President to remind the American people of the values—the integrity—the honor which is so important to our nation.

May I respectfully suggest that those who appoint themselves as the guardians of moral order in America risk the vices of pride and arrogance themselves. Before we don the armor and vest ourselves. Before we don the armor and vest ourselves.

Like Abraham Lincoln, I am a firm believer in the American people. If given the truth they can be depended upon to meet any national crisis.

And the American people have this right. The President's personal conduct was clearly wrong. He has endured embarrassment and will spend the rest of his natural life and forever in the annals of history branded by this experience. The American people clearly believe that the process which brings him before us in this trial was too partisan, too unfair, too suspect.

What has occurred here is a personal and family tragedy—it is not a national tragedy which should result in the removal of this President from office.

In 1798, THOMAS Jefferson wrote to James Madison: "History shows that it in England, impeachments have been an engine of passion rather than justice."

Jefferson felt that even though no process for impeachment could be a formidable partisan weapon. He feared that a determined faction in Congress would use it: "...for getting rid of any man whom they consider as dangerous to their views, and I do not know that we could count on one-third in an emergency."

In 1998, with the suffering and death of our Civil War still fresh in everyone's mind, this Senate came within one vote of impeaching a President who was viewed as too sympathetic to the vanquished South.

In 1999, as millions and millions of tax dollars spent in investigation of this President, I believe the Senate will once again cool the political passions, preserve the Constitution, protect the Constitution, and prove to Thomas Jefferson that his trust in this body and that great document was not misplaced.

I will vote to acquit William J. Jeff erson Clinton on both Articles of Impeachment and support a strong resolution of censure to bring this sad chapter in American politics to a close.

Mr. KYL. This case is about the rule of law—specifically, whether actions and statements of President Clinton in federal court proceedings have done such harm to the rule of law that he should be removed from office. I conclude in the affirmative, and reluctantly vote to convict on both Articles of Impeachment.

Chairman HENRY HYDE observed that the House of Representatives had come to the Senate "as advocates for the rule of law, for equal justice under law, and for the sanctity of the oath." (145 Cong. Rec. S221 (January 14, 1999).)

These are my words. The rule of law refers to our judicial process, which is governed by uniform standards and procedures that we say will always be guaranteed and applied fairly and equally. We are willing to submit ourselves to this process because we have worked hard for 210 years to ensure that it produces impartial justice for all.

Equal justice means that each of us, including the President among us, has rights that the state is bound to protect; and it surely includes the requirement that those who make the laws (including the President) must live under them like anybody else.

And oaths are essential to the rule of law because the judicial process is about seeking the truth; and that requires that we be able to trust what is said. The oath formalizes the commitment to tell the truth, and the whole truth—a truth—important that its violation is itself a crime.

I believe there are two questions to be answered.

The first is whether the President impossibly took the law into his own hands in a federal civil rights case and seven months later before a federal grand jury in order to suppress the truth. The second question is whether, if the President did engage in the impeachable conduct, it is a breach serious enough to warrant removal from office.

The Constitution permits only one vote: to acquit or convict. This leaves some in the anomalous position of determining guilt on an impeachable offense, but having to vote to acquit because they deem the offense insufficiently serious to warrant removal. While the fact that the offense is impeachable should itself resolve the issue "proportionately," I would not consider it impermissible to reach a contrary conclusion, as some will do in this case.

For my part, I answer both questions in the affirmative. The President "wilfully provided perjurious, false, and misleading testimony" under oath to a grand jury and he "prevented, obstructed, and impeded the administration of justice." (H. Res. 611).

While the House of Representatives asserted that the President's actions were criminal, violations of specific criminal statutes are not essential for wrongful conduct to constitute the "high crimes and misdemeanors" that demonstrate unfitness to continue as Chief Executive. Even the Utilities agree a President cannot be prosecuted while in office for crimes allegedly committed during his term. So, for example, whether a lie under oath would necessarily later result in a criminal conviction is not yet known with certainty, and an impeachment trial is not an effective forum for establishing criminal guilt. It is conduct, not a proven crime, that is the basis for impeachment.

This is one of the reasons why it is clear that each Senator may apply his or her standard of proof—it need not be the criminal standard "beyond a reasonable doubt." (See Senate Proceedings in the Impeachment Trial of J uice Claiborne, S. Doc. No. 99-48, at 150.) Moreover, because the Senate constrained the House of Representatives as it did—by limiting the number of witnesses that could be deposed, by effectually foreclosing other discovery, and by precluding "live" testimony—it would be unfair to impose a "beyond reasonable doubt" standard.

The President's counsel argued that the Senate should not consider Article I because the House of Representatives defeated a perjury count relating to the Jones civil action. But Article I also included allegations of "perjuriously, false, and misleading" statements in the Jones case; so the argument is meritless. Moreover, the President's falsehoods in the Jones civil suit also were part of his strategy to obstruct justice.

What is striking about this case is the President's persistent, sustained, carefully calculated, deliberate, and callous manipulation of the judicial process for over a year.

Without attempting to summarize all of the evidence, I conclude that the President lied before the federal grand jury about (1) the nature of details of his relationship with Ms. Monat; (2) his assertion that he told the truth in the Jones depositions; (3) the false and misleading statements that he allowed his lawyer to make to a federal judge
in the Paula Jones civil case; and (4) his corrupt efforts to influence the testimony of aides who were potential grand jury witnesses.

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

The final question is whether the President should be removed for his actions.

As a preliminary matter, there can be no doubt that perjurious, false, and misleading statements made under oath in federal court proceedings are indeed impeachable offenses. The fact that the House of Representatives reached this conclusion, of course, establishes the precedent as to the kind of conduct in this case. But, it is also confirmed by the impeachment and conviction of federal judges—of Judge Harry Claiborne, removed in 1986 for filing a false income tax return under penalty of perjury; of Judge Walter Nixon, removed in 1989 for perjury before a grand jury, and of Judge Alcee Hastings, removed in 1995 for perjury related to financial misconduct. I cannot agree with those colleagues who assert that there is a different standard for a President—that it would require a more egregious kind of perjury to remove a President than a judge. Nothing in the Constitution suggests such a double standard.


As to obstruction of justice, on which there is no other direct precedent, Chief Justice Rehnquist, our presiding officer in impeachment proceedings, precisely because he "discolors and poisons the streams of justice." (Grand Jury Charge (C.C.D.N.Y. (Apr. 5, 1792)) J. Jay, C.J.), in 2 The Documentary History of the Supreme Court of the United States, 1789-1800: The Justices on Circuit: 1790-1794, at 253, 255 (Maeva Marcus ed., 1988).

To obstruct justice, or which there is no other direct precedent, Chief Justice Rehnquist, our presiding officer in impeachment proceedings, precisely because it "discolors and poisons the streams of justice." (Grand Jury Charge (C.C.D.N.Y. (Apr. 5, 1792)) J. Jay, C.J.), in 2 The Documentary History of the Supreme Court of the United States, 1789-1800: The Justices on Circuit: 1790-1794, at 253, 255 (Maeva Marcus ed., 1988).

Surely the violation of constitutional obligations can constitute high crimes or misdemeanors for which the President may be impeached. And surely, such violation would constitute an abuse of trust by the Chief Executive.

By his oath of office and Article II responsibilities, President Clinton is supposed to see that the sexual discrimination in this case is not carried on. But he thought the Jones case was illegitimate, so he took the law into his own hands. His conduct in this case clearly violated his public duties, his oath, and the public trust. And it interfered with the proper functioning of another branch of the government.

The same is true for his deliberate efforts to impede legitimate discovery efforts in federal court proceedings. Such action "is incompatible with . . . the constitutional form and principles of our government," as the 1974 House Judiciary report said. It simply cannot be that a President who wrongly interfered with the underpinnings of any other branch of our government by attempting to subvert justice in federal court proceedings cannot be impeached because he did not do it as President, but rather, as a citizen.

That the underlying conduct covered up is sexual, is, if anything, an aggravating not a mitigating factor. In sex-discrimination litigation, where there is frequently no corroboration for the plaintiff, a defendant who lies can easily subvert justice. Had the blue dress not been found, with its incontrovertible tangible evidence, I doubt Paula Jones would have gotten a dime in settlement.

Judgments about the severity of the impeachable conduct in this case will lead different Senators to reach different conclusions. That is why some of us are willing to say reasonable people can differ. For those who fear the long-term consequences to the rule of law, however, I believe that there is only one result. Anyone who so willfully, callously, and persistently convives to deny the federal court and grand jury the truth, and who used and abused the highest office in the land to advance his personal cover-up is no longer worthy of trust—which all agree is essential to the conduct of his office—but also must be removed to avoid the perpetuation of a legal double standard. If federal judges (such as Judges Claiborne, Nixon, and Hastings) are removed for similar conduct; if average Americans are imprisoned for it, can the rule of law long survive "special exceptions" for powerful people we like, or who are doing a good job, or who hold elective office?

None of these rationalizations are defenses to illegal or impeachable conduct.

As I said, sexual harassment cases are precisely the kind of judicial proceedings that demand the maximum cooperation of and truth-telling by the defendant, because of the lack of third-party witnesses or corroborating evidence. In these cases, justice is denied if obstruction, witness tampering, or perjury prevent the truth from coming out. Can anyone say this is not serious? To what standard of seriousness does it not rise? How many plaintiffs will have to lose their sexual harassment, domestic violence, or sexual assault cases because defendants lie and obstruct justice (and there is no blue dress to keep the honest) before it becomes serious?

An acquittal in this case will make it harder to deal properly with similar conduct in the future. We will be hard pressed to perpetuate a double standard, so the lowest common denominator of conduct will be established as the permissible norm. And this cannot help but weaken the ability of courts
to enforce truth-telling and prevent obstruction of justice.

The precedent set by this case may not change the law overnight, but this unforgettable episode is now part of the institutional life of our country. The lesson is corrosive. Like water dripping on a rock, it eventually makes a deep hollow in the American justice system.

It is true the President could be sent to jail right now. But that is not the power to appoint judges and be head of U.S. law enforcement now? How does that square with his leadership of the armed forces right now, as our Commander-in-Chief? Should the standard for the President not be at least as high as for those he appoints and leads?

In the end, my colleagues who would censure rather than convict the President are right about one thing: the President's conduct is "unacceptable. But, if conduct is unacceptable, we cannot do or say anything else. We have to do something about it that does not leave it stand. And under our Constitution that means removal of the President through conviction on the Articles of Impeachment."

He has moved to dismiss the House case by warning that public cynicism is the greatest threat we face. Our failure to remove the President will only fuel the cynicism of Americans such as Louie Valenzuela of Glendale, Arizona. He was quoted recently in a map-on-the-street interview about this case. "They talk about justice," he told the Arizona Republic. "They talk about doing the right thing," said Mr. Valenzuela. "But they always look the other way when someone rich, famous or powerful does something wrong. Look at O.J. Simpson. Clinton will be next. Asi es."

"That is just the way it is."

That is not the way it has to be. But how it is, is up to us.

A word for the future: It would be my hope that if, as, and when the Senate has to revisit impeachment that it would be done differently. Senator Lieberman made a suggestion on a December 20 television show that there ought not to be party caucuses, that there only ought to be joint caucuses. I think that put a mindset in this body really not to conduct a trial.

The Constitution calls for a trial. The proceeding we had does not measure up in any way, shape, or form to a trial. It is true that there are some few judges are going to decide it. But a trial customarily requires witnesses. Had witnesses appeared on the floor of the U.S. Senate with examination and cross-examination, you would have gotten a feel for what happened here. If Betty Currie had appeared on the floor of the U.S. Senate, or even if her deposition had been taken, there could have been a clarification of inconsistencies in her two lines of questioning.

I had occasion, fairly recently, to go very deeply into the issue of separation of powers when I argued the Base Closing Commission case regarding the Philadelphia Navy Yard case, which was unfairly closed—a subject that I will not amplify on—and I had an opportunity to appear before the Supreme Court, which ended on time. As I did on other two speeches, but I will say that the Chief Justice is a good deal more tolerant here than in the Supreme Court. In the Supreme Court, I was cut off in midsyllable. I didn't know that was possible. But with the forcefulness of the Presiding Officer, I did not do well in that case. I had done better on my previous appearances in the Supreme Court when I was representing the district attorney's office.

But that sojourn into that case brought me into 200 years of reflection and analysis on case law on separation of powers, something that is not often done. The thumping lawyers told me certainly not Senators. It instilled in me a very, very deep appreciation of separation of power.

So when I approached this case—and it has been the toughest case I have ever seen, and I think it has been a very, very intense drain on this body and all of us individually—the focus I had was, What is the burden that you ought to have to show if the Senate is going to remove a President? As I reviewed the evidence, I am not satisfied at all that that burden was met.

The definition of perjury is a very tough one by the Supreme Court of the United States in the famous case called Bronston. Bronston was giving testimony in a bankruptcy proceeding in New York City about bank accounts in Zurich, and said, "My company had a bank account for about 6 months," leading to the implication that he did not have a personal bank account when in fact he did. He was convicted and upheld by the Second Circuit, but reversed by a unanimous Supreme Court because the interrogator, the prosecutor, has to go further. You have to ask the last questions.

And the President was very artful, very careful, and full of guile as he wound his way through the grand jury proceedings. We heard the testimony again and again. The President said he told his aide, "I told them things that were true." Well, he didn't comment on the things that he told them that were false. But nobody said, "Did you tell them things that were false as well?" to give him a chance to perjure himself on that. When asked about Monica Lewinsky—he was alone with her—on a series of rambling answers he wasn't alone with her in the hallway. But that is not the end of the question. He wasn't alone with her in the hallway. But nobody followed up, and said, "Were you alone with her somewhere else?" He was not asked and, therefore, did not deny and, therefore, on this record did not commit perjury under the Bronston case.

"The testimony of Betty Currie we heard again and again and again. Here in late January 1998, Betty Currie testified that when the President gave her that series of questions, she thought the President was trying to lead her, to mold her testimony. Then she came back on in July, she said, Well, it was different on that occasion. She testified that she did not make up the option of either agreeing or disagreeing.

Betty Currie was not a witness in this proceeding—didn't even have her deposition taken, and was not a witness; did not have her deposition taken because of very, very restrictive rules which the U.S. Senate said what the House managers could do. The House managers were on very, very sharp notice that if they asked for too many discussions the vote would not have gone in favor of 1. They made their selection of witnesses, and they left off Betty Currie.

But had House managers been able to present their case in the normal course of the trial... Again, we heard legal arguments on the motion to dismiss, and on depositions, and arguments on what to do about the witnesses, on those videotapes. Again and again, we heard legal arguments, but we did not hear from witnesses.

We are burdened by this record. It is my view that on this record, the burden of proof has not been met, the kind of a burden that would have to be sustained, in my judgment, for the Senate to remove an American President.

One comment about mindset. The Senate really approached this matter as if it were a waste of time from the outset. There was an early effort to structure the vote to ensure the third plus two would not for conviction and therefore, to end it. And then when we had the vote on the motion to dismiss, and 44 Senators voted to dismiss, it confirmed what we all knew; and that is that there would not be a two-thirds vote. I think that put a mindset in this body really not to conduct a trial.
just irreconcilably opposed, just totally opposed. My only conclusion was that it was the kind of argument and the kind of discussion on what happened in the caucuses—really choosing sides and having teams—as opposed to trying to make an analytical, judicial decision as to what was involved here.

So it is my hope that if we ever have to undertake this again we will do it differently.

My position in the matter is that the case has not been proved. I have gone back to Scottish law where there are three verdicts: guilty, not guilty, and not proved. I am not prepared to say on this record that President Clinton is not guilty. But I am certainly not prepared to say that he is guilty. There are precedents for a Senator voting present. I hope that I will be accorded the opportunity to vote not proved in this case.

We really end up, colleagues, very much in my judgment, where at least I started as a Republican. I had thought at the outset that this was not an appropriate case for impeachment because the requisite two-thirds would not be present, and had hoped that impeachment would be by-passed, but instead we have the President finish his term of office, which I thought an inevitability, just as it has worked out that way, and that the criminal process would do whatever is appropriate; if indicted, if convicted, whatever a judge would have to say. I am still hopeful that the rule of law will be vindicated in that process.

We obviously have learned much from this proceeding. It is my hope that we will leave a mark to guide future Senators if we ever have to repeat from this proceeding. It is my hope that the rule of law will be vindicated in that process.

Mr. Chief Justice, I ask unanimous consent that a full text and exhibits A, B, and C be included in the Record as if read on the Senate floor.

The removal of an American president through impeachment carries a high burden of proof and persuasion. For conviction in the criminal courts on charges of perjury and obstruction of justice, the proof must be beyond a reasonable doubt. An extra measure of certainty is necessary to persuade the Senate that the national interest mandates invoking the extraordinary remedy of removing the President.

The only vote is for or against removal.

The starting point is Article II, Section 4 of the Constitution:

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

From that language, there is reason to interpret “other High Crimes and Misdemeanors” as relating back to specific categories of offenses earlier enumerated, such as “Treason and Bribery” that is too well established. Nor do I agree with the simplistic definition that perjury and obstruction of justice, being felonies and therefore more serious than misdemeanors in the criminal law, are automatically impeachable offenses.

The Framers did not foresee the circumstances before us. The omission of “perjury” and “obstruction of justice” from the enumerated offenses probably reflected the Framers’ thought that it would be simply not possible for the President to be testifying under oath or be a participant in a judicial proceeding. Yet, it is equally clear that perjury and obstruction of justice are serious crimes. For the President to commit either, it would be in his own interest above his public duty and the people’s interest in due process.

In 1970, then-Congressman Gerald R. Ford offered this definition: . . . an impeachable offense is whatever a majority of the House of Representatives considers to be at a given moment in history . . .

While that may state the raw power of Congress, it is too subjective to provide any real guidance. Instead, I look to the Federal Constitution, the Federalist papers, and the English and United States impeachment cases.

Commenting on impeachment at the Constitutional Convention James Wilson said: . . . far from being above the laws, he (the President) is amenable to them in his private character as a citizen, and in his public character by impeachment.

The President’s attorneys have argued that the charges arise from private conduct unrelated to his official duties. The issue then arises whether his conduct is “in his public character” by virtue of his Constitutional duty: . . . he (the President) shall take care that the Laws be faithfully executed . . . Article II, Section 3.

Such a public duty may be insufficient for impeachment under Alexander Hamilton’s definition of impeachment in Federalist No. 65: . . . those offenses (sic) which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.

From Hamilton’s statement, the conventional wisdom has evolved that impeachment is essentially a political question. The Framers, cases and commentaries have not articulated a handy definition of “high crimes and misdemeanors.”

Whether to impeach and convict transcends the facts and law to what is in the national interest at a specific time in the nation’s history on the totality of the circumstances.

Consideration of the national interest may include whether there is a clear and present danger to the integrity or stability of the national government; or whether the conduct is so vile or reprehensible as to establish unfitness for office; or whether the electorate has lost confidence in the President to the extent that he cannot govern.

The precedents and commentaries leave substantial latitude for Senators to establish their own standards. The ultimate definition may be analogous to Supreme Court Justice Potter Stewart’s struggle to define obscenity when he concluded: . . . perhaps I could never succeed in defining it to be doing so. But I know it when I see it.”

PARTISANSHIP IN THE HOUSE

The extreme partisanship of the impeachment proceeding in the House prejudiced the matter before it came to the Senate. While it takes two to tango or bi-partisan, some Republicans bore the brunt of the public disdain on the partisan charge. It was more than the party line votes. The whole process was filled with rancor, acrimony and bitterness which contributed significantly to the public view that it was all politics without real substances.

It has been widely noted that there must be significant bi-partisan support to remove a president. President Nixon’s forced resignation occurred only when Republican elders like Senators Goldwater and Scott joined Democrats in urging his resignation.

In an early Sunday TV talk show on December 20, 1998, the day after the House sent the Articles to the Senate, Senator Joseph Lieberman and I appeared together on “Face the Nation” where he urged that there be no party caucuses but only joint caucuses. I recommended that to Senator Lott in my memorandum of December 29 and urged that policy to colleagues on both sides of the aisle. Perhaps, it was too much to expect or even hope that would be done given the Senate’s history and practice of party caucuses.

As noted in this floor statement, the Senate struggled to achieve bi-partisan, mostly without success, but we did avoid the rancor and bitterness which prevailed on the House side.

THE IMPROBABILITY OF TWO-THIRDS FOR CONVICTION OVERSHADOWED THE PROCESS

From the outset, the conventional wisdom was there would not be two-thirds in the Senate in favor of conviction. That pervasive view has cast a long shadow over the impeachment proceedings. When the Senate convened on January 6th, there was immediate informal consideration on taking a test vote to determine if there were enough votes to convict which would end the matter. There appeared to be even more than that number so opposed who based their judgments on news media accounts. That trial balloon was abandoned when Senators who objected on the ground that the Constitution called for a trial and the Senate owed the House the Constitutional deference to give the House Managers a chance to prove their case.

In November, I wrote in a New York Times “op ed” article that impeachment should be bypassed and the President should be held accountable through the criminal process after his
term ended. When the House of Representatives returned Articles of Impeachment in mid-December, I felt at that stage the Senate had a constitutional duty to proceed to a trial.

The CONSTITUTIONAL REQUIREMENT FOR A TRIAL

The Constitution explicitly provides for a trial:

The Senate shall have the sole Power to try all impeachments... (Article I, Section 3, Clause 6).

The same clause refers to being convicted and the next clause refers to judgment, so the constitutional mandate for a trial is plain. Senate Impeachment Rules 6 and 17 deal with witnesses.

The Senate was schizophrenic in wanting to avoid what many considered to be a pointless trial. Others considered it to be our Constitutional duty to hold a trial and give appropriate deference to the House in its Article III function. In a series of halting half-steps, the Senate stumbled through a “pseudo-trial”, a “sham trial”—really no trial at all. In the end, it would have taken hours to let the House Managers put on a case with a full White House defense than the helter-skelter procedures adopted by the Senate.

From the time the House reconvened on January 6, 1999, the public pressure to conclude the trial promptly was palpable. The improbability of a two-thirds vote for conviction was only one factor although the totality of the other factors contributed to that improbability.

The adverse public reaction was reflected in consistent polling data and the feel on the streets in our various states. Notwithstanding the serious charges of perjury and obstruction of justice, Democratic Senators argued and many people agreed that a private sexual liaison should not have caused a multi-year, multi-million dollar investigation of Monica Lewinsky in the Judiciary Committee over perjury charges. The House had good reason not to call witnesses because less than two months before the 106th Congress convened to take up the nation’s important pending business. But, that set the stage for the witness issue to haunt the Senate from the outset.

Early in January there was a strenuous effort for bi-partisanship on witness issues. Agreement was reached initially by almost spontaneous combustion that the House had more to gain from bi-partisanship than Democrats to avoid the rancor of the House proceedings and give legitimacy to impeachment. Many Democrats openly said the President would be helped by party line votes making the Senate look like the House.

The Democrats then lined up solidly behind the President with a number of Republicans, sometimes more than six, testifying on joining the Democrats. There were obviously limits to what elected officials will do to vote a straight party line if it puts their seats in jeopardy. The Senate Democrats had the effective cover of a popular President and their party line votes followed while a significant number of Republicans faced constituents opposed to impeachment. The President’s counsel had fought so strenuously to put on their case with a full White House defense than the helter-skelter procedures adopted by the Senate.

When the videotapes were played in the Senate chamber, the contrast was stark with the same live testimony I saw and heard. On a number of occasions, the sound was inaudible and the tape could not be rewound. There was a superior opportunity in person to observe the witnesses’ facial reactions, their reactions compared to that of Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. Observing these live witnesses confirmed my thinking that the full Senate should have seen and heard their testimony in the tradition of trial practice. While a videotape is very informative, there is no substitute for the more precise evaluation of demeanor and its many nuances which crosses across fully only through live testimony.

I was one of three Senator-presiders/observers designated by Senator LOFT, the Majority Leader, for the depositions of Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. Observing these live witnesses confirmed my thinking that the full Senate should have seen and heard their testimony in the tradition of trial practice. While a videotape is very informative, there is no substitute for the more precise evaluation of demeanor and its many nuances which crosses across fully only through live testimony.

Instead of hearing testimony from live witnesses, the Senate listened to videotaped depositions of Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. Another
day was consumed on votes rejecting live witnesses and permitting use of the videotapes. On the day designated for presentation of those depositions, only snippets were shown with most of the time consumed by lawyers’ arguments for dismissal of the charges. The pretrial motions were held with lawyers again presenting arguments which had been repeated on eleven prior days.

So, in place of a traditional trial with live witnesses such as Monica Lewinsky, Betty Currie, Vernon Jordan, Erskine Bowles, John Podesta, Sidney Blumenthal, possibly Kathleen Willey or whomever the House Managers chose to call, the Senate heard days of repetitious lawyers’ argument from a grand jury record.

**THE PERJURY ARTICLE**

The President’s version was limited to his deposition in the Paula Jones case on January 17, 1998, and his grand jury testimony on August 17, 1998. In their totality, those two cameo appearances raised more questions by far than they answered. As expected, the President was exceptionally well prepared on the law and exceptionally adroit and manipulative on the facts or, more accurately, on evading the facts.

The law on perjury is set forth in the case of Bronston versus United States, 409 U.S. 342 (1973), where the Supreme Court of the United States established a rigorous standard for proving perjury. Bronston, under oath in a 1966 bankruptcy hearing, was asked whether he ever had bank accounts in Swiss banks and he replied: “the company had an account there for about six months, in Zurich.”

His answer that the company had an account there for about six months was accurate. It was not accurate that was the only account the company had. The Supreme Court exonerated Bronston on the charge of perjury because the questioner did not press further to get a specific answer on whether the company had an account in addition to the one responded to by Bronston.

Utilizing the holding in Bronston to the utmost, the President couched his answers with great care relying on the questioner not to pursue the unanswered issues. For example, the President did not deny lying to his aides, but rather evaded the question and the charge of perjury because the questioner did not press further to get a specific answer on whether the company had an account in addition to the one responded to by Bronston.

In his testimony before the grand jury, President Clinton stated,

“I told them [his aides] things that were true about this relationship. They [things the President said to his aides] may have been misleading, and if they were I have to take responsibility for it, and I’m sorry. Note that the President does not deny lying but only that:

I told them things that were true about this relationship.

The President did say some things which were true. The questioner did press the line of interrogation by asking if, in addition to saying some things which were true, the President told his aides other things which were lies. On that clever, ambiguous record, the President escapes the perjury net.

Similarly, President Clinton dodged the perjury charges on his testimony on being alone with Monica Lewinsky. She testified they were alone when they had eleven sexual encounters either in the Oval Office, in the President’s office or the adjacent hallway. In his January 17th deposition, the President was asked if he was ever alone with Monica Lewinsky in any room of the White House. The President responded,

I have no specific recollection, but it seems to me that she was on duty on a couple of occasions working for the legislative affairs office and brought me some things to sign, something on the weekend.

Further on, the President was asked if he was ever alone with Ms. Lewinsky in the hallway between the Oval Office and the kitchen area, the President responded,

I don’t believe so, unless we were walking back to the back dining room with the pizza. I just, I don’t remember. I don’t believe we were alone in the hallway, no.

The President again gets away with vague, unresponsive replies. When the President says “I don’t believe we were alone in the hallway, no”, there is then no pursuit as to whether they were alone in other places. He succeeds in avoiding and misleading, but does not make the unequivocal false statement required by Bronston to constitute perjury.

The President was treated differently than other witnesses before a grand jury when he was permitted to read from a prepared statement:

I engaged in conduct that was wrong. These encounters did not consist of sexual intercourse. They did not constitute sexual relations as I understand that term to be defined at another position.

But they did involve inappropriate intimate contact.

The President then declined to respond to Monica Lewinsky’s specific charges and was not pressed for answers. He made a blanket denial of having sex with Monica Lewinsky relying on a tortured interpretation of Judge Wright’s definition of sexual relations:

I thought the definition included any activity by the person being deposed, where the person was the actor and came in contact with those parts of the bodies with the purpose of gratification of the actor and included any other activity. For example, kissing is not covered by that, I don’t think.

He further stated that:

My understanding was, what I was giving to her was that what those first two lines were any direct contact by the person being deposed with those body parts of another person’s body, if the contact was done with an intent to arouse or gratify. That’s what I believe it means today.

The question was not pursued whether there was a sexual relationship where Ms. Lewinsky was the actor who made contact with the President’s body with an intent to arouse or gratify. When asked specifically about oral sex, the President responded,

... (Y)ou asked me did I believe that oral sex performed on the person being deposed was covered by that definition, and I said no. I don’t believe it’s covered by the definition.

And there is the curious contention by the President on what the meaning of the word “is” is. A videotape of his deposition shows the President sitting quietly and listening to his attorney, Robert Bennett’s arguments to Judge Wright based on Ms. Lewinsky’s affidavit which the President knew to be perjurious.

In his grand jury testimony, the President defended his silence during this statement:

I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

The President also told the grand jury that Mr. Bennett’s statement that there “is” no sex of any kind was not necessarily false, but rather:

It depends on what the meaning of the word “is” is. If the—of if—“is” means is and there has been none, this is one thing. If it means there is none, that was a completely true statement.

On this state of the record, the Senate should have pressed the President for responses to so many important unanswered questions. Since the President was, in effect, asking the Senate to leave him in office, why was the Senate not justified in, at least, insisting on answers to key questions. When Senators submitted interrogatories to the Chief Justice for responses from the attorneys, I submitted the following question:

Would the President honor a request by the Senate to testify? If not, why not? If he declined to testify either in his own initiative or a Senate invitation, would the Senate be justified in drawing an adverse inference from his failure to testify?

With so many other questions submitted, this one was not asked. During the trial, White House Counsel said the President would respond to written questions, but that offer was rescinded.
On January 29th, the President refused to answer ten written questions submitted by Republican Senators. On February 3rd, twenty-six Republican Senators sent the President a letter requesting a deposition. As expected, in a context where the Senate voted against live witnesses and permitted only three deposition witnesses, it was not surprising that there was no political will to press the President for his testimony. I believe that was a serious mistake. In the context of the Senate, the President could have considered exercising the political will to ask, let alone compel, the President to leave the Oval Office for a day or a few days to testify at his impeachment trial or even to give a deposition, how could the Senate be expected to exercise the much greater political will to remove the President from office?

In her civil lawsuit, Paula J. ones had been able to compel the President to give a deposition. In the grand jury proceeding where the Independent Counsel, in effect, compelled the President to testify. Why, then, shouldn't the Senate exercise the commensurate power in an impeachment proceeding to obtain the President's testimony when there are open questions?

In my legal judgment, the Senate has the power to subpoena the President. (My memorandum to Senator Lott dated December 10, 1998, attached as Appendix B, discusses the Senate's legal authority to subpoena the President at pages 8 through 11. My memorandum to Senator Lott dated December 29, 1998, attached as Appendix C, discusses possible testimony by the President at pages 12 and 13.) Senate Impeachment Rule 6 gives the Senate the subpoena power. The Supreme Court of the United States held President Nixon was subject to subpoena to turn over the famous tapes under the established principle "That the public * * * has a right to every man's evidence, in public and private, * * * is further instructive in the Supreme Court's sweeping language on the need for all the facts even where the President is subject to subpoena.

The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be based on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rule of evidence. To ensure that justice is done, it is imperative to the function of the courts that compulsory process be available for the production of evidence needed either by the prosecution or the defense.

**The Article on Obstruction of Justice**

Following President Clinton's deposition in the Paula Jones case on January 27, 1998, the President called his personal secretary, Betty Currie, to his home and asked her to come into the office on the following day. On Sunday, January 18, President Clinton met with Ms. Currie and, according to Ms. Currie, made the following statements to her, one right after the other:

*You were always there when she was, right?*
*We were never really alone.*
*Monica came on to me, and I never touched her, right?*
*You can see and hear everything, right?*

Ms. Currie testified at first (12/27/98) that, based on his demeanor and the way he made the statements, the President wanted her to agree with them.

Six months later (7/22/98) when she testified for the second time, Ms. Currie said that although the President stated "right?" at the end of the statements, she felt she could agree or disagree with them.

I find the testimony of Betty Currie on January 27, 1998 most troubling. Why would the President ask a series of questions when he knew the answers unless he sought to influence her testimony? But then, Ms. Currie undercut her January 27th testimony when she testified on July 22, 1998 that she understood from the President that she could disagree with him on those questions.

In order to make a finding on an important issue like this which could lead to the removal of the President, the Senate should have heard Ms. Currie in person to clarify her testimony. In the absence of such clarification on this state of the record, there is at least a reasonable doubt on this issue.

Monica Lewinsky testified that she met with the President in the Oval Office on December 28, 1997 and that the President gave her several Christmas presents at this meeting. Ms. Lewinsky further testified that at some point in the conversation, she said to the President, "Maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty." Ms. Lewinsky recalled that the President responded either, "I don't know" or "Let me think about that.

The President testified that he has no distinct recollection of discussing the gifts with Monica Lewinsky on December 28. He told the grand jury that:

My memory is that on some day in December, and I'm sorry I don't remember when it was, she said, well, what if they ask me about the gifts you have given me. And I said, well, if you get a request to produce them, you have to give them whatever you have.

In the afternoon of December 28, 1997, Betty Currie drove to Ms. Lewinsky's Watergate apartment and collected a box containing most of the President's gifts. Ms. Currie then drove home and placed this box under her bed. According to Ms. Lewinsky, the transfer originated in a conversation with Miss Currie in which Ms. Currie stated, "I understand you have something to give me," or, "The President said you have something to give me."

Betty Currie testified that it was Ms. Lewinsky who first raised the idea of the gift transfer, either in person or over the telephone. Ms. Currie testified that she did not remember the President ever telling her to call Ms. Lewinsky or to pick something up from Ms. Lewinsky.

Monica Lewinsky testified that Ms. Currie came over to pick up the gifts at "around 2:00 pm or so". Cellular phone records reveal that Ms. Currie phoned Monica Lewinsky's home at 3:32 on December 28th and had a conversation of one minute or less.

The evidence against the President on the gifts issue is equivocal where the idea returning the gifts in the conversation between the President and Monica Lewinsky originates with Ms. Lewinsky; Ms. Currie does not remember the President telling her to call or pick up something from Ms. Lewinsky; the time of the call as shown on the cell phone records conflicts (3:32 pm) with Ms. Lewinsky's version of the sequence of events and the President gave Monica Lewinsky more gifts on December 28, 1997, the same day that efforts were made for the return of some of the gifts.

In December, 1997 and January, 1998, the President's close friend, Washington attorney Vernon Jordan, helped find Monica Lewinsky a job in New York City. On Friday, December 5, 1997, the President's attorneys received a witness list for the Paula Jones case. Monica Lewinsky was included on this list.

On December 11, 1997, Mr. Jordan and Monica Lewinsky met and Mr. Jordan took concrete actions to help Ms. Lewinsky find a job. Mr. Jordan placed calls on her behalf to three business contacts. Mr. Jordan also told her to send letters to three additional business contacts that he provided to her. This meeting held by phone calls took place prior to the issuance of Judge Wright's order of the same day.

On January 7th, Ms. Lewinsky signed an affidavit denying a sexual relationship with the President. On January 9th, Ms. Lewinsky had an interview with McAndrews and Forbes in New York. Afterwards, she called Vernon Jordan to report that the interview had gone poorly. Vernon Jordan immediately phoned Mr. Ron Perelman, the CEO of McAndrews and Forbes, and asked for this help. The next day, Ms. Lewinsky was given another interview and was extended an offer to work for Revlon, a subsidiary of McAndrews and Forbes.

Vernon Jordan defended his efforts to help Monica Lewinsky get a job as a payback for help he secured as a young lawyer in getting a job when he was a victim of racial discrimination. Jordan testified that he told no one at Revlon...
that Monica Lewinsky was a witness in a case involving the President and that Revlon offered Monica Lewinsky a job because she was qualified.

If the Revlon job offer was part of a plan or conspiracy to obstruct justice, then the President would have had to be part of that. The House Managers raise no such contention.

An important piece of evidence on this issue was the undoubted testimony of Monica Lewinsky that she intended to deny her relationship with the President. As she was subpoenaed or the President coached her or Vernon Jordan helped her get a job.

LIMITATIONS ON THE HOUSE MANAGERS

The signals to the House Managers from the Senate were unmistakable. The Senate was unlikely to approve depositions if the list was too long. Responding to that advance notice, the House Managers submitted only three names for depositions necessarily leaving off potentially important witnesses. The President's White House staff then worked with the subcommittee. Given the absence of live witnesses and limitations on depositions, the House Managers have been compelled to rely on transcripts from questioning by the Independent Counsel in grand jury proceedings. Those transcripts have left many key issues unresolved.

TV AND THE TRIAL

The Senate proceeding posed a curious dichotomy with one hundred sitting silent Senators in the Chamber and non-stop Senators' interviews in the corridors and media galleries. The case was really not being tried in the Senate Chamber, but in a sense was being tried in the Senate corridors, on the evening TV interview shows and on the Sunday talk shows.

I declined TV interviews after the day the trial began. I am the only Senator on the ground that my oath to do "impartial justice" was in jeopardy by interviews on the day's proceedings which might conflict with my juror's functions. Again, oddly, on the occasions when Senators were permitted to speak on the Senate floor on the motion to dismiss and the resolution on depositions, the sessions were closed so that the public could not hear our debate.

Efforts to open the Senate proceeding during final deliberations also failed to get the two-thirds vote to overturn the Senate rule closing the Chamber. I thought the public and posterity should know the reasons for our votes as a guide for today and the future. The informal, seat-of-the pants, cold transcript, it is possible that the Senate and the American people would not have had the burden of persuasion, as I see it, to establish that the national interest warranted removal from office.

Perjury and obstruction of justice are serious offenses which must not be tolerated by our society. However, I remain unconfident that impeachment is the best course to vindicate the rule of law on this defensive conduct. President Clinton may still be prosecuted in the Federal criminal courts if his lawyers have, in effect, invited that prosecution by citing it as the preferable remedy to impeachment.

A criminal trial for the President after his term ends may yet be the best vindicator for the rule of law. If the full weight of the evidence with live witnesses had been presented to the Senate instead of bits and pieces of cold transcript, it is possible that the Senate and the American people would have had the President's appearance in the well of the Senate. Under firm examination, the President might have displayed the egregious character described harshly by his defenders in their proposed censure petitions. That sequence might have led to his removal.

But on this record, the proofs are not present. Jurisprudence in criminal cases under the laws of Scotland have three possible verdicts: guilty, not guilty, not proven. I will not join in this trial. I suspect that many Senators would choose "not proven" instead of "not guilty".

That is my verdict: not proven. The President has dodged perjury by calculating evasion and poor interrogation. Obstruction of justice fails by gaps in the proofs.

Many Senators have sought to express their gross displeasure by findings of fact or censure. I reject both. The Constitution says judgment in cases of impeachment shall not extend beyond removal and disqualification from future office. Under the crucial doctrine of separation of powers, the Congress is not and should not be in the business of censuring any President. We are properly in the business of examining our own conduct as Senators. On that score, on the record of this "pseudo-trial", it is my view that the President failed the constitutional mandate to "try" this case.

I ask unanimous consent that Appendices A, B and C be printed in the RECORD.

There being no objection, the appendixes were ordered to be printed in the RECORD, as follows:

APPENDIX A

When the Republican and Democratic caucuses could not agree on the preliminary procedures and witness issue, including depositions, a vote was set for late afternoon on J anuary 7th. That vote was canceled in an effort to achieve a bi-partisan compromise. A joint caucus was then held in the Old Senate chamber at 9:30 am on J anuary 8th where the outline of a procedural agreement was reached. The agreement was read at the first stage without resolving the witness or deposition issues, but deferring them until we knew more about the opposing parties' cases.

While a resolution of agreement was being drafted in the early afternoon fleshing out the compromise, Senator L O T T asked Senator K Y L, Senator SES S I O N S and me to explore the case to determine what witnesses, if any, the Senate should hear for that vote. In the afternoon, Senators K Y L and S E S S I O N S and I met with Chairman H E N R Y H Y D E and some of the House Managers to inform them of the joint discussions, to get a preliminary idea of their thinking on witnesses and to set up a meeting for the afternoon of J anuary 11 to get their specification on what witnesses they believed necessary for the Senate trial. Later on the afternoon of J anuary 8th, Resolution 16 was agreed to 100 to 0. In an effort to carry out a bi-partisan approach, I called Senator L I E B E R M A N on the morning of J anuary 11th to invite him and/or other Senate Demo crats to an afternoon meeting with House Managers. He said he would check with Senator D A S C H L E and then called back to decline. Senators K Y L, SES S I O N S and I met with the House Managers that afternoon to review their witness list. We advised them that the Democrats were opposed to the witnesses and the position among Republican Senators to a lengthy trial with many witnesses. We said their best opportunity for witnesses would be to show conflicts in the record testimony which could establish the need for seeing and hearing the witnesses to evaluate their demeanor. They responded they needed witnesses beyond conflicts to show the tone and tenor of their case. We said they might consider using their 24 hours of opening statements to develop the case as they saw it, for specific witnesses.

I called White House Counsel Charles Ruff on J anuary 12th advising him of
the meeting with House Managers stat-
ing that Senators KYL, SESSIONS and I
were interested in meeting with the
President’s attorneys. Mr. Ruff called
back on January 13th declining the in-
vitation.
On January 25th, in advance of con-
sideration of Senator BYRD’s motion to
dismiss and Senator LOTT’s resolution
on taking depositions, Senator LOTT
requested Senator KYL and me to talk
to House Managers to determine how
they would respond and for what purpose. Senator LOTT
had extended an invitation to join
in those discussions to Senator DASCHLE
who declined. Before that meeting was
held on January 25th, I advised Senator LIEBERMAN of the scheduled meeting and
told him Senator DASCHLE declined Senator LOTT’s invitation.

Between our January 11 and January
25th meetings with House Managers,
there had been numerous public com-
ment by Republican Senators opposing
taking depositions and for what purpose
with some expressing possible opposi-
tion to any deposition witnesses. When Senator KYL and I met with House
Managers on January 25th, we said it
was problematic whether there would be
51 or more votes for a lengthy wit-
ness list.

In arguments before the full Senate,
House Managers complained about the
limitations on deposition witnesses and
expressed their interest in calling live
witnesses. In his “Judgement in Cases of
Impeachment” of the United States,” J
Justice Joseph Story notes that impeachment “is not so much designed to punish an
offender as to secure the country against gross political
misdeavors. It touches neither his person nor property but simply divests him of his
political capacity.” The impeachment process does not contemplate Congress imposing any
penalty, including censure, as part of an
impeachment proceeding. Once the impeach-
ment proceeding is over, the final judgment shall be rendered.”

Several Rules provide for a trial in the provision of Article 1, Section 3, Clause 6: “The Senate shall have the sole
Power to try all impeachments” (Emphasis added). The seriousness and magnitude of re-
move from office. The Starr Report may be.

5. Concluding observations
6. Possibility of conviction
7. What does the Senate do?

Concluding observations

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6. Possibility of conviction
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bound by traditional rules of evidence so that we might consider matters not admissible in a court of law, it would seem questionable or appear unseemly to base our judgment on the mere hearsay on such an important proceeding.

The provisions of Article 1, Section 3, Clause 7 carry forward the analogy of trial referred to in the Senate Sitting as a Court of Impeachment. The Senate, subject to a Rule of the Senate, shall have power to compel the attendance of witnesses. "..." Rule 17 provides that: "Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side."

Although the Rules never explicitly give the parties the right to call witnesses, the language "on behalf of the party producing them" in Rule 17 implies that the parties do have such a right. The practice of the Senate, confirmed in the Rule, is that the parties have the right to call witnesses. For example, in the trial of Andrew Johnson, witnesses were called and heard over a period of one week. In the trial of Alcee Hastings, both sides were allowed to call a total of 55 witnesses.

The provision that the Senate does not conclusively rule out the propriety of proceeding on the Starr Report.

The House of Representatives relied upon the Starr Report for the facts even though the practice of the House in prior impeachment hearings has been to take testimony from witnesses. "Hins' Precedents of the House of Representatives" notes that in four instances witnesses were called during the House impeachment hearings on Senator Blount and Judge Perry. More recently, during the House deliberations on the impeachment of President Nixon, Judge Claborne, Judge Hastings and Judge Nixon, numerous witnesses were called to lay a factual basis for the impeachment charges. In the case of Judge Nixon alone, witnesses provided testimony to the House committee for over a month.

As a practical matter, it is obvious the House did not take the time to hear witnesses because the House proceedings were structured to finish in the abbreviated time frame of November 15th and the end of the year. Starting in mid-November and seeking to finish shortly after mid-December, that time frame was even further constricted.

**HOW LONG WILL THE SENATE IMPEACHMENT TRIAL TAKE?**

It depends entirely on what the Senate seeks to do and what parameters are established.

If the Senate peremptorily chooses to dismiss the House articles without consideration, there is authority that could be accomplished by a majority vote on a motion to adjourn. In the impeachment trial of Andrew Johnson, the Senate voted on three of the eleven articles of impeachment. After failing to secure a conviction on these three articles, the Senate was advised that the Senate sitting as a court of impeachment adjourn sine die. The motion carried and the trial of Andrew Johnson ended prior to a vote on the third article. It may well be that the Senate's position to impeachment had the same basis. Once we get to the Senate trial, my view may change if it is no more trouble to get rid of him than to try him. Perhaps the public will have a similar change of heart.

If the House returns Articles of Impeachment, the Senate should proceed with a deliberate trial. The House is already under pressure and sometimes does because the serious issue of the House is the historical impact call for an unhurried, deliberative trial. To the maximum extent possible, we should make the proceeding non-partisan. Concessions to the minority on some procedural matter would be worthwhile. As the majority party in charge, we should take the lead on non-partisanship. We should avoid the House bickering at all reasonable costs.

The Senate prides itself on being the wisest deliberative body. This trial will be by far the highest visibility for the Senate in its history to date and for the foreseeable future. While the President will be on trial, the Senate will be on trial.

**CONCLUSION**


To: Senator Trent Lott, Majority Leader.

From: Senator Arlen Specter.

Supplementing my memorandum of December 10 and our telephone conversation of December 22, this memo suggests procedures to deal with the Senate trial in light of the public dissatisfaction with the House procedure. The Senate impeachment trial generally and ways to achieve a judicious, non-partisan Senate trial. Since this memorandum was written while I have been traveling, the rules and case citations could be checked only by long-distance telephone.

**CAN PROCEDURES BE STRUCTURED TO SHORTEN THE LENGTH OF THE TRIAL?**

Yes, while it is impossible to say with certainty, extensive pre-trial procedures can be put into place to abbreviate the trial with a reasonable likelihood of reaching a verdict within a few weeks (perhaps even two or three weeks as early as you—Senator Lott) as contrasted with some assessments that the trial would take months or the better part of a year.

The Senate already is under pressure and will probably be under greater pressure to finish at an early date which accounts for the call for short-circuiting the trial through a plea-bargained censure. It is obviously in the national interest to end the trial as soon as possible without rushing to judgment and it would doubtless meet with public approval to announce at the outset a plan to accomplish that.

Several steps could be taken to abbreviate the trial time.

- The Senate can decide to issue a submission of pre-trial memoranda by the parties followed by a pre-trial conference with the Chief Justice to establish the parameters of the trial.
- The Senate can establish long trial days and Saturday sessions.

Without management and limitations, the lawyers could take a long, indeterminate time. The business community, for instance, this trial could be managed by having the parties submit pre-trial memoranda which
would identify any pre-trial motions, list prospective witnesses and lines of questions, etc., and approximate the time involved at each stage. The Chief Justice would then meet with the parties and issue a pre-trial order establishing the trial parameters just as the presiding judge does in Federal court trials.

NON-PARTISAN SENATE

In an impeachment trial, Senators function in a very unusual way in that we are both jurors and judges. A majority of Senators may overrule the Chief Justice's rulings. I suggest that the Senate establish itself as a court of law for the Hastings, Nixon or Claiborne trials, this is obviously a very different matter. The impeachment trials of President Johnson and those which occurred earlier offer little guidance on how the Senate should proceed today.

The existing Senate rules on impeachment are a starting point. They can be changed by a majority vote unless there is disagreement in which case proposed changes are debatable and subject to a two-thirds vote.

It is only through bipartisanship that the Senate will have a fair, non-partisan trial which can generate public acceptance. So, all significant procedures must have the concurrence of most Senators from both parties.

In my judgment, it would be appropriate and practical to structure the presentation of the evidence by having a small bipartisan Senate committee work with the House managers and President's lawyers on what the Senate wants presented in a tightly focused case, taking into consideration any differences in Waite and Nixon, the Senate managers which could then be worked out.

Arguments in appellate courts customarily take the form of written briefs, not oral arguments. Judges focus on the questions they want addressed as opposed to having the lawyers decide how to use their allotted time. It would be an advantage for appellate procedures to have the Senate direct, or work out collaboratively with the House the evidence the Senate wants to hear.

I suggest that a small committee, perhaps five Senators with three Republicans and two Democrats, work up a trial format and brief trial. It will be helpful for the Senators to have had criminal defense experience. This Senate committee, or perhaps one Republican and one Democrat, should participate in preparation of the pre-trial memorandum and pre-trial conference.

LONG TRIAL SESSIONS

Substantial evidence could be presented with trial days from 9:30 am to 5 pm or even 9 am to 6 pm with Saturday sessions. The Philadelphia criminal courts had mini sessions so we could proceed expeditiously and as soon as possible. Even with the trial ending at 5 pm or 6 pm, some Senate business could be conducted in the evenings on confirmations or other business which can be handled by unanimous consent.

We might consider canceling our February and March recesses for the trial, which would likely produce significant public approval.

THE IMPORTANCE OF LIVE WITNESSES

I strongly recommend live witnesses on the key issues also to prohibit any admission against use of hearsay such as the Starr Report. Prior impeachment cases establish the precedent for live witnesses and the Senate can work out its rules for live witnesses. Live witnesses have customarily testified in House impeachment proceedings. In the Senate, for example, live witnesses testified in the Watergate and in the most recent impeachment case on judge Alcee Hastings. Senate Rules 6 and 17 establish procedures for dealing with witnesses.

The dignity, tenor and stature of the Senate trial call for live witnesses on an impeachment of this magnitude. Everything the Senate does will be subjected to a microscope both contemporaneously and historically. While it is a sweeping generalization, I think it is fair and accurate to say that any trial in history to date has been or will be so closely watched.

We have some gauge as to how closely this trial will be scrutinized from the work of the Warren Commission which has been the most closely watched investigation in history. Notwithstanding constant pressure from Chief Justice Warren, who wanted the inquiry concluded at an early date, the staff lawyers insisted on extensive and extensive interrogation knowing the record would be closely examined. At that time, we couldn't conceive of the extent of the scrutiny, but we can imagine what was coming. At this time, the Senate should be on notice to cross every "t" and dot every "i" twice.

It may be sufficient to use the Starr Report to establish some of the lesser proofs for the record.

Without attempting to be dispositive on who are all the key witnesses and what are all the indispensable lines of questioning, a suggested focused strategy would be to call: (1) Betty Currie to testify on the jury issue by covering the numerous times she and the President were alone (he claimed they were never alone) and the specifics of their conduct on the issue as to whether they had sex. (2) Monica Lewinsky to testify in a closed session on the details of their sexual relationship. In retrospect, the Judiciary Committee might have been wise to hear some of the testimony by Prof. Hill and Justice Thomas in a closed session. In the confirmation hearing of Justice Breyer, testimony was taken in a closed session on his finances.

Even though most, if not all of Ms. Lewinsky's testimony has already been made public, it would be less offensive to public taste and arguably less prejudicial or more considerate of the President to avoid the spectacle of television on the specifics of their sex. Any objection to the closed or secret hearing could be largely answered by releasing a transcript to the public at the end of each day.

If the President testifies, consideration should also be given to a closed session on the specifics of their sexual activities. It is not necessary to resolve the factual differences in order to have a closed session with the President, but these questions will have to be threshed out at the time depending on the feel of the case.

In order to have a closed session, there would have to be a modification of Rule 20 which requires the Senate doors to be open except during deliberation.

(1) The Constitution specifies the two remedies or consequences in cases of impeachment which necessarily precedes censure: "Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold any Office of honor, Trust or Profit under the United States"—Article I, Section 3, Clause 7. The language "shall not extend further" specifically precludes censure or any other penalty not already enumerated in the Constitution.

The argument is now being strenuously advanced by many, including some Senators, that the impeachment trial should be ended at an early stage by a motion to adjourn the Senate and then, by pre-arrangement, taking a resolution of Censure by a two-thirds vote by the Senate and House. In my judgment, that would be a perversion of and at variance with the Constitution or, simply stated, unconstitutional.

(2) Censure would meanlessness for this President—not worth a "tinker's dam." Censure would be the least possible which could be used whenever the Congress of one party wanted to express displeasure or embarrass the President of the other party. Simply stated, the Congress is not in the business of censuring the President under our Constitutional separation of powers.

(3) Censure would prejudice a possible later criminal prosecution of the President after he leaves office. There will be an inevitable sense that censure will constitute a form of pre-sentence or final vindication which not technically double jeopardy, which would preclude a later prosecution, as a practical matter.

The prospects for censure have been dampened by Vice President Gore's statement that the President would not accept censure conditioned on the President admitting to lying under oath even if that admission could not be used against him in any criminal proceeding. Even if the President would admit to lying under oath, he would most certainly object to the procedures necessary to rule out use of that admission in a criminal prosecution.

The Senate, or the Congress, can grant immunity from future criminal prosecution. The Senate can take steps to have immunity granted by the Court. But the Court cannot grant immunity and the President or any witness asserts the privilege against self-incrimination under the Fifth Amendment. The Court then grants immunity and the testimony cannot later be used against that person in a criminal prosecution.

Several factors have led the President to announce his unwillingness to admit to lying under oath, it is fruitless to suggest the Fifth Amendment.

PREVIOUS CONSIDERATION OF AN ARRANGED DISPOSITION FOR CENSURE?

For the Senate to have all the facts—or all versions of the facts from which Senator-jurors must determine what the facts are, the
In my legal judgment, President Clinton should have complied with the Senate rules in answering questions by "either in person or by attorney." So the attorney's action satisfies the rule that a defendant has the right to compel the attendance of witnesses and to enforce his or her opponent "as on cross" which means that compulsory process be available for the discovery of all facts. The very integrity of the system depends on full disclosure of all facts. The principle: "That the public . . . has a right to recollect one such meeting of all Senators in President Nixon's case and civil litigation. That accommodates the President's grand jury testimony.

At this moment, it is impossible to judge what the feel or tenor of the trial would be without the President testifying and the appearance of all the facts. The trial shall proceed, nevertheless, as upon a plea of not guilty.

President Johnson's case, although not dealing with impeachment, is further instructive in this point, that a plea bargain could be structured with the Independent Counsel's concern that the President would resign with his pension, his law license and immunity from prosecution.

Once a trial starts, the genie is out of the bottle and anything can happen. Emotions in all directions are at an all-time high with Republicans, the President, Democrats or anybody else in the line of fire at risk for the ultimate public's view that the President's other business would not be attended to forever long the trial took.

That is why I continue personally to favor putting the President accountable until after his term ends through the criminal process. That accommodates the public's short-term desires for the Congress, the President and the Supreme Court to focus on the nation's business and the long-term national interest to later hold the President accountable for the serious crimes that the grand jury so decides, and to sentencing by a judge if a jury convicts.

The public reaction

Prospects are reasonably good that the public reaction would not react unfavorably to a non-partisan, judicious, focused, relatively brief Senate trial. In addition, the public would likely understand the Senate has an explicit Constitutional duty to hold a trial after Articles of Impeachment are passed by the House. There has already been a bipartisan recognition of this duty by Senators who are Democrats or Republicans. Public reaction, as gauged by the polls, was adverse to the House proceedings, at least in part, because of their highly partisan nature. If House managers had said articles of impeachment were never zoned in or highlighted the highly incriminating evidence. There may even be some grudging public approval that Congress is willing to take action on a significant matter contrary to the polls.

A favorable public reaction will depend largely on whether the public is feeling that the proceedings are bipartisan, so the Senate must take extreme care to make the trial bipartisan. As the majority party, we Republicans should bend over backwards to avoid even the appearance of seeking partisan advantage which marred the House proceedings.

I strongly support the suggestion that there should be no separate party caucuses on impeachment issues. It would be useful to have both parties agree to such a rule, such as January 8, 1999, when we will all be in town, to discuss ideas on how to proceed. I recollect one such meeting of all Senators from both parties a couple of years ago on appropriations or budget issues near the end of the session.

CONCLUSION

History will cast a long shadow on what the Senate does in this impeachment proceeding.

The Senate should not, in effect, sweep the matter under the rug by relying on the hearings as the Starr Report for the key facts. Some say the Starr Report is a sufficient factual basis for Senate action because the facts are not in dispute. That is not true. A close reading of the President's testimony and his famous 82 answers to interrogatories demonstrate that he has not conceded the accuracy of the key incriminating evidence. As detailed above, the Senate can leave it to the criminal courts to put the facts on the historical record and have the indicting grand jury, trial jury and presiding judge hold the President accountable to whatever extent warranted after his term ends. A rush-to-judgment censure plea bargain would protect the President from the key facts. Some say the Senate does in this impeachment proceeding.

Mr. LEVIN. Mr. Chief Justice, colleagues, first a personal note to our leaders: How proud I am of them, and we all are of you, for holding us together during this very, very difficult time. We will all be closer for having come through this, regardless of what this vote is or how we individually voted.

The burden of proof on the House that the President has committed high crimes and misdemeanors and should be removed from office is a heavy burden, because the effect is so dire in a democracy that depends upon the election of the President. In my judgment, the House of Representatives has not carried that burden of proof as to the specific allegations against the President. The House repeatedly relies on inferences from the Starr Report for the key facts. Some say the Senate should not, in effect, sweep the matter under the rug by relying on the hearings as the Starr Report for the key facts. Some say the Senate does in this impeachment proceeding.

First, the House managers said articles of impeachment under the testimony of Monica Lewinsky, the President encouraged her to lie." That is the words of the House brief. Second, the testimony of Monica Lewinsky...
leads to the conclusion that it was the President who initiated the retrieval of the gifts and the concealment of the evidence.” Third, “The President needed the signature of Monica Lewinsky on the false affidavit and that was assured by the efforts to secure her a job.”

Those are all direct quotes. Each one of them is contradicted by the explicit testimony of people from whom those inferences are drawn.

Let’s just take them one by one. The House managers’ inference that it was, “President Clinton who initiated the retrieval of the gifts and the concealment of the evidence on December the 28th,” was contradicted by Monica Lewinsky’s direct testimony that she initiated the concealment of the gifts. It is uncontested that on December 22 she took some of the gifts and concealed the rest—some of the gifts to her lawyer’s office. She decided on her own that she would not turn over the gifts in response to that subpoena because they would embarrass her, or they would, in her words, disprove that there was a special relationship. So on the 22nd she decided on her own to withhold some of the gifts. And yet we are told by the managers by inference that somehow or other it is the President who initiated the withholding and the concealment of the gifts.

And then on the 28th, when they met at the White House, it was Monica Lewinsky who said, “Maybe I should get some of the gifts to Betty.” She initiated the question. And then the President said either nothing or, “Let me think about it.” Then the question came up: Well, then made the phone call relative to the pickup of the gifts? Was it Monica Lewinsky calling Betty Currie or was it Betty Currie calling Monica Lewinsky?

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

But one of the most intriguing issues in this whole matter, one that I have really given a lot of thought to, is the question: Why would the President give Monica Lewinsky gifts on December 28 if he was concerned about it and wanted to withhold and hide the gifts? It is one of the questions that didn’t get a lot of attention by the managers.

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

Now, here is the way the House addressed that issue. They asked themselves in their brief the question: Why would the President give Miss Lewinsky gifts at the same time he was asking her to conceal others that he had already given her? Answer from the House in their brief: The only logical inference—only logical inference—is that the gifts, being symbolic of strength, were a tacit reminder to Ms. Lewinsky that they would deny the relationship even in the face of a Federal subpoena. That is the inference that they say is the only logical inference from giving three gifts to Monica Lewinsky, including a bear.

Now, there is a real problem with that. First of all, that bear was obtained by the President in Vancouver before he knew of her entry into the White House. Second, that witness list and pick up a symbol of strength while in Vancouver so that he could do nothing to deny their relationship in the face of some future, unforeseen Federal subpoena.

But even more to the point, Monica Lewinsky was asked directly at the grand jury—directly—this question as to whether or not she interpreted the gift of the bear as a signal to her to “be strong in your decision to conceal the relationship.” Her direct, one-word answer was that the managers come here saying the only logical inference that can be drawn from three gifts being given from the President on the 28th is that the President was signaling to her to be strong in the face of a Federal subpoena. Is that the kind of inference we are asked to draw?

Now, I was raised on the burden of proof, both as a prosecutor in civil rights cases and as a defense lawyer. The House cannot carry the burden of proof here. The managers do not make their case. The House cannot carry the burden of proof, both as a prosecutor in civil cases and as a defense lawyer. The House cannot carry the burden of proof in an impeachment trial. And then the thinking disintegrated here. Vernon Jordan’s meeting was before the judge’s order. And yet that is what we are asked to base the removal of a President on. And then the thinking shifts to another theory. Removal of an elected President from office has got to be made of sturdier stuff than these kinds of inferences.

Finally, on the double standard issue—and I think we all must be concerned about that—a former prosecutor who appeared in front of the House said the following. And Senator SARBANES is correct, if he has one line which quotation I want to repeat that, because it is so important, and then add one other thing that they said. “In conversations with many current and former Federal prosecutors in whom I have great faith, virtually all have agreed that the managers’ inference is contradicted by the explicit testimony of Betty Currie and Monica Lewinsky who said, “Maybe I should get some of the gifts to Betty.”’’

Now, here is the way the House addressed that issue. They asked them a question that the managers did not answer. That order came in the morning, which was wrong, and in the presentation here in the opening arguments Manager HUTCHINSON said the following: The witness list came in, the judge’s order came in, and then the President triggered Ver- non Jordon’s meeting and real activity. Something happened that day. What was it? I judge Wright’s order.

In their House brief, it is said that that order came in the morning, which was wrong, and in the presentation here in the opening arguments Manager HUTCHINSON said the following: The witness list came in, the judge’s order came in, and then the President triggered to action. And the President triggered Vernon Jordon into action. That chain reaction here is what moved the job search along.”

Wrong. It disintegrated here. Vernon Jordon’s meeting was before the judge’s order. And yet that is what we are asked to base the removal of a President on. And then the thinking shifts to another theory. Removal of an elected President from office has got to be made of sturdier stuff than those kinds of inferences.

I know this is not a criminal case, this is an impeachment trial, but I would think that our standards should be at least as high as would be in a criminal case, and that if this President would not be prosecuted, much less convicted for these specific charges—and these were criminal charges that were very specifically made by the managers against the President—if that prosecution and conviction would not take place in a criminal case, we should be loathe, I believe, and very, very cautious and care before we remove an elected President from office.

I learned about the burden of proof and presumption of innocence as a young boy, long before law school, when my father, who was a lawyer, taught me that American justice is dependent on these principles. As I grew up and became a lawyer myself, I experienced firsthand the significance of those bedrock principles and I learned that it applies to all Americans accused of crimes, including the President. These principles of the burden of proof are Std/St.
proving the presumption of innocence help guide me now as we exercise our constitutional duty to judge the specific accusations of criminal behavior lodged against the President of the United States.

The burden of proof on the House of Representatives that the President has committed serious crimes and should be removed from office is a heavy one, because overturning an election in a democracy is a drastic and dire action. The House has not carried that burden of proof as to the specific accusations against the President.

The arguments of the House Managers in support of the Articles suffer from fundamental weaknesses. They repeatedly rely on inferences while ignoring direct testimony to the contrary; they omit key materials which contradict their charges; and they contain serious misstatements of key facts. In a matter of such consequence as the removal of an elected President from office, such a case should not lead to conviction.

Let me cite some key examples from Article I, the allegation of obstruction of justice. First, the House Managers in their report, brief, and arguments to the Senate repeatedly rely on inferences to prove key points and ignore direct testimony to the contrary. In opening arguments, House Manager Hutchison made the following claims:

- As evidenced by the testimony of Monica Lewinsky, [the President] encouraged her to lie.
- The testimony of Monica Lewinsky and Vernon Jordan was a tacit reminder to Ms. Lewinsky that they would deny the relationship.
- Ms. Lewinsky's certainty of the President's involvement, as evidenced by her to lie.
- The President needed the signature of Monica Lewinsky on the false affidavit, and that was assured by the efforts to secure her a job.

Mr. Hutchison's arguments rely on inferences. Relying on inferences is not unique to proving a case. What is unique is that in this case, the House Managers use inferences primarily from bits and pieces of testimony of people who explicitly deny those inferences in their direct testimony. The House Managers' inference that the President withheld gifts which would "give away" Monica Lewinsky is a direct contradiction of a statement made by Ms. Lewinsky in a direct interview.

The Managers' reliance on inferences from testimony of persons whose direct testimony contradicts the inference was a recurring pattern during this trial. The Managers alleged that the signing of the affidavit and the obtaining of the job for Ms. Lewinsky were linked, based on inference from bits and pieces of testimony of Monica Lewinsky and Vernon Jordan. But Vernon Jordan and Monica Lewinsky explicitly denied any such linkage. Ms. Lewinsky said, "There was no agreement with the President, [Jordan] or anyone else that I'd have to sign the Jones affidavit before getting a job in New York." Mr. Jordan told the grand jury in answer to the question whether the job search and affidavit signing were linked, "unequivocally, indubitably, no."

Impeachment and removal should be based on sturdier foundations than the heap of inferences that have been placed before us, when those inferences are pieced together from bits of testimony of witnesses whose direct, explicit testimony refutes the inferences. The House Managers would have us overlook the forest of direct testimony while getting lost in the trees of the multiple inferences.

The House Managers' case also omitted directly relevant, contradictory material and misstated key facts. For instance, the House Managers argued in their brief that the meeting between Vernon Jordan and Monica Lewinsky "occurred for the purpose of discussing 'nothing happened in November of 1997.' But, in fact, our Ambassador to the United Nations, at the request of the Deputy Chief of Staff of the White House, offered Ms. Lewinsky a U.N. job on November 3rd.

The House Managers' report explicitly represented that "(the) first activity calculated to help Ms. Lewinsky actually took place in December 11," and that "(something happened that) changed the priority assigned to the job search." What happened, the Managers argued, was a court order on the morning of December 11 by Judge Wright requiring President Clinton to provide information about prior relationships involving state and federal employees. The Senate was told by the House Managers that "(s)uddenly, Mr. Jordan and President Clinton were now very interested in helping Ms. Lewinsky find a good job in New York" and that Vernon Jordan got active on the afternoon of December 11 when he and Ms. Lewinsky met.

Manager Hutchison said in his argument to the Senate:

- The witness list came in. The judge's order came in. That triggered the President to action. And the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along.

But that key argument disintegrated before our eyes when it turned out that Judge Wright's December 11 order came late in the day, well after the meeting between Vernon Jordan and Monica Lewinsky, and in addition, the meeting had been scheduled many days before.

With respect to the perjury article, the House Managers failed to meet their burden as well. The President admitted to the grand jury that he did have "inappropriate intimate contact" with Monica Lewinsky when he was alone with her, and the House Managers failed to identify specific statements that would meet the requirements of a perjury charge.

The lack of substantive evidence supporting the charges explains why a panel of five highly regarded former Democratic and Republican federal prosecutors, who appeared before the House Judiciary Committee, testified that this case against the President would not have been pursued by a responsible federal prosecutor. Thomas Pickering, who served as U.S. Attorney for the Northern District of Illinois, and whom Chairman Hyde described as having "extraordinarily high" qualifications had this to say:
... (In conversations with many current and former Federal prosecutors in whose judgment I have great faith, virtually all concur that if the President were not involved, a citizen were found in another of the so-called Watergate matters, the prosecutor would not be prosecuted by a responsible United States Attorney.

Finally, I have had a deep concern about the impeachment process which formed the basis of this trial. While my decision to reject the articles is based on the inadequate proof of the crimes alleged, the process which brought this matter to trial was deeply flawed.

The articles of impeachment before us are all allegations of conduct committed by the so-called Starr Report, compiled by an outside prosecutor, not by the legislative branch itself, which has under the Constitution the "sole" responsibility for impeachment. Instead of doing an independent investigation, the House of Representatives unwise delegated, in my judgment, the critically important investigative function to an outside prosecutor in the case of the President and an actual advocate of his impeachment. The House took that prosecutor's record and his testimony and made them the basis of articles of impeachment presented to us.

The contrast to the Watergate investigation and the impeachment of President Nixon is stark. In the Watergate investigation, the Senate convened a select committee in February 1973 to investigate the Watergate break-in and other campaign irregularities in the 1972 election. That committee took testimony for a year. In February 1974, the committee voted to direct the House Judiciary Committee to conduct an inquiry into impeachment. The Committee conducted its own investigation, including subpoenaing the White House tapes and calling numerous fact witnesses. The Committee also obtained the grand jury report of the Watergate prosecutor. In deciding to allow the grand jury report to be forwarded to the House Judiciary Committee, Judge Sirica found that the report:

- draws no accusatory conclusions... contains no recommendations, advice or statements that infringe on the prerogatives of other branches of government. (and) renders no moral or social judgments. The Report is a simple and straightforward compilation of information gathered by the Watergate prosecutor, and so more. 


The report sent to the House of Representatives in the matter before us violated almost every standard followed by Judge Sirica. The Starr Report didn't present the evidence in an impartial manner as contemplated in the independent counsel law. It drew a host of "accusatory conclusions" and rendered judgment. The report contained a large volume of needlessly salacious detail and omitted or dismissed important exculpatory evidence. The impeachment process has suffered as a result.

Moreover, the House made a significant and irreparable mistake in the actual drafting of the articles. Each article alleges multiple acts of wrongdoing. Thus, it would be impossible to determine after a vote on the articles whether 23rds of the Senate majority actually agreed on a particular allegation. Article I, for example, charges that President Clinton committed one or more of the 4 possible acts of perjury; Article II charges that President Clinton committed one or more of 7 possible acts of obstruction of justice. Without separate votes on each of the alleged acts, it would be impossible to determine whether 23rds of the Senate agreed that the President had committed any of the actions alleged. Since the Constitution's impeachment provision, upon a vote of 23rds of the Senate, the articles as drafted do not allow us to guarantee to the American people that we are complying with the requirements of the U.S. Constitution. This is a flaw that can be fixed, because the Senate does not have authority to amend the articles.

Alexander Hamilton in the Federalist Papers asked this question, "Where else than in the Senate could have been found a tribunal... which would be likely to feel confidence enough in its own situation to preserve, unawed and uninfluenced, the necessary impartiality between an individual accused and... his accusers?"

Each of us, however we vote, will soon answer that question, as we stand between the accuser and the accused, weighing the evidence. The issue before us is not whether the President's conduct was reprehensible; that is clear beyond any reasonable doubt. The issue is whether the President committed the alleged crimes for which he should be removed from office, a proposition which places on his accusers a heavy burden of proof. It is a burden the House Managers have not met, and I will, therefore, vote against the articles of impeachment.

I would like to add my thoughts on censure as well, since this may be the only appropriate opportunity to do so. I support the censure resolution authored by Senator Feinstein, and I commend her for her openness, diligence and hard work in bringing to fruition a bipartisan product. The President should know, the American people should know, and history should know that the name of every defendant on impeachment, we did not vote to acquit the President for his egregious conduct. I know of no Senator who is not deeply troubled by the President's conduct. While I do not believe the President's conduct in his private, consensual sexual relationship should have become the business of the American public, it did in fact become so, and we are here today to put our duty to tell the truth. And no matter how wrong or improper that disclosure of the President's private life was, it does not justify the lies the President told to the American people, his family and his staff.

I hope that our votes today on impeachment will conclude this unfortunate chapter in our political history and that the President, through a forthright acknowledgment of the wrongfulness of his behavior, will lead the nation toward healing the wounds these events have opened. I believe the American people want an end to this matter more than anything, and that any further criminal investigation of the President with respect to the matter should be immediately concluded. While Senator Feinstein's censure resolution states that President Clinton remains subject to criminal indictment, that is in the resolution as a statement of fact and not as a statement of our intent or lack of encouragement. Indictment after this impeachment trial would not be appropriate nor would it be in the public interest. Today's votes should bring this tragic episode to an end.

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

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

Acquittal must not be the last word. And while I have felt that it would have been more appropriate for the Senate to issue findings of fact in the impeachment case against the President, I am now prepared to support censure so that there is no mixed message for posterity about what the Senate thinks of the President's actions. And yesterday's events demonstrated that President Clinton's behavior is indefensible, and I for one have no interest in seeing another impeachment. While I do not find that the President's conduct in his private, consensual sexual relationship should have become the business of the American public, it did in fact become so, and we are here today to put our duty to tell the truth. And no matter how wrong or improper that disclosure of the President's private life was, it does not justify the lies the President told to the American people, his family and his staff.

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fact, about something very important—the sanctity of public service.

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

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

I believe acquittal, though the proper outcome, by itself could present a skewed picture of the Senate's findings, and runs the risk that the President's conduct for generations to come. Such a claim, evidence of which is already apparent, is quite simply and obviously, wrong.

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

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

Mr. KOHL. Mr. Chief Justice, throughout this process my colleagues and I have not cast myself to the side as the Office of the Presidency. And I will not let go of my firm belief that this President has done real damage to the Office of the Presidency. And I will not let go of a commitment to do everything I can to restore and protect the idea that good character is essential in those who ask to serve and represent this nation.

Let me explain in more detail why I am voting against both articles. First, removing a President is a drastic measure, called for in only the most extraordinary circumstances. And our Founding Fathers worried it to be used sparingly: that's why they limited impeachment to only "high crimes and misdemeanors" involving abuse of power, incapacity to hold office, or a serious threat to our Constitution or system of government.

But the President's conduct, however reprehensible, related to purely personal matters. He lied to the American people. He lied to his family, his friends and his staff. He lied under oath in a proceeding he may have obstructed justice. Simply put, his conduct was disgraceful and, possibly, illegal.

However, his actions did not relate to abuse of the power. They had nothing to do with his official acts or his capacity to hold office. They did not threaten our Constitution or system of government. Though serious offenses to our American values and decency, they do not rise to the level of constitutional "high crimes."

Some of my colleagues have a different view, and I respect their position. But even the House prosecutors respect mine. In response to one of my questions, House Manager Graham acknowledged that "reasonable people can disagree" about whether the President should be removed. In fact, he went on to say: 

"[I]f I was sitting where you're at, I would probably get down on my knees before I made that decision, because the impact on society is going to be real either way. And if you find the President guilty in your mind from the fact that's he a mere obstruction of justice, you've got to somehow reconcile continued service in light of that event. And I think it's important for this body not to have a disposition plan that doesn't take in consideration the good of this nation... [Y]ou've got to consider what's best for this nation."

Representative Graham deserves credit for putting candor above partisanship and inviting us to decide what's best for the country.

To ask that question is to answer it. It is true, of course, that we have removed judges for lying under oath; for example, ten years ago the Senate removed Judge Nixon on that basis. But impeaching the President, our highest elected official, is different. Judge Nixon was appointed. He held office during "good Behaviour." At the time of his Senate trial, he was already convicted and sitting in jail. He lied about not being a sex offender.

At the time of his impeachment, the only way a judge can be removed is by impeachment. A President, on the other hand, can be removed every four years through an election, and is automatically removed after eight years by the 22nd Amendment.

Second, in addition to the constitutional problems, the prosecution has not proved its allegations by clear and convincing evidence. This is especially true on the "obstruction of justice" charge, which is based on serious allegations. The House Managers argue that more witnesses would have made a difference in bolstering their case, and they may be right. But why then did the House choose not to call witnesses in its own proceedings, even though it had called "fact" witnesses in nearly every other impeachment?

Third, as many of us told the House in the Judge Jackson impeachment trial, lumping together a series of charges in one article—perjury and obstruction of justice charges and seven obstruction of justice charges here—isn't fair or responsible. Alarmingly, the President could be found guilty without a two-thirds...
majority believing any single charge. For example, in theory, even if each obstruction charge were rejected by a 90 to 10 margin, the President could be convicted—because ten different Senators convicting on each of seven separate charges would result in a vote of 70—more than a two-thirds majority.

Mr. Chief Justice, this kind of “one from column A and two from column B” approach may work for a Chinese restaurant menu, but it would not work for a President—or a judge. And this lack of specificity shortchanges the American people, who may never understand which charges were believed and which ones weren’t.

Still, President Clinton is not “above the law.” His conduct should not be excused, nor will it. The President can be criminally prosecuted, especially once he leaves office. In other words, his acts may not be “removable” wrongs, but they could be “convictable” crimes. Moreover, the House vote of impeachment—and the President’s misconduct with Monica Lewinsky—will forever scar this President’s legacy. Finally, Ms. Currie and should ensure the President, and we ought make our condemnation of his conduct as strong as possible.

In sum, Mr. Chief Justice, President Clinton’s conduct was wrong, reckless and indefensible. Under the Constitution it does not justify removal. But for those who love this country, it demands outrage and disappointment. It demands a commitment from this President and future Presidents, this Congress and future Congresses, Congress and future Congresses, that we demand that they not, and not ever again, to let personal weakness and personal failing stain or shake our democracy. Thank you.

Mr. THOMPSON. In 1994, Paula Corbin Jones sued President Clinton for sexual harassment which she alleged he committed against her in 1991, when he was Governor of Arkansas. The Supreme Court of the United States permitted the lawsuit to proceed in 1997.

Monica Lewinsky began work as a White House intern on July 10, 1995. At the time, she was twenty-one years old. She later worked in the Office of Legislative Affairs at the White House. In 1996, she left the White House for a job at the Department of Defense.

The first day that Ms. Lewinsky spoke with President Clinton, November 13, 1995, she and the President engaged in conversations. Their sexual relationship lasted until 1997. The two also engaged in telephone sex at least seventeen times, and they exchanged numerous gifts. The two agreed to keep their relationship secret through the use of cover stories. Ms. Lewinsky, if discovered in the Oval Office, was to say that she was delivering papers, although her job duties never included delivering papers. Once she left the White House, her visits to the President were disguised as visits to Presidential secretary Betty Currie.

The President told Ms. Lewinsky that she could return to the White House after the 1996 election had concluded. Although Ms. Lewinsky tried numerous times to regain employment at the White House, she was never able to do so. After being informed by a friend, Linda Tripp, that she would not be rehired, Lewinsky moved to New York. Ms. Lewinsky decided to seek employment in New York, initially receiving and rejecting a job offer with the United States Ambassador to the United Nations. She then decided to work in New York in the private sector. On November 5, 1997, she met with Vernon Jordan, a prominent Washington lawyer and friend of President Clinton, to seek his assistance in securing such a position. This meeting was arranged by Ms. Currie. Mr. Jordan took no action to help her in November, and does not remember meeting her at this time.

On December 5, 1997, attorneys for Ms. Jones notified the President’s attorneys of their list of witnesses. That list included Ms. Lewinsky. Although she was unaware at the time that her name was on the Jones litigation witness list, Lewinsky coincidentally decided to terminate her relationship with the President the following day, but would continue to work at the White House. President Clinton and Ms. Lewinsky initially exchanged angry words that day over the telephone, but later that day, she came to the White House at his invitation. During this meeting, the President responded, “I don’t know” or “Let me think about that.” Later that same evening, he asked the President to report on his efforts on behalf of Ms. Lewinsky.

Mr. Jordan drove Lewinsky to a meeting at which he would refer Ms. Lewinsky to Frank Carter, a Washington lawyer. Jordan later called Frank Carter, a Washington lawyer, to arrange a meeting at which he would refer Ms. Lewinsky to Mr. Carter as a client.

Notwithstanding Ms. Lewinsky’s denial of sexual relations with the President, Mr. Jordan asked President Clinton that same evening the same question. The President also denied having had sexual relations with Ms. Lewinsky. Jordan also conveyed a number of Lewinsky’s statements to the President, and informed Clinton that Lewinsky had received a subpoena to testify in the Jones case. Following a dinner, President Jordan asked President Clinton whether she, a person for whom he was providing job assistance, had had sexual relations with the President. Jordan then told President Clinton that Mr. Jordan had not appeared to have done anything to help her in her job search. In a conversation Ms. Lewinsky described as “sweet” and “very affectionate,” he told her that he would speak to Mr. Jordan about her job situation. The President did not at that time inform Ms. Lewinsky that her name was on the witness list.

Ms. Currie again called Mr. Jordan, and on December 8, 1997, Ms. Lewinsky was called as a witness with Mr. Jordan for December 11. Although Ms. Lewinsky provided Mr. Jordan with a list of corporations in which she was interested in obtaining employment, Mr. Jordan determined based on his own contacts which companies he would pursue on Ms. Lewinsky’s behalf. Following his meeting with Ms. Lewinsky, acting by his own admission at the behest of the President, Jordan called three corporate executives in New York. He also called the President to report on his efforts on behalf of Ms. Lewinsky.

December 11, 1997 was also the date on which Judge Susan Webber Wright, the presiding judge in the Jones litigation, issued an order permitting Jones’ attorneys to pursue discovery concerning the names of any state or federal employees with whom the President had had sexual relations, proposed sexual relations, or sought to have sexual relations.

On December 17, 1997, between 2:00 and 2:30 a.m., the President telephoned Ms. Lewinsky. He informed her that Ms. Currie’s brother had been killed, as well as that her name was on the Jones witness list. The President indicated that if Ms. Lewinsky was subpoenaed, she should let Ms. Currie know. He also told her that she might be able to sign an affidavit in that event to avoid testifying. In addition, he said that she could say that she was coming to see Betty or was bringing him papers. Ms. Lewinsky says that she understood implicitly that she was to continue to deny their relationship.

Ms. Lewinsky was subpoenaed to testify in the Jones litigation on December 19, 1997. The subpoena also required Ms. Lewinsky to produce all gifts that she had received from the President, and enumerated one specific gift that the President had given Ms. Lewinsky, a hatpin. Because Ms. Currie was in mourning, Lewinsky called Jordan, who invited her to his office. She was in a highly emotional state, and that fact, combined with her statements in the conversation, demonstrated her personal fascination with the President, prompted Jordan to ask whether she, a person for whom he was providing job assistance, had had sexual relations with the President. He says she denied such relations. Jordan then called the President on the telephone call from the President during that meeting, and made plans to see him that night. Jordan later called Frank Carter, a Washington lawyer, to arrange a meeting at which he would refer Ms. Lewinsky to Mr. Carter as a client.

The President met with Ms. Lewinsky on December 26, 1997, at which time they again exchanged gifts. They discussed the subpoena, and she expressed concern, which the President shared, about the specific enumeration of the hatpin, since that suggested that she knew new details of their relationship. Ms. Lewinsky then suggested taking the gifts out of her apartment or giving them to Ms. Currie. The President responded, “I don’t know” or “Let me think about that.” Later that same day, Ms. Lewinsky’s consistent recollection is that Ms. Currie called her and stated, “I understand you have something to give me” or “the President said you have something to give me.” Ms. Currie later drove to Ms. Lewinsky’s apartment, picked up a box containing gifts the President had given Ms. Lewinsky, and hid that box under her bed without asking any questions.
On January 16, 1998, Lewinsky's lawyer, Mr. Carter, sent President Clinton's counsel a copy of the affidavit. Mr. Carter also called the court twice on that day to ensure that the affidavit could be filed on January 17. But his phone calls were not successful. The President's counsel then asked Mr. Carter to file the affidavit. The President then called Mr. Jordan, who had been replaced as Ms. Lewinsky's attorney, and requested that he take the affidavit. Mr. Jordan then called the White House six times in the next twenty-four minutes, trying to relay this information. Mr. Jordan then called Mr. Carter again, and then called the White House again.

On January 20, the White House learned that a story about the President's relationship with Ms. Lewinsky would appear in the next day's edition of The Washington Post. On January 21, the President told his chief of staff and two deputies that he did not have any relationship with Ms. Lewinsky. He later told one of those deputies, John Podesta, that he had not had oral sex with Ms. Lewinsky.

Later on January 21, the President told his aide, Sidney Blumenthal, that Lewinsky had made a sexual proposal on him, and that he rebuffed her. The President told Blumenthal that he believed the President lied to him. The President testified that he was aware at the time that he had made his statements that his aids might be summoned before the grand jury.

The President also met with his political consultant, Dick Morris, on January 21. The President authorized Morris to conduct an overnight poll measuring potential public reaction to the affair. The poll concluded that the American people would forgive the President for adultery, but not for perjury or obstruction of justice. The President then indicated that he did not have to win, then the President told Morris that he did not have to win, then. The President's lawyers could not answer senators' questions why such a poll had been undertaken if the President had not committed any of these acts.

On January 21, the President met with Mr. Blumenthal, press reports began to appear that, quoting White House sources, characterized Ms. Lewinsky as a stalker, and as an "untrustworthy client." Although Mr. Blumenthal in his Senate deposition denied any knowledge of how White House sources were attributed to these stories, one journalist by
It should be noted at the outset that what we have in effect is a "mandatory sentence" wherein if there is a finding of guilt then one particular sentence must be imposed—in this case removal from office. However, unlike judges in criminal cases, the Senate may take into consideration the "punishment" in determining guilt. Some have contended that the President may be guilty of high crimes and misdemeanors, but his actions may not be sufficient for removal and that determination, by definition, means that the President is not guilty of high crimes and misdemeanors. I believe that this analysis is important in understanding the scope of our discretion and helps us get away from the notion that there is an objective standard for high crimes and misdemeanors if we could only find it. Historical analysis of the concept reveals that there is no "secret list" of high crimes and misdemeanors, but rather our forefathers perpetuated a framework that allows for a certain amount of subjectivity which may encompass changing times and differing circumstances.

Such a conclusion emerges from an examination of English law, original state Constitutions, our federal Constitution, the history of impeachment debates, American impeachment precedents and scholarly commentary. The phrase "high crimes and misdemeanors" can be traced back to the thirteen hundreds in England. It was clear from the outset that the phrase covered serious misconduct in office whether or not the conduct constituted a crime. Commentators say that the English impeachment tradition covered political crimes against the state and injuries to the state. Beyond that, it is difficult to determine conduct from the English tradition.

Apparently there was only one discussion during the Constitutional Convention that dealt with the phrase high crimes and misdemeanors and that occurred on September 8, 1787. As reported out of Committee, impeachable offenses included only "treason and bribery." Mason wanted to add "maladministration," which was also contained in many state constitutions. Madison made it clear that such language would leave the President at the mercy of the Senate. Madison contended that the wanton rejection of impeachment for political disapproval of policy. Impeachable offenses were "political" offenses and, as under English law, not necessarily criminal. Other guidance that can be derived from the Convention is the fact that the Framers may have taken note of the Constitution with respect to the Senate in the English system and, therefore, they thought that impeachable offenses should be something that any reasonable man could anticipate. He should not be punished for some crime made up after the fact. Also, there was to be a requirement for "substantiality." This mechanism was not designed for trivial offenses.

Ultimately, Ms. Lewinsky made such characterizations of the framers because their deliberations were in secret and nothing was printed from their deliberations. They intended for the ratifiers at the state Conventions and the authors of the Constitution to have an authoritative voice for interpretation of the provisions in the Constitution. It is fair to conclude that the attitude of the framers was reflected to a certain extent in the Federalist papers. The most definitive statement concerning impeachment were by Hamilton in Federalist 65 wherein he stated:

"The subjects of [impeachment] are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may be with peculiar propriety denominated political, as they relate to abuses done immediately to the society itself."

The ratifiers at the North Carolina convention spoke in terms of serious injuries to the Federal government. Iredell, later to become Associate Justice on the Supreme Court, stated that impeachment was "calculated to bring [great offenders] to punishment for crimes which it is not easy to describe but which everyone cannot doubt are high crimes and misdemeanors against governments... the occasion for its exercise will arise from acts of great injury to the community." He gave as an example of an impeachable offense the giving of false information to the Senate. Impeachment was not for "want of judgment" but rather to hold him responsible for "willfully abusing his trust." Iredell also called attention to the complexity if not impossibility of defining the scope of impeachable offenses with any more precision than the above. And the ratifiers at the Virginia Convention clearly agreed that a President could be impeached for non- indictable offenses.

There was continued discussion and debate after ratification concerning the impeachment process. James Madison contended that the wanton removal of meritorious officers would subject a President to impeachment and removal from office. Forty years later, Justice Story, in his Commentaries insisted that "not every offense" is a high crime and misdemeanor, that "many offenses, purely political... have been held to within the reach of parliamentary impeachments, not one of which is in the slightest manner alluded to in our statute..." He put forth the idea of defining "high crimes and misdemeanors" must be the common law," and left open the possibility that actions a civil officer took that were disapproved by the Senate in the English system and, therefore, they thought that impeachable offenses should be something that the society itself.
on documentation reflecting some of their thoughts, and the fact that perhaps they simply did not think of some of the problems that might arise in the future, we see a certain framework develop—certain perimeters within which we do not wish to be constrained.

The Senate's own precedents do not change this evaluation because they are not terribly instructive either. In impeachment cases, the Senate has convicted on seven occasions, acquitted on five, dismissed two cases on jurisdictional grounds and one case was withdrawn because of resignation. An acquittal serves little as precedent beyond the facts of the case since an acquittal can be based on any number of grounds (jurisdictional, failure to prove the factual allegations, offenses not rising to the level of impeachable conduct, etc.) and the motivation for the vote is not reflected when the verdict is rendered. Not guilty may be little more helpful in terms of precedent. The ac- quittal has only been one impeachment trial for a President, that of Andrew Johnson, and that of course, resulted in an acquittal. A large majority of the remainder of the cases have been those of federal judges.

The question has arisen whether judicial impeachments are to be considered by the same standards as presidential impeachments. It seems to me that certain simple reasons of the standard of "high crimes and misdemeanors" for a president must differ from that of a judge. Removing the President removes the elected head of the nation. Removing a single judge does not carry the same implications for the country. And while a President should act according to the highest standards of probity, it is quite easy to imagine circumstances that would warrant judicial impeachment that would not justify presidential impeachment, such asmaking decisions based on political considerations. It is also possible that certain crimes would be impeachable if a judge committed them, because of the specific nature of the judicial office in our system of government, but would not be impeachable for a President.

It has been argued that the standard should be different for presidents than judges because the former serves for a fixed term and the latter serve "during good behavior." There is little more help derived from convictions, in terms of precedent value. There has only been one impeachment trial for a President, that of Andrew Johnson, and that of course, resulted in an acquittal. A large majority of the remainder of the cases have been those of federal judges.

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attempts to subvert them, are also impeachable. Besides, it would seem to me, that subversion or serious damage to our governmental institutions constitute offenses against the state.

They also point out that one of the purposes of impeachment is to protect the nation from the offender President. I agree again that this may be one of the purposes of impeachment. However, it is not the only purpose, and protection of the public is not always a requisite. An offense has been defined as "bare and totally exposed, and the President is completely incapable of continuing his conduct, this lack of imminent threat to the nation does not necessarily mean that he should not be impeached. President Nixon probably would not have been forced from office if that were the only criteria.

Opponents of conviction also overlook the fact that we may look to the effects of the President's conduct. Even private actions, that serve to undermine the government or the people's confidence in the government or the President, may also be impeachable. In other words, opponents of impeachment overlook the categories that are applicable in impeachment cases, but they set them forth as exclusive when, in fact, they are not.

The impeachment bar has been raised even more recently by respected commentators in the media. The New York Times editorial page, for example, takes a position that the President's action must "threaten the welfare or stability of the state." On another occasion, they stated that the President's actions must "show some fundamental harm to the security interest or stability of the state or some attempt to undermine the Constitution. The problem with this is that there is absolutely no authority to support that view. Such a view relies exclusively upon the "protect the nation" theory of impeachment. The founders certainly did not mean that the President had to be on the verge of throwing the nation into chaos or endangering national security in order to be impeached.

It is extremely important that we refrain from latching onto a definition of "high crimes and misdemeanors" simply because it leads us inexorably to a conclusion that we may desire to draw. For example, a President's offense or offenses must be serious and/or have serious consequences. Also, while they do not have to be crimes, my own opinion is that in most cases they will be crimes. They must be crimes against the state, but we cannot adopt an unreasonable restriction of that term. The President does not have to order tanks to move on the J. Edgar Hoover building. Offenses against the state can include activity which will undermine our government's ability to function. How can we say that briging a judge to effect an outcome in a law suit involving a President's purely personal conduct constitutes an impeachable offense, but say that insinuating perjury into that same law suit to effect the same outcome is clearly not impeachable? And while it is true that the founders meant to cover public behavior, I believe they also meant to cover behavior that has a negative effect on the public if it is of sufficient gravity. Furthermore, if the President's conduct poses a threat and danger to a country, that certainly is a legitimate (though not exclusive) basis for that same conduct serves to undermine the President's credibility and moral authority, that could also pose a danger to the country and is similarly a legitimate consideration. And, again his conduct does not necessarily have to deal with his office. In the Constitution, a named offense is bribery (treason, bribery or other high crimes and misdemeanors), and bribery itself does not necessarily have to do with the President's official capacity, if the President is making the bribe.

I believe that the founders did not intend to make our job easy. They provided no list of offenses. They refused to spare us from the difficult analysis that has now come through. We must take into consideration the offense or offenses, the capacity in which they were committed, the effect on our public institutions, the effect on our people and our people's attitude toward the Presidency and our other institutions, whether the President's conduct was one or more isolated events, or a pattern of conduct, the period of time over which the conduct was carried out and ultimately decide whether in view of all of these circumstances, it is in the best interest of the country to remove this President.

The significance of a "pattern of conduct" is recognized by John R. Labovitz in his book on Presidential Impeachment. Labovitz concluded that focusing on whether the President has committed "an impeachable offense" is of limited usefulness, since few individual crimes warrant removal, such as a single one of them since act of bribery. Even in the case of President Nixon, "[i]t was necessary to combine distinct actions into a pattern or course of conduct to establish grounds for removal from office." As he also wrote:

"The concept of an impeachable offense guts an impeachment case of the very factors—repetition, pattern, coherence—that tend to establish the gravity of the offense warranting the removal of a president from office. Just as a recidivist deserves a more stringent sentence than a first offender, so presumably a repeated offender is more likely to deserve removal from an office of public trust, and especially the highest trust in the land. It is necessary to take a less divided view of the charges. Because the remedy is not additive, the offenses must be considered cumulatively in deciding whether to remove rather than to not remove him. The House must decide whether or not to prosecute an impeachment on the basis of the charges taken as a whole. And, unless the Senate is to take the determinations of the far less serious without question, it too must judge the combined seriousness of the wrongdoing that is proved.

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

**ARTICLE I—GRAND JURY PERJURY**

Article I, after alleging generally that President Clinton violated his oath as President and in his official capacities, care must be taken that the laws be faithfully executed by manipulating the judicial process for his personal gain, alleges that on August 17, 1998, following taking an oath to tell the truth, he willfully provided perjurious, false, and misleading testimony to the grand jury concerning one or more of the following: (1) the nature and details of his relationship with a subordinate Government employee; (2) prior false, false, and misleading testimony that he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

In doing this, William Jefferson Clinton has undermined the integrity of his office, has sought to subvert the rules of law and justice, and the fundamental integrity of the people of the United States.

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

Never has the Senate convicted an article of perjury such as this. Several crimes or categories of crimes (the exact number cannot be determined from reading the article) are charged in this one article. The perjurious statements are not described, nor are their dates. In large part, this article charges that the President committed perjury because he denied prior perjury.

At the outset, it is clear that a count such as this in an indictment would not survive court challenge. Moreover, it is equally clear that the Senate is not bound to follow normal legal rules. Impeachment, Hamilton wrote in Federalist No. 65, "can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors or in the construction of it by the judges, as in common cases serve to limit discretion of courts in favor of personal security." Nevertheless, we should examine the basis for such rules and determine the extent, if any, we should apply them to these situations.

The reason for rules against charging several offenses in one article is clear. A group of senators as few as seventeen could conclude that the President was guilty of one offense in the article, and a group of other senators could conclude that the President was guilty of another offense in the article and so on. This could result in the President being found guilty on one article without two-thirds of the senators ever agreeing upon a single offense that the President committed.

Compounding this problem, the individual items alleged in the article are
vague because they could reach different instances of objectionable conduct within a general heading. The problem with failing to specifically identify the offenses charged is that it does not give the person charged fair notice of the potential offense and that the president had actual notice for the most part, what is actually being charged in this article has not been without dispute.

The articles pending against President Clinton are unique. Never has the Senate considered articles that are simultaneously omnibus, vague, and based upon "one or more" of the charges being proved.

Again, we have substantial leeway in considering these matters, but we must be fair. We are creating precedent, and this is not good practice. The rule of law must apply to the President when it inures to his benefit just as when it inures to his detriment.

The House relies on Rule XXIII of the Senate's impeachment rules as granting this body's tacit approval for the drafting of impeachment articles in the form of those from President Nixon's impeachment proceedings. The House also argues that its committee report provided adequate notice of charges, occupying 20 pages just to list "the most glaring instances of the president's perjurious, false, and misleading testimony before a federal grand jury and requiring [13] pages just to list the most glaring instances of the president's course of conduct designed to prevent, obstruct, and impede the administration of justice." But this argument underlines the problem. These allegations were not made in the articles themselves, and even now, can it truly be said that these were the entirety of the charges that could have been raised at trial, or even in a later impeachment?

Articles of impeachment henceforth should not permit conviction based upon "one or more" findings of guilt. They should list specific conduct, preferably in separate articles. Removal of elected or appointed government officials, especially a president, should occur only when the public can be sure that the process has been appropriate. Articles such as those before the Senate in this case do not further that goal. The Senate should amend Rule XXIII to permit impeachment articles to be drafted in a multiplicative form to incent the House to adopt duplicative articles of impeachment.

In prior impeachments charging false statements, the House has always delineated the date and substance of the false statement. Indeed, in every impeachment proceeding since Judge Pickering in 1803, articles of impeachment exhibited by the House have included allegations of specific misconduct. Although the Senate has at times permitted articles containing multiple or cumulative allegations, it has only done so where specific allegations were made in other separate articles and where the omnibus article was written in the conjunctive. Never has the Senate voted for conviction on an article that charged an individual with "one or more" improper actions.

Unfortunately, instead of following precedent, the case before us deviated from previous practice. In prior cases, the House avoided lumping together several amorphous charges into one article, with conviction permitted if "one or more alleged offenses have been proved" in all cases but one: Richard Nixon. Here, the House explicitly followed the Watergate example, probably thinking that they would be on safe ground. Unfortunately, the articles drafted against President Nixon were deficient in the extreme.

The first article of impeachment against President Nixon charged that the President had "engaged in a course of conduct or plan designed to delay, impede and obstruct investigations of [the] headquarter[s] of the Democratic National Committee; to cover up, conceal and protect those responsible; and to conceal the existence and scope of other unlawful activities." The means used to implement the conduct or plan have included one or more of the following: The article of impeachment then listed nine separate charges, each extremely broad. The second Nixon article charged dozens of indeterminate criminal acts within several wide-ranging categories.

The charges contained in the Nixon articles are alarmingly vague and duplicitous. The articles before us are not that deficient, but they represent a second step down a road we should not take. While these problems with Article I in isolation may not be sufficient to defeat this article, they are more than technicalities, and pose potentially serious consequences for the future.

The Senate, of course, did not have occasion to consider the impeachment articles against President Nixon. Only once in its history has the Senate actually considered an article of impeachment charging violations of "one or more" alleged acts. Among the articles of impeachment against President Nixon in 1989 was an article alleging that Judge Nixon made "one or more" false statements. Unlike the articles against Nixon or Clinton, however, the article in question in the case of Judge Nixon specifically enumerated the alleged material false statements, including the date and nature of the statement made. The Senate, though defeating a motion to dismiss the article, nevertheless acquitted Judge Nixon on this article. Several Senators explained their votes to acquit on this article due to the multiplicitous (actually, duplicitous) and disjunctive "one or more" form of the article.

I agree with those senators who criticized the form of the omnibus article of impeachment that was brought against Judge Nixon. An article of impeachment charging a defendant with "one or more" acts is not only unfair to the defendant, but it does not permit senators to perform adequately their constitutional duty and the American people their right to understand the charges. If the Senate were to convict on a "one or more" acts count of an article of impeachment, the votes to convict would obscure the real basis for each senator's vote. Ultimately, the American people would be deprived of knowing the basis on which the President they duly elected was removed from office.

The Senate also has never been asked to convict someone for conduct that formed the basis for an article of impeachment that was rejected by the House. Although in a literal sense, no such article is before the Senate, in a practical sense that is the situation. The House failed to pass an article of impeachment against President Clinton that accused him of, on January 17, 1998, "willfully provid[ing] perjurious, false, and misleading testimony in response to questions deemed relevant by a federal judge concerning the nature and details of his relationship with a subordinate Government employee, his knowledge of that employee's involvement and participation in the civil rights action brought against him, and his efforts to influence the testimony of that employee." Yet, in Article I, the Senate is asked to convict the President based on "one or more" sets of actions, one of which is the President's "prior perjurious, false, and misleading testimony in an federal civil rights action brought against him." That portion of Article I has resulted in the House recharging all the allegations of perjury made by the President in his civil disposition that were dismissed when the House rejected an article of impeachment that was based on that disposition. The House does so explicitly: "In addition to his lie about not recalling being with Ms. Ambrose, the President told numerous other lies at his deposition. All of those lies are incorporated in Article I, Item 2." House Trial Memo. at 61. The House claims that the President's statement in his grand jury testimony that he intended to be unhelpful but truthful in his deposition, and that he did not violate the law in his deposition, amount to perjury in the grand jury if a single statement in his deposition was perjurious. However, the President repeatedly reaffirm the truth of all his deposition testimony. Indeed, before the grand jury, the President revised many statements he had made in the J'ones deposition.

Two perjury statutes have been enacted as part of the federal criminal code. 18 U.S.C. §§ 1623 and 1621. The elements of section 1623 are that the defendant (1) knowingly makes a (2) false (3) material declaration (4) under oath in proceedings auxiliary to any court or grand jury of the United States. Statements which are misleading but literally true cannot form the
basis for a perjury conviction. Bronston v. United States, 409 U.S. 352 (1973). The most difficult element of the offense is materiality. A statement is said to be material "if it has a natural tendency to influence, or is capable of influencing the decision of the decision-making body to whom it is addressed." United States v. Durham, 139 F.3d 1325, 1329 (10th Cir. 1998); see Kungys v. United States, 485 U.S. 759 (1988). The Supreme Court has characterized commitments by President Clinton as follows: "A witness testifying under oath or affirmation violates this section if she gives false testimony concerning a material matter with the willful intent to provide false testimony, rather than as a result of confusion, mistake, or faulty memory." United States v. Dunnigan, 507 U.S. 87, 94 (1993). As with §1621, testimony that is misleading but literally true does not fall within the ambit of §1623.

A matter before consideration of these charges concerns the burden of proof of the charges in the articles of impeachment which I believe should apply. It is well established that senators are free to weigh the evidence of the particular case for the standard they consider appropriate. My own view is that different cases will be considered under different standards, depending on the nature of the particular charge. Impeachment is not a criminal proceeding, but a hybrid. It is therefore inappropriate to always apply one or the other of the criminal or civil burdens of proof. When the consequences to the nation of the alleged conduct are most serious, such as treason, then the Senate should consider the case under a clear and convincing standard, for fear of leaving a likely traitor in office simply because his guilt has not been established beyond a reasonable doubt. By contrast, when the charges allege harm to the national well-being, it becomes more appropriate to apply the criminal burden of proof: beyond a reasonable doubt. I concede that the charges alleged here, while serious, do not fall within the former category, and I will therefore review the facts under the beyond a reasonable doubt standard.

With that background, I now consider the facts relating to the three perjury specifications concerning the President's testimony to the grand jury in December 1997, and the House's statements concerning the United States v. Currie, 507 U.S. 87, 94 (1993). As with §1621, testimony that is misleading but literally true does not fall within the ambit of §1623.

To be sure, President Clinton contended that the relationship began in 1996, rather than 1995. The House managers note that this is significant because "if his statement was an inappropriately used to obstruct justice is of questionable materiality.

The fourth item of the perjury allegations in Article I concerns "his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence." The President's stated reason for making these statements to Ms. Currie was false. He knew that they were not true, and the President knew that Ms. Currie could not testify to their truthfulness. Thus, his statement of purported purpose for making them, as communicated to the grand jury, was made willfully, with the intent to deceive the grand jury. They were material as well, since they went to the issue of whether he had committed a federal crime. They thus constitute perjury.

The second set of facts at issue in item four of Article I apparently concern whether the President truthfully told the grand jury that when the subpoena arose at the December 28, 1997 meeting with Ms. Lewinsky, he told her "if they asked her for the gifts, she'd have to give them whatever she had, that's what the law was." Although Ms. Lewinsky never testified that the President said this to her, she once indicated that it sounded familiar. Thus, I am not convinced beyond a reasonable doubt that the President lied when he testified that he made this statement.

The third set of facts in item four of Article I addresses alleged lies that he made to the grand jury concerning the truth of statements that he made to White House aides. Before the grand jury, the President stated that he had never testified that he had sexual activity with Ms. Lewinsky as he defined it, and that he told them "things that were true about this relationship." In reality, the President told them false statements, such as a broader denial of sexual activity than that defined as even he had defined it, and that Ms. Lewinsky was a stalker who came on to him, but whom he rebuffed. The President's statements to the grand jury in this regard were false, and were intended to deceive the grand jury about a federal crime of obstruction of justice through the telling of false statements to persons he knew might become witnesses before that grand jury, and therefore committed perjury.

The third item charged in Article I concerns the President's statements to the grand jury regarding the truth of his deposition testimony. For the reasons above stated, I consider finding perjury based on an article of impeachment that the House rejected to be questionable.

The first set of facts under this category evidently concerns President Clinton's statements to Ms. Currie on January 18, 1998, which he described as having been made to refresh his recollection. The President's stated reason for making these statements to Ms. Currie was false. He knew that they were not true, and the President knew that Ms. Currie could not testify to their truthfulness. Thus, his statement of purported purpose for making them, as communicated to the grand jury, was made willfully, with the intent to deceive the grand jury. They were material as well, since they went to the issue of whether he had committed a federal crime. They thus constitute perjury.

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item one of Article I with respect to his statements that he and Ms.
Lewinsky’s relationship began as a friendship, that it started in 1996, and that he had “occasional” encounters with her. These are the only examples of grand jury perjury that I believe have been proved in the entirety of Article I. The question then is whether these examples of perjury warrant removal of the President for the commission of high crimes and misdemeanors. Make no mistake, perjury is a felony, and its commission by a President may sometimes be the very crime for which we have high crimes and misdemeanors. But is removal appropriate when the President lied about whether he was refreshing his recollection or coaching a witness about the nature of a sexual relationship? Is removal appropriate when the President lied to the grand jury that he denied to his aides that he had engaged in sex only as he had defined it, when in fact he had denied engaging in oral sex? Is removal warranted because the President stated that his relationship began as a “friendship” and actually encompassed more telephone encounters than could truthfully be described as “occasional”? To ask the question is to answer it. In my opinion, these statements, while wrong and perhaps indelible after the President leaves office, do not justify removal of the President from office.

In no way does my conclusion ratify the White House lawyers’ view that private conduct never rises to impeachable offenses, or that only acts that will jeopardize the future of the nation would have been harmful to him. The means used to implement this course of conduct, or scheme included one or more of the following acts:

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

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

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

(4) Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William Jefferson Clinton intensified and succeeded in an effort to secure 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 truth 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 allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit, in order to prevent questioning deemed relevant by the judge. Such false and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

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

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

In all of this, William Jefferson Clinton has undermined the integrity of his office, has brought discredit on the Presidency, has betrayed his trust as President, and has brought disrepute on the Presidency, has undermined the integrity of his office, and his statements regarding the relationship with Ms. Lewinsky that that potential witness would have been harmful to him.

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

(8) On or about January 21, 1998, William Jefferson Clinton corrupted and succeeded in an effort to secure job assistance to a witness in a Federal civil rights action brought against him to give perjurious and misleading testimony if and when called to testify personally in that proceeding.

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

(10) 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 truth of that witness would have been harmful to him.

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in fact ever be called upon to testify. United States v. Gabriel, 125 F.3d 89, 102-03 (2d Cir. 1997). The prohibited intent of this subsection is intended to obviate a federal proceeding.

There are seven specifications of obstruction to justice listed in Article II. The first two charges that on or about December 17, 1997, President Clinton corruptly urged a witness in a federal criminal proceeding to execute a false affidavit and to give false testimony if called to testify. That is the day before he met with Ms. Lewinsky that she was on the Jones witness list, that she contact Ms. Currie if she were subpoenaed, and that she could file an affidavit in the case to avoid testifying. In this conversation, the President told Ms. Lewinsky that she could “always say you were coming to see Betty or that you were bringing me letters.”

The President conducted an improper relationship with an employee of the federal government, Monica Lewinsky. He carried on that relationship off the Oval Office. He engaged in sexual banter over unsecured telephone lines to Ms. Lewinsky’s residence, compromising himself and making himself susceptible to the White House’s willingness to call him over unsecured lines to Ms. Lewinsky’s residence, compromising himself and making himself susceptible to blackmail.

And on December 17, 1997, the President raised to Ms. Lewinsky both the cover stories and filing an affidavit to prevent these facts from being disclosed. While Ms. Lewinsky testified that she was already telling the White House to raise the cover stories in the affidavit, his intent was unmistakable: to corruptly endeavor to influence Ms. Lewinsky to file an affidavit that would prevent Paula Jones’s attorneys from learning of the President’s relationship with Ms. Lewinsky, a relationship of the type that the judge in her case had ruled to be relevant. And even if not directly linked to the affidavit, there is no question from Ms. Lewinsky’s testimonial testimony that the President was asking her to use those cover stories if she were ultimately asked to testify, since that was the context of the conversation. The White House’s repeated retort that the relationship with Ms. Lewinsky was consensual, while the allegations by Ms. Jones were of non-consensual sex, is therefore irrelevant. President Clinton did not tell Ms. Lewinsky to lie, but neither did he need to, as she understood that she was to raise the cover stories, and Ms. Lewinsky did that. Ms. Lewinsky, that the affidavit was indeed false. And since Lewinsky’s truthful testimony would have definitely led to her being called as a witness, the President clearly understood that Ms. Lewinsky would file an affidavit he had strength to believe would be false. That is obstruction of justice, as shown by the cases that have held creation of false documents to be presented in evidence to fit within the statutory prohibition. Moreover, that claim must be considered in connection with the President’s discussions with Ms. Lewinsky as her affidavit was being prepared, his conversation with Mr. Jordan after he spoke with her, and his lawyer’s deep involvement in ensuring that the affidavit was filed and that the President had an opportunity to see it before that occurred, all of which shed light on what the President intended Ms. Lewinsky to do in that affidavit and if she testified.

The third item of Article II charges that President Clinton, on or about December 28, 1997, corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a federal civil rights action against him. That is the day the President discussed the subpoenaed gifts with Ms. Lewinsky, and there is no doubt that the President indicated that he was “bothered” by the specific gift, a hatpin, that the subpoena requested. In none of the many times that Ms. Lewinsky testified did she ever say that the President told her to turn over the gifts, although once she said that she seemed to understand. And a number of times she testified that he asked to think about her suggestion that she give the gifts to Ms. Currie. The gifts, of course, ultimately were secreted under Ms. Currie’s bed, and there is no doubt in Ms. Lewinsky’s mind that Mr. Jordan initiated the call that led to that exchange of the gifts. Since only the President and Ms. Lewinsky were present when the subject of giving the gifts to Ms. Currie was raised, and since Ms. Lewinsky did not call Ms. Currie, it is impossible that Ms. Currie could have called Ms. Lewinsky and not be surprised to obtain the gifts was if the President had told her to contact Ms. Lewinsky to retrieve them. This is also consistent with the President’s course of conduct in this matter.

The President thus corruptly acted to obstruct the Jones case by asking Ms. Currie to retrieve and secret the gifts. That constitutes obstruction of justice in this case, but that does not mean that the President obstructed justice by the way he may have tried to hide the gifts and conceal evidence. The White House’s arguments to the contrary are unpersuasive. It is irrelevant that the President did not initiate the subject of the gifts in his conversation with Ms. Lewinsky. It is also irrelevant that he did not tell her to conceal the gifts. What is relevant is that the President, after thinking about the gifts in the night of December 19, asked Ms. Currie to retrieve the gifts from Ms. Lewinsky. The President’s and Ms. Currie’s denial simply cannot be squared with the evidence.

Also irrelevant is the fact that Ms. Currie’s cell phone call to Ms. Lewinsky occurred at 3:30 p.m., whereas Ms. Lewinsky testified that the gift pickup occurred at 2 p.m. Notwithstanding the White House’s willingness to excuse the President’s error by two minutes concerning when his improper relationship with Ms. Lewinsky began, while insisting that the cell phone call’s 90 minute mistiming is fatal to the theory that Ms. Currie instituted the gift exchange, the cell phone call at 3:30 does not prove that Ms. Lewinsky instituted the gift exchange. First, Ms. Lewinsky testified that she might have been mistaken about the time that Ms. Currie took the gifts, and second, there is no evidence that the cell phone call was the one in which Ms. Currie’s gift pick-up was proposed. Ms. Lewinsky testified that she received other telephone calls from Ms. Currie that day to learn the President had given gifts to her apartment and also to know when she should actually come outside to meet Ms. Currie.

The White House also maintains that the President would not have given Ms. Lewinsky additional gifts on December 28 if he planned to hide the gifts. The facts do not support that theory. The President gave Ms. Lewinsky those gifts before, pondering Ms. Lewinsky’s idea, he determined that he would ask Ms. Currie to retrieve them. He realized that he had no intention to retrieve the gifts at the time he gave her the gifts on December 28, there is no inconsistency with his later direction to Ms. Currie to pick them up.

The fourth item of Article II alleges that the President, beginning on December 7, 1997, and continuing through January 14, 1998, intensified and succeeded in an effort to secure job assistance to a witness in a federal civil rights proceeding by reason to corruptly prevent the truth testimony of that witness. Following a meeting with Ms. Lewinsky in November in which she sought his assistance, Mr. Jordan took no action and provided no help. He does not even remember this meeting. Thus, he made no serious effort to find her a job until after December 7, once the President, not Ms. Lewinsky, asked him to conduct a job search for Ms. Lewinsky. That followed Ms. Lewinsky’s appearance on that Saturday.

The President thus obstructed the White House’s investigation by the way he may have tried to hide the gifts and conceal evidence. The White House’s arguments to the contrary are unpersuasive. It is irrelevant that the President did not initiate the subject of the gifts in his conversation with Ms. Lewinsky. It is also irrelevant that he did not tell her to conceal the gifts. What is relevant is that the President, after thinking about the gifts in the night of December 19, asked Ms. Currie to retrieve the gifts from Ms. Lewinsky. The President’s and Ms. Currie’s denial simply cannot be squared with the evidence.

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the first had proceeded badly. Thus, it is true that Mr. Jordan intensified his job assistance to Ms. Lewinsky at the President’s request, following the President’s, but not Mr. Jordan’s, knowledge, that she appeared on the Jones witness list. By answering the question that offered Ms. Lewinsky a job. That call was made the day after Ms. Lewinsky signed her affidavit. Because President Clinton did ask Mr. Jordan to intensify his job efforts to assist Ms. Lewinsky to obtain a job after he knew she was on the Jones witness list, the President corruptly obstructed justice by attempting to influence the testimony of a witness in a case against him.

The White House responses to this charge are hollow. That Ms. Lewinsky had begun her job search in July, and after a few months had not landed a job of her liking is irrelevant to whether, not having obtained a job, the President then took steps to make sure she did obtain employment. Her appearance on the list matters. That Ms. Lewinsky testified that no one ever promised her a job in return for her silence does not change the fact that these efforts were undertaken. That Linda Tripp suggested that Ms. Lewinsky originally speak with Mr. Jordan means nothing because he took no action following that meeting; only after the President requested that Mr. Jordan assist Ms. Lewinsky when her name appeared on the witness list did he do so. That Mr. Jordan testified that he acted with no sense of urgency is also of no import: it was the President who acted with a sense of urgency, using Mr. Jordan as his agent. Nor is it of consequence that Mr. Jordan intensified his efforts to prove the fact relevant to her employment effort. It is true that Mr. Jordan intensified his efforts to prove the fact relevant to her employment effort. It is also of no import: it was the President who acted with a sense of urgency, using Mr. Jordan as his agent.

The President’s conversation with Ms. Lewinsky is relevant. Thus, it is true that the President obstructed justice by corruptly allowing his attorney to make false and misleading statements to a federal judge. In the President’s presence, his attorney represented to the court, based on Ms. Lewinsky’s affidavit, that the President had seen the affidavit, and that it showed that “there is absolutely no sex of any kind, any form of contact or sexual advances or sexual advances or communications with Ms. Clinton.” A statement his lawyer later retracted out of professional ethics obligations. The affidavit stated, inter alia, that “I have never had a sexual relationship with the President,” he did not propose that we have a sexual relationship . . .” and “the occasions that I saw the President after I left my employment at the White House in April, 1996, were official receptions, formal functions or events related to the President’s official duties or the Defense, where I was working at the time. There were other people present on those occasions.” The President testifed that the affidavit was “absolutely true.” The President knew that Ms. Lewinsky’s affidavit would be used to perpetrate a fraud on the Court, and because he was briefed on its contents by his attorney in advance, he knew that his attorney misunderstood the affidavit, and would inadvertently present the affidavit to the court in a false light. How then is it he could change his lawyer’s understanding or to prevent the use of the affidavit under those conditions. Moreover, with knowledge that the affidavit used the cover stories that he had reminded Ms. Lewinsky to continue on December 17, he testified to those same cover stories. Regardless of whether he was paying attention at the moment that this happened, the President clearly knew at the time the deposition commenced in that affidavit used in a way that perpetrated a fraud on the court and on Ms. Jones’s proceedings. He corruptly impeded Ms. Jones’s efforts to prove the fact relevant to her case that Mr. Clinton had a sexual relationship with another government employee. He did so intentionally by allowing that affidavit to be portrayed by an officer of the court as proof that there was in fact no sexual relationship between the President and another government employee. That is obstructive conduct. The President also has addressed these facts only with respect to whether the President’s statement denying that he was in fact paying attention to his attorney as opposed to looking at him constituted perjury, but has never refuted the President’s knowledge that a false affidavit would be used in the deposition to obstruct the proceeding.

Ms. Lewinsky wanted to have sex with him and that Currie would have had no ability to know those “facts.” He asked her to agree that she was always there when Ms. Lewinsky was there, even though she could not logically know whether Ms. Lewinsky had ever been there when Ms. Currie was absent. He asked her to agree that Ms. Lewinsky came on to him and that he never touched her when Ms. Currie was there. These statements constitute witness tampering. The President engaged in misleading conduct, through the use of false statements and omissions to mislead toward Ms. Currie. He attempted to influence her testimony in a federal court proceeding. He acted corruptly, because he acted with the improper purpose of obtaining false testimony from a witness who would corroborate the President’s knowledge that a false affidavit would be used in the deposition to obstruct the proceeding. He attempted to influence her testimony in a federal court proceeding. He acted corruptly, because he acted with the improper purpose of obtaining false testimony from a witness who would corroborate the President’s knowledge that a false affidavit would be used in the deposition to obstruct the proceeding.

The sixth item of Article II concerns the President’s obstruction of justice by relating false and misleading statements to Betty Currie in order to corruptly influence her testimony. The President’s conversation with Ms. Currie followed his telephone call to her, a call that she testified was made later on a Saturday than any call she had ever received from the President at home. The conversation occurred on a Sunday, when it was rare for Ms. Currie to come to the White House. The conversation occurred in the Oval Office, where the President would exercise the full powers and trappings of his office in the presence of a subordinate. The conversation addressed the President’s request, following the President’s knowledge that a false affidavit would be used in the deposition to obstruct the proceeding. The President’s conversation with Ms. Currie stated that he knew to be false about his relationship with Ms. Lewinsky, and that she also knew were false. Two or three days later, is, the day the President learned that the court had permitted independent Counsel Starr to expand his inquiry into the Lewinsky matter or the day after, the President repeated these same statements to Ms. Currie.

The President’s conversation with Ms. Currie followed rapidly upon his deposition in the Jones case, its questions concerning Ms. Lewinsky, and his repeated answers to such questions by invoking Ms. Currie’s name, one of which invited the Jones attorneys to “ask Betty.” In fact, Ms. Jones’s lawyers placed Ms. Currie’s name on their witness list. The “questions” that he asked were leading, and even according to Ms. Currie, were more like statements than questions. He asked her to agree that he was never really alone with Ms. Lewinsky, even though they both knew that he had been alone with her. He asked her to agree that she was always there when Ms. Lewinsky was there, even though she could not logically know whether Ms. Lewinsky had ever been there when Ms. Currie was absent. He asked her to agree that Ms. Lewinsky came on to him and that he never touched her when Ms. Currie was there. These statements constitute witness tampering. The President engaged in misleading conduct, through the use of false statements and omissions to mislead toward Ms. Currie. He attempted to influence her testimony in a federal court proceeding. He acted corruptly, because he acted with the improper purpose of obtaining false testimony from a witness who would corroborate the President’s knowledge that a false affidavit would be used in the deposition to obstruct the proceeding.
The White House arguments in response to these facts is inadequate. It is inadequate as a matter of law for the White House to contend that the President did not know that Ms. Currie was an actual or contemplated witness, and is insufficient to sustain the President in his claim that he had no reason to believe that Ms. Currie was a potential witness. The White House could never have established that the President, as a matter of law, did not know that Ms. Currie was a potential witness because the President's knowledge of potential witnesses is subject to a legitimate claim of executive privilege for two independent reasons. First, the President could have called upon the independent counsel to interview Ms. Currie as a witness if the President had reason to believe that Ms. Currie was a potential witness. Second, it constituted evidence of executive privilege with respect to a potential witness. The White House could not have established that the President did not know that Ms. Currie was a potential witness because the President, as a matter of law, did not require that the defendant need not know that there is any pending or even contemplated proceeding to constitute witness tampering. The United States v. Romero, 54 F.3d 56, 62 (2d Cir. 1995).

The White House's factual defense to this charge is also insufficient. The President could not have made these false statements to Ms. Currie for the purpose of refreshing his recollection. Nor could he have spoken with her for the purpose of seeking information for the same reason. These claims also do not explain why he simply did not ask her the questions over the telephone on the night of the seventeenth, if that was his intention, or explain why he spoke with her a second time.

The seventh item of Article II alleges that the President obstructed justice by relying false and misleading statements to his aides. On January 21, the President called his chief of staff, Mr. Blumenthal, and his aides, Mr. Currie and Ms. Lewinsky. On January 23, he told one of those aides, Mr. Currie, that he had reason to believe that Ms. Currie was a potential witness. Mr. Blumenthal later testified that he believed the President lied to him. The President testified that he was aware at the time that the legislature proceedings that his aides might be summoned before the grand jury. These facts constitute paradigmatic witness tampering. The President knowingly engaged in misleading conduct, as defined in 18 U.S.C. §6002, in his efforts to influence the testimony of those aides in an official proceeding.

Once again, the White House's arguments to the contrary are unavailing. The White House maintains, but that he lied to potential witnesses about his conduct that the grand jury was investigating. It is irrelevant, as the White House contends, that the President did not attempt to influence his aides' own personal knowledge, only their knowledge of the President's views, or, as stated above, is it relevant as a matter of law that the President did not know that any of these individuals would ultimately become witnesses. Most surprising was the claim that Mr. White House Counsel Ruff raised for the first time in closing argument that the President could not have been convicted of obstructing a civil lawsuit because of a conversation with Ms. Blumenthal because the fact that the President claimed executive privilege with respect to his conversation with Mr. Blumenthal meant that he never expected the grand jury to hear about this conversation. However, the President's conversation with Mr. Blumenthal was not subject to a legitimate claim of executive privilege for two independent reasons. First, it was not a discussion that related to the President's official duties. Second, it constituted evidence of crime in and of itself. There was no possibility that any court would have ever upheld such a personally self-serving and frivolous misuse of executive privilege, and the President, as a former constitutional law professor and legislative counsel, must have fully understood that, as does Mr. Ruff. Indeed, Mr. Blumenthal was required to testify to the grand jury about this conversation notwithstanding the fact that the President did invoke an unwarranted executive privilege claim in an attempt to prevent its disclosure. Nor is there evidence that the President intended to claim executive privilege at the time that he had his conversation with Blumenthal. In any case, there was no reasonable basis for this claim.

Mr. Blumenthal except to disseminate it to his press contacts and on any occasion when he might appear before the grand jury. Each and every allegation of obstruction of justice and witness tampering has thus been proven. The question then arises whether the conclusion that the President has broken the law in this respect warrants his removal from office. Since all have been proven, I am far less inclined than the "one more" language appears in this article. It is appropriate to charge an omnibus article in which a series of specific charges are leveled, a finding of guilt on each of which is required for conviction.

President Clinton has committed a pattern of acts of obstruction of justice. The record demonstrates that the President, when his misconduct became public, authorized a federal proceeding in which he was a witness, used all the methods at his disposal, including his status as President, to obstruct these proceedings and to keep the truth from emerging, including:

- Coaching and encouraging a witness, another federal employee, Betty Currie, to give false testimony; facilitating and encouraging Monica Lewinsky to submit an affidavit that she had reason to believe would be false; through Vernon Jordan, securing employment for Monica Lewinsky in order to keep her from divulging to the court the true nature of their relationship;
- Using government employees to transfer false information to the grand jury;
- Allowing a false affidavit to be used to perpetrate a fraud on a federal court;
- After lying in a civil deposition, authorizing a poll and making a calculated decision based on those poll results to continue his obstruction;
- Attempting to speak to Monica Lewinsky before she might testify truthfully to the independent counsel about her relationship with him;
- Following his inability to contact Monica Lewinsky, telling defamatory lies about her in order to discredit her with his aids and with the public;
- Facilitating the hiding of evidence in a civil lawsuit;
- Providing false and misleading testimony in both a civil deposition and before a grand jury in order to protect his personal interests;
- Lying to the American people in order to cover up his personal misconduct;
- Still failing to acknowledge that he committed the above actions, while admitting only as little as he has been forced to do by the discovery of definitive physical evidence.

For at least the last nine months and in some respects up until today, the President has done everything within his power to bring about a miscarriage of justice in both a civil court proceeding and a criminal court proceeding. He took these actions for the sole purpose of protecting himself personally, politically and legally. For those who emphasize the private nature of his original misconduct, I would ask if he should be protected because he obstructed justice for such a low purpose? Time and again, and with premeditation, he was willing to use government personnel to assist in his coverup and his lies, acknowledging part of the truth only when confronted with his absurd evasive and false evidence, and he carried his lies and cover up right on into legal proceedings with the grace and ease of someone who regarded a court of law as deserving of no more respect than if he
were dealing with a stranger on the street. It is this persistent relentless, remorseless pattern of conduct that requires a verdict of guilt. He was willing to lie, defame, hide evidence and enlist anyone necessary, including governing, to shore up and shore again. At every juncture when he had the opportunity to stop, relent or come clean with a forgiving public, he chose instead to go forward. And even today he refuses to acknowledge the damage he has done to the Presidency and the Judiciary, choosing instead to rely upon his high job approval rating and acknowledging only what he is forced to after the production of physical evidence.

Consider what those who oppose impeachment say about his actions:

Senator Bumpers, one of the counsel for the President during his trial, described the President’s conduct as “indefensible,” outrageous, unforgivable, shameful, and unworthy. The New York Times editorialized that “President Clinton behaved reprehensibly, [and] betrayed his constitutional duty to uphold the rule of law. . . .” A censure resolution offered by members of his own party in the House, including one of the strongest opponents of impeachment in the Judiciary Committee, concluded that President Clinton “egregiously failed in [his] obligation” “to set an example of high moral standards and conduct himself in a manner that fosters respect for the truth;” “violated the trust of the American people, lessened their esteem for the office of President, and dishonored the office which they have entrusted to him;” “made false statements concerning his reprehensible conduct with a subordinate;” and “wrongly took steps to delay discovery of the truth.” Respected members of the President’s party in this body expressed or shared the expression of the view that his actions were “disgraceful,” “disgraceful,” while John Major Black, Jr., in a masterful account, described the President’s conduct as “indefensible,” “outrageous,” “unforgivable,” “shameless,” that it was “dismaying” to consider “the impact of his actions on our democracy and its moral foundations,” that it was “immoral” and “harmful” “since the President’s private conduct can and often does have profound public consequences” and “compromised his moral authority,” and they described his behavior as “intentional and premeditated.”

So we castigate the President in the most bitter terms; decry his disgraceful conduct; lament the damage to the institutions we hold most dear; disgrace him with the most condemnatory language at our command and yet refuse to even consider his removal from office? By such action we treat the loss of public office as the worst fate imaginable, reserved for only the most treasurous of villains. Has public office become so precious in the United States that we treat it as a divine right? Actually, by such treatment we cheapen it.

At a time when all of our institutions are under assault, when the Presidency has been diminished and the Congress is viewed with skepticism, our Judiciary and our court system have remarkably maintained the public’s confidence. Now the President’s actions are known to every school child in America. And in the midst of these partisan battles, many people still think this matter is just “lying about sex.” But little by little there will be a growing appreciation that it is about much more than that. And in years to come, in every court house in every town in America, judges, juries, and litigants will have the President’s actions as a benchmark against which to measure any attempted subversion of the judicial process. The notion that anyone, no matter how powerless, can get equal justice will be seen by some as a farce. And our rule of law—the principle that many other countries still dream about—the principle that sets us apart, will have been severely damaged. If this does not constitute damage to our government and our society, I cannot imagine what does. And for that reason I voted for Mr. MOYNIHAN. Mr. Chief Justice, Senators, I speak to the matter of prudence. Charles L. Black, Jr., begins his masterful account, Impeachment: A Handbook with a warning: Everyone must sink from this most drastic of measures . . . [this awful step].” For it is just that. The drafters of the American Constitution had, from England and from Colonial government, fully formed models of what a legislature should be and what it should do. But nowhere on earth was there a nation with an elected head of an executive branch of government.

Here they turned to an understanding of governance which marks the American Constitution as a signal event in human history—what the Framers called “the new science of politics.” What we might term the intellectual revolution of 1787. The victors in the Revolution could agree that no one, or at least any monarch, should rule in line with the long melancholy succession since Rome. Yet given what Madison termed “the futile and turbulent existence of . . . ancient republics,” who could dare to suggest that a modern republic could hope for anything better? Madison could. And why? Because study had produced new knowledge, which could now be put to use. This great new claim rested upon a new and enduring idea of the nature and human nature. Ancient and medieval thought and practice were said to have failed disastrously by clinging to illusions regarding how men ought to be. Instead, the new science would take man as he actually is, would accept as primary in his nature the self-interest, and passion displayed by all men everywhere and, precisely on that basis, would work out decent political solutions.

This critical declaration of intellectual independence was equal to anything asserted in 1776. Until then, with but few exceptions, the whole of political thought had turned on ways to inclu-
the text—deleted the words "against the United States."

Thus the Framers clearly intended that a President should be removed only for offenses "against the United States." It may also be concluded that the addition of the words "High Crimes and Misdemeanors" was intended to extend the impeachment power of Congress so as to reach "great and dangerous offences," in Mason's phrase.

The question now before the Senate is whether the acts that form the basis for removal of this President from office do in fact constitute a violation of the Constitution. President Clinton has said it was his belief that the impeachment process could not have been initiated without a constitutional violation. I think that the history of this country is replete with such instances.

Over the course of 1998, as we proceeded through various revelations, thence to Impeachment and so on to this trial at the outset of 1999, I found myself asking whether the asserted charges, even if proven, would rise to the standard of "great and dangerous offenses" against the United States. More than one commentator observed that we were dealing with "low crimes." Matters that can be tried in criminal courts after the President's term expires. Early in his address to the Senate our distinguished former colleague Dale Bumpers made this point:

Colleagues, you have such an awesome responsibility. My good friend, the senior Senator from Arkansas has said it was his decision to vote for a decision to convict holds the potential for destablizing the Office of the Presidency.

The former Senator from Arkansas was referring to an article in The New York Times on December 29th in which I said this:

We are an indispensable nation and we have to protect the Presidency as an institution. You could very readily destabilize the Presidency, move to a randomness. That's an institution that has to be stable, not in dispute. Absent that, do not doubt that you could degrade the Republic quickly.

This could happen if the President were removed from office for less than the "great and dangerous offences" contemplated by the Framers.

In Grand Inquests, his splendid and definitive history of the impeachments of J ustice Samuel Chase in 1804, and of President Andrew Johnson in 1868, Mr. Chief Justice Rehnquist records how narrowly we twice escaped from a precedent that we had indeed have given us a Presidency (and a Court) subject to "tenure during the pleasure of the Senate."

It is startling how seductive this view can be. In 1804 it was the Jeffersonians, including Jefferson himself, who saw impeachment as a convenient device for getting rid of a Justice of the Supreme Court with whose opinions they disagreed. Not many years later Radical Republicans sought the same approach to removing a President over whom they disagreed over policy matters. It could happen again. Impeachment is a power singularly lacking any of the checks and balances on which the Framers depended. It is solely a power of the Congress. Do not doubt that it could bring radical instability to American government.

We are a blessed nation. But our blessings are a curse if we do not see how rare they are. There are two nations on earth, the United States and Britain, that both existed in 1800 and have not had their form of government changed by force since then. There are eight—repeated eight—nations which both have had their form of government changed by violence since then: the United States, the United Kingdom, Australia, Canada, New Zealand, South Africa, Sweden, and Switzerland.

Senators, do not take the imprudent risk that removing William Jefferson Clinton for low crimes will not in the end jeopardize the Constitution itself. Censure him by all means. He will be gone in less than two years. But do not let him take with him a Waite Court that misconstrues the Constitution we are sworn to uphold and defend.

Mr. GRAHAM. "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are Life, Liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed."

Those words were a radical declaration when spoken in 1776. Never before had it been asserted that the purpose of government was to secure the individual freedoms and liberties of its citizens. To the contrary, previous governments existed for the opposite purpose; to control the people and suppress their aspirations.

Eleven years after the Continental Congress approved these revolutionary sentiments—and after a violent war which severed the colonies' tie to King George III—many of the same individuals who had declared independence gathered again in Philadelphia to secure those rights so recently and tenuously won.

The governmental structure they constructed during those weeks in the oppressive summer heat was far from simple. But its complexity was not an accident, or simply a result of the diverse geographical and economic interests represented at the Constitutional Convention. As our colleague Senator PATRICK MOYNIHAN has so aptly observed, our government was the first to insert conflict as a conscious element, to achieve inefficiency by design.

Our nation's founders had personal knowledge of and experience with English history, in which both Kings and Parliaments had at times exerted excessive power over the people. They realized that liberty would be enhanced if political power was divided instead of centralized.

Unlike other forms of democracy, where a no confidence vote of the national legislature can bring down a government at any time, the Framers took great pains to establish a delicate balance of powers—and a careful system of checks and balances—between the nation and the states and among the institutions of the federal government. They created a structure in which every branch would have the strength needed to keep excessive power from flowing into the hands of any other branch and thus threatening the liberties of the people.

This determination to achieve balance is reflected in the discussion of impeachment and removal from office in Article I, Section 3 of the Constitution. By requiring action from both houses of Congress, and mandating a two-thirds Senate majority for removal, the Framers purposely made it difficult for Congress to undo the results of a presidential election—one of the most disruptive acts imaginable in a democracy—and relieve a President of his or her constitutional duties. The Framers wisely recognized that impeachment, with its procedure of creating an overbearing Congress from the ruins of a destabilized and delegitimized Presidency.

But the Framers' attention to balance was not limited to the procedures of impeachment. They also made clear their belief that impeachment and removal from office should only be an option in situations in which a President becomes a threat to the government and the people it serves. We see this in their small number of enumerated offenses—Treason, Bribery, other High Crimes and Misdemeanors—and in their commentary.

For example, at the Constitutional Convention in 1787, George Mason said that the term "high crimes and misdemeanors" referred to "great and dangerous offenses" and "attempts to subvert the Constitution."

Mr. Chief Justice, the President's self-indulgent activities were immoral. Disgraceful. Reprehensible. History should—and, I suspect, will—judge that William Jefferson Clinton disdained himself and the highest office in our American democracy.

But despite their disputatious nature, President Clinton's actions should not result in his conviction and removal from office. After careful objective study of each article presented by the House of Representatives, I have concluded that the charges against the President do not meet the high constitutional standards established by the Framers. Removal of this President on the grounds established by the House Managers would upset the delicate balance of powers so meticulously established 212 years ago.

Mr. Chief Justice, the Framers set high standards for removal because they understood the vulnerability of the presidency would be held by imperfect human beings. They assembled a government that could withstand personal failings.
We should be outraged that William Jefferson Clinton’s personal failings debased himself and his office. But they did not cause permanent injury to the proper functioning of our government. He did not upset the constitutional balances.

I hope that the Chief Justice, my colleagues, and the American people will not misinterpret my comments. While it has not been proven that President William Jefferson Clinton committed the high crimes and misdemeanors required to impeach from office, he is not above the law. His acquittal in this impeachment trial is not exonerating.

The framers made this clear in Article I of the Constitution. They established that an impeached President, even if convicted and removed from office, would still “be liable and subject to Indictment, Trial, J udgement, and Punishment, according to law.” When this President leaves office, he could face sanction or conviction for his actions.

Mr. Chief Justice, during the questioning phase of this trial, I sought assurances from the President, through White House Counsel Mr. Charles Ruff, that he would not attempt to circumvent this judicial process by seeking a pardon for his actions. Counsel Ruff responded as follows:

I have stated formally on behalf of the President in response to a very specific question by the House Judiciary Committee that he would not, and, indeed, we have said in other places, that the President is subject to the rule of law like any other citizen and would continue to be on January 21, 2001, and that he would submit himself to whatever law and whatever prosecution the law would impose on him. He is prepared to defend himself in that forum at any time following the end of his tenure. And I committed on his behalf, and I have no doubt that he would so state himself, that he would not seek or accept a pardon.

I take Counsel Mr. Charles Ruff at his words. Once the President leaves office, he will be subject to the same prosecutorial and judicial review that all Americans face.

Mr. Chief Justice, now that we are at the end of this divisive and unpleasant experience, what have we learned?

We have learned that the Constitution works. The Framers made it clear that the President should only be impeached and removed from office in cases of high crimes and misdemeanors. The President’s acquittal will uphold the sanctity of the office and prevent a weakening of the balance of powers that protects our individual rights and liberties.

We have reaffirmed the principle that no man is above the law. While I believe that the President is not guilty of high crimes and misdemeanors in this court of impeachment, he will be subject to legal sanction in other forums when he becomes a private citizen.

Mr. Chief Justice, the President’s misdeeds will affect his standing in history. But they do not justify the first removal of a President of the United States from the office to which he was elected by the American people. When my name is called on the roll, I will vote “not guilty” on both articles of impeachment.

Mr. ALAN. As we all know, this impeachment trial has been a difficult process for the Senate and for our nation.

As this trial draws to a close of each of us has the solemn duty of voting our conscience according to the dictates of the Constitution. We do not take this responsibility lightly.

For me, the vote in this trial will be the second most important of my Congressional career. The only other vote to rank higher was my vote to authorize the Gulf War and thereby send American soldiers into combat.

My ultimate goal as we moved into this process was to maintain precedent and to not shatter a very thoughtful process laid out in the Constitution and within Senate rules.

At the start of this Senate impeachment trial I took an oath to do impartial justice according to the Constitution and laws. I worked hard to adhere to that oath, and I pray that I have kept that oath.

This is particularly important to me since much of my thinking in this case centers on my conclusion that the President has violated his oath of office.

I have determined to base my decision on the facts of the case, not the polls, the performance of the economy, the President’s popularity or where he is in his term of office.

Finally, I have felt that if any of the parts of an article constitute grounds for impeachment, then an affirmative vote on the article is warranted.

While the Senate is clearly divided on conviction and removal, one thing we have all learned is the importance of the Constitution.

We may be separated by political party or ideology, but we are united in our belief in the Constitution as the governing charter of our republic.

Presidents come and go, and Senators come and go. The Constitution remains. It is the foundation of our political system.

The Constitution is what preserves the rule of law, and guarantees that we remain a nation of laws, not of men. And, as we have all learned, in the impeachment and trial of a President, the Constitution is the document that directs how we shall proceed as members of the Congress.

Some have argued that this trial has divided America. In the short run, yes. But in the long run, it has united us and made us stronger.

We are stronger because we have once again demonstrated that we determine who shall lead this nation by democratic means, not by force of arms.

During the past month, I have listened to the evidence and I have weighed it carefully. It is now time for me to cast my vote and to explain my reasoning to my colleagues and to my constituents.

We have before us two articles of Impeachment. The first deals with perjury, the second with obstruction of justice.

The first article alleges that the President violated his Constitutional oath and his August 17, 1998 sworn oath to tell the truth before a federal grand jury.

He did so by willfully providing perjurious, false and misleading testimony in one or more of the following: (1) the nature and details of his relationship with a subordinate government employee; (2) prior perjurious, false and misleading testimony he gave in a Federal civil rights action brought against him; (3) prior false and misleading statements he allowed his attorney to make to a Federal judge in that civil rights action; and (4) his corrupt efforts to influence the testimony of witnesses and to impede the discovery of evidence in that civil rights action.

In my view the House managers demonstrated that at least three of the four provisions are true. The physical evidence is there, and the testimony supports that position.

I realize that with enough lawyers, one can certainly cloud things, and confuse and distract, but I believe the facts speak for themselves.

To me, once you cut through all the legal details and hours and hours of argument, this case is very clear. The President lied under oath. He lied not once, but repeatedly.

On this article, the only question for me is whether it rises to the level of an impeachable offense. I believe that it does. And this has certainly been the prior view of the Senate since it has on several occasions convicted and removed Federal judges for perjury.

Most recently in 1989, when Federal District Judge Nicholas H. J. Harkins was impeached and removed from office for “knowingly and contrary to his oath [making] a material false or misleading statement to a grand jury.”

Here the judge’s violation of the oath “to tell the truth, the whole truth, and nothing but the truth” was deemed an impeachable offense. I simply cannot justify a different standard for the President.

Some have argued that the standard for the President should be lower because he is elected by the people, while federal judges are appointed by the President and confirmed by the U.S. Senate to serve for life. While I respect those who hold this view, I cannot agree with it.

I hold the President to a higher standard because he is the chief law enforcement official of the nation. If he is above the law, then we have a double standard; one for the powerful, and one for the rest.

I hold that one address the second article. The charge is that the President violated his Constitutional oath in that he prevented, obstructed, and impeded the administration of justice.

February 12, 1999

CONGRESSIONAL RECORD — SENATE

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Obstruction of justice is clearly an impeachable offense. History and prior practice support this view, and it seems that many members of this body agree that obstruction does warrant removal from office.

The question then is whether the House managers have demonstrated obstruction of justice. I believe that they have.

When we review the witness deposition of Monica Lewinsky, Vernon Jordan, and David Blumenthal, we compare those with the depositions of the President, and when we review all the evidence gathered and presented by the House managers, and by the independent counsel and the grand jury, there are at least four areas of obstruction by the President.

These relate to the encouraging of a false affidavit, the concealment of gifts, the assistance in employment, and the attempt to refresh the memory of his Secretary Betty Currie which done at a time several days later is pure and simple trying to influence her testimony.

While we may never know with absolute certainty what occurred, the evidence is such that the President took numerous actions designed to impede the administration of justice.

I am also of the view that if the President committed perjury, then he obstructed justice. Perjury is a form of obstruction of justice.

I will therefore vote for conviction on both articles. I don't believe I will be voting to undo an election. We have a process of succession to the Presidency which maintains control in the Vice President of the same party with the same agenda.

Let me now explain why I feel conviction is so important in this case. It has to do with the role of the oath in our society. This is why the President's removal is necessary to protect the republic.

When I was sworn in as a United States Senator I took the following oath to uphold the Constitution as did each one of you:

I do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I will obey the orders of the President of the United States in such manner and to such extent as I may be able.

I took the same oath on three occasions when I served in the U.S. House of Representatives. The President takes a similar oath when he enters office:

I do solemnly swear that I will faithfully execute the Office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States.

Both of these oaths are required by the Constitution.

Article VI of the Constitution requires that all Senators, Representatives, Members of the State Legislatures, and all executive and judicial Officers of the United States and the States shall be bound by oath or affirmation to support the Constitution. The oath of office lies at the center of this impeachment debate.

As George Washington stated in his Second Inaugural Address on March 4, 1793:

Previous to the execution of any official act of the President the Constitution requires an oath of office. This oath I am about to take. In giving it I will do so without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

The sworn oath is central not only to our Constitution, but also to the administration of justice. Our legal system would not function without it.

Witnesses in trials swear under oath to "tell the truth, the whole truth, and nothing but the truth." And the citizens who sit on a grand jury take an oath to seek the truth.

The Federal Rules of Evidence make reference to the importance of the oath in our judicial system.

Rule 603 states that the oath is "calculated to awaken the witness' conscience and impress the witness' mind with the duty" to tell the truth.

The Supreme Court has commented in a number of cases on the question of perjury in the United States v. Mandujano the Court opinion noted:

In this constitutional process of securing a witness' testimony, perjury simply has no place whatever. Perjured testimony is an obruption of the law. What is the purpose of an oath, and why do we rely on an oath in so many sectors of our society?

The oath in legal proceedings is designed to ensure truthfulness.

The oath taken by public officials and the military is designed to uphold the Constitution and preserve the rule of law.

The oath taken by scouts and members of civil organizations is designed to encourage values and good citizenship.

Violation of these oaths is taken seriously, and is often punished under the law. Why? To protect the organization, to protect the government, to protect the republic.

The President's oath is the most important oath any public officer takes in our Constitutional system. If that oath can be ignored it will set a very damaging precedent for our society.

Throughout this impeachment process there have been many proposals concerning the best means of resolution.

At each turn however, Members of the Congress have ultimately recognized that the appropriate path to take is laid out in the Constitution. That path was a full trial in the U.S. Senate.

I am proud to have been among those who argued for a trial.

Whatever the outcome, I will leave this process confident that the system has worked. While I may disagree with the final vote, I will respect that vote and I will urge that we move forward united and determined to do the people's business.

Mr. MCCONNELL. Mr. Chief Justice, as the senior Senator from Kentucky, it is my distinct privilege today to rise and speak at the desk formerly occupied by one of the greatest Senators in
the history of our country and the greatest Senator from the common-wealth of Kentucky: Henry Clay.

Henry Clay is best remembered for two things: (1) the Compromise of 1850, and (2) a famous statement he made after that agreement was signed. The Compromise of 1850 would doom his chances for the presidency. At that critical moment Clay replied: “I had rather be right than be President.”

In many respects, William Jefferson Clinton was a similar choice over the past several months. He could do the right thing. Or he could cling to his Presidency—regardless of the costs and regardless of the consequences. Consequences to his family, to his friends, to his aides, to his Cabinet, and, most importantly, to his country.

Time after time, the President came to a fork in the road. Time after time, he had the opportunity to choose the noble and honorable path. Time after time, he chose the path of lies and lawlessness—possibly because he did not want to endanger his hold on public office.

Nowhere is the President’s cold, calculated choice more clear than in the private conversation he had with his confidant and long-time advisor, Dick Morris, just after he raised his right hand to God and testified under oath in a civil rights lawsuit that he had not had any sexual relations with a young intern named Monica Lewinsky.

After that critical denial, the President did what he does best: he put his finger to the wind to determine which path he should take. He asked Mr. Morris to conduct a poll to determine whether the American people would forgive him for adultery, for perjury, and for obstruction of justice. Morris came back with bad news.

The public, in Morris’s words was “just not ready for it.” They would forgive him for adultery, but not for perjury or obstruction of justice.

The President then faced a fundamental choice. He could tell the truth—and admit that he perjured himself in the Jones suit. Or he could cling to public office—and deny, delay and obstruct.

The choice for President Clinton was clear. He told Morris: “Well, we just have to win.”

And, thus the course was charted. The President would seek to win at any cost. If that critical denial, the President did what he does best: he put his finger to the wind to determine which path he should take. He asked Mr. Morris to conduct a poll to determine whether the American people would forgive him for adultery, for perjury, and for obstruction of justice. Morris came back with bad news.

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In December of 1997, the President came to another fork. At that time, he learned the following critical facts:

1. Ms. Lewinsky had been placed on the witness list in the Jones civil rights lawsuit.
2. Judge Susan Webber Wright had ordered the President to provide information concerning any government employee with whom he had engaged in sexual activity; and
3. Ms. Lewinsky had been served with a subpoena and ordered to produce any gifts she had received from the President.

At this point, the President had a choice. He could tell Ms. Lewinsky to obey the law, tell the truth, and turn over the gifts. Or, he could claim immunity. Again, President Clinton chose the path of lies and deceit. Let’s again hear this account from Ms. Lewinsky:

“[I]t wasn’t as if the President called me and said, ‘You know, Monica, you’re on the witness list. This is really serious. For us, we’re going to have to tell the truth. And by him not calling me and saying that, you know, I knew what that meant.

As we had on every other occasion and every other instance of this relationship, we would deny it.

The evidence indicates that the President was not interested in the truth, but rather, was only interested in getting Ms. Lewinsky to sign a false affidavit and getting her a job in New York where, from the President’s way of thinking, was the best way to be out of sight and not to be contacted by the Jones lawyers.

I must say that I am baffled by how the President of the United States—the leader of the free world—was intimately involved in both of these efforts. The evidence indisputably establishes that the President worked with his close friend Vernon Jordan to secure: (1) a job offer for Ms. Lewinsky in New York, and (2) a lawyer for Ms. Lewinsky to prepare and file her false affidavit. As Mr. Jordan’s testimony made clear, his efforts on behalf of Ms. Lewinsky were at the behest of the President.

The evidence also indicates that during the same period the President participated in a scheme to conceal gifts in the Jones civil rights suits. Ms. Lewinsky’s testimony is clear that she met with the President on December 28 and suggested to him that she could put away or maybe give to Betty or give to some other “friend.” Ms. Lewinsky further testified that later that same day the President’s loyal secretary, Betty Currie, initiated a call to her to pick up the gifts. I find Ms. Lewinsky’s testimony to be credible. Moreover, it is corroborated by Ms. Currie’s cell phone record.

And, of course, the President didn’t stop there.

President Clinton came to another fork in the road where he had to decide whether to testify truthfully under oath regarding his relationship with Ms. Lewinsky. And, again, the President chose the path of lies and deceit. He walked into the deposition room, raised his right hand, swore to tell the truth, the whole truth, and nothing but the truth, and then proceeded to give false statements. In a civil case about alleged sexual misconduct with a subordinate government employee, the President testified under oath that he never had a “sexual relationship”, a “sexual affair” or “sexual relations” with a subordinate government employee named Monica Lewinsky.

But, again, as egregious as those actions were, had the President stopped there, we still might not be here.

The stakes for President Clinton continued to go higher and higher. Following his deposition, the President had to decide what to do with his loyal secretary, Ms. Betty Currie. And, again, the undisputed evidence shows that the President took the path of lies and deceit.

Contrary to federal obstruction of justice laws and contrary to Judge Wright’s Protective Order instructing President Clinton “not to say anything whatsoever about the questions, the subordinate government employee, . . . or any details . . . .” President Clinton left the deposition, went back to the White House, and called Ms. Currie at home to ask her to come to the White House the next day—which, I might add, was a Sunday.

At that somewhat surreal Sunday afternoon meeting, the President—in violation of Judge Wright’s Protective Order—told Ms. Currie that he had been asked several questions about Monica Lewinsky at the deposition. Then the President—in violation of the federal obstruction of justice law—fired off a string of fundamentally declarative statements to his secretary.
"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. She wanted to have sex with me and I couldn't do that."

And, of course, the President didn't stop there. According to Ms. Currie, the President again called her into the Oval Office as he did days later, and again, repeated the same false statements to her that he had made under oath in his civil deposition.

CROSSROADS #5: FALSE STATEMENTS TO SENIOR OFFICIALS AND TO THE AMERICAN PEOPLE

The winding road continued its perilous turns. The President next came to a point where he had to decide whether to tell the truth to his Cabinet, his top aides, and, most importantly, to the American people.

Again, the President rejected the right path, telling his Cabinet and staff that the allegations were untrue. He claimed to his then-Deputy Chief of Staff, John Podesta, for example, that he "never had sex with [Ms. Lewinsky] in any way whatsoever." Specifically, he told him that "they had not had oral sex." And, the President admits in his grand jury testimony that he knew that his aids could be called to testify before the grand jury. Ultimately, his top aides were called to testify, and they repeated his lies.

And, as everyone in America knows, the President lied to the nation. I do not need to recite the defiant, indignant, finger-wagging denial that the President gave to 270 million Americans who had placed their trust in him as the chief law enforcement officer of this land.

But, it didn't have to go any further. I think that there's still a chance that had the President stopped there at that awful, disgraceful moment, we would not be here today.

CROSSROADS #6: FALSE STATEMENTS TO THE GRAND JURY

On August 17, 1998, the President came to the most important crossroads. He stood before a federal criminal grand jury—a federal criminal grand jury that was trying to determine whether he had committed perjury and obstructed justice. He had one last chance to do the right thing. He could tell the truth, the whole truth, and nothing but the truth to the grand jury. He could tell the truth.

Again, President Clinton chose the wrong path. During that criminal probe, the President admitted to an "inappropriate" relationship with Ms. Lewinsky, but continued to falsely deny ever having sexual relations with her, in the face of corroborating evidence that included an undisputed DNA test and the testimony of Ms. Lewinsky and two of her therapists.

The President's strained, persistent, and—on the words of his own lawyer—"maddening" denials of the obvious were blatantly and patently false. The President also declared under oath to the grand jury that his post-deposition coaching of Betty Currie about his relationship with Monica Lewinsky was a mere attempt to refresh his "memory about what the facts were." This statement is also blatantly and patently false.

In fact, there was no attempt to refresh Ms. Currie's testimony. There was an unequivocal statement that Ms. Lewinsky would not be able to testify. Nor was there an attempt to refresh Ms. Lewinsky's memory about the President's relationship with Ms. Lewinsky. In fact, the President knew that Ms. Lewinsky had sex with the President. It is difficult to comprehend how the President could be refreshing his own memory through the act of making false statements to a potential witness.

Moreover, it is my opinion that these false statements by the President under oath were clearly material. A false and misleading denial of a sexual relationship with a subordinate government employee and a false and misleading denial of tampering with a potential witness goes to the very heart of whether the President obstructed justice or committed perjury.

Based on his testimony in the record, I am firmly convinced that the President has committed both perjury and obstruction of justice. He lied to the grand jury about the nature of his relationship with Ms. Lewinsky. He lied to the grand jury about coaching his loyal secretary, Betty Currie. He obstructed justice by encouraging Ms. Lewinsky to give false testimony, by participating in a scheme to conceal gifts that were subpoenaed, by tampering with his secretary on two occasions, and by lying to top aides that he knew could be called to testify before the grand jury.

HIGH CRIMES AND MISDEMEANORS

The Senate's inquiry, however, does not end there. We must decide whether perjury and obstruction of justice are high crimes and misdemeanors. Based on the Constitution, the law, and the clear Senate precedent, I conclude that these offenses are high crimes and misdemeanors.

SENATE PRECEDENT

First, Senate precedent establishes that false statements under oath by a public official are high crimes and misdemeanors. In 1986, I sat on the impeachment committee that heard the evidence against President Harry Clai borne. After hearing the evidence, I, along with an overwhelming number of my colleagues, concluded that J udge Clai borne had made false statements under the pain and penalties of perjury by failing to disclose certain evidence on his income tax returns. The Senate—understanding the gravity of a public official making false statements under oath—voted to remove Judge Clai borne from office.

In 1989, the Senate held impeachment trials against Judge Hastings and J udge Nixon—both of whom had been accused of making false statements under oath. In Judge Nixon's case, the false statements were made directly to a criminal grand jury. The Senate—again understanding the gravity of a public official, who has sworn to uphold the laws, violating those very laws by lying under oath—voted to remove J udge Hastings and J udge Nixon from office.

My colleagues on both sides of the aisle had no hesitation about removing these federal officials for making false statements under oath. As Senator HERSCHEL K . KOHL explained on the floor of the Senate: "One might argue, as J udge Nixon does, that his false statements were not material... But J udge Nixon took an oath to tell the truth and the whole truth. As a grand jury witness, it was not for him to decide what would be material. That was for the grand jury to decide..."

So I am going to vote 'guilty' on articles I and II. J udge Nixon lied to the grand jury. He misled the grand jury. These acts are criminal and warrant impeachment."

I think Senator KOHL's statements accurately reflect the sentiment of the 89 Senators who voted to remove J udge Nixon for lying to a federal grand jury. And, I might add, one of those senators voting to remove J udge Nixon for perjury was then-Senator, now-Vice President Al Gore.

Of those 89 Senators, 48 of us are still here in this distinguished body. Will we send the same message about the corrosive impact of perjury on our legal system or will we simply lower our standards for the nation's chief law enforcement officer? Sapna Sen, Constitution and Federal Law

Second, Article II, Section 4 of the Constitution plainly sets forth that bribery is a high crime and misdemeanor, and our federal laws tell us clearly that perjury and obstruction of justice are equivalent offenses to bribery. In fact, the federal sentencing guidelines actually mandate a harsher punishment for perjury than for bribery and a harsher punishment for obstruction of justice than for bribery. So, I am completely perplexed by those who argue that perjury and obstruction of justice are not high crimes and misdemeanors.

If federal law mandates a harsher penalty for perjury and obstruction of justice, how can this Senate—who drafted, debated, and passed those federal laws—now argue that perjury and obstruction of justice are lesser offenses than bribery?

Third, the Supreme Court's declaration: "[f]alse testimony in a formal proceeding is intolerable." ABF Freight System v. NLRB, 510 U.S. 371, 323 (1994). Moreover, the high Court has labeled perjury as an "egregious offense," United States v. Mandujano, 425 U.S. 564, 576 (1976), calling it "an obvious and flagrant affront to the basic concepts of judicial proceedings." 4

Even the President's own Justice Department understands that our nation cannot tolerate perjury or obstruction of justice. President Clinton and his Justice Department have prosecuted approximately 600 cases of perjury since he came to office.
today—as we debate whether perjury is a serious offense—over 100 people are locked behind bars in federal prison for committing the criminal act of perjury.

Perjury and obstruction hammer away at the twin pillars of our legal system: truth and justice. Every witness in every deposition is required to raise his or her right hand and swear to tell the truth, the whole truth, and nothing but the truth, so help them God. Every witness in every grand jury proceeding and in every trial is required to raise his or her right hand and swear to tell the truth. Every official declaration filed with the court is stamped with the express affirmation that the declaration is true. In the words of our nation's first Supreme Court Chief Justice, John Jay: "If oaths should cease to be held sacred, our dearest and most valuable rights would become insecure."

The facts clearly show that the President's conduct has not valued the sacred oath. He was interested in saving his hide, not truth and justice. I submit to my colleagues that if we have no truth and we have no justice, then we have no nation of laws. No public official, no president, no man or no woman is important enough to sacrifice the founding principles of our legal system.

On this point, I am proud to quote Justice Louis Brandeis—a native of my hometown of Louisville and the man for whom the University of Louisville Law school is named:

"In a government of laws, existence of the government will be imperiled if it fails to observe the laws scrupulously. Our government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by example. Crime is contagious. If the government becomes a law-breaker; it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

William Jefferson Clinton is not and should not be a law unto himself. CROSSROADS FOR THE UNITED STATES SENATE

President Clinton's decisions have led the United States Senate to its own critical crossroads. And, now we must choose our path.

We can do the right thing. Or we can lower our standards and allow Bill Clinton to cling to public office—regardless of the consequences to our nation, to our system of justice, and to our future generations.

More than 150 years ago, Alexis de Tocqueville wisely observed that "man rarely retains his customary level in very critical circumstances; he rises above it, or sinks below his usual condition, and the same thing is true of nations."

So what will we do this day? Will we rise above or will we sink below? Will we condone this President's conduct or will we condemn it? Will we change our standards or will we change our President?

AN EARLIER CROSSROADS FOR THE SENATE

As most of you will recall, the Senate faced a similar choice just a few short years ago. It was one of our own who had clearly crossed the line. It was one of our own who had engaged in sexual misconduct and obstruction of justice. He, like President Clinton, was an intelligent and accomplished man. Senator Robert Packwood called him "brilliant" and said he was a man who "had certainly been fair." But, that brilliant and fair man had crossed the line.

At that critical moment in Senate history, we could have taken the high road and called it a private matter, saying "it's just about sex." But, my friend, Senator DIANNE FEINSTEIN was right when she said: "This is not private, personal conduct. This is conduct that took place in public service, and many of the people involved are themselves Federal employees."

At that moment, the Senate could have said, "He lied about his conduct to everybody, so lying in an official proceeding is ok." Or, we could have said, "He offered to sacrifice his investigation, so it's irrelevant and immaterial that he's covering it up during the investigation.

The Senate could have said, "We can't overturn a federal election. After all, he's out of office in a few years." Or: "He may be prosecuted in the courts, so there's no reason for us to act."

And, finally, the United States Senate could have defended its own member by arguing that, "A United States Senator should be held to a lower standard than others, not a higher standard. After all, there are only 100 U.S. Senators in the country. Any one of them is just too precious to lose."

But, we didn't say any of those things. Those doubletalking defenses were reserved exclusively for President Clinton.

During the Packwood debate, we made the tough choice. And, I have to say, that was the most difficult thing I have ever had to do in my career in public service. To recommend expelling from the United States Senate a colleague, a member of my own party, and most importantly, a friend with whom I had served in the Senate for over a decade.

We sent a clear message to the nation that no man is above the law. That no man is so important to serve the government for less money than Federal employees."

Ladie's and gentleman of this fine and distinguished body, I submit to you that William J. Jefferson Clinton has lost his balance. He has lost his sense of right and wrong. Of truth and justice. And, by doing so, he has betrayed his wife, his family, his friends, and we have no justice, then we have no nation that we have to compromise the public trust.

I believe that fundamental principle to be true, and I believe that William J. Jefferson Clinton has abused and violated that public trust:

"The American President is a person who sometimes must ask people in the ranks to do things for the country. The President is a person who asks people close around him to serve the government for less money than their talents would bring elsewhere. The President sometimes must ask people out in the country sacrifice their dollars or their convenience for national goals. All he is asked to provide in return is trustworthiness, loyalty and judgment. President Clinton has failed that simple test abjectly, not merely with undignified private behavior in a revered place, but with his cavalier response to public concern.

In 1989, at his home in Lexington, Kentucky, Henry Clay opined that "[g]overnment is a trust, and the officers of the government are trustees[.]" I believe that fundamental principle to be true, and I believe that William J. Jefferson Clinton has abused and violated that public trust.

His cold, calculated actions betrayed the trust vested in him by the American people and the high office of the presidency. The President of the United States is the most powerful man in the world and he has an obligation to the American people in the eye, and lie—deliberately and methodically. He took an oath to faithfully execute the laws of this nation, and he violated that oath. He
pledged to be the nation’s chief law enforcement officer, and he violated that pledge. He took an oath to tell the truth, the whole truth, and nothing but the truth, and he willfully and repeatedly violated that oath.

I fully believe that the evidence establishes beyond a reasonable doubt that William Jefferson Clinton clearly did not intend the Impeachment experience.

The Framers of the Constitution henceforward could not have been removed under Article I. And so they created the impeachment process, by which the President could be removed from office by the Senate and the House of Representatives in extreme cases where the President had committed “Treason, Bribery, or other high Crimes and Misdemeanors,” a term borrowed from the English impeachment experience.

The Framers of the Constitution made clear that the orderly transfer of Presidential power through national elections was to be scrupulously followed. They took great care to guaranty that process would rarely, if ever, be undermined by the impeachment of the President. Removal of the President would come only after the House of Representatives—with the sole power to impeach—and the Senate— with the power to conduct a trial—found that the President had committed “Treason, Bribery, or other high Crimes and Misdemeanors,” a term borrowed from the English impeachment experience.

The Framers intended the House and the Senate to use the impeachment power cautiously, and not wield it promiscuously for partisan political purposes. Sadly, in this case, Republicans in the House of Representatives, in their partisan vendetta against the President, have wielded the impeachment power in precisely the way the Framers rejected—recklessly and without regard for the Constitution or the will of the American people.

Thus, I find the President guilty under Article I.

The Framers recognized that in certain extreme cases, a narrow exception to the orderly transfer of Presidential power through national elections every four years was necessary to protect the nation from an abusive President. And so they created a special proceeding, by which the President could be removed from office by the Senate and the House of Representatives in extreme cases where the President had committed “Treason, Bribery, or other high Crimes and Misdemeanors.”

The Framers of the Constitution also clearly did not intend the Impeachment Clause to nullify the vote of the people, except in the most extraordinary cases of great danger to the nation.

The entire history of the debates at the Constitutional Convention demonstrates their clear intent to limit impeachment as narrowly as possible, to prevent a willful partisan majority in Congress from undermining the right to vote and the power of the President the people had elected.

The Framers of the Constitution also made clear that the President was to be subordinate to the legislative branch of the Federal government, not to Congress as a whole. They clearly understood the fundamental constitutional privilege is valued by all Americans and envied by millions around the world. It proves that the constitutional process into a partisan charade two months ago. In their wisdom, the Framers recognized that in certain extreme cases, a narrow exception to the orderly transfer of Presidential power through national elections every four years was necessary to protect the nation from an abusive President. And so they created a special proceeding, by which the President could be removed from office by the Senate and the House of Representatives in extreme cases where the President had committed “Treason, Bribery, or other high Crimes and Misdemeanors.”

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February 12, 1999

CONGRESSIONAL RECORD — SENATE

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his contacts with Miss Lewinsky, or to use the word “occasional” to describe the frequency of his telephone conversations with her.

Even the few allegations of perjury and obstruction of justice that are arguably more serious are far from proven beyond a reasonable doubt, which is the standard that I believe should be applied by the Senate in considering the facts of this case. Indeed, I do not believe they were ever approved by any standard of convincing evidence. But even if any such allegations were true, they still fall far short of the constitutional standard required for impeaching a President and removing him from office.

President Clinton’s behavior was wrong. All of us condemn it. None of us condones it. He failed to tell the truth about it, and he misled the country for many months. But nothing he did rises to the high constitutional standard required for impeachment and removal of a President from office.

I believe that conclusion is required by the Constitution. At the time of the Constitutional Convention in 1787, the Framers engaged in a vigorous debate about the role of the President, the new chief executive they were creating. In addition to determining the basic powers of the office, many of those at the convention debated whether or not impeachment should apply at all to the President. As University of Chicago Law School Professor Cass Sunstein told the House Judiciary Subcommittee on the Constitution, “Many of the framers wanted no impeachment power whatsoever . . . [t]hey suggested that in a world of separation of powers and election of the President, there was no place for impeachment. . . . That position was defeated by reference to egregious hypotheticals in which the President betrayed the country during war or got his office through bribery. Those are the cases that persuaded the swing votes that there should be impeachment power.” In the end, the Framers relented, but they did insist that there must be limited circumstances in which a President should be removed from office by Congress in order to protect the country from great harm, without waiting for the next election.

Once the Framers concluded that the President could be removed by the legislature in such cases, they debated the standard for impeachment. Nine days before the final Constitution was signed, the impeachment provision was limited only to treason and bribery. George Mason then argued that the provision was too restrictive, and should be amended to include the phrase, “or misadministration.” But, vigorously opposed to the idea that the President who believed that such a vague phrase would give Congress too much power to undermine the President. Mason withdrew his original proposal and substituted the phrase, “other high Crimes and Misdemeanors,” a phrase well-known from English law.

The Constitutional Convention adopted the modification by a vote of eight states to three—confident that only serious offenses against the nation would provide the basis for impeachment. Later, the Committee of Style removed the words, “against the State,” but because the Committee had been instructed not to change the meaning of the clause, the impeachment clause should be interpreted as it was originally drafted.

The debate surrounding the Impeachment Clause was significant. By first expanding the two speciﬁc impeachable offenses—treason and bribery—through the phrase “other high Crimes and Misdemeanors,” the Framers clearly intended that the President could be removed from ofﬁce for “crimes” beyond treason and bribery, but that he could not be removed for inefﬁcient administration or administration inconsistent with the dominant view in Congress. Impeachment was not to be the illegitimate twin of the English vote of “No Conﬁdence” under a parliamentary system of government. The doctrine of separation of powers was paramount. The President was to serve at the pleasure of the people, not the pleasure of the Congress, and certainly not at the pleasure of a willful partisan majority in the House of Representatives.

As Charles Black stated in his highly regarded work on impeachment, the two speciﬁc impeachable offenses—treason and bribery—can help identify both the “ordinary crimes which ought also to be looked upon as impeachable offenses, and those serious misdeeds, meaning criminal offense, ought to be looked on as impeachable offenses . . .” Using treason and bribery as “the miners’ canaries,” Professor Black states that “high crimes and misdemeanors, in the constitutional sense, ought to be held to be those offenses which are rather obviously wrong, whether or not criminal, and which so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power of their perpetrator.”

The distinguished historian, Professor Arthur Schlesinger, told the House Judiciary Subcommittee on the Constitution, the “[e]vidence seems to me conclusive that the Founding Fathers saw impeachment as a remedy for grave and momentous offenses against the Constitution; George Mason said, great crimes, great and dangerous offenses, attempts to subvert the Constitution.”

In addition to Professor Schlesinger, over 430 law professors and over 400 historians and constitutional scholars have stated emphatically that the allegations against President Clinton do not meet the standard set by the Constitution for impeachment. The scholarly support for the judgment that the charges against President Clinton do not rise to the level of impeachable offenses—even if they are true—is overwhelming, and it cannot be ignored.

The law professors wrote, “[i]t goes without saying that lying under oath is a very serious offense. But even if the House of Representatives had the constitutional authority to impeach for any instance of perjury or obstruction of justice, a responsible House would not exercise this awesome power on the facts alleged in this case.”

The historians wrote, “[t]he Framers explicitly reserved [impeachment] for ‘great crimes’ and ‘other high crimes and misdemeanors’ as an exercise of executive power. Impeachment for anything else would, according to James Madison, leave the President to serve ‘during the pleasure of the Senate,’ thereby mangling the system of checks and balances that is our chief safeguard against abuses of power . . .” Although we do not condone President Clinton’s private behavior or his subsequent attempts to deceive, the current charges against him depart from what the Framers saw as grounds for impeachment.

The House Managers apparently made no attempt to obtain scholarly support for their opposition. It is a fair inference that they did not do so because they knew they could not obtain it.

The House Managers argue that because the Senate convicted and removed three federal judges for making perjurious statements, we must now convict and remove the President. But, as witness to whether President Clinton should be removed from office requires the Senate to do more than make simplistic analogies to federal judges.

Removal of the President of the United States and removal of a federal judge are vastly different. The President is unique, and his role is in no way comparable to the role of the over 900 federal judges we have today. The impact on the country of removing one of 900 federal judges is infinitesimal, compared to the impact of removing the only President we have. And the people elect the President for a speciﬁc four year term, while federal judges are appointed for life, subject to good behavior for 15 years. The distinction is obvious, and they make all the difference.

Other precedents also undermine the House Managers’ insistence that the Senate is bound to remove President Clinton from ofﬁce. The House Judiciary Committee refused on a bipartisan basis to impeach President Nixon for deliberately lying under oath to the Internal Revenue Service, although he under reported his taxable income by at least $796,000. During the 1974 Judiciary Committee debates, many Republican and Democratic members of the Committee agreed that tax fraud was not the kind of abuse of power that impeachment was designed to remedy.

Finally, the House Managers argue that President Clinton must be removed to protect the rule of law and cleanse the ofﬁce. It is not enough, they say, that he can be prosecuted once he leaves ofﬁce. But protecting the rule of law under the Constitution is not accomplished by removing the President. Before impeaching and convicting the President, the Senate must ﬁnd that he committed “Treason, Bribery, or other high
Crimes and Misdemeanors." As Professor Laurence Tribe testified before the House Judiciary Subcommittee on the Constitution, "[i]f the proposition is that when the President is a law break-er, has committed any crime, then the rule of law requires that one impeach him, then we have rewritten the [impeachment] clause."

The Constitution has guided our country well for two centuries. The decision we make now goes far beyond this case. We decide whether President Clinton will be removed from office, the future of the Presidency and the well-being of our democracy itself are at stake.

How will history remember this Congress? The Radical Republicans in the middle of the 19th century were condemned in the eyes of history for using impeachment as a partisan vendetta against President Andrew Johnson. And I believe the Radical Republicans at that time were there in error. The impeachment against President Clinton would apply the law to the facts in the ordinary way.

The impeachment process was never intended to become a weapon for a par-tisan vendetta in Congress to attack the President. To do so is a violation of the fundamental separation of powers doctrine at the heart of the Constitution. It is an invitation to future par-tisan majorities in future Congresses to use the impeachment process to undermine the President. It could weaken Republican and Democratic Presidents alike for years to come.

This case is a constitutional travesty. We deplore the conduct of Presi-dent Clinton that led to this yearlong distraction for the nation. But we should deplore even more the partisan attempt to abuse the Constitution by misusing the impeachment power.

Ms. COLLINS. Mr. Chief Justice, my colleagues, the issue now before the Senate may well be the most signifi-cant of our public careers. Other than declaring war, it is difficult to imagine a weightier decision that could come before us than whether to remove the President of the United States from office.

Our Founders designed impeachment to protect our system of government against officials who lose their moorings in the law or who endanger our most cherished ideals. They conceived of it neither as a popular referendum nor as a mechanism by which—as in par-limentary systems—the legislature can remove the head of government based on nothing more than a policy difference. Instead, this process is a check upon rogue chief executives, de-signated equally to remove the politically popular malefactor and to protect the innocent, but unpopular, official. It is a vital, but extraordinary, remedy that should neither be shunned out of political expediency nor invoked for political gain.

The question before us is not whether President Clinton's conduct was con-temptible or utterly unworthy of the great office he holds. It was. The ques-tion before us is whether the President has committed an impeachable offense for which he should be removed from that office.

The framers thought carefully about where to vest the ultimate power to re-move a president. They chose the United States Senate. This was not an obvious choice. The power to convict and remove could as easily have been assigned to the Court of law, where a jury would apply the law to the facts in the ordinary way.

But the framers gave the power to try impeachments to the Senate. They did so because they recognized that an impeachment trial should not be an ordi-nary trial, requiring an ordinary ap-plication of law to fact. The framers wanted the Senate to make not only a determination of guilt, but also a judg-ment about what is best for our nation and its institutions.

Throughout this impeachment trial, in order to lessen the ambiguity in this process, I have sought to find a way to allow the Senate to express its view of the facts we have so carefully consid-ered for the past month. The vote we now approach is to acquit or convict. It is a blunt instrument that does not allow me to express clearly my belief that President Clinton willfully lied to a federal grand jury, and that he wrongfully tried to influence testi-monies. The consequences of the perjury charges of Article I are not won by discretion of the Senate.

As this case has been argued in this chamber, I have become convinced that the perjury charges of Article I are not fully substantiated by the record. The President's grand jury testimony is replete with lies, half-truths, and eva-sions. But significantly, not all evasion is lying, and not all lying is perjury. Even blatantly misleading testimony that all fair-minded people would con-sider dishonest may not actually con-stitute perjury, as the law defines it.

Time and time again, the attorneys questioning President Clinton before the grand jury—perhaps out of a mis-guided sense of deference—neglected to join him down as he gave nonrespon-sive, evasive, confusing, or simply ab-surd responses. The only remedy for imprecise answers is more precise ques-tioning. Unfortunately, this did not occur, and consequently, the record is too sparse to support the removal based on Article I.

The evidence supporting Article II is more convincing. Indeed, the case pre-sented by the House Managers proves to my satisfaction that the President did, in fact, obstruct justice in Paula Jones' civil rights case. While the cir-cumstances surrounding Monica Lewinsky's filing of a false affidavit are unclear, there is no doubt in my mind that the frantic efforts to find Ms. Lewinsky a job, the retrieval and destruction of records, and the smearing of the President's secretary, and, most egregious, the President's blatant coaching of Betty Currie—not once, but twice—were clear attempts to tam-pere with witnesses and obstruct jus-tice. Indeed, if I were a juror in an ordi-nary criminal case, I might very well vote to convict faced with these facts.

Nevertheless, I do not think that the President's actions equaled a "high crime" or "misdemeanor" as con-templicated by Article II, Section 4 of the Constitution. This is, I readily ac-knowledge, a judgment that can nei-ther be made nor explained with any-thing approaching scientific precision. It is an invitation to future par-tisan vendettas.

First, obstruction of justice is gen-erally more serious in a criminal case, as opposed to a civil case, as it inter-feres with the effective enforcement of our nation's laws and not solely with the adjudication of private disputes. Consistent with this conclusion, the vast majority of obstruction prosecu-tions involve underlying criminal ac-tions, and the statutory penalties are thereby greater in criminal trials. This is not to suggest for a mo-ment that we should tolerate obstruc-tion of justice in civil cases, but only to observe that our legal system treats it as a less serious offense.

Second, I believe that for impeach-ment purposes, obstruction of justice has more ominous implications when the conduct concealed, or the method used to conceal it, poses a threat to our governmental institutions. Neither oc-curred in this case.

Therefore, I will cast my vote not for the current President, but for the presi-dency. I believe that in order to con-vict, we must conclude from the evi-dence presented to us with no room for doubt that our Constitution will be in-jured and our democracy suffer should the President remain in office one mo-ment more.

In this instance, the claims against the President fail to reach this very high standard. Therefore, I will vot-e to acquit William Jefferson Clinton on both counts.

In voting to acquit the President, I do so with grave misgivings for I do not mean in any way to exonerate this man. He lied under oath; he sought to interfere with the evidence; he tried to influence the testimony of key wit-nesses. And, while it may not be a crime, he exploited a very young, star-struck employee whom he then pro-cured to smear in an attempt to de-stroy her credibility, her reputation, her life. The President's actions were chillingly similar to the White House's campaign to discredit Kathleen Willey.

As much as it troubles me to acquit this President, I cannot do otherwise and remain true to my role as a Sen-a- tor. To remove a popularly elected presi-dent for the first time in our na-tion's history is an extraordinary ac-tion that should be undertaken only when the President's misconduct so injures the fabric of our nation that the Senate is left with no option but to oust the offender from the office the people have entrusted to him.
President Clinton has written a shameful and permanent chapter of American history. He alone is responsible for this year of agony that the American people have endured. I do not, however, take solace in the prospect of ultimate censure, nor do I take comfort in the possibility that the President may be prosecuted for his wrongdoing after he leaves office. Rather, I look to the verdict of history to provide the ultimate punishment for this president, a verdict that no public relations gloss or spin can obscure. Maine’s great poet, Henry Wadsworth Longfellow, wrote in 1874, “Whatever hath been written shall remain, nor be erased, nor written o’er again.” When the history of the Clinton presidency is written, every book will begin with the fact that William Jefferson Clinton was impeached, and that will not only the ultimate censure but also the final verdict on this sad chapter in our nation’s history.

Mr. Starr was not, as many have said, a vindictive one. His call for the censure of the President is not, as some have argued, a long-shot. He has not been transformed into some sort of partisan crusader for the impeachment of a President who has been, on occasion, as he has maintained, a great public servant. Mr. Starr, as a matter of principle, is not a partisan crusader.

I disagree. We can only say with Mr. Starr that the President’s conduct in this case—conduct which the President, according to nearly two dozen of his legal and political associates at the University of Chicago, was aware of—has made it clear that the President, as President, cannot fulfill the responsibilities of the office.

The legal and political involvement of the President in the Paula Jones case is, on the face of it, profound. The President, according to the testimony of the independent counsel, Kenneth W. Starr, who was appointed to investigate Whitewater, which turns into Travelgate, Travelgate turns into Filegate, and then one wonders, how did Monica Lewinsky ever drop in on this?

If we look back, when Ken Starr was a private attorney, in 1994, he had dealings with Paula Jones’ attorneys in terms of her then-pending lawsuit. So he had prior involvement himself with the Paula Jones case.

So the Paula Jones case proceeds forward. And in October of 1997, an entity called the Rutherford Institute, funded by conservative forces in the United States, found some new attorneys for the President, according to the testimony of the independent counsel. The Paula Jones case became heavily involved in the case.

Now some time around that time, Linda Tripp, with whom Monica Lewinsky had shared her most intimate details of her involvement with the Paula Jones case, contacted the Independent Counsel with these attorneys. That is sort of the status of the case as of December 1997.

And here I ask unanimous consent to have printed an article from the New York Times, dated January 24, which more or less documents this.

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

[From the New York Times, Jan. 24, 1999]
QUIETLY, TEAM OF LAWYERS WHO DISLIKED CLINTON KEPT JONES CASE ALIVE
(By Don Van Natta, Jr. and Jill Abramson)
WASHINGTON—THIS TIME LAST YEAR, HILLARY RODHAM CLINTON DESCRIBED, IN A NOW- FAMOUS APPEARANCE ON THE NBC NEWS PROGRAM “TODAY,” HOW A “VAST RIGHT-WING CONSPIRACY” WAS TRYING TO DESTROY HER HUSBAND’S PRESIDENCY.

As it turns out, some of the most damaging evidence to Bill Clinton’s Presidency came not from his high-profile political enemies but from a small secret clique of lawyers in his 30s who share a deep antipathy toward the President. The President’s lawyers may explore the issue further, but the reporting of the New York Times has already revealed that the President’s lawyers handled the Paula Jones case in a way that is consistent with the President’s legal and political involvement in the case.

The report, even though the information revived Monica S. Lewinsky and Linda R. Tripp. The information that first tipped off Starr’s office about Ms. Lewinsky, according to testimony last January, if witnesses are called in the Senate impeachment trial, the President’s lawyers may explore the issue further.

Charles G. Bakaly 3d, the spokesman for Starr, denied there was collusion between the independent counsel’s office and the Jones team, including Marcus. “There was absolutely no conspiracy between the Jones lawyers and our office,” Bakaly said, “The President’s lawyers did not testify to or corroborate our allegations as to how this matter came to our attention, and the actions that we took thereafter.”

Clinton said in his grand jury testimony in August that his position was “just thought they would take a wrecking ball to me and see if they could do some damage.” That wrecking ball was wielded by Marcus and his colleagues, who managed to drive Ms. Lewinsky and Mr. Tripp to take their explosive allegations to the President. The President’s lawyers may explore the issue further, but the reporting of the New York Times has already revealed that the President’s lawyers handled the Paula Jones case in a way that is consistent with the President’s legal and political involvement in the case.

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Three classmates at Chicago law school, Michael R. Convery 3d, a 39-year-old associate at the law firm of Kirkland & Ellis, based in Chicago, and Charles G. Bakaly 3d, the spokesman for Starr, denied there was collusion between the independent counsel’s office and the Jones team, including Marcus. “There was absolutely no conspiracy between the Jones lawyers and our office,” Bakaly said, “The President’s lawyers did not testify to or corroborate our allegations as to how this matter came to our attention, and the actions that we took thereafter.”

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One of President Clinton's legal advisers said he noticed a marked difference in quality between the routine legal pleadings filed by the Cammarata and Davis team, and the polished, scholarly briefs written by the shadow legal team headed by Marcus and Conway.

Marcus, meanwhile, was so successful at keeping the extent of his role a secret that even Cammarata only found out recently that Marcus had trouble finding lawyers to agree to represent Ms. J ones. “No one wanted to touch this case,” Cammarata said. “No one wanted to take on the President of the United States.”

Another friend of Marcus also briefly considered assisting the J ones lawyers. “In June 1994, a lawyer at a small law firm in Washington, with experience working in the Justice Department, expressed interest in doing legal work on behalf of Ms. J ones, but did none,” lawyers involved in the case said.

The misconduct at issue here had no independent significance. It is, itself, merely a consequence of a never-ending discussion without Lewinsky’s knowledge—and doing this without any authorization to do it. They didn’t get it until 4 days later.

Now, all this is done prior to President Clinton ever giving a deposition or testifying before a grand jury. And so Clinton has done nothing yet in terms of testifying. So one might ask, What was Starr and his team after? If, in this, this was a sexual relationship between Clinton and a young woman who was an adult, what did it have to do with Whitewater or anything else they were investigating?

Well, here is why it had something to do with it. Let me quote from an article written by Joseph Isenb urg, a professor of law at the University of Chicago. I happen to have read it because he was supporting this findings of fact procedure, and I wanted to see what his thoughts were. But later on in his treatise he said this:

What is perversive about the impeachment of President Clinton is the idiotic premise on which it rests. The President wasn’t forced to respond to judicial process in the Paula Jones case because he committed a crime of paramount public concern. That case, remember, was dismissed as meritless.

I am continuing to quote him:

The misconduct at issue here had no independent significance. It is, itself, merely a consequence of a never-ending discussion without Lewinsky’s knowledge—and doing this without any authorization to do it. They didn’t get it until 4 days later.
"A `sting' set-up in the courts." That is what Ken Starr and the J ones at torneys, working in tandem, were doing, setting him up. And you can see this clearly when you watch Clinton on video tape in the deposition before the Paula Jones attorneys. The truth is that Mr. Starr presented him with this definition of "sexual relations" that even the judge herself said was confusing. They knew what they were going after. But President Clinton did not know that they had all this information about his involvement with Monica Lewinsky—a classic sting operation.

Also, keep in mind that Linda Tripp briefed the Paula Jones attorneys the night before that deposition and gave them the tapes of her telephone conversa- tions. In light of this, it is interesting to note that in today's New York Times, February 10, the conduct of the independent counsel is so suspect and potentially violative of Justice Department policy and law that he now must disclose his notes for a num- ber of reasons which I won't read. But I ask unanimous consent that it be printed in the RECORD. And you can read it in today's New York Times. There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the New York Times, February 9, 1998]

INQUIRY AS TO WHETHER RENO WAS MISLED BY STARR'S OFFICE

By David Johnston and Don Van Natta, Jr.

WASHINGTON, Feb. 9—The Justice Department is beginning an inquiry into whether Attorney General Janet Reno was misled by her senior aides to research whether she had a vested interest in the outcome of the Jones legal team, according to billing records in the Jones lawsuit, according to billing records in the Jones case. According to billing records and interviews between Mr. Marcus and Mr. Rosenzweig, a prosecutor in Mr. Starr's office, complaints to Ms. Reno in January 1998 Government officials said today. Among other concerns, the inquiry will focus on whether the prosecutors should have disclosed the contacts between Mr. Starr's office and the Paula Jones legal team in the month that there were several conversations between Mr. Marcus and Mr. Rosenzweig about possible conflicts of interest when they obtained permission to investigate the Lewinsky matter in January 1998. Government officials said today.

One former Justice Department lawyer has said that the inquiry was prompted by a letter sent by Mr. Marcus to Mr. Reno, which read: "I don't know how else to put it." Mr. Bakaly said. "There was no misleading of Justice. This was a very fluid evolving situa- tion. Unlike most public corruption cases, this one was only brought to my attention because the Watergate special prosecutor, E. Jordan, Jr. was helping Monica S. Lewinsky find a job in exchange for her sli- e as a possible witness in the Jones law- suit."

Charles G. Bakaly 3d, a spokesman for Mr. Starr's office, would not comment on the Justice Department's plans to start an investiga- tion. The officials said that the notes showed that prosecutors had supplied the Justice Department with a thorough status report on the then-nascent inquiry. The "I don't know how else to put it," Mr. Bakaly said. "There was no misleading of Justice. This was a very fluid evolving situa- tion. Unlike most public corruption cases, this one was only brought to my attention because the Watergate special prosecutor, E. Jordan, Jr. was helping Monica S. Lewinsky find a job in exchange for her sli- e as a possible witness in the Jones law- suit."

This latest inquiry has exacerbated ten- sions that have existed between the Justice Department and the Office of Independent Counsel almost since the beginning of the Lewinsky scandal.

At one point last spring, Ms. Reno asked her senior aides to research whether she had the authority to discipline Mr. Starr in some way that stopped short of removing him, a senior Justice Department official who spoke on condition of anonymity. Some aides told her that it would be a mis- take, comparing it to the "Saturday Night Massacre" that then Attorney General William D. Ruckelshaus was asked to fire the Watergate special prosecutor, Archibald Cox in October 1973.

But, the officials said, Ms. Reno shot back: "I'm not asking you to make a political judgment. I'm asking you to make a legal judgment." Deepening hostilities between the Justice Department and Mr. Starr's office delayed the start of the new ethics inquiry. The ethics investigators recently wrote to Mr. Starr outlining the scope and authority for the in- vestigation. Mr. Starr's lawyers are challenging the inquiry, as- serting that the Attorney General does not have the authority to delve into highly sen- sitive grand jury material or investigative decisions that led Ms. Reno to refer the case to Mr. Starr.

Ms. Reno's aides have said that investiga- tive authority is implied by language in the independent counsel statute, which gives the Attorney General the sole responsibility to remove an independent counsel.

Over time, Justice Department officials, including Ms. Reno, have become troubled by what they view as possible violations of Justice Department policies. They are concerned about appear- ances.

The notes have become crucial evidence in the Justice Department inquiry, which will be conducted by the Office of Professional Responsibility, which investigates prosecu- tors. The months in which notes became public just last month as part of the Senate record of documents related to the impeachment trial of the President.

The truth is that Mr. Starr's prosecutors are one of several issues that the department wants to examine, the Government officials said. Lawyers in the ethics office also intend to investigate whether Mr. Starr abused his authority to convene grand juries, or im- properly pressed witnesses like Ms. Lewinsky, and disclosed secret grand jury in- formation to political clients as alleged.

Mr. Clinton's lawyers and supporters have long contended that there was collusion be- tween Mr. Starr's prosecutors and other J ones lawyers, noting that Linda R. Trip looked on the Office of Independent Counsel as a group of private lawyers who performed legal work on the Jones case. Mr. Starr has insisted that his office sought permission from Ms. Reno to expand his ju- risdiction when he learned of allegations that President Clinton's close friend Vernon E. Jordan, Jr. was helping Monica S. Lewinsky find a job in exchange for her sli- e as a possible witness in the Jones law- suit.

"I don't know how else to put it," Mr. Bakaly said. "There was no misleading of Justice. This was a very fluid evolving situa- tion. Unlike most public corruption cases, this one was only brought to my attention because the Watergate special prosecutor, E. Jordan, Jr. was helping Monica S. Lewinsky find a job in exchange for her sli- e as a possible witness in the Jones law- suit."

At times, Ms. Reno has expressed exaspera- tion over Mr. Starr's conduct, fuming over leaks made by Mr. Starr's office in attempts to discredit the Justice Department of trying to un- dercut the inquiry. Mr. Starr's prosecutors have also grown angry and suspicious about Ms. Reno's aides, suggesting that the Justice Department was under the control of the White House and had quietly tried to squelch Mr. Starr's ef- forts, the officials said.

Since October, several news organizations have reported how Mr. Starr's office first learned about the Paula Jones matter. On Jan. 8, 1998—four days before Linda R. Trip con- tacted Mr. Starr's office—J erome M. Marcus, a Philadelphia lawyer who did extensive work for the Jones legal team, informed Paul Rosenzweig, a prosecutor in Mr. Starr's office, about the Lewinsky accusations.

The early tip was not disclosed in Mr. Starr's 445-page referral to Congress. Nor was it disclosed to the Justice Department. And The New York Times reported last month that there were several conversations between Mr. Marcus and Mr. Rosenzweig from November 1997 to January 1998.

David E. Kendall, one of the President's personal lawyers, complained to Ms. Reno in October 1997 that "very sensitive questions" were raised about those contacts.

The allegations of collusion prompted lawyers at the Justice Department to turn their attention to their own recollections and their own handwritten notes, of statements made by Mr. Starr's representatives on Jan. 15, 1998, officials said today.

But a series of newly disclosed notes taken at the initial meeting on Jan. 15 and Jan. 16, 1998, between Mr. Starr's prosecutors and J Justice Department officials, shows that the prosecutors flatly asserted that there had been no contact with the Paula Jones attorneys. We're concerned about appear- ances.

The ethics lawyers are trying to determine whether Mr. Starr's prosecutors and his prosecutors violated departmental rules and prosecutorial guidelines. Their findings could lead to recommenda- tions for disciplinary action, like reprimands or suspension of employment.

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

Mr. Baker, the spokesman for Mr. Starr, has also denied any suggestion of impropriety. When Mr. Starr testified before the House Judiciary Committee on Nov. 19 of last year, he was asked by the chief counsel for the committee, Mr. D. Lowell, how he had handled “substantial contacts” that Mr. Starr had had with Jones lawyers.

In a series of questions, Mr. Lowell tried to suggest that Mr. Starr’s handling of the case should have revealed the contacts to the Justice Department in January 1998, and that Richard W. Porter, a partner of Mr. Starr’s at the law firm, Kirkland & Ellis, had declined a request to represent Ms. Jones.

“I know Richard Porter; I’ve had communications with him from time to time,” Mr. Starr testified. “But in terms of a specific discussion with respect to what the law firm may be doing or may not be doing, I’m not recalling that specifically, no.”

[From The New York Times, Feb. 9, 1998]

TRACING THE PAST: HOW LEGAL PATHS OF JONES AND LEWINSKY JOINED

(By Tim Weiner with Neil A. Lewis)

WASHINGTON—Shortly after 10 a.m. on Jan. 17, a Saturday, the president of the United States stepped out of the White House into the back of a black limousine and rode a block to his lawyer’s office.

A reporter who had a six-hour grilling in the case of Paula Jones vs. William J. Jefferson Clinton.

For six weeks, the president’s lawyers had known that he might be asked a startling question: Did you have a sexual relationship with Monica Lewinsky? When the question came, the president’s body tensed and his jaw dropped.

“Who did I have a sexual relationship with?” he asked.

The questions continued: Had the president been alone with Lewinsky? Had he given her gifts? Had he uttered certain words?

The deposition ended. President Clinton returned to the White House, canceled dinner plans with his wife and called his personal secretary, Betty Currie, asking her to meet him at the Ritz Hotel the next morning.

When they met, the president asserted that he had never been alone with Lewinsky at the White House. It was the lawyer involved in the case, and, under oath, he denied it.

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On Jan. 14 or Jan. 15, Lewinsky handled Tripp three pages of “talking points,” aimed at persuading Tripp to deny any knowledge of sexual impropriety by Clinton in the Jones lawsuit. It is unclear who wrote the document.

On Jan. 15, Starr’s office told the Justice Department about Tripp’s accusations. A panel of federal judges last Saturday said they would investigate whether Clinton and Jordan had encouraged Lewinsky to lie under oath in her affidavit.

On Jan. 16, a Friday, the case reached an explosive state. The Federal Bureau of Investigation confronted Lewinsky. That day and the next, House officials pointed questions, including whether the president had tried to influence other people’s testimony in Jones vs. Clinton, a House official said. Last week Starr’s expanded investigation had already leaked.

Clinton knew none of this. Nor did he know, as he confronted Mrs. Jones on Jan. 17, that he would be so extensively questioned about Lewinsky. Mrs. Jones lawyers appeared to know more details about Lewinsky than the president’s lawyers had anticipated.

The next morning, Clinton summoned Mrs. Currie to the White House and reviewed with her some of the questions and answers he had given the previous day about Lewinsky, said lawyers familiar with Mrs. Currie’s account. The president had not spoken alone with Lewinsky and that he had re- sisted her sexual advances, these lawyers said.

If this was an effort at damage control, it failed. The story of Tripp’s tapes was already leaking out, and Starr was already aiming this investigation directly at the White House. Clinton summoned a panel of aides, including Mrs. Currie, to a grand jury.

On Jan. 21, a Wednesday, the inquiry was national news. That day, Tripp signed an affidavit for Mrs. Jones’ lawyers. It said Lewinsky had “revealed to me in detailed conversations that she had a sexual relationship with President Clinton since November 15, 1995.”

If that is so, the president “committed perjury” in his sworn deposition, and “embarked on an extensive cover-up” afterward, one of Mrs. Jones’ lawyers, Donovan Campbell, said in court papers filed last Thursday.

Those charges are now at the heart of one of the strangest investigations ever carried out against a president of the United States.

Mr. HARKIN. So I just want to end this part of my discussion by saying we have heard a lot about the rule of law recently, about how it applies. Now, how about how it applies to those who are supposed to enforce the law, how it applies to Ken Starr and the Office of Independent Counsel?

Mr. BRYANT. On many, many times in his opening and closing arguments about what this teaches our kids about honesty and truthfulness, that the rule of law means something. Well, yes, it means something. It means something to our kids and future generation as that honesty and truthfulness and the rule of law also applies to those who are cloaked with the authority to enforce that law. We must teach our kids that the ends do not justify the means, that law enforcement officials cannot break the law in order to bring someone to the bar of justice.

So now, in this long process, the case is before the House Judiciary Commit-
I do so now and say it is time to put this sad chapter behind us; move on to the important work of this Nation.

Mr. REID. Mr. Chief Justice, I extend to you my personal appreciation for the dignity that you have extended to each of us in this proceeding. I also say that I have been disappointed. It appears the vote is going to be very comparable to the vote in the House, down partisan lines, even though during the break I understand two of my colleagues on the other side of the aisle announced that they would not vote for conviction on the articles of impeachment.

But in spite of this, I want to extend my appreciation to the Republican leaders. Senator Nickles has been available any time that there is a problem that has arisen during this proceeding. And you, Senator Lott, have 10 more votes than we have and you on many occasions during this proceeding could have steamrolled us. You chose not to do that. I think that is the reason we have had this feeling of harmony, even though we have had some disagreement on what is going to transpire. So I, again, on behalf of all Democratic Senators, express our appreciation to you for the work you have done.

Often as I stand before this body, I am reminded of the lessons of great books. Today, though, the beginning of a novel keeps running through my mind—Charles Dickens' "A Tale of Two Cities":

It was the best of times, it was the worst of times.

I have often felt, these last weeks, as if I were trapped in a work of fiction. Like all really interesting fiction, the story now before us reduces itself to an examination of the human soul—or, to be more accurate, to an examination of human souls. I use the plural because this trial has been about the flaws of two people rather than the gifts they gave them great, and of the contrast between them—one who has failed to rise above his flaws and the other who has embraced them. Much of what we call great literature is about the petty failings which destroy great men. It is about how common sins, of which we are all to some degree guilty, bring low the mighty and turn to ashes the fruits of victory in the mouths of monarchs.

We have heard much in this historic Senate debate about the justice of the Judiciary, but I daresay that, even more than by historians, the true judgment of these events will be written as novels and plays. On the one level, these works will deal with some or all of the seven deadly sins: pride, anger, greed, lust, sloth, envy, and, yes, especially lust.

But on another level, those plays and novels will deal with the theme of all literature. They will be written about conflicts between great men, great men who are flawed; great men, each with their own public and private failings. We are here to sit in judgment of the President of the United States, a very public man, for his very private failings. Bill Clinton fell from grace. Driven by the private sin of lust, he violated his marriage vows and when his sins were uncovered by his enemies, he tried to conceal them by lying to his wife, the kiss of Jesus by Judas Iscariot in the New Testament.

It may be the beginning of a great work of art, it may be the first chapter in a summer day's light reading, but it is not a good reason, it is not the beginning of a good reason, for removing an elected President of the United States.

The core issue is one which has apparently eluded many in this Capitol, but which is obvious to the American people. Great dreams are dreamed by people with human flaws. Great policies and actions are sometimes set in motion by those with broken souls. Great deeds are not always done by good men. Recent history gives us many examples. Winston Churchill, one who initially stood alone in leading the defense of Western civilization, was by most standards an alcoholic—at least modern standards. Franklin Roosevelt, Churchill's stalwart comrade and the author of policies which saved the very lives of families of many in this Chamber today, died in the arms of his lover. Each of us, each one of us in this Chamber, every human being, is flawed. Each of us needs all the forgiveness and forbearance we can be granted by the charity of others.

Bill Clinton has been a friend of the State of Nevada. He has been a friend to me. But he has committed grievous wrongs against his family and his colleagues. He has violated his high office and lowered the standard of public behavior. I have no doubt that he has strayed from the path of goodness. But I do have very real doubts as to whether he perjured himself or suborned perjury. I have no doubt whatsoever that, under the circumstances of this case, the crimes alleged do not rise to the level of an impeachable offense. Because of what the President did in public and in violation of the public trust, I think he harmed the faith of all. I have no doubt that the President's conduct was a record censure. I will not vote to impeach.

I said a few moments ago that great men are not always good men. But there is an obvious corollary: Good men are not always capable of doing great deeds and they are not even always capable of doing good. I began today by saying this trial was about the flaws of two people. Both are men with God-given gifts. Both are extraordinary in their intellect, perseverance, and dedication to certain core values. Both are capable of greatness and even very great goodness. Both have sinned. One is the President of the United States. His sins are of the flesh and of the spirit. About these I have already spoken. The other is the special prosecutor, Ken Starr, who has pursued the President beyond all bounds of reason and decency. His are the sins of unremitting, unindulgent, unrepentant pursuit. These are the sins of pride, the sins of anger—they are damning sins indeed.

I don't use lightly McCarthy's name or accuse others of his tactics. I am old enough to remember how he misused his power and how he damaged careers. My friend and client, the late newspaper publisher, Hank Greenspun, was a victim of his lies, a victim who had the courage to stand up and fight back. Others fought, but many also suffered irreparable harm because of Senator McCarthy.

I know McCarthy's tactics were the back room stab, the whispered smear, the half-truth, the leaked calumny. I know that he subpoenaed witnesses and forced them to choose between betraying their friends or committing perjury. I know he destroyed the careers of innocent men and women, drove some to suicide and sent others to jail. But at least McCarthy had an excuse, of sorts. For all his lies, leaks and libels, he was heroically defending Western civilization. There really were Communist spies. Some of the people he accused really did commit treason. They were guilty of treason. At least, Mr. Chief Justice, McCarthy and his cohorts had the truth. Kenneth Starr doesn't have an excuse.

Before I came to the national legislature 17 years ago, I was a trial lawyer. At various times, I prosecuted and defended people charged with crimes. Long before that, I served as a police officer. I never argued a case in the U.S. Supreme Court, but I tried more than 100 jury trials, hundreds of other cases before various courts, and argued before different appellate courts. I think I know something about prosecutorial misconduct, and I know something about prosecutorial discretion.

Every American is entitled to equal justice, no matter their rank in society, to equal justice but not equally unfair justice.

The independent counsel's argument throughout his tenure seems to be that any U.S. attorney, any criminal prosecutor, would treat any defendant in the same unredeemedly savage and unfair fashion in which Mr. Starr and his office have treated the witnesses, the defendants in peripheral cases and the President of the United States. Almost $60 million has been spent—White House, Filegate, Travelgate and now this. I think not.

No prosecutor of integrity, of principle, of fairness would have tried to
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Bootstrap a sexual affair into something criminal. A truly independent prosecutor would not make deals time after time with organizations established to embarrass the President, covert with attorneys for Paula J ones, do business with Linda Tripp and others to entrap the President. A fairminded prosecutor would not have leaked salacious details to the press in an effort to force the target to resign from office. And, most fervently, a principled prosecutor would have the common sense to realize that the evidence not the target of the investigation was not all out, no holds barred, “get” that targeted individual out of pride, anger and envy. I invite each of you to look at Justice Scalia’s brilliant dissent in the Morrison versus Olson case where he talks about the constitutionality of the independent prosecutor. He predicted what we are now witnessing. Justice Scalia was visionary. Here is one of the things he said:

The concept of the statute is acrid with the smell of threatened impeachment.

He was right. What else did he say? His opinion was 8 or 9 years ago. He said then: Congress appropriates approximately $50 million annually for general legal activities, salaries, and expenses of the Criminal Division of the Department of Justice.

Fifty million dollars the whole year covers everything for the whole civil division of the Department of Justice. We are spending more than that to go after one man. Scalia could see that coming.

He also said, and my friend, the Senator from Vermont, earlier today talked about what Justice Jackson had said, but he also quoted Scalia. Scalia said:

If the prosecutor is obliged to choose his case, it follows that he can choose his defendants. There is the most dangerous power of all for: that he will pick people that he thinks he should get, rather than cases that need to be prosecuted. . . . it is not questioned here discovers the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then searching the law books, or putting investigators to work, to pin some offense on him.

Justice Scalia could see this coming, and we got just what he said we would get.

This is a bad situation. When you have the brilliance of Ken Starr and the viciousness of Ken Starr, you get what we have here today.

I want to use this occasion to say something to the American people, to the people of the State of Nevada, to leave them with the hope that those in high office have not been bereft of all reason, sense and sensibility. What the President did was wrong. It was immoral. I don’t believe it constitutes a crime justifying his removal from office. What Mr. Starr did, and continues to do is also wrong, and it is also immoral.

But their conduct is not the standard to which we must hold ourselves. We, all of us in Government, can do better. We must do better. The American people have the right to expect that or it doesn’t matter how great we are, how great our ideas or how powerful our values. Set the standard high and judge by that standard. That is how the system is supposed to work, and in the long run it is our constitutional form of government, with a legacy of more than 200 years, has worked and, with the help of a power greater than any of us, will work.

Mr. EDWARDS. I add my praise, Mr. Chief Justice, for the work you have done, but I would add one other thing. The last time I saw you before this impeachment trial you were leading a sing-along at the Fourth Circuit Judicial Conference. I thought it might be a good idea for this group. The Chief Justice. A healing device.

(Laughter)

Mr. EDWARDS. Thank you, Mr. Chief Justice. I have prepared remarks. But I am not going to use them. I made that decision about 20 minutes ago.

I have been thinking a lot about what my fellow Senators speak, and I want to speak to you from the heart. I want to speak to you about a struggle, because I have been through a struggle. It is a real struggle. And I suspect that there are a lot of you who have been through the same struggle—both before we voted on the motion to dismiss and, for me, since we voted on the motion to dismiss.

For me, the law is a sacred thing. And that is part of my life. I have seen what the law can do. It is a powerful, powerful thing. It can do extraordinary things for ordinary people. And I believe we have been given a sacred responsibility. I will tell you what that sacred responsibility means to me personally. It means that when I walked in here the first day of this impeachment trial I was 100 percent completely open to voting to remove this President.

And I have to tell you all something, my friends on this side of the aisle, that wasn’t a hard thing for me to do. I think this President has shown a remarkable disrespect for his office, for the moral dimensions of leadership, for his friends, for his wife, for his precious daughter. It is breathtaking to me the level to which that disrespect has risen.

So I said to myself, what is the right and fair thing to do? And this is what I have done. I have looked—many times until 3 a.m. in the morning—at the evidence in this case. Because I think that is the way we need to make this decision.

The first charge, I believe, is just not there. The evidence is not there to support it. I know many of you believe it is there. I respect your view on that. I don’t believe it is there. The obstruction charge is a totally different matter. And I have thought about the obstruction charge.

I view, in my mind’s eye, the scales of justice. And on one side, where the prosecution makes an allegation, I put their evidence. On the other side I put the defense evidence. And I do believe that for a charge this serious that the proper standard is beyond a reasonable doubt.

So after that evidence is put on both sides of the scale of justice, what happens? I want to just very briefly go through what I think are the four main charges for obstruction.

First, the false affidavit. The prosecution side: There is, in my judgment, clearly a false affidavit. The President had a conversation with Monica Lewinsky about filing an affidavit where he said to her, “You can file an affidavit; that might be a way for you to avoid testifying.” That is on the prosecution side.

I want to make a really important point for me personally here. I think there is an enormous difference between what we suspect, because I have to tell you all, I suspect a lot that has not been proven.

What is on the defense side? On the defense side: what in my view this case is that President Clinton never saw the affidavit, never had a discussion with anyone about the contents of that affidavit. He didn’t know what was in it. He never told, according to the independent prosecutor, anyone what should be in the affidavit.

So that is the evidence on the scales of justice: One for the prosecution; that evidence for the defense. For me it is a very clear thing. The scales tilt in favor of the defense, and they certainly don’t tilt strongly enough to be beyond a reasonable doubt.

The second charge—and the one that bothers me the most—coaching Betty Currie. The evidence on the side of the prosecution is that President Clinton has a conversation with Betty Currie just after he has been questioned in his deposition where he makes very declarative statements to her—it happens twice. I declare to her about what he remembers, many of which we now know to be false. And his explanation for that conversation lacks credibility, to say the least, that he was trying to refresh his memory. I doubt if anybody buys that. That is on one side, that is on the prosecution side.

What is on the other side? On the other side we have Betty Currie saying it had no influence on her. But that is not the most troublesome thing for me. The troublesome thing is this: For that conversation to be obstruction of justice, it must have been proven that it was President Clinton’s intent to affect that for a charge this serious that the proper standard is beyond a reasonable doubt.

I don’t believe it. I don’t believe it at all. And what are the other possibilities? We have a man who has just been confronted with this problem, who is political by nature. And do we really believe that the first thing he thought about is, “I’m going to go protect myself politically?” No. I suspect the first thing he thought about is “I’m going to protect myself politically.” He was worried about his family finding out. He
was worried about the rest of the staff finding out. He was worried about the press finding out. Do I know which of these things are true? Absolutely not. I don’t know which of them are true. Doesn’t that answer the question? If we don’t know which of those things are true, have they been proven? If we don’t know what was in his head at that moment, how can we find that the prosecution has proven intent beyond a reasonable doubt?

The second issue, the job search. On the prosecution side of the scales of justice, we have an intensified effort to find a job for Monica Lewinsky. I think that has been proven. I think that has been proven clearly. On the other side, we have testimony from Monica Lewinsky that she was never promised a job for her silence. We have evidence that the job search, although not as intense, was going on before anyone knew she would be a witness. We have Vernon Jordan testifying under oath— I sat there and watched it and looked him in the eye—that there was never a quid pro quo, that the affidavit was over here and the job search was over here.

The reality is, when you put all that evidence on the scale—prosecution evidence on one side, defense evidence on the other—at worst the scale stays even. And the prosecution has got to prove this case in order to remove the President of the United States beyond a reasonable doubt. They just have not proven it no matter what we suspect. No matter what we suspect. So that is the false affidavit which we have talked about, coaching Betty Currie, the job search.

Now to the gifts. Let’s see what the proof is. What is the proof—not the suspicion. On the prosecution side, we know that the President’s secretary went to Monica Lewinsky’s house, got the gifts, took them home and hid them. I have to tell you, on its face, that is awful suspicious, and it is strong, heavy evidence. The problem is, there is evidence on the other side. That evidence doesn’t stand alone.

First, we have the testimony of Betty Currie that Monica Lewinsky called her. Second, we have the fact that President Clinton gave her other gifts on that Sunday, which makes no sense to me. I heard the House managers tell me that this had nothing to do with it. President Clinton had not been a lawyer for 20 years, and I have been in that place trying to explain away something that makes no sense. It doesn’t make sense. Monica Lewinsky, herself, testified that she brought up the issue of gifts—not President Clinton—and that the most President Clinton ever said was something to the effect of “I’m not sure. Let me think about that.”

Now when that evidence goes on the defense side, the only evidences on the prosecution side is the fact that those gifts are sitting under the bed of Betty Currie, what happens to the scale? At best, the scale stays even. In my judgment, it actually tilts for the defense. There is no way it rises to the level of “beyond a reasonable doubt.”

Every trial I have ever been in has had one moment, one quintessential moment when the entirety of the trial had to be decided. We have such a moment. There was a question that had my name on it. The reality is, Senator KOHL wrote it—I tagged on—but it was a great question. The question was, is this a matter about which President Clinton is informed? I will never forget Manager LINDSEY GRAHAM coming to this microphone and his answer was “Absolutely.” Now if the prosecution concedes that reasonable people can differ about this, how can we not have reasonable doubt?

These things all lead me to the conclusion that however reprehensible the President’s conduct is, I have to vote to acquit on both articles of impeachment.

I have one last thing I want to say to you all, and it is actually most important. If you don’t remember anything else I said, and you weren’t listening to anything else I have said, please listen to what I am about to say because it is so important. I have learned so much during the 30 days that I have been here. I have had a mentor in Senator BYRD, who has probably been a mentor to many others before me. I have formed friendships with people who are Sen. LEAHY and Dodd, who I worked with on these depositions—wonderful, wonderful Senators. I have learned what leadership is about from these two men sitting right here—Senators LOTT and DASCHLE. I have loved working with Senators DeWINE and THOMPSON. And Senator SPERRY and I worked together on a deposition. He showed me great deference and respect. I have no idea why, but he did, and I appreciate it. I have deep respect and admiration for the Honorable Justice Based in North Carolina, who has been extraordinarily kind and gracious to me since I arrived here.

Let me tell you what I will be thinking about when my name is called and I cast my vote, hopefully tomorrow. I will be thinking about juries all over this country who are sitting in deliberation in rooms that are not nearly as grand as this but who are struggling, just as you all have and I have, to do the right thing. I have a boundless faith in the American people sitting on those juries. They want to do what is right. They want to do what is right in the worst kind of way.

An extraordinary thing has happened to me in the last 30 days. I have watched you struggle, every one of you. I have watched you come to this moment, how can we find that the public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings.

The House of Representatives approved two articles of impeachment by a straight party line vote, after bitter and divisive partisan debate, forwarding to the Senate the impeachment articles to remove the President of the United States as authorized by the Constitution. At the same time, the partisan nature of the House inverte challenge to its legitimacy. And, although we have more often than not voted along party lines during the impeachment trial, I am proud of this body and its genuine effort to pursue a bipartisan course during our trial of the President. We have disagreed without being disagreeable.

The body has not strayed too far from the comity and tone that marked our first bipartisan caucus to set the framework for this process. Managers, the President’s defense team without prejudice.

We have taken the admonition of the senior Senator from West Virginia to heart and avoided descending into the pit of caustic partisanship and recrimination.

After reviewing volumes of evidence and weighing weeks of presentations before the Senate, I have concluded that a case has not been made on either article of impeachment against President Clinton. Conviction and removal from office, as charged by the House Managers, is simply not warranted.

Thank you, Mr. Chief Justice. Mr. AKAKA. Mr. Chief Justice and esteemed colleagues, I rise to offer my thoughts on the momentous decision we will render shortly. At the start, I deeply regret that the American people have been denied the opportunity to hear the Senate’s final deliberations on the impeachment charges against President Clinton. I say this because I have been thoroughly impressed with the thoughts and testimony brought to this deliberation by my colleagues on both sides of the aisle. I wish the American people could have the opportunity to observe what I have had the privilege of witnessing for the past 50 days. Whether seated in the gallery, watching on television, listening on radio, or following on-line, the public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings. The public would have benefitted tremendously from the opportunity to hear, in real time and full context each of our proceedings.
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The record does not sustain the level of proof necessary to convict and remove the President. Certain facts are indisputable: the President lied to the American people and to his wife and daughter about an extramarital affair; he lied to his staff; and he was misleading in his deposition in the Jones vs. Clinton civil suit and his grand jury testimony.

However, impeachment is not a Constitutional penalty to punish a President "when he gets out of bounds," as proposed by the House Managers. The constitutional standard is whether high crimes and misdemeanors were committed, and that test has not been met.

In 1974, the House Judiciary Committee rejected an article of impeachment against President Nixon based on the filing of a false tax return. I was reasoned that the President's misleading tax return tria also a President as president, although a minority believed the count was unsupported by the evidence. Thus we see that all crimes that may be punishable by the courts are not punishable by impeachment.

Rather, impeachment is narrowly limited by the Constitution to offenses of treason, bribery, or other high crimes and misdemeanors. After listening to the House Managers on this issue, I am convinced that impeachment and removal from office should only be used for crimes against the country or threats to our national security.

Our founding fathers carefully defined the terms of impeachment in a manner that establishes a high threshold and requires the charges to be of an egregious nature. That is why the Senate has only once before held an impeachment trial for a President.

The House Managers recommend impeachment because it is the only way in which the President's misconduct can be punished. Yet, I remind my colleagues that the President remains subject to justice and civil liability after he leaves office in two years.

As I will point out, the facts and other evidence accumulated and presented to the Senate do not meet the constitutional standard for impeachment and removal that our founding fathers established.

Article One charges the President with perjury before the grand jury in August 1998, for willfully giving false testimony under oath in a judicial proceeding. Yet to prove this charge the House Managers introduced material from the Jones suit during their Senate presentation even though the Senate rejected an article of impeachment on the same basis. Judge Susan Webber Wright is one case specifically excluded evidence concerning Monica Lewinsky because it was immaterial.

Furthermore, Thomas Sullivan, former U.S. Attorney for the Northern District of Illinois, testified before the House Judiciary Committee that perjury "can be particularly arcane, including the requirements that the government prove beyond a reasonable doubt that the witness knew the testimony to be false at the time he or she testified, that the alleged false testimony was material, and that any ambiguity or uncertainty about what the question or answer meant must be construed against the witness." Mr. Sullivan also noted that generally, "federal prosecutors do not use the criminal process in connection with civil litigation involving private parties, because, "there are well-established remedies available to civil litigants who believe perjury or obstruction has occurred."

Article Two charges the President with seven different instances of obstruction of justice. The House Managers insist the evidence shows that these separate acts constitute a deliberate attempt by the President to obstruct justice. The White House argues that the President did not seek to influence witnesses or impede discovery. Legal scholars argue that the lumping together of these seven charges would cause most courts to throw out the charges, and witness testimony undermines the House charges. After the smoke cleared from the charges and countercharges, it was evident that the connections between the actions of the President and the actions by the witnesses were circumstantial, at best.

Moreover, I agree with White House counsel Charles F. Ruff, who in his closing arguments said of the House Managers, "I believe their vision to be too dark, a vision too little attuned to the needs of the people, too little sensitive to the needs of our democracy."

In the obtuse count, the Managers charge the President with asking Monica Lewinsky to lie, a charge that she denies in two dozen depositions, and testimony given under the protection of immunity. There is no evidence that the President ever asked her to provide a false affidavit in the Jones case or to testify falsely.

Vernon Jordan, the President's close friend and advisor, testified that although he met with Ms. Lewinsky and was given a draft of the affidavit, he refused to review the document and referred the young woman to her attorney for advice and counsel.

The House Managers say the President is guilty of obstructing justice when he ordered his secretary, Betty Currie, to retrieve gifts given by the President to Monica Lewinsky. However, Ms. Lewinsky's testimony, on a number of occasions, indicates that it was she who asked Mrs. Currie to keep the gifts, not the President.

The House Managers insist that the President asked Vernon Jordan to intensify an on-going job search in Ms. Lewinsky's behalf after Judge Webber Wright ruled that Paula Jones's attorney could investigate the President's sexual relations with state or federal employees.

Mr. Jordan and Ms. Lewinsky first met in November 1997, a month before Ms. Lewinsky was listed as a witness in the Jones case. Since she did not appear to be involved in the inquiries by Mr. Jordan on her behalf that led to two job rejections and one job offer, efforts by the House Managers to link the job search and the affidavit unravel with the dates on which Mr. Jordan and Ms. Lewinsky first met, when Ms. Lewinsky's name first appeared on the Paula Jones case witness list, and the drafting of the affidavit are analyzed.

The President, Ms. Lewinsky, and Mr. Jordan have testified that no one was seeking Ms. Lewinsky's silence, and Ms. Lewinsky further testified that she realized in October 1997 that she would not be returning to the White House employment when she renewed her job search in New York City.

The additional testimonies of Ms. Lewinsky, Mr. Jordan, and Mr. Blumenthal added no new information to the case against the President. I voted against deposing these witnesses since they already had been deposed many times.

Moreover, we each received thousands of pages of testimony from the grand jury, various depositions, statements given under oath, and documents relating to the impeachment charges. We know that Ms. Lewinsky had been questioned on at least 23 separate occasions, Ms. Lewinsky, the President's grand jury testimony and as recently as January 22, 1999, by the House prosecutors before testifying February 1, 1999, on video. During arguments in favor of deposing Ms. Lewinsky, House Manager Bryant urged the deposition because he believed the Senate should observe her demeanor, her tone, and her tenor in responding to questions.

I respectfully disagree with Mr. Bryant when, as he now does. My decision was bolstered when I viewed Ms. Lewinsky's videotaped testimony in which she reaffirmed her grand jury testimony. I saw no purpose in bringing her to the witness table again, nor did Mr. Jordan, who had been questioned five times, nor Mr. Blumenthal, who has answered questions under oath four times. These witnesses did not change their testimonies, nor did they provide information that was omitted in previous testimony.

The witnesses' statements are a matter of record, and they comprise thousands of pages encompassed in the volumes of testimony and sworn affidavits used in the case against the President in 1994. I concur with House majority counsel David Schiffers who said during the House Judiciary impeachment proceedings, "As it stands, all of the factual witnesses are unequivocally and amply corroborated."

In conclusion, I cannot overstate my disappointment with the actions of the
President. He deliberately misled the American people and greatly diminished the public's trust in the office of the presidency. However, I have concluded that the two articles of impeachment, as drafted and presented by the House, fail to meet the very high level of high crimes and misdemeanors, and I will vote to acquit the President.

Mr. LEAHY. Thank you, Mr. Chief Justice.

I ask unanimous consent that a fairly lengthy brief on this issue be printed in the Record at the conclusion of my remarks.

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

(See Exhibit 1.)

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

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

Mr. LEAHY. Mr. Chief Justice, like other Gentlemen, I want to thank you for your professionalism and good humor in these proceedings even though I suspect there are days that both you and I wish we were back at our homes in Vermont rather than here.

But I want to remind the Senators also of an extraordinary day that my good friend, Senator STEVENS of Alaska, and I spent. We left Sunday afternoon from Washington for the funeral of King Hussein of Jordan. We came back at about 2 o'clock yesterday morning. The delegation was an extraordinary one: Two other Members of Congress, senior members of the President's staff; even the parents of the King's widow, Queen Noor of Jordan, were with us.

And the airplane, Air Force One, that is so recognizable around the world as a symbol of America, underscored our country's presence even as it landed.

And Ted will recall the TV was on in the plane. We could see they interrupted national television in Jordan to show the King's landing. What was most remarkable to the people assembled from around the world for the funeral was the dramatic appearance not only of the President of the United States, William Jefferson Clinton, but three former U.S. Presidents—Gerald Ford, Jimmy Carter and George Bush—they joined with President Clinton as an extraordinary demonstration not only of bipartisanship but of a united American commitment to the peace policies of King Hussein of Jordan.

I spent about 20 minutes with the Prime Minister of England. We saw the leaders from Israel, Japan, Syria, Kuwait, Saudi Arabia, Libya, Pakistan, India, Germany, France, Ireland, Egypt, and others coming together, brought together by their respect for King Hussein.

Much of their attention was focused on the leader of the United States.

The questions raised by this trial came back to me. I thought, do we abandon our elected leader because of concern about his personal conduct? Now, if this question was in my mind, it was in the minds of a lot of people there. I have been privileged to know many of them, and many asked me the question. And I was serious about impeachment and removal? They asked that because they said the United States is not a parliamentary system of government, and the one thing that they can rely on is when we elect a President, and if it is not his intention to remove the President they wished we had elected, there are 4 years to deal with him and they can determine their foreign policy with the most powerful Nation on Earth accordingly.

They said they have great respect for our strength and leadership, and they asked if it is really possible that partisanship in the Congress could destroy that heritage overnight.

In my notes, as I flew back throughout the dark night, I asked myself, Are we going to spend our heritage of continuity and strength this way? Are we going to impeach the President on these charges in this record? Are we going to destroy a heritage and continuity we earned, from our own Revolution, through a Civil War, through World Wars, through deaths and assassinations of Presidents, through great economic prosperity and devastating recessions and depressions? I completed my notes, and I no longer ask a question of whether we do this to Bill Clinton, but whether we do it to ourselves.

The record of this impeachment trial is a time capsule. We leave it for succeeding generations. As the trial began, we reopened the records of 1868. I looked at those records. I thought, someday someone will review ours in the same way. We leave behind a trail of precedents. Our successors will try to use it against the next, and wisely, they will try to emulate it. Our actions can stir a chord that will vibrate throughout the history of our Republic.

So in explaining my decisions in this trial, I know that I am addressing myself to fellow Vermonter and fellow Senators, but also to future generations. In that future generation is my own grandson and perhaps even his grandchildren.

The conclusion I have reached on the articles of impeachment is imbued with this solemn knowledge and sense of duty. My conclusion is we must not avenge the faults of William Jefferson Clinton upon our Nation, our children and our Constitution.

Extreme partisanship and prosecutorial zealotry have strained this process in its critical early junctures. Partisan impeachments are lacking in credibility. The framers knew this. We all know this.

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

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providing a forum to replay the embarrassing and humiliating facts of the President's improper relationship. No one can say the Presidency has emerged unscathed.

For me, the regrettable action is the fact we have turned to serve this country as a U.S. President rather than Bill Clinton. Experienced prosecutors, Republican and Democrat, testified before the House Judiciary Committee that no prosecutor would have proceeded based on the record compiled by Mr. Starr, and prosecutors I have talked to have said they wouldn't even get to a jury with it. As a former prosecutor, I agree and note that during the course of the Senate proceeding, the case has gotten weaker.

The testimony in the record shows that Ms. Lewinsky had no intention of revealing her relationship with the President. She is the person who originated and carried out the plan to hide certain gifts from the J ones lawyers. The only crimes shown to possibly have occurred are those for which Ms. Lewinsky and Ms. Tripp have already received immunity from prosecution from Ken Starr. To influence our judgment, the managers have argued that the consequences of the President did were wrong, to point out the humiliation and other consequences brought on himself and his Presidency. That is not our the Congress’ job. That is the job for parents in this country.

I don’t believe the Constitution calls upon us to remove a duly elected President for symbolic purposes. Rather, I believe the country is now at a crossroads. Conviction without proof and removal without constitutional justification would be far more dangerous for our Republic than his actions.

The House managers have warned that should the President be acquitted, it would damage the “rule of law.” I strongly disagree, because the supreme rule of law in this country is the Constitution; that is what we have to uphold.

Partisan impeachment drives are doomed to fail. The Senate must restore sanity to this impeachment process. We must exercise judgment and do justice. We have to act in the interest of the Nation. History will judge us based on whether this case was resolved in a way that serves the good of the country, not the political ends of any party or the fortunes of any person.

We have all talked about President Andrew Johnson's impeachment. Few people will recall that after the unsuccessful effort to remove him from office, former President Johnson returned to serve this country as a U.S. Senator. I look forward to the day when the Senate can close our work as an impeachment court and that we can all return to our work—our important work we face as U.S. Senators representing our States.

I have spoken with 259 Senators, including the 100 here now. I have respected all of you. I have had great affection for many of you on both sides of the aisle. I count among my best friends many Senators on both sides of the aisle. This is a difficult time. I will not put any Senator's vote on this. But the Senator from Vermont cannot vote to convict and I will not. Thank you.

EXHIBIT 1

Procedural and Factual Insufficiencies in the Impeachment of William J. Jefferson Clinton by Senator Leahy

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I. OATH OF OFFICE

On the first day of this Congress, the Vice President of the United States administered the oath of office to the most recently elected Members of the Senate. I was honored by the people of Vermont to be among those Members and to take the oath of office to serve here as a representative of Vermont. With this oath I have again sworn to protect and defend the Constitution of the United States.

We were reminded by the Majority Leader at the beginning of the last Congress that the oath we take was formulated in 1788 to help bring the country back together. As Senator Lott has noted, following the Civil War, some urged continued use of an ironclad oath that those who had served the Confederacy from serving in the Federal Government. It took "nearly a quarter of a century of confusion and acrimony" for the Senate to settle upon the oath that we take today.

The same year in which our oath was developed, our country experienced its first, and until now, its only presidential impeachment trial. History has judged harshly the "Radical Republicans" who pursued that impeachment against President Andrew J ohnson. A notable exception is William Maxwell Evarts, a Vermonter who was criticized by many Republican party leaders for defending a President of the opposite political party.

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Senate is the last of the 20th century. We began this first session of the 106th Congress facing a challenge that no other Senate in over 100 years has been called upon to address. That challenge is whether to impeach and remove from office a president whose personal conduct has made him vulnerable to the loss of his office. It is a difficult and important task, and it is the most serious duty that we will perform in this Senate. I enter this impeachment trial with no preconceived notions either about the outcome or the process.

I focus first on the oaths we take to be Members of Congress and to serve in this high office. This impeachment trial since the House Managers opened and closed their presentation to the Senate pointing to the oaths the President swore to be assumed on two occasions the office of the President. The Managers have emphasized that the President’s inaugural oath of office imposes a constitutional duty to “take Care that the Laws be faithfully executed.” Their argument is that the presidential oath spelled out in Article II, section 1 of the Constitution is the permanent investigation of the charges against the President. But, the Constitution simply does not say that a President shall be removed for “Treason, Bribery, or other high Crimes and Misdemeanors.” To find an alternative constitutional footing to remove this President we are required to interpret the Constitution’s Extradition Clause.

The Framers purposely restrained the Constitution’s impeachment power, which limits the grounds for removal to “Treason, Bribery or other High Crimes and Misdemeanors.” To find an alternative constitutional footing to remove this President, the Framers returned to the oath we take to be Members of Congress, and the oaths of the President’s oath of office.

The Managers have invited the Senate to lower the bar for impeachment and removal of a President by distorting the constitutional text and using the presidential oath in a manner never contemplated by the Framers. I believe the Framers have used their seductive invitation not only for this President but, more importantly, for the future of the presidency and our constitutional framework.

As my oaths demand, I will work to protect and defend the Constitution. I will continue to defend our constitutional democracy against encroachments from all sides. Over the last few years, we have seen scores of constitutional amendments introduced each Congress and several voted upon each year. We have spoken about the assault by amendment being made against the Constitution and the methods against the Framers and lower those standards for all time. I have heard more than one Senator acknowledge that in this sense it is not just the President but also the Senate on trial in this matter.

In any case, we have come to an agreement that to do and must not ignore how we arrived at this point lest our actions countenance repetition in the future. We are now in a position to write the history of the Members of Congress who have the privilege to serve America in Congresses into the next century and millennium.

II. HOW DO WE GET HERE?

When former Senator Dale Bumpers spoke to us about the task before us, he posed a question that many of us have asked ourselves on the impeachment proceedings. He asked, “How do we come to bear?” “If only we knew,” was the reply.

Future generations may ask the same question of us as they ponder not only how but also why this sorry episode of constitutional misconduct led to this great countenance. This is the case that history will try to thePresidents and the Congresses who voted for or against the ability of removing a popular President, whose leadership has given this country not just a balanced budget but a surplus two years running, the lowest unemployment in decades and the strongest economy in the world. Our economy is in the best shape in a generation in no small part because of the economic policies of the President. We should be working with the President to make the hard choices and develop the bipartisan cooperation that are needed to move the country forward in industries with a secure Social Security, strong Medicare and needed investments in education.

Instead, we find ourselves facing the first impeachment trial of a duly-elected President and only the second impeachment trial of a sitting President in the history of this country. We find ourselves in this situation due to the personal judgment of the President, whose personal conduct was inexcusable; the antics of a Special Prosecutor run amok; and the public stockade of Republican leaders, who misconstrued the constitutional role of the House and advanced a take-it-or-leave it strategy of impeachment or nothing. Each of these processes has one important element: the exercise of sound judgment.

That is why the country has looked to the Senate to restore political sanity to this process. The demand on us is not simply to uphold the “rule of law,” about which the Managers have repeatedly lectured us. Our oath requires us to use the constitutional act of applying the law to the facts or accepting blindly the facts and conclusions presented by either side in this trial. We are not required to act in isolation, but in the context of our precedent and the history of impeachments, and our focus always is what is good for the country. In short, it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then putting investigators to work, to pin some offense on him.” “It is here,” he concluded, “that law enforcement becomes personal, and the real crime becomes that of the obstructing or the obstructed, of the predator or the prey.” When this happens, he said, “it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man, and then putting investigators to work, to pin some offense on him.” “It is here,” he concluded, “that law enforcement becomes personal, and the real crime becomes that of the obstructing or the obstructed, of the predator or the prey.”

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

Finally, after four years of fruitless investigations, Special Prosecutor Starr renewed his attack on President Clinton when Linda Tripp's deposition and briefings on the Monica Lewinsky phase of his investigation. According to Mr. Starr, that contact with her began on January 8, 1998, days before Ms. Lewinsky had filed her affidavit in the Jones case and before the President's deposition in that matter. As an officer of the court, he has the duty to let the President know about the case. It is noteworthy that in 1974, the Special Prosecutor, in the Watergate investigations, committed solely to the House of Representatives, that the power to recommend impeachment is vested in the House of Representatives. History tells us that to be something must be handled in a bipartisan manner.

Does anyone recall after the past year of upheaval which crimes the Special Prosecutor was seeking to find last January? Recall that the “talking points” given to Ms. Lewinsky by Mr. Starr were supposed to be the “smoking gun” showing that the President was involved in a vast conspiracy and cover-up to suborn perjury from Ms. Tripp. No one now doubts that Ms. Lewinsky never even had the slightest idea of what the President, his lawyers, or his ethics advisor felt compelled to tell her. She alone, wrote the talking points based on her discussions with Ms. Tripp. Moreover, no one now doubts that Ms. Lewinsky never even appeared for depositions with Mr. Starr, and that her New York job search. Indeed, Linda Tripp’s role in this scandal is a pivotal one. She was the one lawyer who, like Ms. Lewinsky, met with Mr. Jordan in early October 1997, first suggested that Ms. Lewinsky move to New York and first discussed with Ms. Lewinsky, in her interview with Mr. Starr, the smear attempt against Monica Lewinsky with her New York job search. Indeed, Linda Tripp’s role in this scandal is a pivotal one. She was the one lawyer who, like Ms. Lewinsky, met with Mr. Jordan in early October 1997, first suggested that Ms. Lewinsky move to New York and first discussed with Ms. Lewinsky, in her interview with Mr. Starr, the smear attempt against Monica Lewinsky.

President Clinton has been accused of perjury, obstruction of justice, and contempt of Congress. The charges must be so grave and impeachable as to influence the electorate. The charges must be so grave and impeachable as to influence the electorate. The charges must be so grave and impeachable as to influence the electorate. The charges must be so grave and impeachable as to influence the electorate. The charges must be so grave and impeachable as to influence the electorate. The charges must be so grave and impeachable as to influence the electorate.
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House Resolution 581 was patterned from the resolution adopted by the House in February 1974, directing the Judiciary Committee to investigate President Nixon. That Committee spent almost five months gathering information and hearing testimony from multiple witnesses before debating and voting to adopt articles of impeachment.

By contrast, the House Judiciary Committee in 1998 was acting not as a grand jury, but as a limited role, depreciated the President's constitutional role. The Committee instead relied on the one-sided testimony procured by Mr. Starr's lieutenants in the grand jury. Though this testimony was uncorroborated, it certainly was not tested by cross-examination nor was the Special Prosecutor's office interested in any information that might have been exculpatory to the President.

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February 12, 1999

CONGRESSIONAL RECORD — SENATE

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2. Rejected Charges

In the end, the House did not approve the 11 articles recommended by Special Prosecutor Starr or the 15 articles of impeachment recommended by the Republican Committee staff. The House rejected outright two of the four articles reported along party lines by the House Judiciary Committee, and authorized pursuit of only three additional articles of impeachment in the Senate. In considering these two Articles, the Senate has been forced to sort through what is left of the allegations that resulted from the practice of subpoening witnesses for depositions and for permission to introduce evidence obtained from the depositions. I asked unanimous consent that the record be made complete and include Vernon Jordan’s brief remarks at the end of the day and his joinder in the Senate’s consideration of these Articles.

As one of the Presiding Officers at those depositions, I am well aware of the parts of those depositions intentionally omitted by the Managers. In fact, following their presentation of the evidentiary record, I asked unanimous consent that the record be made complete and include Vernon Jordan’s brief remarks at the end of the day and his joinder in the Senate’s consideration of these Articles.

There is no question but that the Managers attacked and impugned Mr. Jordan’s word and his integrity. Senator BOXER argued that the Managers’ arguments were so weak and unfounded that their rebuttal could not contain that moving and important part of Mr. Jordan’s deposition.

IV. THE ARTICLES ARE UNFAIRLY DRAFTED

Close examination of the Articles exhibited by the Managers reflects the underlying unfairness in the impeachment proceedings in the House.

A. Article I is Defectively Vague

Article I is drafted with such vague accusations, as one House Manager acknowledged, that Senators can responsibly and constitutionally pass judgment on it. As a judge and juror in the Senate, I note that in 1974, the House Judiciary Committee made available to President Nixon the House’s depositions, a large part of which is secret evidence. If the Senate had to review or be given an opportunity to rebut that evidence, it must be introduced, admitted into evidence, and subject to examination and inspection before it may be considered by the fact finders.

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Third, the lack of specificity makes any perjury allegations to be forwarded to the Senate, that Article I did not have the support of a majority of the House and should not be considered by the Senate.

The Managers ignore the grave constitutional questions raised by the vagueness of Article I. As a judge and juror in the Senate, I note that in 1974, the House Judiciary Committee made available to President Nixon the House’s depositions, a large part of which is secret evidence. If the Senate had to review or be given an opportunity to rebut that evidence, it must be introduced, admitted into evidence, and subject to examination and inspection before it may be considered by the fact finders.

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The Constitution vests the sole power of impeachment in the House of Representatives, not in a handful of managers appointed by that body. Just as prosecutors may not save an defendant without the constitutional role of the grand jury, these Managers may not save a defendant by usurping the constitutional role of the full House. Further, another way, 13 Members may not take it upon themselves to guess what was in the minds of over 200 Members of the 106th Congress when they voted to impeach the President. The Full House must pass on any amendments to the Articles.

That is how it has always been done. In 1868, the impeachment of President Johnson, for example, the Senate, which viewed itself as the court of impeachment, considered amendments to the Articles of Impeachment. Although the Senate approached the amendments in light of evidence presented during the Senate proceedings, it failed even to identify a single statement, much less an entire article, that was not true, then vote to concur. If you think he said something, anything, to the grand jury and says, in effect, take your right to speak for yourself, and the President if “you conclude he committed a crime.” In that instance, the Managers do not have the power to make the Article more specific, nor have they tried. Instead, they have exploited the vagueness in Article I by continuing to add to the list of falsehoods that the President has committed—configured in language that it was obviously much more.

V. THE SENATE’S DUTY

A. Standard of Proof

In this impeachment trial, the President starts out with fewer rights than any criminal defendant in any court in this country. He starts out with no clear rules of evidence, no right to censure, only when questions were raised about whether his conduct crossed the line between misconduct and crime, no right to counsel, and, if you like, some from column B. He expects the Senate to “deliberate obfuscation trivializes what should be a grave and solemn process.”

In 1868, when President Johnson was acquitted, the Senate considered the standard of proof question when impeachment proceedings against President Nixon were investigated. As a result, the Senate has refused to bind itself to a single standard for all impeachment trials. As a result, each Senator may follow the burden of proof he or she believes is appropriate to determine whether the House’s charges have been adequately proven. The fact that each Senator may evaluate the evidence under any standard of proof of his choice presents a remarkable challenge to the Managers and to the counsel. One commentator has noted that, “this practice can often work . . . to the disadvantage of the prosecution.” The President is entitled to a specific “standard of proof.” The Constitution is silent on the standard of proof to be applied in impeachment trials, and the Senate has refused to bind itself to a single standard for all impeachment proceedings or for all questions. As a result, each Senator may follow the burden of proof he or she believes is appropriate to determine whether the House’s charges have been adequately proven.

The fact that the Senate has adopted no uniform standard of proof is not a reason to follow is not for lack of attention. The Senate considered the standard of proof question when impeachment proceedings against President Nixon were investigated. As a result, the Senate has refused to bind itself to a single standard for all impeachment trials. As a result, each Senator may follow the burden of proof he or she believes is appropriate to determine whether the House’s charges have been adequately proven. The fact that each Senator may evaluate the evidence under any standard of proof of his choice presents a remarkable challenge to the Managers and to the counsel. One commentator has noted that, “this practice can often work . . . to the disadvantage of the prosecution.”
He had given her a number of gifts. Given these admissions, the Managers had a heavy burden to prove that the President testified falsely on a material matter.

Perhaps for this reason, the Managers re-packaged the three alleged falsehoods identified by the Special Prosecutor in their Senate impeachment brief, the Managers claimed that the President perjured himself no less than 48 times during his grand jury appearance. They hoped that the President's perjury charge would be so staggering, that the Senate would be overcome by the essential triviality of each individual charge. It does not.

In this regard, the most remarkable charge leveled against the President is that the President's prepared statement, in which he made his many admissions, was itself perjurious. The President's argument that the statement at issue was simply an admissory statement because Ms. Lewinsky "began as a friendship"; Ms. Lewinsky disagreed, although she allowed for the possibility that the President had a different perception of how the relationship had evolved.

The President said that the inappropriate intimate contacts occurred on "certain occasions," and described their telephone conversations as "occasional." There is nothing in the record to this effect. In their Reply Brief, the Managers used the same term to describe these events, even though a few dozen meetings or telephone conversations over a two-year period may appropriately be described as "occasional.

Such a characterization trivializes the serious business in which we are now engaged. Can anyone really believe that the President's evidence would be outweighed by the six-week discrepancy as to when his admitted inappropriate affair began? Or because of general statements that are allegedly contrary to specific numbers? Or because he did not inform the grand jury that the relationship began with a crude sexual overture by Ms. Lewinsky, as she herself was compelled to describe in humiliating detail, at the behest of the Special Prosecutor's inquisitors and for no legitimate investigatory purpose? Another set of statements that the Managers consider perjurious relate to the President's state of mind. The Managers claim, without support, that the President did not believe his former, consistent and often repeated story that Ms. Lewinsky could file a truthful affidavit that might relieve her of having to testify in the Jones case. Such unsupported speculation about what was in the President's mind is not, as the President's counsel stated, "the stuff or fuel of a perjury prosecution."

"To ask if the President's statements were of particular importance to the perjury charge, Manager Rogan pointed to the President's explanations for his attorney Robert Bennett's statement, during the..."
The Managers do their best to transmogrify other exculpatory testimony into evidence of criminality. For example, Ms. Lewinsky testified that the President declined to review his own notes when she showed them to him, implying that he knew of his own affairs. But neither Mr. RODGAR's affidavit nor Mr. MCCOLLUM's speculation, as the President had reviewed the affidavit with her “at all, ever.” Manager ROGAN cited this as evidence of obstruction of justice. The Managers do not seem to have understood that anyone’s theory nor Mr. MCCOLLUM’s speculation can overcome or obscure the fundamentally exculpatory nature of Ms. Lewinsky’s testimony.

Unable to conjure inculpatory evidence out of the President’s refusal to review Ms. Lewinsky’s affidavit, the Managers invited the Senate to infer guilt from the “fact” in her affidavit that she “believed it could be truthful.” In case we review the affidavit if he really believed it could be truthful. In case we re-traced this theory, Manager MCCOLLUM speculated that the President would have reviewed the affidavit—speculation at odds with Ms. Lewinsky’s testimony that she did not show the President her affidavit in final form until December. Moreover, although Manager HUTCHINSON later insinuated that Mr. Jordan and the President discussed Ms. Lewinsky’s job in the Jones case, the December 7, the Managers’ Trial Brief acknowledges that the December 7 meeting was “unrelated” to Ms. Lewinsky.

More generally, the Managers failed to show any connection between Ms. Lewinsky’s status as an affiant and possible deponent in the Jones case and her New York job search. Every witness to testify on this point, including the President, Mr. Lewinsky, and Mr. Jordan, agreed that those conversations concerning this point, including the President’s statement, “Well, you have to turn over whatever you have,” sounded far from exculpatory. The Managers have yet to explain whether the President, Mr. Jordan, or Ms. Lewinsky had discussed the New York job search with Mr. Jordan or Ms. Lewinsky by saying, “[s]he turned out to be this huge liar. I found out she left the White House because she was moving to New York and that she would be leaving her job and moving to New York in November—”

The Managers have also stretched and distorted the evidence regarding the box of gifts. The Managers contend that Ms. Currie retrieved the box of gifts, which had been subpoenaed by the Senate, because she was “questioned” by the President, that she “left the job and moved to New York,” and that Ms. Lewinsky had a “connection” to the gifts.

Equally unavailing was the Managers’ insistence that the President must have known Ms. Lewinsky’s affidavit would be false because a truth-telling affidavit would have saved her from having to testify. Both the President and Ms. Lewinsky testified that, in their view, it was possible to craft a truthful affidavit that might have accomplished this objective. The Managers have never explained why we should not credit this uncredited testimony.

The Managers have stretched the facts in other ways as well, most notably with respect to the timing of Ms. Lewinsky’s job search. In their Trial Brief, in their opening presentations, and in their charts, the Managers posited that Mr. Jordan intensified his efforts to get Ms. Lewinsky a job on December 11, 1997, only after, and because, the judge in the Jones case ordered the President to answer far-ranging questions about other women. The Managers thus approved the use of the Majority Report prepared for the House of Representatives.

The Managers, in their opening presentations to the Senate, made clear beyond any doubt that Mr. Jordan met with Ms. Lewinsky before the judge issued her ruling in the Jones case. Nevertheless, the Managers repeatedly scheduled the President’s statement, “Mr. Jordan and I have discussed the Jones case, ‘coached’ his secretary about what to say if asked about Ms. Lewinsky. The President has argued that Ms. Currie was not then a witness in the Jones case, ‘coached’ his secretary about what to say if asked about Ms. Lewinsky. The President’s counsel in the Jones case challenged the President’s statement, “Well, you have to turn over whatever you have.”

The Managers have made much of a conversation between Ms. Lewinsky and Mr. Jordan on December 31, 1997, that touched upon certain notes, or possibly drafts of notes, Ms. Lewinsky wrote to the President. According to Ms. Lewinsky, Mr. Jordan suggested a “conversation” effect, of “check to see what we have, which Ms. Lewinsky interpreted to mean, “get rid of whatever is there.” Mr. Jordan recalled having discussed the notes with Ms. Lewinsky, but not about turning over the notes to them. Did Ms. Lewinsky misunderstand Mr. Jordan, or is one witness lying? The Senate need not decide, since by either account, the President could not have been in possession of the conversation notes and, indeed, neither the notes nor the December 31 conversation between Ms. Lewinsky and Mr. Jordan are mentioned in the two Articles of Impeachment approved by the House.

Perhaps the longest stretch by the Managers is their theory regarding presidential aides Sidney Blumenthal, John Podesta, and Bruce Lindsey. It simply cannot be that the7 managers could have had the courts obstruct justice by making false or misleading denials of wrongdoing in personal conversations with friends and colleagues, even if he knows that they may be forced to testify about those conversations. Indeed, until recently, most federal courts held that false denials of wrongdoing—even when made under oath—could not be a basis for criminal liability.

The Managers have focused particular attention on the President’s conversations with Sidney Blumenthal on January 21, 1998, the day the Lewinsky scandal erupted. According to Mr. Blumenthal, the President said that Ms. Lewinsky had told him that she was “the stalker” by her peers, and that she would claim they had an affair because then they would not be known as “the stalk-er” any more. Curiously, Ms. Lewinsky herself, in the now-famous “talking points” she prepared before her relationship with the President became public, encouraged Ms. Tripp to initiate contact with the President by saying, “[s]he turned out to be this huge liar. I found out she left the White House because she was moving to New York and that she would be leaving her job and moving to New York in November—”

The Managers asked us to look at the “big picture”. The “big picture” with respect to Ms. Lewinsky is that she had no intention of revealing her relationship with the President, regardless of whether he helped her find a new job; she acted independently and in her own best interests in filing her affidavit. The Managers changed their theory regarding presidential aides Sidney Blumenthal, John Podesta, and Bruce Lindsey to account for Mr. Jordan’s story that he did not know that Mr. Jordan was carrying out a plan to hide evidence from the Jones lawyers; and Linda Tripp rather than Sidney Blumenthal was her primary and ultimate betrayer. In fact, the only crimes shown to have possibly occurred are not high crimes but those for which Ms. Lewinsky and Ms. Tripp have now immunity from prosecution from Mr. Starr. What remains when you sweep aside the cobwebs of unsupported speculation and conspiracy theory? To my mind, the case on obstruction boils down to the charge that the President, in the wake of his deposition in the Jones case, “coached” his secretary about what to say if asked about Ms. Lewinsky. The President has argued that Ms. Currie was not then a witness in the Jones case and was not given the approaching deadline for completing discovery. Moreover, he did not know that Mr. Starr had initiated an investigation. In fact, one learned that Mr. Jordan was investigating and that Ms. Currie might be a witness. Mr. Starr, the President told Ms. Currie, “Don’t worry about me. I just relax, go in there and tell the truth.”

I was seriously troubled by the President’s counsel’s initial suggestion that Ms. Currie could “unwind” the facts of the case. Still, Mr. Ruff’s candid correction and apology to the Senate to stand in stark contrast to the Managers’ refusal to correct their own misleading representations of the facts. In the end, reasonable minds may differ over why the President spoke to Ms. Currie
as he did in mid-January 1998. His explanation— that he was "trying to think of the best defense we could construct in the face of what I thought was going to be a media on- slaugher, I couldn't do it." Using a
trusted employee as a sounding board to test
responses that might later be made public is
also not impeachable or criminal. The Presi-
dent also had a legitimate interest in deter-
ing whether Ms. Currie was the source of
incriminating evidence to share.

Mr. Hyde's second justification for failing to
call witnesses was grounded in his tenuous view of that body's role in the
impeachment process. According to Mr.
Hyde, "[t]he threshold in the House was for
impeachment, which is to seek a trial in the
Senate. All that could be was present evi-
dence sufficient to convince our colleagues
that there ought to be a trial over here in
the Senate," explaining that we "were fail-
cy of this position. When these Articles of
Impeachment fail, as I believe they must,
I hope it will send a clear message to the
Senate of what we do do a slapdash, partisan job on something as
momentous and wrenching for the nation as a
presidential impeachment.

Contrary to the suggestions of some Man-
ger, there is no authority for the notion
that the Senate must hear witnesses. It is
true, as one Manager noted, that the Senate
does not hear fact witnesses in the impeach-
trial of President Johnson, notwithstanding the House's failure to do so. As most
historians agree, however, the Johnson impeach-
ment was an illegitimate attempt by the Re-
publicans to unseat a President whose policies they disliked. It was
hardly a model of procedural correctness.

More recently, the Senate re-
removed three impeached federal judges
without hearing any witnesses on the Senate
floor. Indeed, in the impeachment trial of Judge Claiborne of Alabama, a majority of the
Senate approved a motion by then-Majority
Leader Dole not to hear any live testimony. Instead, in each case, the Senate reviewed a
private record prepared by a special
committee of Senators. The Senate
did this over the objections of the judges
being removed.

If the President is willing to forego the
opportunity to cross-examine the witnesses
being relied upon by the Managers, that
eliminates the most pressing need for further
disclosure in this matter. After all, Ms.
Lewinsky, Ms. Currie and others were interviewed multiple times by the
Special Prosecutor while depositions
were called to get sworn statements from
them. That is testimony that we can believe and accept. We chose to believe it and accept it.

Why reinvestigations and deposition have
nothing to do with what they were told by
Special Prosecutor Starr? Why interview Monica Lewinsky when we had her statement under oath, and with a
guaranteed immunity that if she lied she
would forfeit?"

Having chosen to proceed in the House
without witnesses, the Managers were in no position to "challenge questions,
positions on witnesses. Manager Hyde said,
"we were operating under time constraints
which were self-imposed but I promised my
colleagues to finish it before the end of the
year. I didn't want it to drag out." But selfimposed time constraints do not begin to
eplain why Mr. Hyde's Committee declined to
call additional witnesses. The Committee did
hold two day-long hearings. It heard from a
panel of convicted felons who testified, to
nobody's surprise, that perjury is a crime. And it heard from the special prosecutor,
Starr, who had no first-hand knowledge of
any facts in the case, and had not even spo-
ken with anyone who had. Those two days
could have been spent hearing fact witnesses
and surely they would have been, if the Com-
mittee majority thought for one moment
that fact witnesses would have any new and
incriminating evidence to share.

The question each Senator must address is
whether the conduct charged in the Articles
meets the constitutional standard of high
crime and misdemeanor warranting convic-
tion and removal. The President's counsel
and, in particular, former Senator Dale Bumpers have provided us with
erudite history lessons on the misconduct
the Framers meant to cover by this stand-
ard. We have heard debate whether this stand-
covers only conduct performed in the
President's public capacity or also covers
private conduct. A strong case can be made
that the Framers never intended that a
President be subject to impeachment and re-
moval for private misconduct, however
grevious. Instead, they purposely limited the
ground for impeachment to offenses against
the state or grave abuses of official
power.

But this argument presents the proverbial
"slippery slope." Does this mean that a
President may not be removed for murder? The Framers may very well have responded
"no." In fact, during the impeachment trial of
Chief Justice Samuel Chase, the presiding
officer was then Vice-President Aaron Burr, who was the same person who was in custody
in both New Jersey and New York for the
murder of Alexander Hamilton in a duel in 1804. As Chief Justice Chase was in
Grand Inquests, "This fact caused one con-
temporary wag to remark that whereas in
most courts the murderer was arraigned be-
fore the judge, in this case the judge was ar-
raigned before the murderer!" Nonetheless,
Burr was not the subject of the impeachment
trial, Chief Justice Chase was.

In another matter how the Framers would treat
serious private misconduct, I do not hesitate
to conclude that heinous crimes, such as
murder, would warrant the remedy of re-
moval. Professor Cooter has explained:
"Many common crimes—willful murder,
for example—though not subversive of gov-
ernment or political order, might be so seri-
ous as to make a president simply unviable
as a national leader; I cannot think that a
president who had committed murder could not be removed by impeachment.
But the un-
meritorious reason remains much the same;
such crimes would so stain a president as
to make his continuance in office dangerous to public order."

The House Judiciary Committee in 1974
summed up the thorny issue of how to evalu-
ate the constitutional standard for impeach-
ble and removable conduct as follows: "Not
merely the legal standard, but the general governmental interest, is the test to
constitute grounds for impeachment. There
is a further requirement—substantiality."

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Professor Black also addressed the “substantiality” of the misconduct necessary to meet the constitutional standard for impeachment and removal, with the following illustration:

“Suppose a president transported a woman across a state line or even (so the Mann Act reads) to another within the District of Columbia, for what is quite called an ‘immoral purpose.’ Or suppose a president did not immediately report to the nearest policeman that he had discovered that one of his aides was practicing homosexuality—thereby committing ‘misprision of a felony.’ Or suppose the president actively assisted in concealing the latter’s possession of three ounces of marijuana—thus himself becoming guilty of ‘obstruction of justice.’ ... Would it not be preposterous to think that any of this is what the Framers meant when they referred to ‘Treason, Bribery, and other High Crimes and Misdemeanors,’ or that any sensible constitutional plan would make a presid- ent removable on such grounds?”

In my view, the charges that the President committed perjury and obstructed justice to conceal the wrongdoing of a young White House intern are of a different order. Paula Lewinsky not only failed as a matter of proof, but to the extent they raise legitimate questions about his conduct they fail the test of substantiality. Vermonters who indicted Hyde recognized that “one hardly exhausts one’s moral imagination by labeling every untruth ‘perjury.’ The Managers have eloquently expressed their concern about the ‘kind of message’ it would send to America should the Senate refuse to convict and remove the President on the Articles. Chairman Hyde expressed his view that the message would be that “charges of perjury, obstruction of justice are summarily dismissed—disregarded, ignored, brushed aside. In this case, there is no reasonable basis to hold the President above the law. The Managers are also wrong that the conduct at issue here is sufficiently heinous to warrant impeachment and removal of the President. Chairman Henry Hyde has acknowledged ‘one of the most unethi- cal turns in our history’ of the President’s personal misconduct meets the constitutional standard for impeachment, conviction and removal should not be misconstrued to reflect our views on the seriousness of perjury or ob- struction of justice. Professor Tribe, in his testimony last November before a House Judici- ary subcommittee confronted this issue directly, stating: ‘It is always possible to argue, when confronted by serious crime, that the system would crumble if everyone followed the wrong example. But everyone took President Richard Nixon’s allegedly false filing of tax returns under oath, including backdating documents, as a model to emulate, the na- tion’s tax system, and thus its defenses, would crumble. Yet there was no realistic basis to suppose that the Nixon example would start any such stampede, and the sim- ple proposition that, if all did as Nixon had done, the consequences would be catastro- phic did not mislead the House Judiciary Committee into treating the President’s al- leged tax offense as a ground for impeachment. By a vote of 26-12, the Committee soundly declined to treat it as such.”

Second, the Managers are also wrong that Senator Clinton’s personal conduct es- sentially set up a “double-standard” and put the President above the law. The Managers ignore the fact that the Constitution itself establishes a purposely high and difficult standard for the Senate to remove a duly elected head of a co-equal branch of government. In a court of law, not a Senate court of impeachment, if his personal capacity, stands subject to the same standard as any American.

V. PRIOR JUDICIAL IMPEACHMENTS FOR HIGH CRIMES AND MISDEMEANORS

Just ten years ago, the Senate voted to convict two Federal judges on charges of perjury. The Managers read those precedents to mean that perjury, if proved, is always an impeachable offense. This ought not not be held to a lower standard of impeachability than judges. While the failure of proof in this case obviates the need to entertain the constitutional challenge, that judicial impeachments may have on the impeachement of a President, the Managers’ simplistic, “one-size-fits-all” approach is un- sound.

Perjury is not included in the impeach- ment section of Article II of the Constitu- tion, even though, as Manager Buyer noted, the Framers were familiar with the crime. Treason is the defining crime in the Consti- tution—“it is a crime against and under- mines the very existence of Government. Bribery is also expressly included—no officer of the United States can continue if he is corrupted by accepting a bribe to do what he is sworn to do. Since the President’s public duties, perjury may, if proved, pro- vide a basis for impeachment, but only if it is itself done in the course of committing ‘other High Crimes or Misdemeanors.’

In the recent judicial impeachments, the lies at issue were aimed at concealing grossly overreached federal offenses. Alcee Hastings lied to conceal his participation in a conspiracy to fix cases in his own court. Judge Walter Nixon lied to conceal his cor- rup- tions efforts to influence a state prosecutor to drop a case. Significantly, Judge Nixon had been convicted by a Federal jury and was serving a 5-year prison sentence at the time of the impeachment. The Managers simply could not continue to function as a Fed- eral judge and perform his duties.

Judges are approved by the people; even the impeachment of a third judge, Judge Harry Claiborne, but he was impeached for filing a false tax return and not perjury per se. In and as with Judge Claib- borne had been convicted after a jury trial and was serving a federal prison term when he was impeached. By contrast, President Clinton is not ac- cused of lying to conceal public misconduct. He is accused of lying to conceal the ‘nature and details’ of an extramarital affair—an affi- davit that he admitted had occurred. Beyond this, there are very basic differences in terms and functions between Federal judges and the President. Judges are ap- pointed for life. Presidents are elected for fixed terms and accountable in political terms. A President can be subject to review by the people if he runs for reelection. More- over, removing an appointed Federal judge, while extremely serious, implicates none of the momentous, anti-democratic conse- quences of removing an elected President.

Another difference between Federal judges and the President is that, under the Con- stitution, only the former hold their Offices during good Behaviour. The proposition, however, that this clause creates a different constitutional standard for removal of judicial misconduct for Federal judges or other civil officers is dangerous. Such an in- terpretation would attacks on the independance of the federal judiciary and un- dermines the balance between the co-equal branches of our federal government.

Indeed, Alexander Hamilton opined in Federalist No. 79 that impeachment was the only provision for removal “which we find in our own Constitution in respect to our own judges.” The past few years have seen unprece- dented attacks on controversial decisions by Federal judges. Should such decisions be deemed malfeasance by the party in control of Congress, then impeachments against judges who render unpopular deci- sions could provide a platform for endless po- litical posturing. More importantly, this would chill the independent operation of our Federal judiciary.

As Professor Michael Gerhardt has ex- plained, the phrase “other High Crimes or Misdemeanors” means that Federal judges may be impeached on the basis of a lower standard than the President, but it does suggest that they may be impeached “on a basis that takes account of their special duties or functions.” A judge who lies under oath is uniquely unfit to con- tinue in an office that requires him to ad- mit his truths and sit. The removal is perfectly appropriate for the Senate when sitting as a court of impeachment to take into
account the type of duties that the impeached official is called upon to perform and whether the charges, if proved, clearly impair the official’s ability to perform those duties. The outcome of this analysis could very well differ depending on the job of the impeached official.

VII. “FINDINGS OF FACT” FALLACIES

As the impeachment trial wore on, without any punishment and without a popular Republican exit strategy was to force a preliminary vote on so-called “findings of fact” that the President committed perjury and obstructed justice, followed by a second vote on removal. I opposed this initiative because, in my view, it reflected a basic misunderstanding of the Senate’s institutional function when sitting as a court of impeachment.

The Senate’s constitutional role is to determine whether to convict the President of an impeachable offense and remove him from office. This is a unitary question, requiring a unitary answer. In recognition thereof, the Senate has rules prohibiting dividing articles of impeachment.

A presidential impeachment trial is not an appropriate forum for “finding” that a public official has committed a crime. Crime and punishment is a proceeding by the Constitution to our criminal courts, where an accused is entitled to due process rights far in excess of the minimal procedural requirements guaranteed under the Constitution by the Senate in the impeachment trial. In the current case there are also additional complicating factors since the Senate made up its procedures as it went, without the specificity or restraint against the President have constantly shifted.

Impeachment is not about punishing the officeholder but about protecting the public. Senator George Edmunds of Vermont explained in 1868 that “[p]unishment by impeachment does not exist under our Constitution. . . . [T]he accused can only be removed if he poses a threat to the democratic system of government that they had fought to establish, and the direct election of Senators by the people in our States.

Branding the President is not the function of impeachment. On the contrary, a congresional process for criminal punishment would be an illegitimate exercise in shaming the President and an abuse of the impeachment process in support of a future criminal prosecution, which recent leaks from prosecutor Starr’s office confirm he is considering.

A preliminary vote on guilt in the form of “findings of fact” would set the dangerous precedent that a Senate impeachment trial could be used for the purpose of criticizing conduct that the constitutionally-required numbers of Members of both Houses did not believe impeachable.

The last protection against impeachment does not exist under our Constitution. . . . [The accused] can only be removed if he posed a threat to the democratic system of government that they had fought so hard to establish. They were not trying to ensure that the President would be a good role model for the nation’s children. More important than that, the Constitution was concerned with when they met in Philadelphia in 1787. They had just paid a great price to liberate themselves from a tyrant. They wanted to ensure that their new Chief Executive could not become a tyrant. They wanted to ensure that he could be removed if he posed a threat to the democratic system of government that they had fought so hard to establish. They were not trying to ensure that the President would be a good role model for the nation’s children. More important to them, as a grandparent and grandfather, I work hard to be a role model for my children and grandchild. They do not need the President to serve that role. They do not have to look to the Congress to impeach and remove this President to know the difference between right and wrong.

I trust that America will raise their children, to explain what the President did was wrong, and to point out the humiliation and other consequences he has brought not only himself but all of us. It is not hard to imagine a generation, the reasons and views upon which the President had to suspend his judgment.”

The motion was tabled.

In the 130 years that have passed since that time, the Senate has seen the advent of telecommunication, distribution of Senate documents over the Internet, the addition of 46 Senators representing 23 additional States, the direct election of Senators by the people in our States.

Opening deliberations would help further the dual purposes of our rules to promote the effective and open functioning in the impeachment process. I supported the motion by Senators Harkin, Wellstone and others to suspend this rule requiring closed deliberations on the Articles of Impeachment. I had hoped that this secrecy rule would be suspended so that the Senate’s deliberations would be open and the American people would be able to witness their Senators’ deliberations.

I have indicated objection to opening our final deliberations because petit lujar in courts of law conduct their deliberations in
secret. Analogies to juries in courts of law are misplaced. I was privileged to serve as a prosecutor for eight years before I was elected to the Senate. As a prosecutor, I represented the government in court, before juries on numerous occasions. I fully appreciate the traditions and importance of allowing juries to deliberate and make their decisions without intimidation or pressure from the parties, the judge, or the public. The sanctity of the jury deliberation room ensures the integrity and fairness of our judicial system.

The Senate sitting as an impeachment court is unlike any jury in any civil or criminal process, for a court of law is specifically because the jurors have no connection or relation to the parties or their lawyers and no familiarity with the allegations. Keeping the deliberations of regular juries secret ensures that as they reach their final decision, they are free from outside influences or pressure.

As the Chief Justice made clear on the third day of the impeachment trial, the Senate is more a jury; it is a court. Courts are called upon to explain the reasons for decisions that the Senate is called upon to evaluate the evidence as is a jury, we stand in different shoes than any juror in a court of law. We all know many judicial decisions will be open to public scrutiny in this matter; we all know the Managers—indeed, one Senator is a brother of one of the Managers—and we were familiar with the underlying facts in this case before the Managers ever began their presentation.

Because we are a different sort of jury, we have a heavier burden in explaining the reason for the decisions we make here. I appreciate why Senators would want to have some aspects of our deliberations in closed session; to avoid embarrassment to and protection for persons who may be discussed. Yet, on the critical decisions we are now being called upon to make on our votes on the Articles themselves, allowing our deliberations to be open to the public helps assure the American people that the decisions we make are for the right reasons.

In 1974, when the Senate was preparing itself for the anticipated impeachment trial of former President Richard Nixon, the Committee on Rules and Administration discussed the possibility of televising the coverage of the Senate trial. Such coverage did not become routine in the Senate until later in 1986. In urging such coverage of the possible trial of President Nixon, Senator Metcalf (D-MT), explained: "Given the fact that the party not in control of the House is the majority party in the Senate, the need for broadcast media access is even more compelling. Charges of a 'kangaroo court,' or a 'lynch mob proceeding' must not be given an opportunity to gain ground in an environment where American must be able to see for themselves what is happening. An impeachment trial must not be perceived by the public as a mysterious proceeding with which they would have no means of expressing their opinion. The Senate must be open to the public to disprove any such charges. An open trial would also enable the public to understand the interests of the nation. We all knew before the trial began that history would be written of the world's most powerful nation for the first time in our century in a trial that would affect the right of the people to see how government decisions are made. Keeping closed our deliberations is wholly inconsistent with the accountability that is the hallmark of our government. I likenwise have urged the Senate to adopt these 130-year-old rules to allow the Senate's votes on the Articles of Impeachment to be recorded for history by news photographers. This is a momentous official and public event in the annals of the Senate and in the history of the nation. This is a moment of history that should be forever for both its contemporary and its lasting significance.

Open deliberation ensures accurate accountability to the people. If our elected representatives have chosen for or against conviction for reasons they understand, even if they disagree. To bar the American people from observing the deliberations that result in these important decisions is unfair and undemocratic. The Senate should have suspended the rules for the purposes of this case. Instead, the Senate has acted in open session. After this impeachment trial is over, I urge the Senate to re-examine the rule on closed deliberations in impeachment trials and revise the rule to reflect the open and accountable government that is now the pride and hallmark of our democracy.

X. CONCLUSION

The House Managers have warned that should the President be acquitted we will set a dangerous precedent and damage the 'rule of law.' I have set the following important precedent for the future: that partisan impeachment drives are doomed to failure. It is up to the Senate to restore sanity to this process, exercise judgment, do justice and act in the interests of the nation. We all knew before the trial began that history would be written of the world's most powerful nation for the first time in our century in a trial that would affect the right of the people to see how government decisions are made. Keeping closed our deliberations is wholly inconsistent with the accountability that is the hallmark of our government.

Opening deliberation would ensure complete and accurate accounts of the reasons for the decisions we make here. Opening our deliberations on our votes on the Articles would tell the American people why each of us voted the way we did. The last time this issue was actually taken up and voted on by the Senate was more than a century ago, during the impeachment trial of Secretary of War William Belknap. Without debate or deliberation, the Senate refused then to open the deliberations of the Senate to the public. That was before Senates were elected directly by the people of their State, that was before the Freedom of Information Act. We have promised the right of the people to see how government decisions are made. Keeping closed our deliberations is wholly inconsistent with the accountability that is the hallmark of our government.

Constitutional scholar Michael Gerhardt noted that the Senate, instead of balancing the tasks of making policy and finding facts (as required in impeachment trials) with political accountability. Public access to the deliberations that result in important decisions is unfair and undemocratic. The Senate should have suspended the rules for the purposes of this case. Instead, the Senate has acted in open session. After this impeachment trial is over, I urge the Senate to re-examine the rule on closed deliberations in impeachment trials and revise the rule to reflect the open and accountable government that is now the pride and hallmark of our democracy.

22. Black, supra, p. 17.
23. Mr. GRASSLEY. Mr. Chief Justice, my fellow Senators, as this trial nears the end, we have to ask the question how we got here with a tragedy like this. There are many losers. There are no winners. There are surely no heroes. There are lots of lessons to be learned, and I think all of our prayers ought to go out to those who were ensnared in the web of controversy.

In reflecting on this case and my role in it, I would like to offer some personal reflections. The word "sad" comes to mind. I have not relished sitting in judgment of a twice-elected, popular President. I would prefer to make history in other ways. I also regret the nature of the subject of this trial. It is not uncommon for our entire society suddenly thrust into an open, nonstop debate about things that ought to make all of us blush.

Some say that this impeachment effort is part of a right-wing conspiracy. It is a Republican plot to get a Democratic President. Let's look at how we got here and see if that argument holds up.

We are here because the President did a wrong acts and he admits to that. We are here because of the independent counsel law. The President himself led the charge to reauthorize the Independent Counsel Act. Thirty-three of my colleagues on this side of the aisle were in that particular time. All but one of you voted for reauthorization.

On June 30, 1994, the President signed the reauthorization bill. He issued a statement and here is what he said: "On June 30, 1994, the President signed that reauthorization bill. He issued a statement and here is what he said:"
He says,
Opponents called it a tool of partisan
attack against Republican Presidents and a
waste of taxpayer funds. It was neither.
In fact, the independent counsel statute has
been tested in a current case today for Gov-
ernment integrity and public confidence.

Those were the words of President

Before reauthorization, it was the Presi-
dent himslef who advocated the appoin-
tment of a special prosecutor.
That appointment was made by the
President’s own Attorney General.
After reauthorization, the Attorney
General supported the appointment of
an independent counsel. The independ-
ent counsel was then appointed by a
special three-judge panel, as required
by law.

Also under the law, the Attorney
General can initiate the dismissal of an
independent counsel if he oversteps his
bounds or acts improperly. Not only was
this never done by the President’s
Attorney General but, in contrast, she
even agreed several times to expand his
jurisdiction, including to cover the
Monica Lewinsky matter.

Also under the law, the independent
counsel is obliged to send to the House
any evidences of crimes that might be
impeachable.

In short, this case came about through a legitimate, legal process. It
is a process that historically was vigor-
ously defended by this side of the aisle.
There are various checks and balances
built into the process. They are de-
signed to prevent abuse by the inde-
pendent counsel, but they were never
terminated, even though the President’s
own Attorney General could move for
dismissal.

No, this President is in this predica-
ment because of his own private wrong-
doing and because of public policy he
pursued. There is no conspiracy.

The President’s actions are a profound affront, of course, upon our
society. His misdeeds have caused
many to mistrust elected officials.
Cynicism is swelling among the grass-
roots. His breach of trust has eroded
the public’s faith in the office of the
President. The President’s wrong-
doing has painted all of us in Wash-
ington with a very broad brush.

In the past 12 months, thousands of
Iowans have registered their opinions
with me. One letter from a middle
school teacher caught my eye.

At an assembly to mark the new
school year, a video entitled “Attitude
is Everything” was presented to the
student body. The video was all about
American heroes—college athletes, Olym-
pic medalists, astronauts and
world leaders.

Logically, the video also included
President Clinton. The school principal
wrote to me the following. He said,
when the President’s picture appeared,
the entire student body—aes 11 to 14—
snickered. He said their spontaneous
reaction struck a chord. He wrote:

Although they may not fully understand
the adult connotations and political rami-
fications...they do know that if you want
to be trusted and [if you want to be] re-
spected, you must tell the truth....[As]
an educator in Iowa’s public schools for the past
16 years...our students’ reaction to Presi-
dent Clinton’s picture is one of the saddest
moments I can recall. In that instant, I real-
ized how deeply his conduct has affected our
country.

Mr. Chief Justice, there is that word
“sad” again. It seems to come to the
fore in people’s minds over this case, over
this President’s conduct, and over the
impact it has had on our country.

The true basis of the case is the
collapse of the President’s moral au-
thority. He undermined himself when
he wagged his finger and lied to our
people on national television, denying
that relationship with Ms. Lewinsky.
That did more damage to his credibil-
ty than any other single act.

There was no better reason than that
for the resignation of the President.
I did not personally call for his resigna-
tion in August. That is something the
President should decide on his own.
But once you lose your moral author-
ty to lead, you are a failure as a leader.
FDR once spoke of the Presidency in this
way:

The Presidency is not merely an adminis-
trative office. It is preeminently a place
of moral leadership.

Mr. Clinton should take note.
Next, there is the issue of the abuse
of power and authority. The President
used his position to enter into an
improper relationship with a subordi-
ate—not just a subordinate, a young intern.
He later used his power to find
her a job.

Another abuse of power: The full
powers of the White House were on
leash to stop the process and to
attack the credibility of those who in-
vestigated him.

This White House has perfected the
art of stonewalling around the truth.
I fear that future White Houses will
learn much from these experts and will
refine and employ their own truth-
finding arsenals. Truth and openness
will be casualties.

Last, there is the issue of the poor
example the President’s actions serve
for the Nation, especially for our
youth. Is it now OK to lie because the
President does it? And in the same
manner, by wordsmithing, by trying to
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moments I can recall. In that instant, I real-
ized how deeply his conduct has affected our
family and to our country. At that
point, she said she changed her posi-
tion in favor of impeachment.

These are all questions and issues
that emerge from the broader contours
of this case, outside the narrow charges
in the articles.

With respect to the impeachment
charges, many of the President’s argu-
ments are based on contorted inter-
pretations of the facts. These interpreta-
tions aren’t credible. They represent
lawyering at its best or, as some would
say, at its worst.

It is clear to me that the President
committed serious crimes when he
coached his secretary, Betty Currie,
and when he misled his aides, Sidney
Blumenthal and John Podesta. Each of
these aides ended up being a witness in
official court proceedings. I believe,
based on the evidence before the Sen-
ate, that the President lied to those
witnesses so they would repeat those
lies before official court proceedings.
That is obstruction of justice.

In addition, I find it very interesting
that a power lawyer like Vernon Jor-
dan would be so active in the job hunt
for Ms. Lewinsky. Regardless of what
she felt or thought, I believe the Presi-
dent was arranging to get her a job.
That way, she wouldn’t provide harm-
ful testimony in the Paula Jones sex-
ual harassment lawsuit. Again, ob-
struction of justice.

Mr. Chief Justice, these actions
weren’t just outrageous, and, more im-
portant, morally wrong, but they were
also illegal. They were a direct assault
on the integrity of the judicial process.
The President is guilty of the offenses
charged under article I.

The first article charges that the
President committed perjury on sev-
eral occasions. While I am not con-
vincing he committed perjury on each
occasion charged, I believe he did com-
mit perjury when he lied about his ef-
forts to obstruct justice. That is
the fourth count.

I don’t believe the President’s state-
ment that he was merely trying to re-
frain from memory when he spoke with
Betty Currie about his relationship
with Ms. Lewinsky, and I don’t believe
the President’s statement that he was
only trying to protect himself from
embarrassment when he concocted
elements of these lies about Ms. Lewinsky
and then conveyed those lies to his aides.

The President was not forthright
when he testified before the grand jury.
Time and time again, he gave answers
that were misleading and sometimes
deliberately false. The American peo-
ples have a right to expect their Presi-
dent to be completely truthful, as they
expect you and me to be com-
pletely truthful. And the American
people have a right to expect their Presi-
dent to be truthful, especially
impeachable.

I voted guilty on article I as well.

Mr. Chief Justice, these were not
easy decisions. They are the product of
soul-searching, as it is for all of you.
So they leave me with a good con- science. I believe my votes reflect the truth of what happened in this case.

The Senate is about to close this chapter in American history. It may or may not be the final chapter in this story. Nevertheless, our decision in this impeachment trial will stand against the test of time. You only truly understand the present when it is past. In that respect, future generations will serve as our jury and, in the end, history will serve as the final judge. That is my hope.

Mr. CRAIG. I promised to share with the people of Idaho and the nation what comments I made in the closed session of the Senate deliberating on the impeachment of President Clinton. What I told my colleagues as we deliberated was this:

If we were in a church, the minister would admonish us from the pulpit to hate the sin, and forgive the sinner. But we’re not in a church. If we were in a court of law, the judge would tell us to hate the crime, and punish the criminal. But we’re not in a court of law.

We’re part of a constitutionally-directed tribunal, and our job is to love the Constitution and protect the office of the president. Our decision should not be about saving or removing William Jefferson Clinton, but about protecting the office of the president and keeping our Constitution strong.

I believe he committed the crimes and acts charged in the articles of impeachment, and I will vote to convict and remove him from office.

That was my statement to the senators in closed deliberations, and I stand by it today.

But this statement was not the full explanation of my vote and my reasoning; that I believe is owed to the people of Idaho and the nation. Therefore, let me try to share with you the thoughts now to clarify why I voted to convict President Clinton on the articles of impeachment.

First, I believe the House made its case on the facts. I was persuaded by what I saw, read, and heard that the president deliberately lied under oath in the case brought by Paula Jones to enforce her civil rights. I was also persuaded that he encouraged others to lie under oath and committed other acts designed to obstruct justice. In reaching these conclusions, it was important to me that the Senate is not bound to a specific constitutional or statutory standard in judging the evidence; instead, each senator is left to his or her own conscience. That is both the political and judicial nature of the impeachment process prescribed by the Constitution.

However, reaching this conclusion about the facts does not trigger automatic conviction and removal of the president. A senator must still resolve two objections: whether the acts committed were the kind of “high crimes and misdemeanors” warranting removal from office, and whether the interests of the nation are served by removal. Impeachment by the House expresses that chamber’s opinion on those two questions, but it is up to the Senate to render final judgment.

And it is these two questions that have caused the greatest controversy in this impeachment process—not to mention the most furious debate, hand wringing, and logical contortions.

For example, we have heard much during these proceedings about proportionality—in other words, about ensuring that the punishment or sanction fits the crime. Some of our colleagues have suggested that while the crimes of perjury and obstruction of justice may rise to the level of impeachable offenses, that conclusion is not inevitable on every set of facts. More to the point, they argue there is something in this particular case that diminishes the seriousness of the offense or renders it a private, as opposed to public, crime: perhaps the context of the misbehavior was not that of the perjury, or the motive behind the obstruction of justice.

Yet considerations such as these have not prevented the government from prosecuting criminals who committed much greater crimes. Furthermore, while we are not bound by statutory definitions of crimes here, these arguments frustrate the very goal our Founders had in mind when they established the extraordinary remedy of impeachment: to protect the president from the lawless, and the nation from a lawless president. The Framers of the Constitution believed that governments are established in the first place to protect the rights of the governed. It follows that the most serious breach of duty in public office—the most serious threat to the order of society itself—is for the enforcers of the law to break the law. How much more grave that breach becomes when it is committed by the one individual who personifies the federal government: the president. How much more abhorrent it is when, in covering up his crimes, that president exploited the very public trust he betrayed.

There is no question in my mind that perjury and obstruction of justice are the kind of public crimes that the Founders had in mind, and the House managers have demonstrated these crimes were committed by the president in an effort being desperately sought by some to allow President Clinton to escape accountability, it seems to me that creating such loopholes would require tearing holes in the Constitution—something that cannot be justified to protect this president, or any president.

This brings me to the final question: whether the public interest will be served by the president’s removal from office. Let me say there are those in my State who have been seeking this result ever since the president was elected, because they simply don’t agree with him. I, too, generally disagree—sometimes loudly—with President Clinton’s approach to public policy.

However, political and policy differences are emphatically not the focus of this question. Instead, the Founders intended us to focus on the safety of our nation. That is the threshold, appropriate to the serious impact of the vote we must case. In this case, many are arguing that our nation is not at risk; we’re prosperous; the government is not collapsing; there is no immediate or external threat to the country.

But I would submit that if a generation of young people are taught by our actions in this case that a lie carries no consequences, then the nation is at risk. If our citizens conclude that lawlessness in the highest office is acceptable, that their elected representatives are complicit in that corruption, and that nothing can be done to stop it, then the nation is at risk. If future presidents think they can go further in their crimes and think they will not be held accountable, then the nation is at risk. If they apply the “Clinton Indicator,” then the nation is at risk. If the Executive Office of the President is occupied by an individual who is generally believed to have lied and betrayed the public trust—if the symbol of the presidency is compromised, the nation is at risk.

Some have suggested that removing this president from office would put the nation at risk. That is false argument, and managed along the way to generate fear. Instead, we should place our faith in the Constitution and the wisdom of its Framers, who provided a roadmap for a peaceful, swift, and orderly transition of power to the vice president. That transition poses no threat to the nation.

On the other hand, I believe exonerating President Clinton with a vote for acquittal does create a threat to our nation. In short, I am convinced that the nation is at risk because of the possibility of the president’s removal through the impeachment process, but because of the damage he has caused to the Executive Office of the President, and the damage that continues to be done by his remaining in office.

For all these reasons, I believe my vote to convict and remove this president from office is an appropriate response, a necessary response, a consistent response, and one I should fear. Instead, we should place our faith in our colleagues in the final result, I salute them for their sincerity and the seriousness with which they applied the “Clinton Indicator,” then the nation is at risk. If the Executive Office of the President is occupied by an individual who is generally believed to have lied and betrayed the public trust—if the symbol of the presidency is compromised, the nation is at risk.

I said at the beginning of this process that it would be my goal to ensure that we proceeded in a fair and constitutional manner. I believe we have done so—and managed along the way to generate real political will. I believe that the political will of the day. While I fundamentally disagree with many of my colleagues in the final result, I salute them for their sincerity and the seriousness of their purpose. No matter what the result, the Senate discharged its constitutional duty.

However, reluctant as I am to say it, I do not believe this sorry chapter in our history is closed. On the first day
of this trial, as I watched the Chief Justice take the chair, I was angry—profoundly angry that this president had brought this nation to this point because of his own self-gratification, setting what was good for himself above all else. For the American public it is unconscionable what the president has put the country through, continues to put the country through, and will continue to put the country through for his own personal and political ends. My differences with the president on this trial and party or policy are manifest, but I am saddened that this sorry chapter will continue, that the book will be opened and the pages of this chapter will be turning as long as this president remains on office. Our young people, our citizens, our Constitution deserve a better end to a better story.

Mr. DODD. Mr. Chief Justice, my colleagues, 31 days ago at about this very hour we gathered in the Old Senate Chamber in closed session to begin the journey toward the Constitutional Convention we are today. We are only hours away from casting what ROBERT C. BYRD has appropriately described as the most important vote that any of us have cast or are likely to cast in our service as U.S. Senators. A decision to declare the president impeached and to try him in our Senate is a decision unparalleled in comparison to trying the impeachment of a popularly elected President of the United States.

Unlike the House of Representatives, we did not decide to initiate the impeachment action. We did not seek this burden. It has been thrust upon us. Our responsibilities were limited to how to proceed in this trial and what verdict to render. Despite our procedural differences along the way, the Senate has fulfilled, in my view, Alexander Hamilton’s vision as a “tribunal significantly and sufficiently dignified.” The credit for that result, I suggest, belongs primarily to TOM DASCHLE, the Democratic leader, and to TRENT LOTT, the majority leader. Let history record that these two leaders, saddled with different challenges, led us with patience, fairness, good humor and dignity.

I have listened intently to all of you who have spoken on this matter, and I urge all Senators to add the reason for your vote to this record for, in many respects, it will be our words, our thinking, our rationale that will be revisited in the coming millennium, when and if those who succeed us in the judgment that is upon us.

The contemporary press will record what decisions we have reached but the ever-passionate eye of history will also scrutinize collectively and individually how we reached our conclusion and what impact this ordeal has had on the Constitution, the Congress, the courts, the Presidency and the maintenance of our tripartite federal system of government.

I agree heartily with those who say we should not decide this matter on more than the executive branch itself. The culpability for this damage lies first and foremost with President Clinton. His illicit affair with a young woman, a subordinate in the west wing of the White House has properly been given more than the executive branch itself.

I am dismayed by the argument of some that conviction can be based on reasons totally beyond the scope of the articles of impeachment. Whether we like it or not, we have a constitutional duty to confine our judgment to the specific accusations. The standard of proof that we use to arrive at our decision is probably up to each Senator, but we do not have a similar luxury to determine what grounds we believe to be sufficient for conviction. Those grounds are set by the House and must be proven by very narrow margins on nearly party-line votes.

The House Republican managers have presented us with two articles of impeachment accusing the President of perjury and obstruction of justice. The House managers have very specifically charged the President with violation of the Criminal Code, insisting that the facts prove each and every element of the criminal charges.

While it is certainly true that no person, including the President, is above the law, it is equally true that no trial judgment is beyond review. By insisting that this President is in violation of specific crimes in the Criminal Code, have not the House managers, to some degree, deprived the Members of this Senate of the individual judgment when exercising a standard of proof?

The standard of proof in all criminal cases is beyond a reasonable doubt. If
I would urge our two leaders to include an examination of these issues as part of the agenda in the 106th Congress.

Thank you.

Mr. JEFFORDS. On January 7, 1999, the House of Representatives presented the Senate with two articles of impeachment against President William Jefferson Clinton. The articles charged the President with lying under oath before a Federal grand jury and with obstruction of justice. In the days following the House's presentation of the articles, many have criticized the Senate for continuing on where the House left off. They argue that if there are not enough votes in the Senate to remove the President, then the Senate should not have bothered proceeding with the trial. While this may seem like a reasonable way of disposing of an unpopular process, the Senate has a constitutional duty to hold an impeachment trial. Although the Constitution provides little guidance, one thing was clear: In order to fulfill this duty, we had to come together as a body and proceed in a manner that was judicial, deliberative, and fair. That meant that before the Senate could make any decision on the articles of impeachment, each side had to be given the opportunity to present its case.

Now that we have heard from the House Managers, the President's counsel and viewed the deposition testimony of three key witnesses, it is the appropriate time to render judgment on the articles of impeachment. I must state at the outset that this has been one of the most difficult experiences that I have endured in my 23 years in Congress.

A. A Loss of Respect.

This process has been distressing on a personal level because I came into it with a great deal of respect and admiration for President Clinton. Over the past six years, we have enjoyed a good working relationship. While we do not share the same party and we often disagree, I have respected his knowledge of important projects. Given my esteem for the President, I have been saddened and gravely disappointed by much of what I have learned over the last few weeks. Whatever the final outcome, I will leave the knowledge that the President has indeed committed shameful acts, misled the American people and brought discredit upon the office of Presidency. By his own actions, he has ensured himself a place in history alongside President Andrew Johnson.

B. Setting An Important Precedent.

This process has been trying on a professional level because I recognize the enormous historical significance of my decisions. This trial will establish precedents to examine and judge the conduct of all future Presidents. While our founding fathers clearly intended impeachment for only the greatest of offenses, confronted with a series of tawdry acts, the facts and circumstances do not neatly fit into the definition of "other high crimes and misdemeanors." I am gravely concerned that a vote to convict the President on these accusations may establish a threshold that would make every President subject to removal for the slightest indiscretion or imperil every President who faces a Congress controlled by the opposing party. Yet, at the same time, I am concerned that a vote of acquittal be mistaken as a license to mean that perjury and obstruction of justice are not impeachable offenses.

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

A. The Standard of Proof: Clear and Convincing Evidence

The Constitution provides very little guidance to the Senate for its trying of the impeachment of the President. There is absolutely no reference at all to the standard of proof that senators shall use when evaluating the Articles of Impeachment. I believe the fact that the Framers gave this body the duty to try an impeachment, but no guidance as to what standard of proof to use in the trial, gives each senator the discretion to select the standard he or she deems appropriate.

In making my decision, I have focused on the nature of the proceeding: How, in a unique process, it is neither criminal nor civil. I also focused on the purpose of the proceeding: The Senate holds an impeachment trial to determine whether there is proof that the President's misconduct rises to the level which demands that he or she is no longer fit to hold office.

Given the nature and purpose of an impeachment trial, I have decided that the "preponderance of the evidence" standard would not be appropriate as being too low a standard. On the other hand, I believe that "proof beyond a reasonable doubt" would raise too high a standard. The question we must ask ourselves is: Do the President's actions demonstrate that he is unfit to serve, thus warranting his removal in order to protect the public? Since we are concerned with the public's protection I would suggest that the clear and convincing standard, which lies somewhere in between, would be more appropriate to use in this case. Based on the very fateful decision of removing the President from office.

Accordingly, I have used the clear and convincing evidence standard to judge the impeachment charges against President Clinton. I understand that this standard is little used, however, I feel that in impeachment trials it is most appropriate to use a standard that is somewhere in between the extremes.

B. Article I: Perjury Before the Grand Jury

I consider it essential that the President provided perjurious false and misleading testimony before the federal grand jury. The House Managers applied the federal perjury statute found at 18
U.S. C. § 1623 to the President’s testimony. The elements of perjury are met when: (1) while under oath (2) one knowingly (3) makes a false statement as to (4) material facts. While I agree that some of the President’s statements regarding the federal grand jury were false, I have concluded that some of the allegations simply do not rise to the level of perjury and that the House Managers have not proven the remaining perjury charges by clear and convincing evidence.

The first allegation is that the President committed perjury before the grand jury when he testified about the nature of his relationship with Monica Lewinsky. In his testimony before the grand jury, the President admitted that his relationship with Ms. Lewinsky was ongoing and that it involved inappropriate intimate contact. Based on the House Managers’ presentation, there is no doubt in my mind that the President’s prepared statement to the grand jury was inaccurate in part. While I disagree with the House Managers’ conclusion that the President’s use of the terms “on certain occasions” and “occasional” were intentionally misleading, I agree with the House Managers that the President lied about when and how his relationship with Ms. Lewinsky began. However, given that the President admitted to the key issue before the grand jury, I am of the opinion that the House Managers failed to prove whether or not the President was lying about these immaterial details or whether or not these elements establish a charge of perjury. I also reject the related allegations pertaining to the President’s testimony regarding the definition of sexual relations used in the Jones case.

The second allegation of this Article is that the President committed perjury in his grand jury testimony by repealing the perjurious answers he had given in his civil deposition. The House Managers have certainly proven that the President lied about a number of issues in his civil deposition. However, Article I concerns the President’s grand jury testimony, not his deposition testimony and the House Managers seem to rely upon the President’s reaffirmation of his deposition testimony as proof that he committed perjury. Since I do not find that the President reaffirmed his deposition testimony before the grand jury, I reject this as an allegation of perjury.

The third allegation is essentially that the President committed perjury when he testified before the grand jury that he was not paying attention to Mr. Bennett’s misstatement that the Lewinsky affidavit meant that “there was no sex of any kind in any manner, shape or form.” Although the video tape of the President’s civil deposition does show the President staring in Mr. Bennett’s direction, we cannot know what the President actually was thinking at that time. We have all had moments where we appear to be paying attention to a speaker, when we are actually lost in our own thoughts. Because the House Managers could not possibly prove whether or not the President was actually paying attention to the exchange, they have not met the burden of proving that the President’s testimony was false.

The most serious allegation in Article I is that the President testified falsely about his attempts to obstruct justice in the Jones case. I reject this perjury allegation outright because I believe it was improper for the House Managers to rely on the obstruction of justice allegations within Article I. I have considered the obstruction of justice allegations in Article II.

C. Article II: Obstruction of Justice

The second article of impeachment charges the President with obstruction of justice. Article II charges that the President prevented, obstructed and impeded the administration of justice, both personally and through his subordinates and agents, in a Federal civil rights action. To prove a case of obstruction of justice under the Federal statute found at 18 U.S.C. §1503, the House Managers must prove that the President acted with intent and that he “endeavored to obstruct or impede the due administration of justice.” After considering these allegations, I have concluded that the House Managers have failed to prove all but one of the obstruction of justice charges. My basis for this conclusion is the following.

The first allegation in Article II is that the President obstructed justice by having his friend Vernon Jordan assist Ms. Lewinsky in her New York job search in exchange for her silence in the Jones case. To prove this allegation, the House Managers presented compelling circumstantial evidence that Mr. Jordan assisted Ms. Lewinsky with both her job search and with her affidavit. The House Managers also pointed out that Ms. Lewinsky received her job offer just two days after she signed a false affidavit. However, there are also circumstantial facts that belie the “quid pro quo” claim. First, there is evidence that the President enlisted Mr. Jordan’s help well before Ms. Lewinsky’s name appeared on the Jones witness list. Second, Mr. Jordan testified in his Senate deposition that he had stepped up the job search before he learned that Lewinsky was involved. In a final note, a conspiracy takes two willing actors. I would have a hard time convicting the President of this charge when both Mr. Jordan and Ms. Lewinsky have denied that there was any connection between the job search and the false affidavit.

Another allegation is that the President obstructed justice by encouraging Ms. Lewinsky to file a false affidavit in the Jones case. The House Managers have a final alleg that the President informed Ms. Lewinsky that her name had appeared on the Jones witness list, he suggested that she might file an affidavit to avoid being deposed. To find that the President obstructed justice, however, I must infer from the evidence that the President was encouraging Ms. Lewinsky to file a false affidavit. I cannot make this leap when Ms. Lewinsky herself testified that President Clinton told her that between their false cover stories and the contents of the affidavit. Indeed, Ms. Lewinsky testified repeatedly that the President never discussed the contents of the affidavit with her and that, at that time, the President did not think that the affidavit necessarily had to be false.

Article II also alleges that the President obstructed justice by encouraging Ms. Lewinsky to hide his gifts. The thrust of the House Managers claim is that the President instructed Ms. Currie to pick up the gifts from Monica Lewinsky on December 28, 1997, so that Ms. Lewinsky would not have to turn the gifts over to Paula Jones attorneys. I would agree that the circumstances of the President’s secretary, Ms. Currie picking up the gifts a few hours after Ms. Lewinsky suggested to the President that Ms. Currie pick up the gifts are certainly suspect. If the House Managers could prove that Ms. Currie initiated the gift pickup there would be clear and convincing evidence that the President was in fact encouraging Ms. Lewinsky to hide the gifts. Because there is conflicting evidence on this critical issue, the House Managers did not meet their burden.

In addition, Article II alleges that the President obstructed justice by making false and misleading statement to his aides about Ms. Lewinsky. Given that the President had an ongoing relationship with Ms. Lewinsky, it was spurious, mean spirited, defamatory and baseless to refer to Ms. Lewinsky as a stalker or in any way impugn her reputation. The House Managers and all of us have every reason to be incensed by the President’s actions. That being said, it is my opinion that the President’s remarks in his continuing effort to conceal the true nature of his relationship with Ms. Lewinsky are not evidence that the President knew that these aids would be called to testify. Therefore, I believe that this allegation has no merit.

While I found the other charges alleging in Article II to be either legally or factually deficient, there is one allegation of obstruction which I believe that the House Managers have proven by clear and convincing evidence: the President’s post-deposition statements to Betty Currie. Ms. Currie testified that on two occasions in the following the President’s deposition in the Jones case, the President called her into his office and made a series of remarks to her “You were always there when she was there, right? Lewinsky called me alone. You could see and hear everything. Monica came on to me and I never touched her, right? She wanted to have sex with me and I couldn’t do that.”
I simply do not believe the President's explanation that he was questioning Ms. Currie in an "effort get as much information as quickly as I could" or that he was "trying to ascertain what the facts were" or what Ms. Currie "thought" because I am not persuaded by the fact that Ms. Currie testified that she did not feel pressured to agree with the President. Rather, I agree with the House Managers that if the President was actually seeking information, he would not have been heard by repeating rhetorical questions. I also believe that the President's explanation would be more plausible if his statements to Ms. Currie were not false.

The fact is that the President gave false testimony in the Jones deposition, that during his deposition he repeatedly referred to Ms. Currie as someone who could back up his testimony and that immediately following the deposition he summoned Ms. Currie into work on a Sunday and cleverly spoon-fed his cover stories to her. Despite the President's counsel's protestation, there was still a possibility that Ms. Currie could be called to testify in the case. Accordingly, I do not believe that when the President called Ms. Currie to his office and repeatedly recounted these false statements he "endeavored to influence, obstruct or impede the due administration of justice" in violation of the federal obstruction statute.

\[ \text{III. HAS PRESIDENT CLINTON COMMITTED A HIGH CRIME WARRANTING HIS REMOVAL FROM OFFICE?} \]

A. To Decide Whether the President's Actions are a High Crime, We Must Look at the Underlying Circumstances.

The House Managers have left us with the impression that once we conclude that the President has committed either perjury or obstruction of justice, we have a Constitutional duty to vote to remove the President from office.

They maintain that perjury and obstruction of justice must be considered high crimes in the same manner that they carried the same penalties as bribery. I reject this premise. In fact, the severity of a bribery sentence is dependent on subject matter and the amount of the bribe. Similarly, a conclusion that the President committed obstruction of justice should not automatically warrant his removal. It is incumbent upon each of us to examine the underlying facts and circumstances to determine whether or not the President has committed a high crime.

B. Background: How Did We Get Here Anyway?

Now, having found that the President is guilty of obstructing justice in the Paula Jones case, I had to determine whether the violation is a "high crime" warranting removal from office. This led me to think about what justice was actually being obstructed and to consider the underlying circumstances that brought us here today.

In the narrow legal sense, this entire impeachment trial rests on the Independent Counsel statute and the Paula Jones case.

As many of my colleagues remember, Congress enacted the Independent Counsel statute in the wake of the Watergate scandal, after President Nixon ordered the dismissal of special Watergate prosecutor Archibald Cox over his refusal to drop a subpoena for Nixon's incriminating White House tapes. Congress designed the Independent Counsel statute to insulate and protect investigations of alleged criminal conduct by the President and other high-level federal officials. Unfortunately, the statute as Congress envisioned it would. This well intended statute has resulted in a proliferation of interminable, expensive investigations against public officials. It has cost our taxpayers more than $30 million and consumed the time, effort and expense, there have been very few successful prosecutions resulting from the statute.

One such investigation under the statute originated in August 1994, when Judge Wright appointed me as an Independent Counsel to investigate alleged wrongful acts in the so-called Whitewater land deal. During the course of the next four years, the Office of Independent Counsel ("OIC") expanded its investigation of President Clinton a number of times. At the same time, the President was defending a civil rights action by Paula Jones, a former Arkansas state employee who alleged that President Clinton sexually harassed her during the time he served as Governor. By the end of the OIC was able to expand its investigation and redirect its D.C. based Whitewater Grand Jury panel to investigate the President's concealment of his extra-marital affair with White House employee Monica Lewinsky.

We must not forget that the reason the President's relationship with Ms. Lewinsky was even an issue in the Jones suit was because Paula Jones was trying to show that the President's "nature of his relationship with Betty Currie, the fact is that the President's concealment of his consensual relationship with Ms. Lewinsky, the fact is that the President's actions did not actually hinder Paula Jones. Indeed, in the midst of the OIC investigation, Paula Jones appealed Judge Wright's ruling and the President agreed to pay her in an out-of-court settlement. Some might even argue that as a perverse result of the President's obstruction of justice, Paula Jones ended up with greater monetary relief than she would have otherwise received. Therefore, while the articles of impeachment came about as a direct result of President Clinton's actions in the Jones case, it is clear that in the end, the President's actions did not negatively effect Paula Jones' justice. In other words, there was no justice to obstruct in the Jones case.

C. Is the President Fit to Serve?

Most of us now believe that the President lied about his relationship with Ms. Lewinsky when he testified under oath and that therefore, he committed perjury. The President's actions must be considered in the context of the nature of his relationship to his staff, his family and the American people. I have concluded that the President not only lied about the affair but that he took at least one illegal action in an attempt conceal the truth from Paula Jones. However, I believe that President Clinton took these steps to avoid deep personal embarrassment, not to seize, maintain or subvert the power of the state.

We must not forget that the ultimate question we must each answer is whether on these facts arising out of these circumstances this President poses such a danger to the state that we can no longer permit him to remain in office. The ultimate issue here is a determination of whether the President is fit to serve.

Consider our constitutional guidance: The President of the United States shall be removed from Office on Impeachment for, and Conviction of, "Treason, Bribery, or other high Crimes and Misdemeanors." The Framers intentionally set this standard at an extremely high level to ensure that only
the most serious offenses would justify overturning a popular election. The concept of “maladministration” was considered and rejected.

I believe that whether the President’s misconduct occurred in the private sphere or in the public or official acts which I think no reasonable person would doubt reflect poorly on a president’s fitness for office and would warrant impeachment and removal. I think we can all see the difference in gravity between the offenses of which President Clinton stands accused and a hypothetical accusation that he took a bribe. While the former reflects poorly on his character and discretion, the latter reflects on his fitness to serve and describes a classic case of abuse of office.

For the President to do what he did was reprehensible and morally wrong. I believe that the President lied to avoid embarrassment. However, the Framers did not envision such behavior as being encompassed by the phrase “other high crimes and misdemeanors.”

The bottom line is that old maxim that bad facts lead to bad law. Such a low threshold for removal of a president from office would be dangerous. After careful consideration, I have concluded that President Clinton has not committed an offense that indicates the President is not fit to serve. Therefore, I will not vote to convict President Clinton.

D. Time to Move On.

I do not want the President to come away from this trial thinking that he is forgiven, or that what he has done is not serious, because I think it was most serious. I do not want the people of this country to think that acquittal means that the President’s conduct is acceptable because it is not acceptable. Lying and obstruction are wrong. I also hope that my vote does not lend any credence to the notion that sexual harassment is not that important. Because it is important. A determination to let the President serve out his term should not be taken as an exonerations of his actions. At the same time, I think it is extremely important that we leave this chapter behind us and move on to the nation’s business.

Mr. WELLSTONE. Mr. Chief Justice, I want to explain my views publicly on the impeachment articles sent to us by a partisan vote of the House of Representatives, and on the removal of the President from office which I would prompt.

First, I am shocked and saddened that our Republican colleagues persistently have blocked our efforts to have open and public debates and discussion in our deliberations in this matter, and most especially in our deliberations on the final votes on whether to remove the President. Whatever their motives, this is not what a free, representative, accountable democracy is all about. Simply publishing partial transcripts of our proceedings, which include only some formal statements made by senators and not the deliberations themselves—and doing so only at the end of the trial—is, in my view, a great leap sideways.

I also want to describe what I think—and frankly have thought for months—is a more appropriate mechanism to the public and to the nation. The resolution before us is not an impeachment of the President’s behavior; a tough, bipartisan censure resolution which makes clear our contempt for what he’s done in lying to his family, his friends, his staff, and the American people about his relationship with Monica Lewinsky; and the disgrace which those lies have placed upon his Presidency for all time.

In recent months, hundreds of Constitutional scholars—including many respected conservatives—have argued that the Constitution does allow this censure vote; the Senate’s precedents allow it; we have done it before. It’s true that the Constitution is silent on the question of what else we can do in addition to removal; it is true that the Constitution in no way prevents us from moving forward on censure. The argument that we are somehow blocked Constitutionally from censuring the President is contrived, and fraught with partisan pleading.

Even so, if we are ultimately blocked by a filibuster from a vote on censure, the President will not have escaped the judgment of Congress or the American people. Any Senator, in any venue they choose, can offer their own forceful, public censure of the President, repeatedly if they like. I certainly have. A corporate expression of the Senate’s condemnation of the President’s actions, while of course preferable, is not essential. What we are already have made known our views.

We all condemn the President’s behavior. It has been said so many times, it hardly bears repeating, were it not for the willful, partisan attempts to mischaracterize a vote against removal as a vote to condone what the President has done. That is, of course, preposterous; the President has been impeached by the House. That has only happened once before in our history. The trial has gone forward, and every member of this body has condemned the President’s behavior as unacceptable, meriting only scorn and rebuke.

It is clear that the President already has paid a terrible price in the eyes of history, not least in the shame and humiliation that this permanent mark on his presidency has caused him, his family, his friends and supporters, and his Administration. The message is clear, including to our young people: When we fail to tell the truth, there are real, permanent, even unlawful consequences and costs. The President’s behavior was shameful, despicable, unworthy, a disgrace to his office. And in this long, sorrid, painful process, I believe he has been held accountable for what he has done.

Pursued zealously by Kenneth Starr and by House Judiciary Committee Republicans, the articles were then rubber stamped by the full House. A grossly unfair and partisan proceeding that was destructive both of our politics and our politics. All of us should be deeply troubled by it, and all should work together to put it behind us. In my view, the Senate Majority Leader’s decision to allow the House’s bill to be considered by the Senate reflects the Supreme Court’s words of caution in our 1805 case:

``... It is evident that the present is a time of extraordinary public interest, in which the honor, the safety, and the happiness of a great nation are involved. Under such circumstances the court will be more guarded than usual, in applying the rules of judicial decision to the cases which come before it. It is also evident that the present is a time of extraordinary importance to the constitutional rights of the United States.``

The Senate’s decision not to allow a vote on censure was a reasoned judgment in the face of the Constitution, which states:``The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery, and other high crimes and misdemeanors.``

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having come this far, the wisdom of the founders that impeachment is and must be a high barricade, not to be mounted lightly. Let us learn that because it requires the overwhelming support of the Senate to succeed, it cannot and should not be occasioned on a merely partisan basis. Let us learn that the desire to impeach and remove must be shared broadly, or it is illegitimate.

Let us learn that the subject matter of impeachment be a matter of great gravity, calling into question the President’s very ability to lead, and endangering the nation’s liberty, freedom, security. Let us learn that the case against the President must be a strong and unambiguous one in fact and in law, for even a President derives the benefit of our reasonable doubts.

The charges brought against President Clinton do not rise to those levels. And even if they did, the case against him is not bipartisan, nor unambiguous. As the White House defense team has made clear, there are ample grounds for doubt about both the facts and law surrounding each of the two articles before us.

It is true that the impeachment process has further alienated millions of Americans from their government, and that is a tragic harm for which the President bears considerable responsibility. It is also true, as we were told by Chairman Hyde yesterday, that the nobility and fragility of a self-governing people requires hard work, every day, to get it right, to fight the good fight, to discern the common good. But I believe, unlike him, that it is the impeachment process itself, both here and in the other body—its partisanship, its meanness and unfairness, its leadership by those who want to win too badly—which has increased people’s cynicism; not the prospect of the President’s “getaway” with something.

Our nation was founded on the Jeffersonian principle, “that government is the strongest of which every man feels himself a part.” What Jefferson and the other Founders feared was the warning of their counterpart Rousseau: “As soon as any man says of the affairs of State ‘What does it matter to me?’ the state may be given up as lost.” But while the many signs of disaffection among our people are growing, I do not think we have reached the point of no return; there is time in this Congress to recover from this episode, and to move on.

Despite the claims of pundits that Americans have simply tuned out, I think a deeper reality is present in their reactions, and in the polls. In fact, most Americans, in their wisdom, have reached a subtle, sophisticated judgment in this case, and have already moved beyond it. As is so often the case, they are ahead of the angriest. It is true that they abhor the President’s behavior, but don’t believe it merits his removal. In addition, they believe that there are larger issues facing the nation than the misdeeds that nearly all now concede the President committed: peace in the Middle East; the hunger of children; the health of Americans; saving our social security safety net; debating whether hundreds of billions of dollars should be spent to bolster Medicare, or to some combination of universal savings accounts or tax cuts. These are the things that the people sent us here to work on. These are the things that I hear about when I return to my state.

So let us resolve that there shall be many a year before we have another one like it. It is time for our country to pull together to seek an end to the factional partisanship that has defined this period, and to re-engage a full-throated, genuine debate about our nation’s future that can help us find again that common ground that unites us as Americans. We have the foundation for resolving the many serious problems that still face our country—impeachment or not—today and tomorrow.

We should, as White House attorney Charles Ruff said, listen to the voices not merely of the advocates who have been before us, but of Madison, Hamilton, and the others who met in Philadelphia 212 years ago; of the generations of Americans since then; of the American people; of future generations of Americans. And if we do, we will do the right thing.

Congressman John Lewis observed in his final impeachment speech, in the end, we are “one house, one family, one people; the American house, the American family, the American people.” We are called together to come to judgment on this President, and then to return promptly to the pressing issues that lay before us, and that require our attention. That judgment is by now clear: Bill Clinton should remain President; the censure of this body, and the historic impeachment that will ever attach to his name, will leave a permanent mark on his presidency. I thank you, Mr. Chief Justice, for the fine work that you have done, and I thank both the majority leader and the minority leader for their leadership. I said to Senator Lott, I think yesterday, I am still furious that we are in closed session and will say that, but I also appreciate the way in which you have kept us together. I thank the two of you.

I was thinking I might do something a little different, because even if I were to give a great speech to the best of my ability, I don’t know that there are any more arguments that can be made. I was thinking like, I might agree—actually I have a printed statement—I might agree to just have my statement included in the Record and not speak any further. If I can get some support for some legislation. (Laughter.) Just on some children’s legislation. Does it look like we are at that point?

If it does? Well, I like that show of support, and I think, Mr. Chief Justice, what I will do is give to you in a moment a full statement and just simply say to everybody here about three things in 2 minutes.

First of all, we had done this in open session, and I cover that more in my full statement.

Second of all, I think that a decision to acquit is certainly not a decision to condone the President’s behavior for which I think merits scorn and rebuke.

Third of all, I think that the standard, and I want to say this to Senator Domenici, talking about children, to me the standard is guilty beyond a reasonable doubt. I think the evidence has to be unambiguous and strong. I don’t think it was. Senator Levin said that very well, so I don’t need to repeat any of those arguments.

Finally, I think a lesson that I have learned as a political scientist, when I teach class again, is I do not think the articles work and this process works when it is clearly not bipartisan. I think it becomes illegitimate. It just doesn’t work.

You did not have broad support coming from the House, and you do not have it here. That is why I think it was doomed from the start.

Finally, it has been a long, sad year, and I wish—I just wish—that those who could have really rendered decisions with judgment had done so, starting with the President and his sorry affair. He could have told the truth to the people in the country. The people would have appreciated that. I could also talk about Starr, and I could also talk about the House, and I could also talk about us. But I do not think I need to do so.

Let’s get on with the work of democracy. We have had some strong views here, but I am looking forward to working with you.

SEVENTH, I thank our majority leader. Throughout this ordeal, no one has tried to poll me on any substantive matter or influence my vote. That, to me, means a great deal. I view this process as the most serious task I have faced as a Senator over the past 30 years, and I appreciate the recognition by the leadership of the solemnity of our duties under these circumstances and the fact that we each must reach our own conclusions based on the evidence.

As Senators, each of us joined in this oath:

I . . . do solemnly swear that I will support and defend the constitution of the United

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States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I will take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge my duties of the office on which I am about to enter. So help me God.

And now, we took an additional oath: I solemnly swear that in all things appertaining to the trial of the impeachment of William Jefferson Clinton, President of the United States, now pending, I will do impartially according to the Constitution and laws, so help [me] God.

As free citizens of the world’s most successful democracy we are inexorably tied to the pledges and commitments we make. These obligations, and the unlimited benefits they bestow on us, depend on our willingness to be truthful with one another. The President took the two most serious oaths any American ever encounters: the oath to faithfully execute our laws, administered by the Chief Justice, our Presiding Officer, on the steps of this Court and the oath to tell the truth, the whole truth, and nothing but the truth to a jury of his peers.

I am most concerned that the action we take here to day not denigrate the role of law and truth in our society. To be fair to the President, I feel he believed that he had not testified truthfully under oath in his deposition. In fact he did not, and he did not tell the truth to a jury either.

Both the House Managers and the President’s lawyers have seized on apparent conflicts in the evidence and recorded testimony before this Court of Impeachment. Nonetheless, the evidentiary record and the presentations of both sides, as supplemented by their responses to our questions, leave no doubt in my mind that if I were sitting as a juror in a criminal case I would find that the accused is guilty of perjury. Article I of the Constitution requires that the House of Representatives determine in a court of impeachment if a President of the United States, by his conduct has brought upon himself, and fully deserves, the censure and condemnation of the American people, lessened their esteem for the office of President, and disdained the office which they have entrusted to him;

(1) On January 20, 1993, William Jefferson Clinton took the oath prescribed by the Constitution of the United States faithfully to execute the office of President, implicit in that oath is the obligation that the President set an example of high moral standards and conduct himself in a manner that fosters respect for the truth; and William Jefferson Clinton has egregiously failed in this obligation, and through his actions violated the trust of the American people, lessened their esteem for the office of President, and disdained the office which they have entrusted to him;

(2) William Jefferson Clinton made false statements concerning his reprehensible conduct with a subordinate;

(3) William Jefferson Clinton remained subject to criminal and civil penalties; and

(4) William Jefferson Clinton, President of the United States, by his conduct has brought upon himself, and fully deserves, the censure and condemnation of the American people, lessened their esteem for the office of President, and disdained the office which they have entrusted to him;

That it is the sense of the House that—

1. On January 20, 1993, William Jefferson Clinton took the oath prescribed by the Constitution of the United States faithfully to execute the office of President, implicit in that oath is the obligation that the President set an example of high moral standards and conduct himself in a manner that fosters respect for the truth; and William Jefferson Clinton has egregiously failed in this obligation, and through his actions violated the trust of the American people, lessened their esteem for the office of President, and disdained the office which they have entrusted to him;

2. William Jefferson Clinton made false statements concerning his reprehensible conduct with a subordinate;

3. William Jefferson Clinton wrongly took steps to delay discovery of the truth; and

4. Inasmuch as no person is above the law, William Jefferson Clinton remains subject to criminal and civil penalties; and

5. William Jefferson Clinton, President of the United States, by his conduct has brought upon himself, and fully deserves, the censure and condemnation of the American people, lessened their esteem for the office of President, and disdained the office which they have entrusted to him;

That is the sense of the House.
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of the President’s relationship with Monica Lewinsky and his efforts to conceal it. Nor is that judgment about whether the President is guilty of committing a specific crime. That may be determined by a criminal court, which the President clearly is not, after he leaves office.

No, the question before us now is whether the President’s conduct—as alleged in the two articles of impeachment—makes his continuance in office a threat to our government, our people, and the national interest. That, I conclude, is the extraordinarily high bar the Framers set for removal of a duly-elected President, and it is that standard we must apply to the facts to determine whether the President is guilty of “High Crimes and Misdemeanors.”

Each side has had ample opportunity to present its case, illuminating the voluminous record from the House, and we Senators have been able to cast wide-ranging questions of both parties. The House was also authorized to conduct depositions of the three witnesses it deemed most important to its case. I have listened intently throughout, watched the videotaped depositions, and been very impressed by both the House Managers and the counsel for the President. The House Managers, for their part, have presented the facts and argued the Constitution so effectively that they impelled me more than once to seriously consider voting for removal.

But after much reflection and review of the extensive evidence before us, of the meaning of the term “High Crimes and Misdemeanors,” and, most importantly, of the best interests of the nation, I have concluded that the facts do not meet the high standard the Founders established for conviction and removal. No matter how deeply disappointed I am that our President, who has worked so successfully to lift up the lives of so many people, so lowered himself and his office, I conclude that his wrongdoing in this sordid saga does not justify making him the first President from among our wider electorate to be ousted from office in our history. I will therefore vote against both Articles of Impeachment.

In reaching the judgment that President Clinton is not guilty of high crimes or misdemeanors, I started from the same premise that the Founders did—people should lead lives of probity. Their leaders are paramount in America, derived directly, as Thomas Jefferson wrote in the Declaration of Independence, from the equality of rights endowed to the people by our Creator. The supremacy of this first democratic principle was well described by Alexis de Tocqueville in Democracy in America: “The people reign in the American political world as the Deity does in the universe. They are the cause and the aim of all things; everything comes from them, and everything is absorbed in them.” (Jefferson, 1825, p. 58)

In debating the President’s fate, we must remember that we are deciding whether to supersede the people’s decision about who should lead them—to substitute our judgment for theirs. On this point, the Framers of the Constitution were clear. They had boldly rejected the autocratic rule of a monarch and the President elected by, and accountable to, the people. Their deliberations show that they did not want even the legislature to exercise too much control over him popu-

larly-chosen President. The Framers provided for only the narrowest of escape valves in the most extreme of cases. As a result, they set an extraordinarily high bar—both procedurally and substantively—for Congress to overcome before we, rather than the voters, could remove a President from office.

Specifically, they required a majority of the House of Representatives to impeach and permitted removal only upon the concurrence of two-thirds of the Senate. But I cannot conclude, is the extraordinarily high bar the Framers set for removal of a duly-elected President, and it is that standard we must apply to the facts to determine whether the President is guilty of “High Crimes and Misdemeanors.”

The first time I read that clause, “high Crimes and Misdemeanors,” I assumed it included any criminal offense—and only criminal offenses—and I thought that it gave Congress broad latitude to impeach and remove from office a President who had committed any violation of the criminal code. But the more I studied the history, the less clear that interpretation became. The phrase “high Crimes and Misdemeanors” was a term of art to the Framers, and it meant something very different from ordinary crimes, the response to which is a criminal justice system. The Framers chose the term high crimes, to connote a very specific type of offense, like treason or bribery, which has a direct impact on the government and undermines the chief executive’s ability or will to continue serving without corruption and in the national interest. As Alexander Hamilton explained in the Federalist Papers, high crimes and misdemeanors are “those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself.” (The Federalist Papers, No. 65 Rossiter ed. 1961 p. 396 (emphasis in original))

It is not necessary here to offer a lengthy dissertation on the Constitutional Convention’s impeachment debate, and I will not do so here, but I share a statement of James Madison that illuminates the reasons why the Framers wanted to authorize impeachment and removal, as well as the intended scope of that power. In response to the suggestion that it was dangerous to authorize the legislature to remove the President, Madison argued that it was: indispensable that some provision should be made by defending the Community against the possibility of error of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might administer into a scheme of peculation or oppression. He might betray his trust to foreign powers . . . in the case of the Executive Magistrate, which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic. (II Records of the Federal Convention of 1787, pp. 65–66 (Farrand ed. 1888))

“Loss of capacity or corruption”—that is the evil at which the Constitution’s impeachment clauses were directed, in Madison’s view.

Although neither the words of the Constitution nor the writings of Hamilton, Madison or any of the other Framers of the Constitution provide a precise list of those offenses that prove “the abuse or violation of some public trust,” or “the loss of capacity or corruption,” Madison and Madison himself and his office, I conclude that his wrongdoing in this sordid saga does not justify making him the first President from among our wider electorate to be ousted from office in our history. I will therefore vote against both Articles of Impeachment.

Second, pervading the Framers’ discussions—and the Constitutional language they ultimately adopted—was the view that impeachment was intended to protect the nation and the national interest and not to provide the legislature an alternative to the criminal justice system for holding accountable the President or any other violator of the nation’s criminal laws. In crafting our Constitution’s impeachment clauses, the Framers specifically and consciously departed from the English practice, in which Parliament could use its impeachment power to impose criminal sanctions. Emphasizing that the legislative branch has no constitutional role whatsoever in meting out punishment, whether for the Chief Executive or any other citizen, was so important to the Framers that they declared it not once but twice in the Constitution—first when they outlawed bills of attainder (Art. I, sec. 9, cl. 3), and again when they emphasized...
that "I judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law" (Art. I, sec. 3, cl. 7).

It is this linguistically-driven irony—that the Constitution's impeachment clauses employ the language of criminal law to authorize a process entirely outside of and distinct from the criminal justice system—that has created so much confusion over our precise task here. The House Managers often appear to suggest that if they show that the President committed a crime, then they have met their burden, because it is our responsibility to hold accountable a President who violates the law and to send a message that the President is not above the law.

But as Professor Charles Black so well explained in Impeachment: A Handbook, criminality in and of itself is neither a necessary nor a sufficient basis for concluding that a President has committed a high crime or misdemeanor, because our goal is to protect the nation's interests, not to punish a President for violating the criminal law. He states: "I think we can say that 'high Crimes or Misdemeanors,' in the constitutional sense, ought to be held to be those offenses which are rather obviously wrong, whether or not 'criminal,' and which so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power of their perpetrator. The fact that such an act is also criminal helps, even if it is not essential, because a general societal view of wrongness, and sometimes of seriousness, is, in such a case, publicly and authoritatively recorded." (1996 ed. pp. 39-40).

If the purpose of impeachment was to ensure that the President is held accountable for violating the law, then the Framers would have authorized Congress to impeach and remove, not just for high crimes but for any crimes. They did not do that. They gave us the power of impeachment and removal for one reason and one reason only: to protect the Republic from a Chief Executive who, by his acts, has demonstrated ability to discharge his duties in the interests of the American people. In other words, the second category of offenses that equal "high Crimes and Misdemeanors" is an offense unequivocally demonstrate the same threat posed by treason or bribery: that the President could no longer be trusted to use his power in the best interests of the nation.

It is for this reason that I reject the contention that a President's giving false or misleading statements under oath or his impeding the discovery of evidence in a lawsuit arising out of his personal conduct may never constitute a high crime or misdemeanor. I have no doubt that under certain circumstances such offenses could demonstrate such a level of depravity, deceit and disregard for the administration of justice that we would have no choice but to conclude that the President could no longer be trusted to use the authority of his office and make the decisions entrusted to him as Chief Executive in the best interest of the nation. It is because I hold this position that I found reaching a decision in this case such a difficult matter.

Before evaluating the charges against the President, and determining whether his misconduct in fact meets the high threshold the Constitution establishes for removal, each of us had to resolve the important question of what standard of proof should be used for judging the evidence against the President. It is widely agreed that the House Managers convinced Members of the Senate that the President has committed a high crime or misdemeanor, but there are differences of opinion on the level of certainly each of us in the Senate must reach before we conclude that the House has met its burden.

During the Impeachment Trial of Judge Alcee Hastings, I gave a great deal of thought to this question, and after weighing the competing interests of preserving the integrity of the judiciary, maintaining the independence of the judiciary, and protecting the personal interests of the office holder, I concluded that the House had to prove it by "clear and convincing evidence." (See 135 Cong. Rec. S 14359-61 (Oct. 27, 1999)) Clear and convincing evidence is evidence that, in one formulation, produces in the mind a "firm belief or persuasion as to the matter at issue." U.S. Federal District Judges Association, Pattern Jury Instructions §2.14 (1998 ed.) or, put another way, persuades the finder of fact that the claim "is highly probable" (Committee on Model Jury Instructions, Ninth Circuit Manual of Model Jury Instructions §1.12.2 (1997 ed.)).

There are valid arguments for adopting the higher standard of "beyond a reasonable doubt" in this case, most importantly that the national trauma caused by the removal so far surpasses the damage imposed by the removal of a single judge, that the Senate must remove a President only if it has a very high degree of certainty in the facts underlying its decision. On the other hand, just as the trauma of removing a President is greater than that flowing from removing a judge, the danger an errant President poses to the Republic far exceeds the threat presented by a misbehaving judge. This need to accord the President a "high threshold" policy and the welfare of its people argues against setting the standard of proof so high that it would result in leaving in power an individual whose fitness to continue serving in the national interest is seriously in doubt, remembering that no matter what the standard, removal still requires two-thirds of the Senators' support.

In 1974, then Senate Majority Leader Mike Mansfield recommended that the standard of "clear and convincing evidence" be a "fair compromise" between the burden of proof requirement in criminal proceedings ("beyond a reasonable doubt") and the burden of proof requirement in civil proceedings ("by a preponderance of the evidence"). He added these words of insight and reason: An impeachment proceeding is not a criminal proceeding since the Court of Impeachment is barred by the Constitution from imposing any of the usual sanctions in the event of conviction, and it is not a civil proceeding because the extraordinary formality and complexity of the process and the serious consequences of removal (in at least the case of an impeachment of the President of the United States) militate against accepting as adequate the low threshold requirement of a civil action. The burden of proof, like the terminology and various other requirements, must be unique because impeachment itself is unique. It is unique in that it is a hybrid of the legislative and the judicial, the political and the legal. (Senate Committee on Rules and Administration Executive Session Hearing; Senate Rules and Precedents Applicable to Impeachment Trials, Aug. 5-6, 1974, p. 193)
For similar reasons, Professor Charles Black in his Handbook on Impeachment (p. 17) offer the standard of “overwhelming preponderance of the evidence” as appropriate for impeachment trials.

Taken together, those arguments persuaded me to adopt as the appropriate standard of proof the same one I chose in Judge Hastings’ impeachment trial: clear and convincing evidence. In other words, to vote for either of the articles before us, I must conclude that there is clear and convincing evidence that President William J. Jefferson Clinton has committed a high crime or misdemeanor.

This brings me to the crux of this case, where it is necessary to apply the standard of proof I have adopted to the evidence the Managers have presented, in order to reach judgment on the Articles before us.

A number of specific allegations contained in the Articles lack sufficient legal or evidentiary support. For example, it strikes me as highly doubtful that an obstruction case can be made from the President’s statements to aides who later testified to the grand jury. This is because the statements constituted obstruction because the President knew his aides would repeat those statements to the grand jury, thereby providing misleading information to the grand jury. But the President’s statements were not adequately explained by the President saying privately to his aides the same thing he was saying to the public could constitute obstruction, particularly when we have been presented no evidence showing that the President made those statements for the purpose of having them repeated to the grand jury.

Similarly, the Managers have not offered a convincing legal theory showing how the President obstructed justice simply by failing to dispute his attorney’s statement about his relationship with Ms. Lewinsky during the President’s deposition. And, the Managers have failed to substantiate their allegation that the President committed perjury by misstating the date of his initial sexual encounter with Ms. Lewinsky when he told the grand jury “When I was alone with Ms. Lewinsky on certain occasions in early 1996 and once in early 1997, I engaged in conduct that was wrong” (Aug. 17, 1998 Grand Jury Testimony of President Clinton pp. 8-9). The Managers have not offered evidence that the President’s error was intentional, nor did they provide a convincing explanation how such a misstatement was material to the grand jury’s investigation.

Although the Managers offered slightly more weighty evidence concerning the involvement of the President and his friend, Vernon Jordan, in Ms. Lewinsky’s job search, as well as his efforts to cover up the President’s affair by hiring Monica Lewinsky as a secretary, this evidence does not rise to the level of “clear and convincing evidence.”

Moreover, the Managers have left me thoroughly unconvinced that the President lied about his affair with Ms. Lewinsky. The evidence the Managers have presented, though far from compelling, is far from sufficient to render the President’s statements to the grand jury misleading or false. The President’s statements were made not only with a subjective belief in their truthfulness, but also with an objective belief in their truthfulness.

In summary, although the House managers have left me thoroughly unconvinced of some of their allegations, the evidence presented on others does lead me to believe that it is likely that there were occasions on which the President made false or misleading statements regarding his affair with Ms. Lewinsky, which could have had the effect of impeding the discovery of evidence in judicial proceedings. Whether any of his conduct constitutes a criminal offense...
such as perjury or obstruction of justice is not for me to decide. That, appropriately, should and must be left to the criminal justice system, which will uphold the rule of law in President Clinton’s case as it would for any other American president. I would leave the decision of this constitutional question to the House and the Senate. I would leave it to the Senate to consider impeached President Clinton’s irresponsibility in carrying on a sexual relationship with an intern in the Oval Office and by the disregard for the truth he showed in trying to conceal it from his family, his staff, the courts and the American people. The Managers have not convinced me with the evidence they have presented that his misbehavior, as charged in the articles of impeachment, makes him a threat to the national interest, and that we can no longer trust him to govern in the national interest that he must be removed.

I conclude that the House Managers have not met that high burden. I am, of course, profoundly unsettled by President Clinton’s misconduct and I am troubled by much of what he said to the grand jury. But it would also be a serious error to ignore the people’s voice, because in exercising our authority as a court of impeachment we are standing in the place of the voters who re-elected the President two years ago. In this case, the prevailing public opinion on President Clinton’s sexual misconduct is, I believe, powerful evidence to me that the President’s misconduct has not been so harmful as to shatter the public’s faith in his ability to fulfill his Presidential duties and act in their best interest. It is possible, of course, that a popular President could nevertheless be corrupt and pose a threat to the nation, which is to say that public opinion is not the only barometer of fitness for office. But in this democracy it is an indispensable measure, and in light of the ultimately unconvincing evidence the Managers have presented to demonstrate the President’s loss of capacity or corruption, the public’s opposition to removal carries weight in my deliberations. In particular, the weight given the overwhelming amount of information the news media has provided us about the details of the President’s behavior, which strongly suggests that the American people have not reached their conclusions in ignorance of the President’s flaws or faults.

The public opinion polls tell us more than that the majority of people support his continuance in office. Those polls and evidence of his unpopularity in some quarters cannot be dismissed out of hand. But we must ask whether the public’s opinion has been reached by its people, and our democratic ideals. It is, they contend, to wink at any immorality, any transgression that is connected to sexual behavior, to sacrifice our most precious principles at the altar of moral relativism. And worse, by choosing to acquit the President, they argue, we are setting an awful precedent for future Presidents to come. I must understand and share their frustrations that lead to these criticisms. As I stated in the speech I made on this floor on September 3rd of last year, I was deeply angered by the President’s recklessness and his purposeful deceit. The President had to answer no.

To reach this conclusion, that the context matters in judging the President’s misconduct, is in the eyes of the House Managers and many of the President’s critics and abdication of duty and honor. It is, they contend, to wink at any immorality, any transgression that is connected to sexual behavior, to sacrifice our most precious principles at the altar of moral relativism. And worse, by choosing to acquit the President, they argue, we are setting an awful precedent for future Presidents to come. I must understand and share their frustrations that lead to these criticisms. As I stated in the speech I made on this floor on September 3rd of last year, I was deeply angered by the President’s recklessness and his purposeful deceit. The President had to answer no.

But as unsatisfying as that choice is, it is the only one that the Founders envisioned when they entrusted us with the awesome power of making the law. Our responsibility is to pass judgment on the moral quality of the President’s behavior, or to find whether he committed a specific crime. Impeachment is not an instrument of protest, or of prosecution, but one of protection, of our country, its people, and our democratic ideals. When in this era the President is on trial I answer “not guilty,” I want it understood that I am saying “not guilty of a high crime or misdemeanor,” and that is all I can say.
With that understood, I do believe the Constitution allows for one recourse that would provide a means for us as the people's representatives to register our and their disapproval, and would, I believe, help us to bring appropriate time and attention to this problem in our nation's history. It is well within the Senate's constitutional prerogatives to adopt a resolution of censure expressing our contempt for the President's misconduct, both that which is charged in the articles and that which is not. Such a censure would not amount to a punishment, nor would it be intended to do so. What it would do, particularly if it united Senators across party lines and positions on removal, is fulfill our responsibility to our children and our posterity to speak to the common values the President has violated, and make clear what our expectations are for future holders of that highest office.

And what it could do, I believe, is to help us to begin healing the wounds the President's misconduct and the impeachment process's partisanship have done to the American body politic, and to the soul of the nation. I have observed the two-thirds of the public consistently expresses its opposition to the President's removal. But I do not think we can leave this proceeding, especially those of us who have voted against the Articles, without also noting that the language, the tone of the Articles, this process, that effort to magically eliminate this division, but I believe it will help by demonstrating that we can find common moral ground and articulate our common values even though we Senators and our constituencies have disagreed about impeachment. For that reason, I hope that once this trial is concluded, we will put aside our partisan loyalties and our political hesitations and overcome partisan and particularly if it united Senators across party lines and positions on removal, is fulfill our responsibility to our children and our posterity to speak to the common values the President has violated, and make clear what our expectations are for future holders of that highest office.

This extraordinary divergence of opinion tells us that there is a rift in our public life that extends far beyond the specific circumstances of this case, a rift that the President's misconduct has only exacerbated. A statement of censure is not an antidote that will magically eliminate this division, but I believe it will help by demonstrating that we can find common moral ground and articulate our common values even though we Senators and our constituents have disagreed about impeachment. For that reason, I hope that once this trial is concluded, we will put aside our partisan loyalties and our political hesitations and overcome partisan and political obstacles to join together in passing a resolution that affirms our belief that the presidency is and must forever be above the law. By his words and deeds, he has undermined the truth-finding function of the judiciary, at great harm to that branch of our government. By his words and deeds, he has done great harm to the hopes of honesty and integrity that form the underpinnings of this great republic.

The following represents the specific facts upon which I find William J. Jefferson Clinton is guilty of perjury before a Federal Grand Jury and obstruction of justice, and must be removed as the President of the United States:

**ARTICLE I—PERJURY BEFORE A FEDERAL GRAND JURY**

**Perjury**

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 corrupted and manipulated the judicial process of the United States for his personal gain and exonation, impeding the administration of justice, in that:

On August 17, 1998, William Jefferson Clinton sworn to tell the truth, the whole truth, and nothing but the truth before a Federal grand jury of the United States. Contrary to that oath, William Jefferson Clinton willfully provided perjurious, false and misleading testimony to the grand jury concerning the nature and details of his relationship with a subordinate Government employee:

**A. Testimony that conflicts with Ms. Lewinsky's account of the relationship:**

Ms. Lewinsky testified as to the extent of her sexual relationship with President Clinton, and her statements were corroborated by numerous individuals with whom she contemporaneously shared the details of her encounters with the President and the two professionals. Her testimony indicated direct contact by the President with certain areas of her body. The conduct described by Ms. Lewinsky clearly falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula J ones case and during his grand jury testimony.

In his prepared statement to the grand jury, President Clinton stated that this was a purely consensual relationship and that it was an "affair" that began in 1996 and ended in 1997, when he was first informed of Ms. Lewinsky's presence in the United States. He admitted to having sexual relations with Ms. Lewinsky "but did not constitute sexual relations as I understood that term to be defined at my January 17th, 1998 deposition." President Clinton acknowledged that the type of activity described by Ms. Lewinsky constituted sexual relations as he understood the term to be defined during the Paula Jones' deposition: "I understood the definition to be limited to, to physical contact with those areas of the bodies with which I am familiar, but not to signify or to imply[.]." However, during questioning under oath, President Clinton repeatedly engaged in the activities described by Ms. Lewinsky.
President Clinton was even asked by a grand juror whether “if Monica Lewinsky says that while you were in the Oval Office area you touched [certain area of her body] that falls within the definition of sexual relations as understood in the Paula Jones case, would she be lying.” President Clinton responded: “That is not my recollection. My recollection is that I did not have sexual relations with Ms. Lewinsky and I’m staying on my former statement about that.”

If Ms. Lewinsky’s testimony is true, President Clinton committed perjury during his grand jury testimony concerning the extent of his sexual relationship with Ms. Lewinsky. As a result, the President’s interest in talking to Mrs. Currie the day after the President was deposed by the Paula Jones case was to refresh [his] own recollection and not to impart instructions on how she was to recall things in the future.” As will be discussed further below, I conclude that President Clinton made a series of statements to Betty Currie in an attempt to improperly persuade her to provide false testimony. As a result, based upon the evidence presented in the record, I believe that President Clinton’s interest in talking to Mrs. Currie was to recall events concerning the President’s illicit affair and not to refresh his recollection of the President’s interest in talking to Mrs. Currie the day after he was deposed by Paula Jones’ attorneys to impart instructions on how Mrs. Currie was to recall events concerning the President’s illicit affair and not to refresh his recollection of the President’s interest in talking to Mrs. Currie. The President testified that the grand jury concerning his interest in talking to Mrs. Currie would thus constitute perjury.

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

In his grand jury testimony, President Clinton asserted in his conversations with Mr. Blumenthal and Mr. Podesta, that “I said things that were true. They may have been misleading.” President Clinton also testified that “what I was trying to do was give them something they could—that would be true, even if misleading in the context of this deposition.” Mr. Clinton told Sidney Blumenthal that “Monica never came on to me, and I never engaged in a sexual demand on me” and that the President had rebuffed her. Mr. Blumenthal also testified that the President claimed that Ms. Lewinsky threatened the President, saying “that she would tell people she had an affair, that she had an affair or said she had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn’t be the stalker any more.” When Mr. Blumenthal asked the President whether Mr. Clinton had been alone with Ms. Lewinsky, the President replied “I was within eyesight or earshot of someone.”

Even President Clinton acknowledges that he was alone with Monica Lewinsky and not within eyesight or earshot of anybody, on numerous occasions. Mr. Clinton also acknowledges that he and Ms. Lewinsky engaged in “inappropriate intimate contact” which, if Ms. Lewinsky’s testimony is true, amounted to sexual relations as President Clinton understood the term to be defined in the Paula Jones case. As a result, the President lied, not simply misled Mr. Blumenthal, when Mr. Clinton stated that he had rebuffed her.

John Podesta testified that President Clinton had told Mr. Podesta that the President “had never had sex with her [Ms. Lewinsky] in any way whatsoever. Mr. Podesta further testified that President Clinton elaborated that the President had told him that he had “not engaged in sexual activity that falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case.” During President Clinton’s grand jury testimony, he refused to directly contradict Mr. Podesta’s characterization of their conversation: “I’m not saying that anybody who had a contrary memory is wrong.”

President Clinton was asked “[i]f [the White House aides] testified that you denied sexual relations or relationship with Monica Lewinsky, or if they told us that you denied that, do you have any reason to doubt them?” The President responded “no.”

Based on the evidence concerning the extent of the sexual relationship between President Clinton and Ms. Lewinsky, and based on the President’s own admission concerning the accuracy of statements made by his aides, I conclude that President Clinton committed perjury when he characterized the manner in which he conveyed false statements to Mr. Podesta and Mr. Blumenthal. President Clinton did not simply mislead his aides, he lied to them about his relationship with Ms. Lewinsky.

ARTICLE II—OBSTRUCTION OF JUSTICE

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

The means used to implement this course of conduct or scheme included:

A. On or about December 28, 1997, William Jefferson Clinton corruptly engaged in, encouraged, or supported a scheme to conceal evidence that had been subpoenaed in a Federal civil rights action brought against him. Ms. Lewinsky testified that on December 28, 1997, she told President Clinton that she had been subpoenaed and that the subpoena required her to produce gifts given her by the President. According to Ms. Lewinsky, she asked the President “should I—I may be should put the gifts away outside my house somewhere or give them to someone maybe Betty.” Ms. Lewinsky testified that President Clinton responded “I don’t know” or “Let me think about that.”

Later that day (December 28), Ms. Lewinsky testified that she received a phone call from Mrs. Currie, who stated “I understand you have something to give me” or “the President said you have something to give me.” Mrs. Currie then retrieved the gifts that President Clinton had given to Ms. Lewinsky and hid them under her bed. Based upon the facts that President Clinton and Ms. Lewinsky engaged in an attempt to hide evidence requested
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in a subpoena in a federal civil rights case.

B. Beginning on or about December 7, 1997, and continuing through and including January 14, 1998, William J. Jefferson Clinton intensified and succeeded in securing a job in New York. However, Mr. Jordan took no action until December 11, 1997, five days after President Clinton learned that Monica Lewinsky was on the witness list in the Paula Jones case and that Mr. Jordan had not yet provided Ms. Lewinsky with any assistance in securing a job in New York. On the day that Mr. Clinton learned that Ms. Lewinsky was on the witness list, the President assured her that he would talk to Mr. Jordan to ensure that Mr. Jordan stepped up his efforts to secure her a job in New York.

Mr. Jordan stepped up his activities on December 11, 1998, because, on that date, Judge Susan Webber Wright ordered that Paul Jones was entitled to a potential witness in that proceeding. Counsel to Mr. Jones related a false and misleading statement made by Mr. Clinton in an effort to secure job assistance for Ms. Lewinsky. All of this activity was done in order to ensure that Ms. Lewinsky did not provide damaging testimony against President Clinton and thus constituted an effort to obstruct justice in the Paula Jones case.

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

Mrs. Currie was summoned to the White House on Sunday, January 18, 1998 for a private meeting with President Clinton. The President was under court order not to talk about the case to anyone. Nonetheless, after telling Mrs. Currie that he had been deposed in the Paula Jones case and that Ms. Lewinsky’s attorneys had asked the President several questions about Ms. Lewinsky, President Clinton then made a series of statements to Mrs. Currie:

I was never really alone with Monica, right?
You were always there when Monica was there, right?
Monica came on to me, and I never touched her, right?
You could see and hear everything, right?
The testimony of Mrs. Currie and President Clinton indicate that these statements were an attempt to influence the future testimony of Mrs. Currie regarding the President’s relationship with Monica Lewinsky. President Clinton admitted being alone with Ms. Lewinsky and also testified that the President and Ms. Lewinsky had been alone. Given the fact that President Clinton and Ms. Lewinsky had been alone on a number of occasions, a fact that President Clinton would be unlikely to forget, considering the intimate nature of their encounters, the President was not refreshing his memory when he stated to Mrs. Currie that he and Ms. Lewinsky had never been alone. President Clinton also perjuredly persuaded Mrs. Currie to testify that he and Ms. Lewinsky were never alone.

Mrs. Currie testified that President Clinton and Ms. Lewinsky were alone a number of times. Despite the legal hair splitting engaged in by the White House, I interpret the statement “You were always there when Monica was there, right?” to mean that President Clinton was attempting to improperly persuade Mrs. Currie that the President and Ms. Lewinsky was always within Mrs. Currie’s sight during her visits to the President.

Based upon Ms. Lewinsky’s testimony, President Clinton’s statement that “Monica likely won’t forget, and I never touched her, right?” would clearly be false. In addition, because even President Clinton admitted to “inappropriate intimate contact,” I assume that President Clinton is at least admitting to having touched Ms. Lewinsky. As a result, I must conclude that President Clinton did touch Ms. Lewinsky. I must then further conclude that, because Mr. Clinton was making a statement to Mrs. Currie that the President knew to be false, he could only have made such a claim in order to improperly persuade Mrs. Currie to testify that President Clinton had never touched Ms. Lewinsky.

In his grand jury testimony, President Clinton admitted that he did not tell Mrs. Currie to “watch whatever intimate activity [the President] did with Ms. Lewinsky.” In addition, when asked whether he would “not have engaged in those physically intimate acts if [the President] knew that Mrs. Currie could see or hear that,” President Clinton responded “[t]hat’s correct.” However, on the Sunday after he was deposed in the Paula Jones case, Mr. Clinton told Mrs. Currie “You could see and hear everything, right?” and made these two concepts inherently contradictory. President Clinton could not, on the one hand, shield Mrs. Currie from seeing or hearing any intimate activity, while, on the other hand, be sincerely stating that Mrs. Currie could see and hear everything. I must then conclude that President Clinton made this statement in an attempt to improperly persuade Ms. Currie to testify that President Clinton and Ms. Lewinsky engaged in no activity that Mrs. Currie could neither see nor hear.

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

On January 21, 1998, President Clinton met with Sidney Blumenthal, a senior White House aide. During the course of their conversation, Mr. Blumenthal asked President Clinton what the President had done wrong. According to Mr. Blumenthal, the President responded “[n]othing” and “I haven’t done anything wrong.” When Mr. Blumenthal asked the President why he had done nothing wrong, would the President want to appear on television and admit wrongdoing, which is what the President implied he wanted to do. At that point, according to Mr. Blumenthal, the President stated that “Monica Lewinsky came to me and made a sexual demand on me” and that the President had rebuffed her. Mr. Blumenthal also testified that the President claimed that Ms. Lewinsky threatened the President, telling him “that she would tell people they’d had an affair, that she was known as the stalkers 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.”

When asked by Mr. Blumenthal, President Clinton also stated that “I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can’t get the truth out.” When Mr. Blumenthal asked the President whether Mr. Clinton had been alone with Ms. Lewinsky, the President replied “I was within eyesight or earshot of someone.”

Based upon the grand jury testimony presented by Ms. Lewinsky and President Clinton, and upon the deposition provided to the Senate by Ms. Lewinsky as well as the President’s failure to provide the Senate with a deposition, I have concluded that the statements made by President Clinton to Mr. Blumenthal are false. If the President had agreed to be deposed by the Senate, his testimony might have strengthened the credibility of the statements that he had to Mr. Blumenthal. However, the credibility of such statements in the evidence presented to the Senate. As a result, I must conclude that President Clinton had a motive other than an interest in conveying the truth.
when he made these statements to Mr. Blumenthal.

President Clinton has tried to argue that the President made these statements to Mr. Blumenthal, not to obstruct justice, but merely to mislead him. He asked whether the President knew that Sidney Blumenthal and John Podesta might be called into a grand jury, President Clinton responded "That's right." Therefore, I must conclude that President Clinton lied to Mr. Blumenthal in order to prevent the President himself admits he knew might be called.

John Podesta testified that President Clinton told Mr. Podesta that the President "had never had sex with her [Ms. Lewinsky] in any way whatsoever." Mr. Podesta further testified that President Clinton elaborated that the President and Ms. Lewinsky "had not sexual activity that falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case." As stated above, Mr. Clinton acknowledges that he knew that Mr. Podesta might be called as a witness by the grand jury. As discussed above, it is my opinion, based on the evidence, that President Clinton and Ms. Lewinsky did engage in sexual activity that falls within the definition of sexual relations as President Clinton understood the term to be defined in the Paula Jones case. As a result, Mr. Clinton lied to Mr. Podesta. In addition, because President Clinton knew that Mr. Podesta might be called as a witness by the grand jury, I must conclude that the President lied to Mr. Podesta, not simply to mislead him and his White House colleagues, but in order to prevent the President from being held in contempt of court.

High Crimes and Misdemeanors

Perjury before a Federal Grand Jury and Obstruction of Justice do rise to the level of being a "high crime or misdemeanor" that is the standard set forth in the Constitution for impeachment. Indeed in recent years the United States Senate has impeached two federal judges for perjury. Where we do not remove the President for the same offense we would be breaking established precedent.

Furthermore, would it be right to set a lower standard for the President than the judges he appoints? I think not. The President must be held to the same standard, if not a higher one.

Perjury and obstruction of justice are crimes against the state. Perjury goes directly against the truth-finding function of the judicial branch of government. If the President can lie under oath, others will plead the same defense, sacrificing the truth.

The President is the Chief Law Enforcer of the land. He should be the ultimate example of a law-abiding citizen, not one who willfully and repeatedly violates the law when it serves his or her narrow interest. The unlawful actions by the President will have the long term effect of reducing compliance with the law by others if the President can get away with it.

The Constitution states that impeachment and removal is to occur when "the President, Vice President and all civil officers" commit "treason, bribery, or other high crimes and misdemeanors." I find bribery and perjury to be offenses of the same nature. Both seek to thwart well established legal processes. Bribery seeks to produce an outcome different from justice by obscuring our priorities. Perjury seeks to produce an outcome different from justice by obscuring the truth.

Obstruction of justice committed by the President undermines the entire judicial system and is thus a crime against the nation falling clearly in the category of a "high crime or misdemeanor."" CONCLUDING COMMENTS

Whether or not the vote taken today is considered a victory for President Clinton, it will be, in many ways, a loss for America. We have lost many things over the past year as we have eroded our respect in public officials, respect for the rule of law, confidence in the truth of the White House's public statements. But perhaps the most tragic loss has been the steady erosion of our societal standards.

It is hard to imagine that a generation or two ago, a majority of Americans would have greeted news of Presidential crimes and cover-ups with a shrug, if not a wink. We did not expect our leaders to be perfect, but we did expect them to provide moral leadership, and to obey the laws they were charged with upholding and executing. We expected Presidents to commit sins; but we would not allow them to commit crimes. We held the office of the Presidency, and the honor of the nation, in the highest esteem.

We looked to the leaders of our nation as examples to admire, rather than avoid. We pointed to the President of the United States and tell their son or daughter that if they worked hard and did right, they might one day hold that office. That is not so today. Perhaps in the future the admiration of that office can be restored.

Our loss is compounded by the manner of our response. In many quarters, the news of Presidential perjury and obstruction of justice has been greeted with a shrug, if not a wink.

We have grown comfortable with presidential misconduct, even as we proscribe, convict, and imprison the less powerful for the same crimes.

If we are to preserve our democracy, much of our reluctance to enforce the laws of our land springs from our material concerns. We have heard, from many quarters, the assertion that things are good in America, we are at peace, the stock market is doing well, why rock the boat? Why shake things up?

We seem to have forgotten that all of our prosperity would be impossible without the rule of law, and without a cultural predisposition to honor and uphold the law. Reducing the administration of justice to opinion polls devalues our country. Putting pothole concerns over standards of right and wrong impoverishes our culture. If we do not sustain the legal foundation on which our system of government and our prosperity is based, both will surely and steadily diminish.

The great southern writer Walker Percy once stated that his greatest fear for our future was seeing America, with all of her great strength and beauty and freedom . . . gradually subside into decay through default and be defeated . . . from within by weariness, boredom, cynicism, greed, and in the end, helplessness before its great problems.

I am optimistic about our future, but this point is an important one. America is at a place in history where our great enemies have been defeated. Our economy is strong, and our expectations high. We are the only remaining world superpower.

Our future looks bright. But our continued success is not a historical certainty. It will be determined by the character and condition of our culture, as much as our economy. The standards we hold—for ourselves, and for our leaders—are a good indicator of what we soon shall be.

For all of the reasons described above, I have chosen, with great sadness but firm resolve to vote for the conviction and removal of William Jefferson Clinton as President of the United States of America.

Mr. BRYAN. We are about to embark upon a roll call vote that only one other Senate in the history of our Republican has been called upon to cast. It is a weighty decision. We have taken an oath that requires us to render "impartial justice according to the Constitution and the laws." By so doing each of us has undertaken a solemn obligation to be fair to the President, fair to the American people, and faithful to our constitutional responsibility.

One hundred thirty one years ago, the 40th Congress faced a similar decision. Then, as now, the Nation was divided. Then, as now, the passions of the day raged across the land. Then, as now, the critics of the President were in the majority in the Senate. Concerning the cynics of that day, the House members voted 79 to 2 to remove President Andrew Johnson. The Senate rose above itself by the slimmest of margins, a single vote, and acquitted President Andrew Johnson.

More than a century later, that decision has stood the test of time. The Senate's acquittal reaffirmed a basic constitutional doctrine that the Executive branch, and the Legislative branch shall be separate and co-equal; and that the Executive Branch should not be subervient to the prevailing views of Congress. The Senate's decision was, in point of legal and historical history, one of the great triumphs of that body.

How different the course of our constitutional history might have been had President Andrew Johnson been
the appropriate standard. Many believe that his prosecutorial zeal violated any reasonable standard of fairness. He has been no shrinking violet in his pursuit of the President.

Yet even Mr. Starr and his staff, who can sustain the burden of proof of the 11 allegations of perjury before the Grand Jury, and one of the allegations of obstruction of justice lacked sufficient prosecutorial merit to be submitted to the House. Certainly, it cannot be contended that these allegations (the preponderance standard, as defined in law. Under these circumstances, I believe the appropriate standard is the criminal standard—proof beyond a reasonable doubt.)
But is it impeachable conduct? Does it rise to the constitutionally required standard of bribery, treason or other high crimes and misdemeanors? I think not.

The President's conduct is boorish, indefensible, even reprehensible. It does not threaten the Republic. It does not impact our national security. It does not undermine or compromise our position of unchallenged leadership in international affairs.

Although I include the evidence presented in this case does not reach the standard commanded by the Constitution to convict and remove a President, it does not follow that we are precluded from registering our strong disapproval of the President's personal conduct.

There is a way. After our vote on these Articles of Impeachment, and assuming, as most believe, there are not the votes to convict the President—the Senate should proceed immediately to adopt a bipartisan resolution of censure.

It is important for us to do this. There are two reasons. First, the American people need to hear from us in strong and unambiguous language that President's personal conduct is unacceptable and unworthy of the President of the United States.

The record of these proceedings must also reflect that the acquittal of the President in no way be construed as an exoneration of his conduct. A censure resolution should not be embarked upon lightly or for political reasons, but it should be used in this case.

And finally, a response to the injunction that we have frequently heard over the past several weeks: that no man is above the law. That is a core value. It goes to the very essence of our beliefs as Americans. No violence is done to this sacred principle by pursuing the President; no wrong is done to the Constitution.

For those who believe that the President is guilty of perjury and obstruction of justice—criminal offenses—there is a forum available for that determination. It is our criminal justice system and William Jefferson Clinton may be called to the bar of justice to respond to these criminal charges armed with no greater legal protection than that accorded the most humble among us. And that is how it should be.

Mr. CLINTON. When the impeachment trial began on January 7th, I took an oath to render “impartial justice according to the Constitution and laws: So help me God.” This oath distinguishes impeachment from all my other responsibilities in the Senate. Although the Constitution requires Senators to take an oath of office and gives the Senate numerous powers and responsibilities, only the obligation to try impeachments demands the swearing of a special, separate oath. What many of us have fought to mark this trial as a political event, the oath leaves room only for impartial justice. I interpret this oath as requiring that I decide this case based on the evidence in the record, the arguments of the parties, and the applicable law—and on no other basis.

If I were to look beyond the evidence in the case, to public opinion polls, then a path to a decision would be clear. A large majority of Americans, for example, believe that the President committed perjury, but do not think that he should be removed from office. The evidence does not link the President's actions to the many factors and did not limit themselves to the Senate record. More than anything else, these polls reflect the American people’s capacity for forgiveness. I share this desire to forgive the President for his admitted mistakes. However, the forgiveness we grant in our capacity as individuals must be distinguished from the government’s responsibility to remedy wrongdoing. We routinely ask jurors to deliberate and determine the facts, determining credibility and evidence, determining the correctness of the defendant. That is the same responsibility that the Constitution and my oath impose on me in this proceeding. On that basis, I have a duty to vote my conscience as whether I believe the President’s continued service is good for our country and our culture, that is a clear path as well. From the very outset, I have stated consistently that the allegations were true concerning the President’s relationship with Ms. Lewinsky, then the President has disgraced himself and his office, and should resign. In my view, the constituents of the President’s conduct in the Oval Office make his continued presence an obstacle to the healing of our culture. The honorable course would be for the President to resign, to allow the nation to heal from the wounds he has inflicted.

My oath, however, forecloses either of these paths, and instead forces me to undertake the far more difficult task of sifting through the record, weighing evidence, determining credibility and making a judgment on the articles of impeachment. As a result, I cannot explain my judgment by resort to any grand principles or by broad statements about my opinion of the President as a leader. I can only explain my vote through a detailed examination of the articles of impeachment, the evidence presented and the relevant law.

**ARTICLE I—GRAND JURY PERJURY**

The first article of impeachment charges President Clinton with committing perjury before the grand jury when he testified on four subjects. Attorneys for the President complain that the House Managers failed to specify the particular grand jury statements of the President were constituting perjury. I agree that the President deserves sufficient specificity to provide him the basis for a defense. However, during the course of the House Managers’ presentation it became clear that these perjury allegations focused on a handful of specific statements the President made to the grand jury.

**ARTICLE II—OBSTRUCTION OF JUSTICE**

Perhaps the single most obvious instance of a false statement by the President stems from his explanation of his conversations with Ms. Monica Lewinsky. Ms. Currie told the grand jury that on the evening of his deposition the President called her and requested that she make a rare Sunday appearance at the White House. When she arrived, the President called her in and confronted her with an unusual series of statements and questions, including: "Did you ever touch her, right?"; "You were always there when Monica was there, right?"; and "I was never really alone with Monica, right?" (See Sen. Rec. Vol. IV, part 1 at 559-60; Ms. Currie 1/27/98 GJ at 704L.) When the President was asked to explain this conversation to the grand jury, he stated that he was "trying to refresh [his] memory about what the facts were." (See Sen. Rec. Vol. III, part 1 at 651; Mr. Clinton 8/17/98 GJ, at 138.) (See also Sen. Rec. Vol. III, part 1 at 593-94; Mr. Clinton 8/17/98 GJ, at 141-42 (Q: "[Y]ou are saying that your only interest in speaking with Ms. Currie in the days after your deposition was to refresh your own recall? A: Yes.")

This statement is demonstrably false. A person cannot refresh his or her memory by repeating lies. The President’s leading questions were falsehoods. The President knew that he had never been alone with Ms. Lewinsky, knew that they had been together outside of Ms. Currie’s presence, and knew that he had touched Ms. Lewinsky. Repeating these falsehoods to Ms. Currie made the President’s memory “about what the facts were.”

What is more, Ms. Currie testified that the President reviewed the same statements and questions with her again two or three days later. (See Sen. Rec. Vol. IV, part 1 at 560-61; Ms. Currie 1/27/98 GJ, at 80-82.) The President does not have specific memory of this second conversation, but does not dispute Ms. Currie’s recollection. If the President were trying to refresh his memory, he would not go through the same questions again two or three days later. However, if the President were trying to coach Ms. Currie’s testimony and ensure that the President knew what had gone before, the President knew the President’s recollection was false.

Perhaps the single most obvious instance of a false statement by the President stems from his explanation of his conversations with Ms. Monica Lewinsky.
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Jury testimony is his claim that he was truthful with his aides in discussing his relationship with Ms. Lewinsky. The exact nature of what the President said to his aides in the immediate aftermath of his deposition was of interest to the grand jury as part of its investigation of whether the President obstructed justice. When asked about these conversations, the President told the grand jury that "I said to them things that were true about this relationship." (See Sen. Rec. Vol. IV, part 1, at 558; Mr. Clinton 8/17/98 GJ, at 106.)

The testimony of the President's own aides, however, makes it clear that the President was not truthful with his aides. He did not tell them what he lied to them about. For example, one presidential aide, John Podesta, testified that the President told him that he did not have sex with Ms. Lewinsky "in any way whatsoever" and provided additional, more detailed denials concerning the relationship. (See Sen. Rec. Vol. IV, part 3, at 3311; Mr. Podesta 6/16/98 GJ, at 92.) Sidney Blumenthal, another presidential aide, testified that the President told him that Ms. Lewinsky came at me and made a sexual demand on me," that he "rebuffed her," and that Ms. Lewinsky "was known as the stalker." (See Sen. Rec. Vol. IV, part 1, at 185; Mr. Blumenthal 6/4/98 GJ, at 48.) In his Senate deposition Mr. Blumenthal unequivocally stated that he now believes the President lied to him. (See CONGRESSIONAL RECORD S1249; Mr. Blumenthal 2/29/99 Dep.) As the President's closest aides have said, the President did not tell them the truth with them. In reviewing all the evidence, it is clear beyond a reasonable doubt that the President was not truthful with his aides and that his grand jury testimony concerning these discussions was false.

THE PRESIDENT'S TESTIMONY ABOUT HIS RELATIONSHIP WITH MS. LEWINSKY

The first example included in the grand jury perjury article approved by the House focuses on the President's grand jury testimony concerning the nature and details of his relationship with Ms. Lewinsky. His testimony on this matter also appears to be false.

Although some of the detailed testimony underlying this example of perjury is nothing short of sordid, the President's lack of credibility on this matter is straightforward. For a number of months last year, Ms. Lewinsky was on record as having told federal investigators and the President himself that she had engaged in a sexual relationship. The President publicly and repeatedly denied the truth of these allegations. It was a classic "he said, she said" situation. Then physical evidence of a sexual relationship between the President and Ms. Lewinsky was discovered. After this physical evidence came to light, it ceased to be a "he said, she said" situation. He changed his story and admitted an inappropriate intimate relationship with Ms. Lewinsky. However, the President declined to follow his oath to tell the grand jury the whole truth and admit the true nature of the relationship. Instead, the President attempted to walk an impossibly fine line, admitting to a relationship which involved sufficient contact to explain the physical evidence but insufficient contact to avoid the President's earlier deposition statements about the relationship perjurious. The President's testimony on this matter, therefore, was at the heart of the grand jury's investigation into whether the President committed perjury in the Jones case. The physical evidence strongly suggested that the President had committed perjury in his deposition, and this grand jury testimony was the basis for his defense. The President's testimony flatly contradicts Ms. Lewinsky's testimony concerning the nature and details of their relationship. Ms. Lewinsky's testimony provides a much more plausible explanation of the physical evidence, and makes clear that the President perjured himself in his sworn deposition testimony.

With respect to the nature and details of their relationship we are once again present with a "he said, she said" situation, one which can be described as having two differences. First, the President's implausibly contorted version of events appears to be tailored precisely to avoid admitting a prior perjury. Second, we have the benefit of a prior "he said, she said" dispute between the same two people, in which subsequent evidence conclusively proved that she was telling the truth and he was lying. Under these circumstances, I am convinced beyond a reasonable doubt that the President lied about "the nature and details of his relationship" with Ms. Lewinsky.

THE PRESIDENT'S TESTIMONY CONCERNING HIS DEPOSITION

The House included two other examples of grand jury perjury in the first article included in the article. The first example alleges that the President lied to the grand jury concerning both his prior, perjurious deposition testimony and whether he was paying attention to his lawyer's statements during that same deposition. While there is considerable evidence that supports the notion that the President did lie to the grand jury regarding these two matters, I am not convinced beyond a reasonable doubt that the President's statements on these matters constitute perjury.

The President began his grand jury testimony with the assertion that he was truthful in his deposition testimony. However, later in his grand jury testimony, the President clarified and corrected much of his false and misleading deposition testimony. As a result, it is clear that the President's claim that his deposition testimony was truthful was itself a false statement. However, it is equally clear that this false statement cannot make the testimony true on the basis of the jury's construction for two reasons. First, when viewed in its entirety, the President's grand jury testimony makes this one statement imma-
terial. It is the equivalent of the statement of a murderer who begins his confession with the statement that "I didn't do anything wrong." Second, in light of the House's decision to reject a separate article focusing on deposition perjury, I am uncomfortable allowing this type of a single statement to be used as a means to "backdoor" allegations that the President lied in that forum.

The allegation that the President lied to the grand jury when he testified that he was not paying attention to his lawyer after he used Ms. Lewinsky's affidavit to deny that there was any sexual relationship between the President and Ms. Lewinsky is a closer matter. During the President's deposition in the Jones case, the President's lawyer, Mr. Bennett, argued to the Court that Ms. Lewinsky's affidavit demonstrated "there is absolutely no sex of any kind in the so-called or fancy sense or any form" between the President and Ms. Lewinsky. (See Sen. Rec. Vol. XIV, at 23.)

The President allowed his lawyer to make this representation to the Court, even though the President knew that representation and the underlying affidavit were both false. When confronted with these facts before the grand jury, the President attempted to excuse his behavior with the claim that he was not paying attention to the affidavit and this "whole argument just passed me by." (See Sen. Rec. Vol. III, part 1, at 481; Mr. Clinton 8/17/98 GJ, at 29.) The available evidence makes clear that the President was paying attention. I have reviewed the videotape of the President's deposition, and he appears to be paying attention to his lawyer before, during, and after his lawyer's representation. Otherwise, it suggests the President was paying attention because his lawyer made this statement in an effort to keep the President from answering a question the President had just directed to him. The President would have needed to pay attention to his lawyer's argument in order to have made this representation. It is hard to believe he would have tuned out his lawyer's objection to the question.

What is more, in light of the President's admitted fears about the true nature of his relationship with Ms. Lewinsky becoming public, it is implausible that he would have not paid attention to his lawyer's efforts to use the Lewinsky affidavit to prevent questioning about their relationship. The President does not dispute that he suggested that Ms. Lewinsky file an affidavit in a December 17, 1997, telephone call. The President's stated objective in suggesting the filing of an affidavit was to keep Ms. Lewinsky from becoming an issue in the Jones litigation. The notion that the President would not pay attention to his lawyer's effort to help him avoid the possibility of a backdoor affidavit is support for the House's decision to reject a separate article focusing on deposition perjury. Finally, it is worth noting that immediately following Mr. Bennett's representation, the President denied the truth of these allegations. It is the equivalent of the statement of a murderer who begins his confession with the statement that "I didn't do anything wrong." Second, in light of the House's decision to reject a separate article focusing on deposition perjury, I am uncomfortable allowing this type of a single statement to be used as a means to "backdoor" allegations that the President lied in that forum.
judge cautioned Mr. Bennett against coaching the witness. That caution would not have been necessary had the witness, Mr. Clinton, not been paying attention to his lawyer’s words.

If I were applying a preponderance of the evidence and convincing evidence standard, I certainly would reject the President’s claim that the “whole argument just passed me by.” However, applying a beyond a reasonable doubt standard, I have reached a differing conclusion. The problem for me is that the President’s statement concerns his own mental state. Although the evidence and common sense suggest the President was paying attention to Mr. Bennett, I have not been able to remove all doubts from my mind on this score.

**THE LEGAL ELEMENTS OF GRAND JURY PERJURY**

On the other hand, I am convinced beyond a reasonable doubt that the President made false statements to the grand jury concerning his conversation with Ms. Currie, his statements to other aides, and the nature and details of his relationship with Ms. Lewinsky. Moreover, in light of the legal standards for grand jury perjury, I am convinced President Clinton’s conduct satisfies every element of felony perjury under section 1623 of the federal criminal code, Title 18. There are five elements to the crime of grand jury perjury. To constitute perjury a statement must be made under oath, before a grand jury, with intent, and the statement must be both false and material. I have already discussed why I have concluded that these statements were false, and there is no question that they were made under oath to a grand jury. The only two remaining elements are intent and materiality. Neither of these standards is difficult to satisfy in the context of grand jury perjury. Congress passed a special statute, section 1623, to make it easier to prosecute grand jury perjury. The requirement that grand jury perjury is a more serious threat to the administration of justice than other perjuries. As a result, the intent requirement is not demanding—the defendant need only make the statement with knowledge of its falsity. As the well-respected American Criminal Law Review published by Georgetown University concludes: “Section 1623, unlike 1621 (the general perjury statute), does not require proof that the allegedly false testimony submitted willfully. Rather, it requires that such testimony was knowingly stated or subscribed. This requirement is ordinarily satisfied by proof that the defendant knew his testimony was false at the time he provided it.”

The one thing that emerges from the presentations made by both the White House and the House Managers is that the President made his grand jury statements with a great deal of forethought and precision. The President’s false statements do not result from inadvertence or confusion. The President knew these statements were false. For example, he knew full well that his conversation with Ms. Currie was not designed to refresh his memory. Likewise, the materiality standard is easily satisfied in this case. Courts are generally quick to find grand jury perjury to be material in deference to the broad investigative authority of a federal grand jury. As the Second Circuit observed in United States v. Kross, 14 F.3d 751, 754 (2d Cir.), cert. denied, 513 U.S. 828 (1994): “Because the grand jury’s fact-finding function is so pervasive, a declarant who testifies falsely whether or not there is a direct threat to the administration of justice. The only two remaining elements for grand jury perjury, I am convinced that the President’s grand jury testimony concerning what he said to his aides and the nature of his relationship with Ms. Lewinsky was directly relevant to the grand jury’s investigation. The President’s grand jury material—they were at the heart of the grand jury’s inquiry.

**THE PRESIDENT’S LEGAL DEFENSES**

Lawyers for the President raised a number of legal smoke screens in his defense that do not change the ultimate conclusion that the President committed perjury. For example, they emphasize the so-called Bronston defense, in which a misleading statement does not constitute perjury if it is technically true. However, the Bronston defense provides no defense to a statement that is literally false. As United States Supreme Court Justice Breyer, while still on the First Circuit, observed: “The Bronston Court held only that a defendant cannot be convicted of perjury for true but misleading statements, not that a defendant is immune from prosecution for perjury whenever some ambiguity can be found by trained reading of the questions and answers. The Bronston defense fails in this regard that in his conversation with Ms. Lewinsky, the President asked Ms. Currie’s name in answering questions concerning his relationship with Ms. Lewinsky. Indeed, at one point, the President specifically directed the Jones’ lawyers to “ask Betty whether Ms. Lewinsky was alone with him or with Ms. Currie between the hours of midnight and 6:00 a.m. (See Sen. Rec. Vol. XIV, at 35). In other words, during his deposition, the President attempted to rely on the two-witness rule—i.e., the notion that a perjury prosecution cannot rest on an oath versus an oath. That rule of law would not apply here if it were a correct statement of the law because there is ample corroborative evidence. But the truth is that section 1623 expressly rejects the two-witness rule, stating that: “it shall not be necessary that such proof be made by any particular number of witnesses.” As the well-respected American Criminal Law Review puts it: “the obvious purpose of this language is to prevent the application of the two-witness rule in section 1623 prosecutions.” That view is supported by the Supreme Court’s analysis of the purpose of section 1623 in Dunn v. United States, 442 U.S. 100, 108 & n.6 (1979).

In the end, the White House’s legal arguments cannot obscure the fact that the President committed perjury in his grand jury testimony. The House Managers successfully carried their burden. They proved the facts underlying the first article of impeachment beyond a reasonable doubt, and the evidence satisfied every element of proof for grand jury perjury.

**ARTICLE II—OBSTRUCTION OF JUSTICE AND WITNESS TAMPERING**

The second article of impeachment approved by the House alleges that the President obstructed justice and provided seven examples of specific conduct that obstructed justice in the Jones litigation or the federal grand jury’s investigation. I have examined each of these examples in detail and will share my analysis. As with perjury, perhaps the clearest example of obstruction of justice stems from the President’s conversation with Ms. Currie the day after his sworn deposition testimony in the Jones case.

**COACHING MS. CURRIE’S TESTIMONY**

As noted in the discussion of perjury, the President called in Ms. Currie the day after his sworn deposition testimony and confronted her with a series of questions and answers, such as “Monica came on to me, and I never touched her, right?”; “You were always there when Monica was there, right?” and “I was never really alone with Monica, right?” (See Sen. Rec. Vol. IV, part 1, at 559-560; Ms. Currie 1/27/98 GJ, at 70-75). According to Ms. Currie, the President repeated this rehearsal of questions and answers two or three days later. As discussed earlier, the President’s explanation for this conversation—that he was trying to refresh his memory—is simply not credible. The true purpose of these conversations becomes clear in light of the President’s sworn deposition testimony. On several occasions during his deposition, the President directed Ms. Currie’s name in answering questions concerning his relationship with Ms. Lewinsky. Indeed, at one point, the President specifically directed the Jones’ lawyers to “ask Betty whether Ms. Lewinsky was alone with him or with Ms. Currie between the hours of midnight and 6:00 a.m. (See Sen. Rec. Vol. XIV, at 35). In other words, during his deposition, the President attempted to use Ms. Currie as an alibi witness to deny that he had been alone with Ms. Lewinsky. It is telling in this regard that in his conversation with Ms. Currie the President sought Ms. Currie’s agreement that “he was never alone with her, right?” This was the exact point as to which the President directed the Jones’ lawyers to “ask Betty.” In short, having invoked Ms. Currie as an alibi in his deposition, the President wasted no time in contacting Ms. Currie and making sure her story would square with the President’s sworn testimony. As the President contacted Ms. Currie and explained that Ms. Lewinsky’s name had come up during the deposition despite Judge Wright’s
admonition not to discuss the deposition with anyone other than his lawyers. There is simply no innocent explanation for this conversation with Ms. Currie. It was a violation of Judge Wright's order. Ms. Lewinsky was not an attempt to refresh the President's memory. Instead, the evidence shows beyond a reasonable doubt that this was an unlawful attempt to obstruct justice by altering Ms. Currie's testimony in the Jones case.

The President, MS. LEWINSKY, AND THE FALSE AFFIDAVIT

This coaching of Ms. Currie is not the only example of obstruction of justice by the President. For instance, the first example cited in the obstruction of justice article alleges that the President corruptly encouraged Ms. Lewinsky to file a false affidavit in the Jones litigation. The President does not dispute that he called Ms. Lewinsky at 5:30 a.m. on December 17, 1997, to inform her that she was on the witness list in the Jones case. The President likewise does not dispute that he hoped Ms. Lewinsky would not have to testify and suggested to her that she could file an affidavit to reduce her chances of being deposed or called to testify in the Jones proceeding. (See Sen. Rec. Vol. III, part 1, p. 567-73; Mr. Clinton 8/17/98 GJ, at 115-121). The President's defense is that he wanted Ms. Lewinsky to file an affidavit to avoid testifying, he did not want her to file a false affidavit. As the President put in his grand jury testimony, "I did hope she'd be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not." (See Sen. Rec. Vol. III, part 1, at 571; Mr. Clinton 8/17/98 GJ, at 119).

This claim that an affidavit could be both truthful and result in a reduced chance of Ms. Lewinsky testifying is critical to the President's defense because it is a crime to corruptly perjury, a potential witness to delay or prevent their testimony.

The fundamental problem with the President's defense is that a truthful affidavit that disclosed the nature of his relationship with Ms. Lewinsky would have been inconsistent with the President's stated goal of reducing her chances of being called to testify. A truthful affidavit would have guaranteed that the President's defense because it is a crime to corruptly perjury, a potential witness to delay or prevent their testimony.

Additional evidence that the President encouraged Ms. Lewinsky to file a false affidavit comes from the President's revival of previously developed cover stories in this same 2:30 a.m. telephone conversation. Specifically, according to Ms. Lewinsky, the President reminded her that "you can always say you were going to see Betty or that you were bringing me letters?" (See Sen. Rec. Vol. III, part 1, at 843; Ms. Lewinsky 8/16/98 GJ, at 123). To be sure of what he was saying, the President repeated that the ideas of filing an affidavit and using the cover stories were not explicitly linked in her mind. However, there must have been some implicit link, in fact, because Ms. Lewinsky's draft affidavit featured one of the cover stories. Although it was dropped in the editing process to eliminate any suggestion that the President and Ms. Lewinsky were alone, the draft affidavit suggested that Ms. Lewinsky had brought the President papers.

In addition, the notions that the President wanted Ms. Lewinsky to file a false affidavit and that only a false affidavit would have the desired effect of keeping Ms. Lewinsky from being deposed or called as a witness are supported by the fact that the filed affidavit was false. The affidavit Ms. Lewinsky filed was false, in the following particulars: (1) it stated that Ms. Lewinsky did not possess "any information that could possibly be relevant to the investigation"—made by Paula Jones...", (2) it stated that on the occasions on which Ms. Lewinsky saw the President after she left employment at the White House in April 1996, they had no "intimate relationship"—the President... always behaved appropriately in my presence." (See Sen. Rec. Vol. III, part 1, at 1235). Moreover, any doubt about the falsity of Ms. Lewinsky's affidavit is removed by her decision to enter into an immunity agreement to prevent her prosecution for perjury with respect to the affidavit.

Finally, the President's claim that he did not want Ms. Lewinsky to file a false affidavit is belied by the fact that the President allowed his attorney to use the false affidavit in an effort to keep the Jones lawyers from questioning him about his relationship with Ms. Lewinsky. The President's attorney, Mr. Bennett, relying on the Lewinsky affidavit, prepared a chart that "there is absolutely no sex of any kind in any manner, shape or form, with President Clinton." (See Sen. Rec. Vol. XIV, at 23). Mr. Bennett expressly told the court that the President was "fully aware" of Ms. Lewinsky's affidavit. (See Sen. Rec. Vol. XIV, at 23). It is difficult to credit the President's claim that he did not want Ms. Lewinsky to file a false affidavit when he allowed his lawyer to use a false affidavit—of which he was "fully aware"—to keep him from being questioned about Ms. Lewinsky.

The House has alleged that the President's decision to allow Mr. Bennett to use this affidavit—knowing it to be false—was an additional example of obstruction of justice. I am not convinced that the President's failure to correct his attorney's representation to the Court amounts to an obstruction of justice. His actions in allowing his attorney to use a false affidavit to his litigation advantage undermines his claim that he never wanted Ms. Lewinsky to file a false affidavit. When all the evidence is considered, it is clear beyond a reasonable doubt that the President wanted Ms. Lewinsky to file a false affidavit.

The Cover Stories

The second example cited by the House in its obstruction of justice article was the President's suggestion that Ms. Lewinsky could use cover stories to disguise the true nature of their relationship from the Jones lawyers. These cover stories, of course, were used by the President and Ms. Lewinsky. The House has noted that the President's reiteration of the cover stories constituted obstruction of justice. His actions obstructed the true course of justice and denied an American citizen a fair hearing of her claim.

The Gift Exchange

The third example of obstruction of justice cited in the House article concerns the efforts to conceal the President's gifts to Ms. Lewinsky from the Jones lawyers. The House argues that the President orchestrated a scheme by which Ms. Lewinsky concealed the gifts from the Jones lawyers by conveying them to Ms. Currie. In defending against this charge, the President's argument that the President simply wanted the disputed fact that the gift's sought by the Jones lawyers ended up beneath the President's personal secretary's bed.
These gifts clearly were relevant evidence in the Jones litigation. The subpoena served on Ms. Lewinsky required the production of “each and every gift including but not limited to, any and all dresses, accessories, and jewelry, and docket it to you, or on behalf of Defendant Clinton.” (See Sen. Rec. Vol. III, part 2, at 2704.) Ms. Lewinsky discussed this subpoena with the President on December 28, 1997, and both expressed their concern that the subpoena covered the hats that the President gave to Ms. Lewinsky. Ms. Lewinsky testified that when the subject of what to do with the gifts came up the President responded: “I don’t know” or “let me think about it.” (See Sen. Rec. Vol. III, part 1, at 872; Ms. Lewinsky 8/98 GJ, at 152.) The President, by contrast, told the grand jury that he instructed Ms. Lewinsky that if the Jones’ lawyers asked for the gifts, [Ms. Lewinsky would] have to give them whatever she had, that “that’s what the law was.” (See Sen. Rec. Vol. III, part 1, at 495; Clinton 8/17/98 GJ, at 43.)

Ms. Lewinsky left the White House and returned home only to receive a call from Mr. Jordan. Mr. Jordan told her “I understand that you have something to give me” or “the President said you have something to give me.” (See Sen. Rec. Vol. III, part 1, at 874; Ms. Lewinsky 8/98 GJ, at 154-55.) Ms. Currie does not recall making this call, and Mr. Jordan never directed Ms. Lewinsky to pick up the gifts. That is the subject of the gift exchange. It is uncontroverted, however, that Ms. Currie went to Ms. Lewinsky’s apartment to pick up the gifts and that those gifts were stored under Ms. Currie’s bed. The net result of these events is that the gifts that evidenced a relationship the President was trying to conceal in litigation against him were kept from the Jones lawyers. This net result makes the President’s sworn testimony that he directed Ms. Lewinsky to turn over this evidence to Mr. Jordan difficult to square with the facts. It is difficult to believe that Ms. Lewinsky would disregard the President’s advice on this issue.

This evidence makes it more likely than not that the President obstructed justice by orchestrating the concealment of the gifts. However, to prove obstruction of justice, the House must show that the President directed Ms. Currie to pick up the gifts. That is the missing link in the House’s case. Although the respondent relied upon the definition for the concealment of the gifts, both parties to that conversation—Ms. Currie and the President—deny that such a discussion took place. As a result, there is a reasonable doubt in my mind as to whether the President obstructed justice by concealing the gifts, and I find this issue in his favor.

The next example of obstruction cited by the House involves the President’s false statements to aides who were potential grand jury witnesses. Most of the evidence on this point is not in dispute. The President insisted before the grand jury that he was less involved with Ms. Lewinsky than his aides. However, the President’s own aides now admit that he lied to them. There is no dispute that those lies were repeated to the grand jury. The only remaining question is whether the President told these lies to his aides with the expectation that they would resurface in the Jones case.

The White House’s principal defense on this point is that the President’s lies to his aides were no different than those told by him to the House. The only difference is that the President’s aides now admit that he lied to them. There is no dispute that those lies were repeated to the grand jury. The only remaining question is whether the President told these lies to his aides with the expectation that they would resurface in the Jones case.

Influencing the Testimony of His Aides

The final example of obstruction cited by the House involves the President’s false statements to aides who were potential grand jury witnesses. Most of the evidence on this point is not in dispute. The President insisted before the grand jury that he was less involved with Ms. Lewinsky than his aides. However, the President’s own aides now admit that he lied to them. There is no dispute that those lies were repeated to the grand jury. The only remaining question is whether the President told these lies to his aides with the expectation that they would resurface in the Jones case.

The President did not merely repeat the lies to his aides. He also directed his aide to file an affidavit in that case. Mr. Jordan failed to file the affidavit and instead directed Ms. Lewinsky to do so. The affidavit sheds light on many of the President’s key claims. It is difficult to believe that Mr. Jordan would file such an affidavit without the President’s direction.

Mr. Jordan denied that he asked Ms. Lewinsky to file the affidavit. However, Ms. Lewinsky testified that Mr. Jordan established a legal foundation for the affidavit by directing her to file it and that she did so. However, the President never expressly conveyed such a message. Although the President never expressly conveyed his request for Ms. Lewinsky to file the affidavit, the President issued a series of requests that a private investigator be hired to keep the Jones lawyers from discovering the notes. The President’s act of omission constitutes a separate act of obstruction. The final example of obstruction cited by the House involves the President’s false statements to aides who were potential grand jury witnesses. Most of the evidence on this point is not in dispute. The President insisted before the grand jury that he was less involved with Ms. Lewinsky than his aides. However, the President’s own aides now admit that he lied to them. There is no dispute that those lies were repeated to the grand jury. The only remaining question is whether the President told these lies to his aides with the expectation that they would resurface in the Jones case.

Although Ms. Lewinsky has testified that the President never expressly conditioned her job assistance on her continued cooperation in the Jones litigation, her conduct shows an implicit connection between the job search and the legal proceedings related to the Jones litigation. Ms. Lewinsky received a subpoena from the Jones lawyers that she went to her job counselor. When she had concerns about what to do with incriminating notes, she discussed the matter with her job counselor.

The evidence demonstrates that the motivation for the job search was not to enhance Ms. Lewinsky’s career or to find her a “dream job.” The President had the opportunity to give her a “dream job” at the White House and declined. Instead, the evidence shows beyond a reasonable doubt that the job search was intimately tied to the Jones litigation and designed to ensure Ms. Lewinsky’s continuing cooperation.

Mr. Bennett’s Use of the False Affidavit

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The final example of obstruction cited by the House involves the President’s false statements to aides who were potential grand jury witnesses. Most of the evidence on this point is not in dispute. The President insisted before the grand jury that he was less involved with Ms. Lewinsky than his aides. However, the President’s own aides now admit that he lied to them. There is no dispute that those lies were repeated to the grand jury. The only remaining question is whether the President told these lies to his aides with the expectation that they would resurface in the Jones case.
large. The President's denials to his aides were embellished and substantially more detailed. The President did not tell the American people that Ms. Lewinsky was a stalker or categorically state that there was no sex "in any way whatsoever," though she had made it hard to leave that false misexpression. He did share these details with his aides, and they repeated them to the grand jury. These details, moreover, were not immaterial to the grand jury investigation. These details, such as the characterization of Ms. Lewinsky as a stalker, directly attack the credibility of the principal witness against the President in the grand jury proceeding. As a result, I am convinced beyond a reasonable doubt that the President obstructed justice when he lied to his aides.

THE LAW OF OBSTRUCTION OF JUSTICE AND WITNESS TAMPERING

The President's conduct clearly violates the criminal statute against obstruction of justice and witness tampering. The federal obstruction of justice statute requires the government to prove three elements: (1) there was a pending federal judicial proceeding or due administration of justice; (2) the defendant acted corruptly with the specific intent to obstruct or interfere with the proceeding or due administration of justice; and (3) the defendant obstructed justice. The President's attorneys have emphasized that the President never physically threatened or intimidated any witness or grand juror. However, that is simply not relevant under the federal witness tampering statute, which criminalizes not just physical intimidation, but corrupt persuasion and misleading conduct as well. What is more, the statute makes clear that it applies to any witness in any official proceeding, and the statute specifies in subsection (c) that "official proceeding need not being pending or about to be instituted at the time of the offense."

The President's conduct clearly violates the federal statute against witness tampering. The federal witness tampering statute requires the government to prove three elements: (1) the defendant had a document or record from an official proceeding; (2) the defendant knew of the existence of the document or record; and (3) the defendant knowingly and with intent to influence, delay or prevent testimony or cause any person to withhold a record, object or document from an official proceeding.

The President's actions, as characterized by the President's attorneys, are not sufficient to constitute a violation of the federal witness tampering statute. The President's attorneys have emphasized the President's legal advice, but his legal advisors repeatedly inflated the threat to a grand jury, and the President's conduct shows that he intended to obstruct or interfere with a judicial proceeding, and the statute makes clear that it applies to any witness in any official proceeding. The only relevant legal question is whether he intended to obstruct justice in the Jones case.

There is ample evidence in the record to suggest that obstructing justice in the Jones case was the President's precise intent. Indeed, the President's own testimony makes clear that he viewed the Jones litigation as illegitimate. He stated that he "deported" the Jones' suit was pending when he engaged in the conduct covered by the obstruction of justice statute. The only relevant legal question is whether he intended to obstruct justice in the Jones case.

In addition, the scope of "high crimes and misdemeanors" is informed by the two crimes specifically enumerated in the Constitution as a basis for impeachment, treason and bribery. Both these crimes, in common with perjury and obstruction of justice, threaten the proper functioning of government—either directly in the case of treason, or indirectly, by undermining the government's integrity, in the case of bribery. Perjury is bribery's twin. Perhaps the clearest illustration of this point is that the President could have accomplished the same result in this case by interfering with the Jones litigation—by bribing a witness or the judge. Perjury, like bribery, is grouped among the most serious crimes at least since the founding of our nation.

John Jay, one of the three authors of the Federalist papers and our nation's first Chief Justice, provides a glimpse of the framers' views on the seriousness of perjury. When riding circuit in Bennington, Vermont in the summer of 1792, Chief Justice Jay instructed the Grand Jury in a perjury prosecution of 1792 that perjury "is among the most serious crimes at least since the founding of our nation."

Independent of the abominable insult which perjury offers to the divine Being, there is no crime more extensively pernicious to Society. It discoursels and poisons the streams of justice, and by substituting falsehood for truth, saps the Foundation of Truth, which perjury offers to the divine Being, and discolors and poisons the whole System of Government.
should cease to be held sacred, our dearest and most valuable rights would become insecure.

There is ample evidence to support Chief Justice Jay's view that, of all crimes, perjury is among the most pernicous to society, and one that has always been thought to rise to the level of "high crimes and misdemeanors." It is not surprising then, that the Kentucky Constitution of 1792 directed that: "The Senate shall be made to exclude from office and from suffrage those who thereafter be convicted of bribery, perjury, forgery or other high crimes or misdemeanors." Art. VIII cl. 2. Moreover, the belief that perjury is an impeachable offense is not limited to the framers. Less than a decade ago in a law review article, Chief Justice Rehnquist, the presiding officer in this impeachment trial, summed up our national experience with impeachment by noting that "impeachment has been confined to flagrant abuse of office—perjury, bribery, and the like." William Rehnquist, The Impeachment Clause: A Wild Card in the Constitution, 85 Northwestern University Law Review 903, 910 (1991).

There has also been raised that the President's conduct does not rise to the same levels as President Nixon's conduct in Watergate. That may well be true, but it is also irrelevant. Not every high crime and misdemeanor is created equal, but all require removal under the express terms of the Constitution. However, whatever differences exist between President Clinton's conduct and Watergate, the reaction of Watergate Special Prosecutor Leon Jaworski to President Nixon's misconduct is telling. Of all the misconduct portrayed on the famous Nixon tapes, Jaworski found one strip of dialogue "the most repulsive on the tape. In that strip the President—a lawyer—coached [his aide] to testify untruthfully and yet not commit perjury. It amounted to subornation of perjury. For the number-one law enforcement officer of the United States to do it was, in my opinion, as demeaning an act as could be imagined." Leon Jaworski, The Right and the Power—The Prosecution of Watergate 47 (1976).

That is perjury. The nation's first Chief Justice stated that "there is no crime more extensively pernicous to Society." Our current Chief Justice described it as a "flagrant abuse of office." And the Watergate Special Prosecutor noted that "by his oath he has promised to the people that he will in every way endeavor to maintain the integrity of our government. Not surprisingly, Congress always has treated them as high crimes and misdemeanors that require the removal of a guilty party. In light of the President's criminal misconduct, I will vote to convict the President on both articles of impeachment.

This is the only conclusion consistent with my oath to impartial justice. In large measure, this case is all about the importance of oaths. The President's failure to honor his oath has necessitated this entire proceeding. Although some might see a vote to acquit the President as further damage the sacredness and vitality of oaths by disregarding my own.

I have not relished the responsibility of serving as a finder of fact and determiner of law in an impeachment trial. I have been eager to return to a legislative agenda to provide Americans and Missourians with tax cuts, retirement security, educational opportunity and...
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greater safety from drugs and crime. It is regrettable that the President’s misconduct forced Congress to consider this matter. I hope the unprecedented time that Senators have spent together in this work will enable us to make stronger the people’s business when we return to the Senate.

Finally, while I have not relished this duty, and sincerely wish the President would have spared the nation this ordeal, responsibility is among the most important assigned to the Senate under our Constitution. It has been my goal to do my very best to do my duty as prescribed by the Constitution. While the Constitution calls upon the Senate to remove an unfit President, it does not charge the Senate with punishing the President. Indeed, the Constitution specifically limits the Senate’s remedies and leaves the President “subject to . . . punishment, according to law, for the violation of any law of which he may become guilty.” The Constitution requires a clear choice: acquit the President and leave him in office, or convict him and remove him. The framers deemed it wise not to allow the Senate to leave a President in place, but with punishments short of removal. Thus, once we discharge our impeachment responsibilities, the Senate should move energetically to its legislative agenda. To accomplish legislative goals for the nation, it will be necessary for Congress and the President to work together. If Senators wish to condemn the President’s conduct, they should do so on their own, and should not tie up the Senate and divert energy from doing the people’s work.

Mr. THURMOND. Mr. Chief Justice, the vote I cast on the articles of impeachment was one of the hardest votes that I have had to make in all my years in the United States Senate, not that I do not think I made the correct decision. While I am saddened that we had to make the judgment we made in this impeachment trial, each of us had a duty to undertake this task, and I do not shirk it.

The House Managers performed their duty admirably, making a comprehensive, coherent, and eloquent presentation. The White House attorneys presented a spirited defense. Similarly, due in part to the outstanding leadership of the Senate Majority Leader, I am confident that history will record that we in the Senate exercised our duty to conduct the trial appropriately and fairly. I believe the Founding Fathers would be pleased with the process and procedure.

The purpose of impeachment is not to punish a man. It is not a way to express displeasure or disagreement with a President. Impeachment is a mechanism designed to preserve, protect, and defend the Constitution, the Country, and Office of the Presidency. My primary concern, from the first day of this scandal, was the impact it would have on the Office of the Presidency.

This case is not about illicit conduct or even about not telling the truth about illicit conduct. Instead, the case is about two activities. The first is whether the President intentionally made false statements under oath to a Federal grand jury, to the J udiciary of the United States. The second is whether the President obstructed justice in the District Court and a Federal grand jury, again to the J udiciary of the United States.

A Senator’s role in an impeachment trial is a mix of roles from our judicial function and a co-equal branch of Government. It is the role of a Senator to sit as a judge or as the President’s j urors, to listen to their testimony, to determine, to consider, to review evidence, to deliberate, to conduct, and to make decisions. If a Senator were to become a juror as described by the President, she should be described by the Constitution as a Judge of the United States. The Senate should move energetically to its Constitutional duty. We did not ask for a Constitutional crisis. The Constitution provides for the removal of the current President, and the law provides that his running mate, the Vice President, takes the oath of office. If the President is removed, the Administration does not change from one party to another. The Constitution wisely provides for continuity. The impeachment process only provides for the removal of the current occupant.

Indeed, we are not engaged in a Constitutional crisis. The Constitution provides the roadmap for what we are doing. We are simply following our Constitutional duty. We did not ask for this burden. It was thrust upon us by the misconduct of the current occupant of the Office of the Presidency.

Before today, perjury and obstruction of justice were clearly high crimes and misdemeanors under the Constitution. My vote is consistent with this. The President is not above the law. The Constitutional standard is no different for him than for anyone else. It is for these reasons that I voted guilty on both articles of impeachment.

Mr. CRAPO. Mr. Chief Justice, very soon we will all cast what is clearly among the most serious votes any members of Congress could ever be
asked to make. I will vote to convict President William J. Jefferson Clinton on both of the two articles of impeachment before the U.S. Senate—perjury before a grand jury and obstruction of justice. To me, the evidence presented over the past four weeks on President Clinton's conduct is reasonably subject to any conclusion other than that the President did commit the crimes alleged against him.

From the very beginning of this matter, I have been circumspect about commenting on the President's conduct. As a newly elected Senator, I was inundated with interview requests from national media. I chose not to appear on these programs and restricted my comments to a discussion of the process. I felt it was incumbent upon me as a member of the impeachment court to avoid commenting on the evidence until the trial has concluded.

At the outset, each Senator was administered a separate oath by the Chief Justice of the Supreme Court. This special oath to conduct, and perform from the oath of office that each Senator takes when sworn into office. To my knowledge, this is the only other occasion in which our Founding Fathers required a separate and distinct oath of each Senator to perform a constitutional responsibility.

Once again, the incredible wisdom of our Founding Fathers was evident. As each Senator took the oath to provide impartial justice, I realized that over the previous four weeks I had just embarked on a very solemn duty. No longer was the Senate a legislative body, it was a court of impeachment. A unique court, to be sure, not identical to traditional civil and criminal courts, but a court nonetheless.

This oath to render "impartial justice" was a promise to God under our Constitution. It also represented a duty to all Idaahoans to represent them impartially. I committed that I would conduct our business in a fashion so that any time I could affirm that I fully honored this commitment. I was present at all the Senate proceedings, and fully reviewed the evidence presented before the Senate. I was ready to vote either to acquit or to convict, depending on the evidence, argument, and law presented to the Senate.

In approaching this decision, several questions must be answered. Did the President commit the crimes alleged? And is it true that these crimes—high crimes and misdemeanors—require the removal of the President from office under the impeachment provisions of the U.S. Constitution? After carefully weighing the evidence and the law presented to the Senate, I have concluded after many sleepless nights and troubling days that the evidence shows that President Clinton committed the crimes alleged in the Articles of Impeachment. These crimes involve perjury in a civil grand jury proceeding, and in a federal civil rights action. Although the "beyond a reasonable doubt" standard of traditional criminal trials is not applicable in impeachment proceedings, I am convinced the evidence presented in this case meets even this high standard.

Notwithstanding the impression created by some of the media and talk shows, I have reached a consensus that the President committed the acts alleged against him. The core debate is whether these acts rise to the level of high crimes and misdemeanors as required to impeach and remove the President from office under the Constitution.

Some argue that this entire matter is just an effort to impeach the President for "private" conduct and that impeachment is proper only for "public" conduct that violates the public trust. But it is important to clarify that these proceedings are not about sex or even lying about sex. Both the President's counsel and the House managers correctly made the point that private conduct by the President is a matter for the President and his wife and family. The allegations in this case, however, relate to public acts that go to the heart of the rule of law in America—perjury and obstruction of justice in a civil rights case and before a grand jury. I am deeply concerned that we will do great damage to our system of law and the freedom it defends if we diminish the seriousness of these crimes and thereby suggest to future offenders that they can commit these crimes with little to fear.

I am telling that on three separate occasions the U.S. Senate has removed federal judges from office for perjury. Judges are tried under the same Constitutional provision requiring proof of treason, bribery or high crimes and misdemeanors as are presidents. Judge Claiborne was removed from office for lying on his income tax returns. Judge Hastings was removed for lying under oath; Judge Nixon was removed for making false statements to a grand jury. Clearly, under prior Senate precedent, perjury is a "high crime and misdemeanor."

In America, our freedom is assured by the rule of law. Our law seeks to provide equal and impartial justice to all. All Americans—the poor, the rich, the weak, the powerful—are entitled to the same protection under the law. And even, the most powerful among us must be subject to the laws. Tampering with the truth-seeking functions of the law undermines our justice system and the foundations on which our freedoms lie. All Americans must abide by the rule of law, including the President of the United States, who is the highest official in the land and who has the additional duty to ensure that the laws are faithfully executed.

The primacy of the rule of law over the rule of individuals is one of the unique characteristics of our freedom in our Constitution. Our entire legal system is dependent on our ability to find the truth. That is why perjury and obstruction of justice are crimes. Federal sentencing guidelines place perjury, witness tampering, and obstruction of justice in the same realm of serious crimes as bribery. Commission of these crimes is a direct effort to prevent our legal system from performing one of its core functions—finding the truth.

The offenses are even worse when committed against the poor or powerless by the wealthy or powerful. Our Constitution guarantees, fortunately, that the most ordinary person has the right to her day in court even if she is not well liked by the public or has become characterized in a bad light by her opponents. And even if the person from whom she seeks justice is the President.

In 1793 Chief Justice John Jay gave one of the best historical explanations of the reason crimes against the truth-seeking process in our system of justice are so dangerous to our freedom: independent of the abominable Insult which a Trial by jury affords to the divine Being, there is no Crime more Pernicious to Society. It discolors and poisons the Streams of justice, and by substituting Falsehood for Truth, alarms the Foundational and Public Right. . . . Testimony is given under those solemn obligations which an appeal to the God of Truth impose; and if oaths should cease to be held sacred, our dearest and most valuable Rights would become insecure—Chief Justice John Jay, Charge to a Grand Jury of the Circuit Court of the District of Vermont, June 25, 1793.

Perjury and obstruction of justice are public crimes that strike at the heart of the rule of law—and therefore our freedom—in America. I conclude that these acts do constitute high crimes and misdemeanors under the impeachment provisions of the U.S. Constitution. Therefore, I will vote to convict President Clinton on both of the impeachment articles.

Fortunately, this trial is over and I now can direct my full attention to fulfilling the other oath I took when I was sworn in as a United States Senator. Many challenges and opportunities face Idaahoans and all Americans. I will, as I always have, give all my energy to working on a bipartisan basis to solve problems, strengthen America and protect our future.

Mr. DORGAN. Thank you Senator LOTT, Senator DASCHLE, and Mr. Chief Justice for the skill and dignity you have given these proceedings.

I wish every American could see and hear the Senate in these deliberations. There is a kind of majesty to see the different people, coming from different regions with different philosophies, and that is what creates the unique character of this wonderful institution.

I want to tell you briefly today about Teddy Roosevelt. Over a century ago, Teddy Roosevelt was consumed with grief following the death of his wife and mother who died on the same day. He decided to change
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his life and move out west. When he stepped off the train in the Badlands of North Dakota, he was wearing a cowboy suit hand-tailored from Brooks Brothers, rimless glasses, a Bowie knife with “Tiffany’s” engraved on the handle, and a silver spur with his initials on each rowel.

The local cowboys thought he was a joke. One unlucky cowboy picked a fight with Teddy in a Badlands saloon in Medora. In minutes, the cowboy was punched senseless by this funny looking easterner.

And then Teddy Roosevelt was accepted. Being different, looking different didn’t much matter to the folks in the Badlands after that.

Here in the Senate we are very different people too. No saloon fights here, though. We engage in verbal battles. And the Senate works because we accept each other, and we share a common purpose.

The discussion we are having today reminds me of the unique skills and passion for our country possessed by each and every member of the Senate.

How do we apply these skills and that passion here and now?

Mark Twain once said, with tongue in cheek, that “the next best thing to a lie, is a true story no one will believe.”

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

We meet here as Senators to consider whether to remove from office a president elected by the American people. In the entire history of our country, the Senate has never voted to remove a president. In fact, it has been tried only once. The Framers of our Constitution made it very hard to do; and they made it, with a 2/3 vote required in the Senate, impossible to do on a “partisan” basis.

The matter that calls us to this duty is a sordid one.

It is truly a scandal and a drama without heroes and without winners.

It is about a president who should be, and I’m sure is, ashamed of his behavior. Is there anyone here in the Senate who had a sexual relationship with one of their interns? Of course not! The President did. He had a sexual relationship with an intern, and he lied about it, to the country, to all of us, to try to conceal it.

This President has betrayed our trust and I have expressed to him personally how profoundly disappointed I am with his actions.

This matter is also about an Independent Counsel who you and I know has leaked confidential information from secret proceedings of a grand jury, and whose actions in detaining Monica Lewinsky should be troubling to every Senator. And an Independent Counsel who came to Congress with such a notorious past that his ethics advisor resigned in protest.

And it is about many others as well. Major figures and bit players, some who conspired in disgraceful ways, and others who were innocently swept into the maelstrom of a sensational scandal.

But, for all of the intrigue, the matter here is less complicated than some would have it.

This is a short chronology. Several years after the day she claims that then-Governor Bill Clinton made unwanted sexual advances toward her, Paula Jones appeared at a conservative political gathering to announce she was filing suit against the President.

Some while later, following the Supreme Court ruling that the case could go forward, the President was called to a deposition in the Jones case.

In that deposition, which the Judge later determined to be in material, and in a case that was later dismissed, Bill Clinton denied having a sexual relationship with Monica Lewinsky. That was a lie. Oh, I know about the condom that was used that day, but I think he lied. But that’s not a matter before us. The impeachment article about that deposition was defeated in the U.S. House.

Following the President’s testimony in the Jones case, the Independent Counsel, appointed three years earlier to investigate a Whitewater land deal, and controversies called Travelgate and Filegate, swung into action to investigate this sex scandal. Linda Tripp recorded the many hours that the President and Monica Lewinsky were talking. And the FBI, and they told her she shouldn’t call her lawyer. A grand jury began hearing witnesses and after many months the President appeared before that grand jury to answer questions.

Then, one-and-a-half months before the 1998 general election, the U.S. House, with cooperation from the Independent Counsel, released to the American public all of their investigative material and the secret proceedings of the grand jury.

Following the election, the U.S. House Judiciary Committee began their impeachment hearings. The Independent Counsel, in a virtual footnote to his presentation before the House on the sex scandal, admitted he had not been able to implicate the President on Whitewater, Travelgate or Filegate—but he got him on the sex matter. And so the House managers and the Independent Counsel accused the President’s bad behavior to weave their charges of perjury and obstruction of justice.

And finally the U.S. House on a partisan vote sent to the Senate the two articles of impeachment.

That’s the Monica Lewinsky story as I see it.

And so we gather—conducting a trial of this sordid mess.

What are we to do? What is our duty? What is, as Lincoln said, “our last full measure of devotion” to this country.

I am deeply troubled by this President’s behavior. But I am also troubled by the constitutional gravity of removing a President. Some, with a mere wave of the hand seem to say that “it’s not such a big deal.” But they are wrong. This decision affects the very roots of our democracy.

The selection of the head of government by the governed in a free election is one of the greatest dangers that any country has to face. It is through voting—not fighting—that power shifts.

And in our country, the American people choose their President by the simple act of voting. It is through voting that threats to our country.

But the Framers worried that a partisan majority could try to remove a President for political gain.

Hamilton, in the Federalist 65 said, “the greatest danger...that the decision be regulated more by the comparative strength of the parties than by the real demonstration of innocence or guilt.”

Mason said that the President should be removed for “great and dangerous offenses” that amount to “attempts to subvert the Constitution.” Hamilton wrote that impeachable offenses result from a “violation of public trust” and “relate chiefly to injuries done to society itself.”

It is also clear that the impeachment process was not meant to punish a transgressor. In fact, the Constitution provides that any such “crimes” would still be punishable in the criminal justice system.

In short, impeachment is a device to prevent grave danger to the Nation.

I believe that the Framers of the Constitution would be startled by this impeachment effort.

That this impeachment process was passionately partisan in its birth in the U.S. House is not in question. In fact, two of the House managers who brought these articles of impeachment to us called for the impeachment of President Clinton long before they had ever heard of Monica Lewinsky. Seventeen Republican Congressmen had called for impeachment hearings long ago. Theirs was a cause searching for a reason.

Nearly two years ago, before Linda Tripp, before Monica Lewinsky, before Betty Currie, before knowledge of sex with an intern, before a stained dress, before the deposition in the Jones case, before the testimony to the grand jury, two of the House Managers who argued in favor of impeachment had introduced an impeachment inquiry resolution. Representative Bob Barr and Representative Lindsey Graham said then that it was about “the rule of
law." They were asking for the nullification of an election before they knew the existence of a Monica Lewinsky and before the action that led to the two articles of impeachment now before us.

I think it is fair to wonder then, that maybe this is exactly the partisan passion that persuaded our Framers to place the impeachment bar just above the vertical leap of those Members of Congress who would carry "fill in the blank" impeachment papers for every reason and every season.

Take the partisan flavor away. I don't think the case has been made that the President's behavior, while reprehensible, poses a grave danger to the Nation. Therefore I cannot vote to nullify the results of the last election. The people chose Bill Clinton and I do not believe the case made against the President meets the constitutional threshold for removing a president.

I respect those here who differ. I do not agree with you who has shamed himself. But let us not respond to his bad behavior by hurting our country.

Let us not aim at Bill Clinton and hit the Constitution. I do not vote to support our President. I vote against these articles of impeachment to support our Constitution.

In the final analysis, however, the President should take no solace in this vote. I and others in the Senate have joined in a censure resolution that expresses a harsh judgement about the President's actions.

Now, it is time for the country to move on. Mr. KERRY. Mr. Chief Justice, my colleagues, I want to thank the Chief Justice for his important stewardship of these proceedings. And I thank Senator LOTT and Senator DASCHLE for their patient leadership in helping to bridge the divide of partisan votes so that these are not partisan deliberations.

There is a special spirit in this Chamber. No matter all the easy criticisms directed at this great institution and in our own way we are witnessing—living out—the remarkable judgment of the Founding Fathers.

Let me turn to the question of removing President William Jefferson Clinton.

Many times the House managers have argued to us that if you find the facts as you argue them, you must vote to convict and thereby remove. But of course, that, like a number of things that the Senate is really not true. You can, of course, find the facts and still acquit, because you don't want to remove on a constitutional basis or, frankly, on any other balance that a Senator decides to make in the interest of the Nation.

Now, I agree that perjury and obstruction of justice can be grounds for removal or grounds for impeachment. The question is, Are they in this case? Will it be further in this case because I don't have the time but also because I believe there are issues of greater significance than the facts of this case.

Let's assume you take the facts as the House managers want you to. I would like to talk about some of the things in the arena outside of the mere recitation of facts—critical considerations in this matter.

I have listened to all of the arguments for removal, and I must say that even as I understand what many have said, there seems to be a gap between the words and the reality of what is happening in this country.

Some have said it sets a double standard for judges, despite the fact that judges also lie. Others say there is a difference between impeachment of judges and the President, despite a difference clearly spelled out in the Constitution, and despite all of the distinguishing facts of each one of those cases.

Some have said we will have a negative impact on kids, on the military, and on the fabric of our country. And while I agree that this is absolutely not about polls and popularity, somehow it is as if they are proving that clearly the country itself does not agree with. The country does not believe the fiber of our Nation is unraveling over the President's egregious behavior, because most people have a sense of proportion about this case that seems totally lacking in the House managers' presentation.

No parent or school in America is teaching kids that lying or abusing the justice system is now OK. In fact, the President's behavior does not make it harder to do so. If anything, there may now be a greater appreciation for the trouble you can get into for certain behavior. More parents are teaching their children about lying, about humiliation, about family hurt, about public responsibility, than before we ever heard the name of Monica Lewinsky.

The clear answer to children who write letters about the President is that they are making a judgment that clearly the country itself does not agree with. The country does not believe the President's actions to the kind of threat to the fabric of the country contemplated by the Founding Fathers. I must say that I am truly somewhat surprised to see so many strict constructionists of the Constitution giving such new and free interpretation to the clear intent of the framers.

And I have, frankly, been stunned by the overreach, the moral righteousness, even the zealotry of arguments presented by the House managers.

No matter the words about not hating Bill Clinton, no matter the disclaimers about partisanship, I truly sensed at times not just a scorn but a snarling, trembling venom that told us the President is a criminal and that "we need to know who our President is."

Well, the President is certainly a sinner. We all are. And he may even have committed a crime. But just plain and simply, I am not sure we need additional moralizing about something that the whole Nation has already condemned and digested. The President lied to his countrymen, to family, friends, to all of us. And if one is supposed to be punished, I say let the gifts not surrendered, conversations which can't refresh recollection, jobs produced with uncommon referral and speed, certainly one must be unsettled by the mere lack of easy compliance with judicial inquiry by a President. That is of grave concern to all. It deserves our censure.

But let me say as directly as I can that no amount of inflated rhetoric, or ideological or moral hyperextension of the personal, venial aspects of the President's actions to the kind of threat to the fabric of the country contemplated by the Founding Fathers, I must say that I am truly somewhat surprised to see so many strict constructionists of the Constitution giving such new and free interpretation to the clear intent of the framers.

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But let me say as directly as I can that no amount of inflated rhetoric, or ideological or moral hyperextension of the personal, venial aspects of the President's actions to the kind of threat to the fabric of the country contemplated by the Founding Fathers, I must say that I am truly somewhat surprised to see so many strict constructionists of the Constitution giving such new and free interpretation to the clear intent of the framers.

And I have, frankly, been stunned by the overreach, the moral righteousness, even the zealotry of arguments presented by the House managers.

No matter the words about not hating Bill Clinton, no matter the disclaimers about partisanship, I truly sensed at times not just a scorn but a snarling, trembling venom that told us the President is a criminal and that "we need to know who our President is."

Well, the President is certainly a sinner. We all are. And he may even have committed a crime. But just plain and simply, I am not sure we need additional moralizing about something that the whole Nation has already condemned and digested. The President lied to his countrymen, to family, friends, to all of us. And if one is supposed to be punished, I say let the gifts not surrendered, conversations which can't refresh recollection, jobs produced with uncommon referral and speed, certainly one must be unsettled by the mere lack of easy compliance with judicial inquiry by a President. That is of grave concern to all. It deserves our censure.
which all of this is based. So I ask my colleagues, are we really incapable of at least measuring the real human dimensions of what took place here and contrasting it properly with the constitutional standards we are presented by this very grand jury?

We have heard some discussion of proportionality. It is an important principle within our justice system and in life itself. The consequences of a crime should not be out of proportion to the crime itself. As the dictionary tells us, it should correspond in size, degree or intensity.

I must say that no one yet who will vote to remove has fully addressed that proportionality issue.

If you want to find perjury because you believe Monica about where the President touched her, and you believe that adopting the definition given to him by a judge and by Paula Jones' own lawyers, and you can reach into the President's mind to determine his intent—that is your right. But having done that, if you think a President of the United States should be re moved, an election reversed, because of such a thin evidentiary thread, I think you give new meaning to the concept of proportionality. It is an important principle within our justice system and in life itself. The consequences of a crime should not be out of proportion to the crime itself.

I wonder also if there is no one even concerned about Linda Tripp—who now gives definition to the meaning of friendship—working with Paula Jones' attorneys even as she was in the guidance and control of Mr. Starr as a Federal witness. Some of you may want to turn away from these facts. Secondly, the House managers never even acknowledged my knowledge of her communications. I raise them, my colleagues, not for ideological or political purposes, but fundamental fairness demands that we balance all of the forces at play in this case.

Now, no advocate has also been made in this trial of the rights of Paula Jones and her civil rights case—that we must protect Paula Jones' rights against the President of the United States. My fellow colleagues—please let us remember that the crime was a personal one. This is a personal case. It was no ordinary civil rights case. It was an assault on the Presidency and on the President personally, and the average American's understanding of that is one of the principal reasons our fellow citizens figured this case out long ago.

But there is more to it than that: Mr. Starr became involved in the Paula Jones suit before he became independent counsel. He had contacts with Paula Jones' attorneys before his jurisdiction was expanded. He wired Linda Tripp before his jurisdiction was expanded. Many sources documented that without any expansion of jurisdiction, in 1997, he had FBI agents interrogating Arkansas State troopers, asking about Governor Clinton's private life—especially inquiring into Paula Jones.

After Paula Jones filed her suit in 1994, announced a political convention, and with new counsel affiliated with the Rutherford Institute, her spokesperson said, "I will never deny that when I first heard about this case, I said, "OK, good. We'll get that little slime ball." She later said: "Unless Clinton wants to be terribly embarrassed, he'd better cough up what Paula needs. Anybody that comes out and testifies against Paula better have the past of a Mother Teresa, because the President's investigators will investigate their morality." Even Steve Jones, Paula Jones' husband, was part of an operation to poison the President's public reputation by divulging the secrets of his personal life—threatening even to employ subpoena power to depose, under oath, every State trooper in Arkansas who may have worked for the Governor. Steve Jones pledged that: "We're going to get their names; we're going to get dates; we're going to do the job that the press wouldn't do. We're going to go after Clinton's medical records, the raw documents, not just opinions from doctors...we're going to find out everything." Into all of this came Ken Starr, and the police power of our Nation.

This was not a civil rights suit in the context most of us would recognize. Indeed, there existed a syndicated and secret Jones legal team of outside lawyers—including George Conway and James Marcus, experts on sexual harassment and presidential immunity, who ghostwrote almost every substantive argument leveled by Paula Jones' lawyers; Ken Starr's friend Theodore Olson, and Robert Bork, the former Supreme Court nominee, who together advised the Jones team; Richard Porter, a law partner of Ken Starr and former Paper Chase opposite guru, who also wrote briefs for the Jones team; and the conservative pundit and longtime Clinton opponent Ann Coulter, who worked on Paula Jones' response to President Clinton's motion for a dismissal. The connections between this crack—and covert—legal team, and Ken Starr's staff and his witnesses—including Paul Rosenzweig, Jackie Bennett, and Linda Tripp—as well as familiar figures including Lucianne Goldberg, add up to something far more than a twisted and disturbing game of six degrees of separation.

I do not suggest that this was the right public policy to be bandied about on the talk shows. But I ask you, are we not able to acknowledge that this was a legal and political war of personal destruction—not just a civil rights case? And we cannot simply dismiss the fact that all of this—the entire proceedings—arise out of this deeply conflicted, highly partisan, ideologically driven, political civil rights case with incredible tentacles into and out of the office of the independent counsel.

Moreover, I remind my colleagues, Mr. Starr is supposed to be independent counsel—not independent prosecutor. He was and is supposed to represent all of the Congress and nowhere do I read anywhere that the independent counsel is to be岑chet in the grand jury. Moreover, Mr. Starr is supposed to be independent counsel—not independent prosecutor. He was and is supposed to represent all of the Congress and nowhere do I read anywhere that the independent counsel is to be岑chet in the grand jury. Moreover, Mr. Starr is supposed to be independent counsel—not independent prosecutor. He was and is supposed to represent all of the Congress and nowhere do I read anywhere that the independent counsel is to be岑chet in the grand jury.

Now there is a rejoinder to all of this. Nothing wipes away what the President did or failed to do.

So, some of you may say, So what? The President lied. The President obstructed justice. No one made him do anything, he did it himself, yes, you're right. The President behaved without common sense, without courage, and without honor, but we are required to measure the totality of this case. We must
measure how political this may have been; whether process was absurd; whether the totality of what the President did meets the constitutional threshold set by the Founding Fathers.

We must decide whether the removal of the President is proportional to the offense and we must remember that proportionality, fairness, rule of law—they must be applied not just to conviction, but also to defend—to balance the equities. I was here during Iran-contra and I remember the extraordinary care Senator Rudman, Senator Moynihan, and Senator Sarbanes exerted to avoid partisanship and maintain proportionality. I wish I did not conclude that their example frankly is in stark contrast to the experience we are now living.

The House managers often spoke to us of principle and duty. And equally frequently we were challenged to stand up for the rule of law. We are speaking here in rule of law. But we also believe in the law being applied fairly, evenly—that the rule of law is not something to cite when it serves your purposes, only to be shunted aside when it encumbers.

But I believe this is a manager’s duty to their colleagues in the House—in the committee—on the floor; where was the same self-conscious sense of pain for what they were going through, when they denied a bipartisan process for impeachment; where was their commitment to rule of law in denying the President’s attorneys access to the exculpatory evidence which due process affords any citizen?

Rule of law is a process in a democratic institution, and there is a duty to honor process.

I believe the Senate has distinguished itself in that effort and I want to express my deep respect for the strongly held views of all my colleagues. Reasonable people can differ and we do, but we can still come together in an affirmation of the strength of our Constitution.

Chairman Hyde says “let it be done”—I hope it will be. Right requires we be proportional as to all aspects of this case. I hope that what we do here will apply the law in a way that gives confidence to all our citizens, that everyone can look at the final result of our deliberations and say justice was done. Right also requires we understand the process by which we savage each other, and are beginning to heal our country.

Mr. DeWINE, Mr. Chief Justice, my friends in the Senate, each of the articles before us contains numerous examples of conduct of which as alleged would constitute grounds for the President’s removal from office. I have determined that most of these allegations have not been proven by clear and convincing evidence.

Let me now turn to the three, at least for me, remaining allegations. First, is the allegation that the President obstructed justice. When? After his Paula Jones deposition, he had his two, by now very famous, conversations with Betty Currie. The facts are familiar, but they are telling. On January 17, 1998, the President gave his deposition in the Paula Jones case. The Jones lawyers zeroed in on the relationship between Betty Currie and the President. It was clear that the Jones lawyers had specific knowledge of the details of this relationship. In the President’s answers, he referred repeatedly to Betty Currie. Further, counsel for Ms. Jones questioned the President in Betty Currie, about her job, her hours at work, etcetera.

I submit that any first year law school student who attended that deposition would know that Paula Jones was a prospective witness or would know that Betty Currie was a prospective witness. In fact, 5 days after the deposition Betty Currie was subpoenaed by the Jones lawyers. When the President returned to the White House the next day, after the President, he knew Betty Currie was a prospective witness.

Sure enough, within 3 hours of the conclusion of the deposition, the President called Betty Currie at home on a Saturday night and asked her to come to the White House the next afternoon. During the course of that Sunday afternoon meeting, the President informed Betty Currie that Monica’s name came up during the deposition. According to Betty Currie’s testimony, the President said to her—and we are, of course, familiar with this—“You were always there when Monica was there, right?” “We were never really alone, right?” “Monica came on to me and I never touched her, right?” “You could see and hear everything, right?” “She wanted to have sex with me and I couldn’t do that.”

We are all familiar with that, but I think most significantly, and to me the most telling thing, is that 2 or 3 days later our colleagues again spoke to Betty Currie and again made the same statements and used the same dehumanizer.

The President does not dispute that he made these statements to Betty Currie. He explained he was just trying to refresh his memory about what the facts were. The President’s explanation is simply not credible. It defies logic. Why would the President make five declarative statements to Betty Currie to the President, and never know that Betty Currie could not possibly know whether most of these statements were true? In fact, we know and the President knew that the statements were false.

Betty Currie was a key potential witness who could contradict the President’s sworn testimony in the Paula Jones deposition. She was also the President’s subordinate. On two separate occasions the President made basic statements to Monica Lewinsky to try to corrupt the due process of justice. And with the intent to corruptly persuade her with the intention to influence her testimony. This charge of obstruction of justice, I believe, has been proven by clear and convincing evidence, and I might add it has been proven beyond a reasonable doubt.

Let me now turn to the second allegation, the allegation that the President obstructed justice on August 17, 1998, when he testified about these two post-deposition meetings with Betty Currie. I know there may be some who are still struggling with the perjury charge. I simply do not believe, as I do, that the obstruction of justice charge is made based on the statements made to Betty Currie, then any fair reading of the grand jury testimony will indicate to you that you all have to find he committed perjury.

Here is what he said:

What I was trying to determine is whether my recollection was right and she [Betty Currie] was always in the office complex when Monica was there and whether they thought she could hear any conversation we had, or did she hear any. I thought what would happen is it would press, I thought, and I was trying to get the facts down. I was trying to understand what the facts were.

He also says, the President:

I was not trying to get Betty Currie to say something that was untrueful. I was trying to get as much information as quickly as I could.

I submit if the President is guilty of obstruction of justice in his statements to Betty Currie, then clearly, clearly, he also must be guilty of perjury in his account of these events to the grand jury. The two findings are inextricably connected. One cannot reach the first conclusion without reaching the second. I believe it has been proven by clear and convincing evidence that the President committed perjury. And I might also add, I believe it has been proven beyond a reasonable doubt. The evidence clearly shows that the President obstructed justice and then lied under oath about his obstruction in his grand jury testimony.

Now, on the third charge, I believe the evidence shows that the President further perjured himself in the grand jury to avoid a perjury charge. In his prior deposition this perjury had to do with the nature and details of his relationship with Monica Lewinsky.

I know that many people have come to the well and have expressed concern about how we got here, what brings us here today. I share some of those concerns. Congresses, beginning with this one, will have to deal with the aftermath of this sorry affair: court cases that have weakened the Presidency, a discredited independent counsel law.

You will forgive me if I point out that I was one of the 80-some Members of the House who voted against the independent counsel law when it came up. I was one of the 80-some Members of the House who voted against the independent counsel law when it came up. I voted against it because I share some of the same concerns we have heard expressed here today and yesterday. We also will have to deal with the Secret Service that is now vulnerable to subpoena and Presidents who are vulnerable to civil right suits while in office.

These are important issues, but I submit they are issues not for today
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but rather for another day. None of us wanted to be here, but we are where we are, the facts are what they are, and we know what we know. What we know is that the President obstructed justice and committed perjury. What must we do with this President who obstructed justice and then committed perjury?

Obstruction of justice and perjury strike at the very heart of our system of justice. By obstructing justice and committing perjury, the President has disregarded, and with a deliberately corrupt intent, attacked a coequal branch of Government, the judiciary. It has been proven by clear and convincing evidence that the President of the United States has committed serious crimes.

But while I have found specific violations of law, it is not insignificant, in my final decision, that these specific criminal acts were committed within a larger context, a larger context of a documented pattern of indefensible behavior that shows a reckless disregard for the law and for the rights of others.

I have concluded that the President is guilty of behaving in a manner grossly incompatible with the proper function of the office he holds. In 1974, the House Judiciary Committee used those precise words to define an impeachable offense.

I have also concluded that the President is guilty of the abuse or violation of a specific constitutional right. In 1974, in Federalist No. 65, used those precise words to define an impeachable offense. What the President did is a serious offense against our system of government. It undermines the integrity of his office and it undermines the rule of law.

Here is what Thomas Paine said about the rule of law:

"Let a crown be placed on the law by which the world may know that, so far as we approve of monarchy, in America the law is king.

The law is indeed king in America. There isn't one law for the powerful and one for the meek. That is what we mean when we say we are a "nation of laws." We elect a President to enforce these laws. In fact, the Constitution commands that the President "take care that the laws be faithfully executed."

How can we allow a man who has obstructed justice and committed perjury to remain as the chief law enforcement officer of our country? How can we call ourselves a nation of laws and leave a man in office who has flouted those laws? We define ourselves as a people not just by what we hold up, not just by what we rest, but we also define ourselves by what we tolerate. I submit that this is something we simply, as a people, cannot tolerate.

Mr. Chief Justice, I will vote to convict with a sense of duty on both counts and to remove him from office.

I ask unanimous consent that my full statement be included in the RECORD immediately following these remarks.

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

SUPPLEMENTAL STATEMENT OF SENATOR DEWINE

Mr. Chief Justice, members of the Senate: The President has been impeached on two separate articles by the House of Representatives.

Article I charges that the President willfully provided false and misleading testimony to the grand jury.

Article II charges that the President obstructed justice.

Each article contains numerous examples of conduct, any of which, it is alleged, would constitute grounds for the President's removal from office.

I have examined each of these separate grounds or allegations.

I have determined that most of these allegations have not been proven by clear and convincing evidence.

I have now turned to the three allegations that I believe have the most merit.

I examine first the allegation that the President obstructed justice when on January 18, 1998 and January 20 or 21, 1998, he made false and misleading statements relevant to a Federal civil rights action brought against him by a potential witness in the proceeding—Betty Currie—in order to corruptly influence that witness.

These are the essential facts: On January 17, 1998, the President gave his deposition in the Paula Jones case. Jones' lawyers zeroed in on Monica Lewinsky and the President. It was clear that the Jones lawyers had specific knowledge of the details of this relationship. In the President's answers, he referred—repeatingly—to Betty Currie. For example, when asked whether he walked with Ms. Lewinsky from the Oval Office to his private kitchen at the White House, the President said Miss. Lewinsky was not there alone or that Betty was there (3); when asked about the last time he spoke with Monica Lewinsky, he falsely testified that he only recalled that she was only there to see Betty (4); when asked whether he prompted Vernon Jordan to speak to Monica Lewinsky, he stated that he thought Betty asked Vernon Jordan to meet with Monica (5); and he said that Monica asked Betty to ask someone to go in on the Monday afternoon to ask about a job at the United Nations (6). Further, counsel for Ms. Jones questioned the President in detail about Betty Currie, her job, and her hours of work. Anyone reading the transcript would have to expect the Jones lawyers to scrutinize the President's testimony in the Paula Jones case. Such a motive to lie was not close to a perjury charge in that case. To avoid a perjury charge concerning the Jones deposition, the President had to carefully craft an explanation so it was clear he did not touch Monica Lewinsky. He had to do this to avoid falling within the definition of "sexual relations" that had been given him in the Jones deposition.

The President's story defies common sense and human experience. This is particularly true if you consider the number of times the President and Monica Lewinsky met and, in the President's words, engaged in "inappropriate behavior." It is also probable that the President's DNA was found on Monica Lewinsky's dress.

The charge of perjury has been proven by clear and convincing evidence. (Let me state, for the record, that it has also been proven by reasonable doubt.) I II. Let me now turn to the second allegation—that the President committed perjury on August 17, 1998 and August 19, 1998, when he testified in the Paula Jones case.

Here is what the President said to the Grand Jury about these meetings. He first testified that "what I was trying to determine was whether my recollection was right and that she [Betty Currie] was always in the office. I don't recall her being there, and whether she thought she could hear any conversations we had, or did she hear any [ . . . ] I thought what would happen is that it would be there for the next time I would be trying to get the facts down. I was trying to understand what the facts were." (9)

The President also testified that "I was not trying to get Betty Currie to say something that was untruthful. I was trying to get as much information as quickly as I could" (10).

When asked again about these statements, the President said: "I was trying to refresh my memory about what the facts were . . . . And I believe that this was part of a series of questions I asked her to try to quickly refresh my memory. So, I wasn't trying to get her to say something that was untrue."

He was asked this specific question: "If I understand your current line of testimony, you are saying that your only interest in the facts in the Betty Currie deposition after you deposition was to refresh your own recollection?" The President responded: "That's correct." (11)

If the President is guilty of obstruction of justice in his statements to Betty Currie, then clearly, he must also be guilty of perjury in his account of these events to the grand jury. The two findings are inextricably connected—one cannot reach the first conclusion without also reaching the second.

Mr. Chief Justice, in this case, it was proven by clear and convincing evidence that the President committed perjury (13). (Let me state for the record that it has also been proven beyond a reasonable doubt.)

Monica Lewinsky's testimony is just as unequivocal. She describes, in graphic detail, how she encountered and admitted intimate activities occurred (15). Ms. Lewinsky's story is corroborated by numerous consistent contemporaneous statements she made to her friends and counselors. Her testimony is further corroborated by phone logs and White House exit and entry logs.

Counsel for the President have failed to show any motive for Monica Lewinsky to lie about those details.

Conversely, the President clearly had a motive to lie. He could not, in his Grand Jury testimony, accurately describe his activity without directly contradicting his deposition testimony in the Paula Jones case. Such a contradiction would have to a perjury charge in that case. To avoid a perjury charge concerning the Jones deposition, the President had to carefully craft an explanation so it was clear he did not touch Monica Lewinsky. He had to do this to avoid falling within the definition of "sexual relations" that had been given him in the Jones deposition.

The President's story defies common sense and human experience. This is particularly true if you consider the number of times the President and Monica Lewinsky met and, in the President's words, engaged in "inappropriate behavior." It is also probable that the President's DNA was found on Monica Lewinsky's dress.

The charge of perjury has been proven by clear and convincing evidence. (Let me state, for the record, that it has also been proven beyond a reasonable doubt.)

That concludes my findings of fact. The evidence clearly shows that the President obstructed justice and committed perjury about this obstruction in his grand jury testimony. He further perjured himself in the grand jury to avoid a perjury charge in his private kitchen.

I wish this were not true. When I began my examination of this case, I assumed that I
wished not guilty. I assumed that the evidence simply would not be sufficient to convict.

Unfortunately, the facts are otherwise. Making a decision, including myself, are deeply concerned about how we got here. Congress—beginning with this one—will have to deal with the aftermath of this sorry affair. We have weakened the Presidency; a dedicated independent counsel law; a Secret Service vulnerable to subpoena; and indeed, we are subjects who are subjects to civil suit while in office.

These are important issues. But they are issues for another day.

None of this is to be here. But we are where we are. The facts of the President's misconduct are what they are. We know what we know. And although each of us may find it more or less offensive, we all are of the same deliberating body—others, all of them are disturbing, all and all lead to the same conclusion: The President obstructed justice and committed perjury.

What must we do with this President who has obstructed justice, and then committed perjury about that obstruction? Obstructing justice and perjury strike at the very heart of our system of justice. By obstructing justice and committing perjury, the President has directly, illegally, and corruptly attacked the equal branch of government, the judiciary.

The requirement to obey the law applies to us all, in all cases. To say President can obstruct justice, but the President above the law, and above the Constitution.

Perjury is also a very serious crime. The Constitution gives every defendant a choice. To testify truthfully, or remain silent. No one can be forced to testify in a manner that involves self-incrimination. But a decision to place one's hands on the Bible and invoke God's witness—and then lie—threatens the judiciary. The judiciary is designed to be a mechanism for finding the truth—so that justice can be done. Perjury perverts the judiciary, turning it into a mechanism that accepts lies—so that injustice may prevail.

It has been proven by clear and convincing evidence that the President of the United States has committed serious crimes. But although I have found specific violations of law, it is not insignificant in my final decision because the President is a criminal who has committed within a larger context of a documented pattern of indefensible behavior—behavior that shows a reckless disregard for the laws of others.

I have concluded that the President is guilty of "Behaving in a Manner Grossly Incompatible with the Proper Function and Purpose of (his) Office." In 1974, the House Judiciary Committee used those precise words to define an impeachable offense (16).

I have also concluded that the President is guilty of the abuse or violation of (a) public trust." Alexander Hamilton, in the Federalist No. 65, used those precise words to define an impeachable offense (16).

What the President did is a serious offense against the system of government. It undermines the integrity of his office. And it undermines the rule of law.

Here's what Thomas Paine said about the rule of law: "Let a crown be placed (on the law), by which the world may know, that so far as we approve of monarchy, that in America the law is king" (17).

The law is indeed king in America. There isn't one law for the powerful and one for the meek. We mean when we say we are a nation of laws. We elect a President to enforce these laws. The Constitution commands him "to take care that the laws be faithfully executed." (7)

How can we allow a man who has obstructed justice and committed perjury to remain as the chief law enforcement officer of our country?

How can we call ourselves a nation of laws, and tolerate a man in office who has flouted those laws?

We define ourselves as a people not just by what we revere, but by what we tolerate. This, in my view, is simply not tolerable. I will vote to remove the President on both counts, and to remove him from office.

I wish to acknowledge the assistance of many talented individuals who have helped me with this report. I have attempted to address the questions of fact, law, and policy. I have been given able counsel by Karla Carpenter, Helen Rhee, Louis DuPart, Robert Hoffman, Laurel Pressler, and Michael Pathman staff. My good friends William F. Schenk, Curt Hartman, Nicholas Wise, and Charles Wise; and my son and valued adviser Patrick DeWine.

Perjury is also a very serious crime. The Modern Federal Jury Instruction defines clear and convincing evidence as "proof that leaves no reasonable doubt in your mind... that establishes in your mind, not only the proposition at issue is probable, but also that it is highly probable. It is enough if the party with the burden of proof establishes his claim beyond any 'substantial doubt' he does not have to dispel every 'reasonable doubt.'" (18)

2. Each Senator must determine the standard of proof to be applied in judging an impeachment case. In weighing the facts of this impeachment, I have used the standard of "clear and convincing evidence." (19) The Modern Federal Jury Instruction describes such evidence as "proof (that) leaves no substantial doubt in your mind... that establishes in your mind, not only the proposition at issue is probable, but also that it is highly probable. It is enough if the party with the burden of proof establishes his claim beyond any 'substantial doubt' he does not have to dispel every 'reasonable doubt.'" (20)

I have reached the standard of proof beyond a reasonable doubt, which applies to criminal trials, (21) and also the standard of preponderance of the evidence. (22) This standard, which would provide for conviction if the scales of evidence were tipped ever so slightly against the President, would not treat removal from office with the seriousness and gravity it deserves.

3. Question: Do you recall ever walking with Jane Doe Lewinsky down the hallway from the Oval Office to your private kitchen there in the White House?

Answer: No.

Question: Now, to go back to your question, is it true that at some point during the government shutdown, when Ms. Lewinsky was still an intern but was working the chief of staff's office because all the employees had to go home, that she was back there with a pizza that she brought to me and to others? I do not believe she was there alone, however. I don't think she was there at all. I have a couple of occasions after that she was there by my secretary Berry Currie was there with her. She and Betty are friends. That's my recollection. I have no other recollection of that.

4. Question: When was the last time you spoke with Monica Lewinsky?

Answer: I think sometime before Christmas. She came by to see Betty sometime before Christmas. And she was there talking to her, and I stuck my head out, said hello to her.

Question: Stuck your head out of the Oval Office?

Answer: Uh-huh. Betty said she was coming by and talked to her, and I said hello to her.

Question: I believe I was starting to ask you a question a moment ago and we got sidetracked. Have you ever talked to Monica Lewinsky about the possibility that she might be asked to testify in this case?

Answer: I'm not sure, and let me tell you why I'm not sure. It seems to me the, the— I want to be as accurate as I can here. Seems to me the last time we were talking to see Betty before Christmas we were joking about how you all, with the help of the Rutherford Institute, were going to call every woman I'd ever talked to, and said, you know what, I can't. Mr. Bennett: We can't hear you, Mr. President.

Answer: And I said that you all might call every woman I ever talked to and ask them that, and so I said you would qualify, or something like that.

Question: Was anyone else present when you said something like that?

Answer: Betty, Betty was present, for sure. Somebody else might have been there, too, but I don't, I don't, I don't, my mind is that just something I said.

5. Question: You know a man named Vernon Jordan?

Answer: I know him well.

Question: You've known him for a long time.

Answer: A long time.

Question: Has it ever been reported to you that he met with Monica Lewinsky and talked about this case?

Answer: I knew that he met with her. I think Betty suggested that he meet with her. Anyway, he met with her. I, I thought that he talked to her about it also.

6. Question: Did you know that—I think he had given some advice to her move to New York. Seems like that's what Betty said.

Answer: So Betty, Betty Currie suggested that Vernon Jordan meet with Monica Lewinsky?

Answer: I don't know that.

Question: I thought you just said that. I'm sorry.

Answer: No, I think, I think, I think, I think Betty thought that Vernon met with Monica, but my impression was that Vernon was talking to her about her moving to New York. I think that's what Betty said to me.

7. Question: Did you have any conversation with Monica Lewinsky?

Answer: I don't know anything, sir, to prompt this conversation to take place between Vernon Jordan and Monica Lewinsky?

Answer: I can tell you what my memory is. My memory is that Vernon said something to me about her coming in, Betty had called and asked if he would see her and he said he would, he said he would, and then she called Vernon and then he said something to me about it. 

Question: My question, though, is focused on the time before the conversation occurred, and the question is whether you did anything to cause the conversation to occur.

Answer: I think in the mean—I'm not sure how—how you mean the question, the answer to that is no, I've already testified. What my memory of this is, if you're asking did I set the meeting, I do not believe that I did. I believe that Betty did that, and she may have mentioned, asked me if I thought it was all right if she did it, and if she did ask me I would have been fine, yes and so on. If that happened, then I did something to cause the conversation to occur. If that's what you mean, yes. I didn't think there was anything wrong with it. It seemed like a natural thing to do to me, But I don't believe that I actually was the precipitating force. I think that she and Betty
were close, and I think Betty did it. That’s my memory of it.

6. Question: Have you ever asked anyone to talk to Bill Richardson about Monica Lewinsky?

Answer: I believe that, I believe that Monica, what I know about that is I believe Monica asked Betty Currie to ask someone to talk to him about Monica, and she did, and she went to an interview with him. That’s what I believe happened.

Question: And the source of that information is who?

Answer: Betty. I think that’s what Betty—I think Betty did that. I think Monica talked to Bet—she went up to New York, and I, my recollection is that that was the chain of events.

Question: Did you say or do anything whatsoever to hint at the possibility that Monica Lewinsky was getting a job at the U.N.?

Answer: To my knowledge, no, although I must say I wouldn’t have thought there was anything wrong with it. You know, she was a—she had worked in the White House, she had worked in the Defense Department, and she was moving to New York. She was a friend of Betty. I certainly wouldn’t have been opposed to it, based on anything I knew, anyway.

7. Question: How long has Betty Currie been your secretary?

Answer: Since I’ve been president.

Question: How is her work schedule arranged? Does she have a certain shift that she works certain hours the following day? Please explain how her schedule is determined.

Answer: She works, she comes to work early in the morning and normally stays there until I leave at night. She works very long hours, and then when I come in on the weekend, if I work on Saturday, she’s there, and normally if I’m, if I’m working on Sunday and I’m having a schedule of meetings, either she or Nancy Hernreich will be there. One of them is always there on the weekend. Sometimes if I come over just with paperwork and work for a couple of hours, she’s not there, but otherwise she’s always there when I’m there.

Question: Have you ever met with Monica Lewinsky in the White House between the hours of midnight and six a.m.?

Answer: I certainly don’t think so.

Question: Have you ever met—

Answer: Now, let me just say, when she was working here, during, there may have been a time when she was all working late. There are lots of, on any given night, when the Congress is in session, there are always several people around until late in the night, but I don’t have any memory of that. I just can’t say that there could have been a time when that occurred, I just—but I don’t remember it.

Question: Certainly if it happened, nothing remarkable would have occurred?

Answer: No, nothing remarkable. I don’t remember anything.

Question: It would be extraordinary, wouldn’t it, for Betty Currie to be in the White House between midnight and six a.m. wouldn’t it?

Answer: I don’t know what the facts were. I meant I don’t know. She’s an extraordinary woman.

Question: Does that happen all the time, sir, or rarely?

Answer: Well, I don’t know, because normally I’m not there between midnight and six. You wouldn’t know how many times she’s there. Those are questions you’d have to ask her, I just can’t say.

8. There are two statutes regarding obstruction of justice, 18 U.S.C. 1503 and 18 U.S.C. 1505 which provide “Whoever corruptly . . . influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice . . .” shall be guilty of the crime of obstruction of justice and 18 U.S.C. 1502 which provides “Whoever corruptly . . . persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—(1) influence, or attempt to influence the testimony of any person in an official proceeding . . .” shall be guilty of the crime of witness tampering.


10. Ibid., p. 56.

11. Ibid., p. 122-12.

12. There are two federal perjury statutes relevant to the facts of this case: 18 U.S.C. 1621 which provides that “Whoever—having taken an oath before a competent tribunal, or . . . person, in any case, in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, . . . willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true . . .” shall be guilty of an offense against the United States, and 18 U.S.C. 1623 which provides that “Whoever under oath . . . in any proceeding before . . . any . . . court or grand jury of the United States, the United States, or any State, makes any false material declaration . . .” shall be guilty of an offense against the United States. A statement is material “if it has a natural tendency to influence the fact finder’s decision on the · · ·”


14. Question: So, touching, in your view then and now—the person being deposed touching or kissing the breast of another person would fall within the definition?

Answer: That’s correct.

Question: And you testified that you didn’t have sexual relations with Monica Lewinsky in the Jones deposition, under that definition, correct?

Answer: That’s correct, sir.

Question: If the person being deposed touched the other person would that be and with the intent to arouse the sexual desire, arouse or gratify, as defined in definition (3), would that be, under your understanding then and now—

Answer: Yes, sir.

Question: —Sexual relations?

Answer: Yes, it would.

Answer: Yes, it would. If you had direct contact with any of these places in the body, if you had direct contact with the intimate area, arouse or gratify, that would fall within the definition.

Question: So, you didn’t do any of those three things?

Answer: Yes.

Question: —With Monica Lewinsky?

Answer: You are free to infer that my testimony is that I did not have sexual relations, as I understood this term to be defined.

Question: Including touching her breast, kissing her breast, or touching her genitalia?

Answer: That’s correct.


17. Quoted in Maxwell Taylor Kennedy, ed., Make Gentle the Life of This World: The Vision of Robert F. Kennedy, p. 106.

Ms. Lincoln, Mr. Chief Justice, I thank you for your thoughtfulness and patience in these proceedings. I apologize that my back is to you.

I would also like to thank the majority leader and the minority leader. I have been awed by their patience—just as J ob had the patience—to deal with all of us on our particulars that we have wanted to express here and the time constraints we have all felt. They have been a wonderful support in accommo-dating all of us and certainly giving these proceedings the dignity that I think all Americans have expected. I do appreciate that.

As the youngest female Senator in the history of our country, as a farmer’s daughter raised on the salt of the earth with basic Christian values, and as a young mother whose first priority in life is my family and the well-being of the world that they live in, I regret that my first opportunity to speak on the floor of the historic Chamber is under these circumstances. And I am reluctant to speak here today. I had intended to wait until I had more experience under my belt before I addressed my esteemed colleagues here. You will find that I am not quite as eloquent, or as lengthy, as my predecessor; but I will work on that. But because of the historical aspects of this proceeding, I feel it is important that my thoughts and my judgments are expressed here today.

1. I like President Clinton and my colleague, Senator Hutchinson, grew up in a small town in Arkansas, the oldest city in Arkansas. My colleague expressed regret that the black and white picture of him and his wife, as it was growing up in that small rural community, I am reminded of the wisdom that my grandmother shared with me as a younger woman returning home from college. I sat on our back porch and she expressed regret over what difficult times I was growing up in, and that she could not possibly know or understand because right and wrong were so much easier in her day.
She quickly corrected me. Right and wrong becomes more difficult for each of us as we grow older, because the older we get the more we know personally about our own human frailties.

I will not discuss the historical or the legal aspects of what we are doing here today and what we have been doing in these past weeks. I am not a lawyer; neither am I a historian. But I do want to thank each of you for your legal and your historical aspects, and the heartfelt wisdom and guidance that you have shared with me and with all of us as colleagues.

I want desperately to cast the right vote for the people that I represent in Arkansas and for all the people of this great country. My heart has been heavy and I have deliberated within my own conscience, knowing that my decision should not come out of my initial emotion of anger toward the President for such reckless behavior, but should be based on the facts. I have approached this both as a parent and as a public servant, with the ultimate goal of doing what is right for our country. Since hearing of the President’s misconduct, I have in no way tried to make excuses for the President or to defend his behavior. I have tried to determine how we should communicate to our children and our Nation that this very visible misconduct is unacceptable.

I have sought to reconcile in my mind what is appropriate condemnation of such action and what is the best course of action for the future of the Presidency and for this country. In my efforts to reach a fair conclusion, I have listened to the presentation of evidence from both sides. I have examined the historical intent of our Founding Fathers with regard to impeachment and my constitutional responsibility as a Senator—however young I may be. I have sought the counsel of colleagues and friends and constituents; and, of course, I have prayed for guidance for myself and for our country.

My home State of Arkansas has been under the scrutiny of a powerful microscope these past 6 years and, yes, regardless of how closely we may be viewed, any of us, character does count in each and every one of us. But who of us in this Chamber does not have a chapter in our individual books of life that we might be ashamed of or might regret? Truth might be veiled under such a powerful microscope, something we might be so ashamed of that we might mislead others to spare our families, our very children, the pain and sorrow.

Many have referenced what they would do if another President of their own party were in this situation, and they have indicated that they would still vote the same.

But the truth is, I say, what is each of us would want done if we were in this President’s position. How would we want to be treated? And who of us would not go to great lengths to protect our children and our families from the pain and embarrassment that we have seen over the course of these years?

I have also heard many people say that the President should be removed from office for example, for our children. It is all of our responsibility to set an example for our children. It is not just the President’s. Ultimately, my husband and I have the responsibility to teach our children. And we will teach our children that misconduct is unacceptable. The President’s conduct, however troubling, does not take away my responsibility to teach what is right to my children. Future generations depend on each of us—not just the President—to teach and to lead.

Many are amazed that the general public, although they believe that the President’s behavior was wrong, does not want him removed from office. I am not so amazed by this as I find it reasonable. This expression of humanity and forgiveness from the real-life people of this Nation that we represent reassures us that in our highly technical, fast-paced and somewhat impersonal society, we as a country, but more importantly, we as human beings, are still equipped to handle this or any other situation.

It is striking to me that we are at a crossroads in our Nation at this entrance into the 21st century. We are leaving one President or being excused—but by conflict that is our own trouble from within. This requires us to reflect on not only the lessons we have learned but, more importantly, those that we want to leave. These lessons should not only demonstrate how we as a country prosper, or how our people advance, but how we treat and relate to one another as individuals.

So today, after much careful thought and deliberation, I have come to the conclusion that the President’s actions, while dishonorable, do not rise to the level of an impeachable offense warranting his removal from office. Impeachment was never intended to be a vehicle or a means of punishment. And the standard to prove high crimes and misdemeanors has not been met by the disjointed facts strung together by a thread of inferences and assumptions that were presented here.

I have and will support a strong bipartisan censure resolution that tells the President and this Nation that the President’s misconduct with a subordinate White House employee was deplorable, and that future generations must know that such conduct will lead to a profound loss of trust, integrity and respect. I believe there has to be consequences here not only to demonstrate that something wrong has been done but to finally bring closure to this ordeal, not just for us but also for the American people.

And, above all else, I believe we have been entrusted not only to be judges and jurors in this trial, but we have also been entrusted with the last word. Senator Kerry from Nebraska spoke strongly to this—that the last word from this body’s collective voice should be a chorus, loud and clear, of how great this land and our people are.

The President, actually in his own words from his 1993 inaugural address, aptly replied. He said, “There is nothing wrong with this country that cannot be fixed by what is right with this country.”

The most important thing we can do in the last days of this trial is to present the good in the U.S. Senate, in our government, and in our Nation for the sake of our children and future generations. I hope and pray that in the following weeks this body will grasp the leadership role and to begin the process of healing our Nation, restoring pride in our Government, and inspiring faith in our leaders once again.

Mr. HELMS. Mr. Chief Justice, 26 years ago this past November, I was first elected to serve as a United States Senator from North Carolina. I had not believed it possible that I would be the first Republican directly elected to the U.S. Senate by the people of North Carolina.

I have often told many of the thousands of young people with whom I have visited during the past 26 years that one of the commitments I made to myself on that election night in November 1972 was that I would never fail to see a young person, or a group of young people, who want to see me.

That was one of the most meaningful directions I ever received. I was told then that I have met with something in the neighborhood of almost 70,000 young people according to our records for the past 26 years.

These are wonderful young Americans and I am persuaded that they are by all odds the most valuable treasure held by our country.

For the better part of the past year, these young people have almost without exception asked me about what they described as “the problems” of President Clinton. The vast majority of the time, the young people have talked about the moral and spiritual principles so deeply etched in the hearts of those patriots whom we today call our Founding Fathers—or the Framers of our Constitution—or both—when America was created.

So, in the first few weeks of this New Year 1999, I have begun my remarks to the young visitors with the recitation of two statements that I sincerely believe have much to do with whether (and how) this blessed nation can and will survive.

The first statement: “A President cannot faithfully execute the laws if he himself is breaking them.”

The second statement: “The foundations of this country were not laid by politicians running for something—but by statesmen standing for something.”

The first statement was voiced by a former distinguished Democratic U.S. Attorney General of the United States, The Honorable Griffin Bell.
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The second was sent to me at Christmas by a friend whose name and voice I suspect is familiar to most if not all Senators, my dear friend, George Beverly Shea, who for so many years has thrilled and inspired millions as he did beside Billy Graham and, singing with that remarkably deep voice—"How great Thou art.

Our trouble today is that the American people every day, must choose between what is popular and what is right. There is a constant deluge of public opinion polls telling us which way to go, almost without fail showing the popular way.

But I must put it to you that we will, at our own peril, look to opinion polls to decide how we vote, when the real need is to look to our hearts, to our consciences and to our soul. So many decisions are made in the Senate—be it on the fate of treaties, or legislation, or even presidents—decisions having implications, not merely for today, but for eternity, reminding us that if we don't stand for something, the very foundations of our Republic will crumble.

Perjury and obstruction of justice are serious charges, as nobody knows better than Mr. Chief Justice, charges that have been proved during the course of this trial. Therefore, the outcome of this trial may determine whether America is becoming a fundamentally unprincipled nation, bereft of the principles by which we blessed America 210 years ago with more abundance, more freedom than any other nation in history has ever known.

There is certainly evidence fearfully suggesting that the Senate may this week fail to convict the President of charges of which he is obviously guilty. What else can be made of the behavior of many in the news media whose eyes are constantly on ratings instead of the serious issues in play?

This trial has been dramatized as if it were a Hollywood movie trivializing what should be respected as our solemn duty.

The new media technology is creating an explosion of media outlets and 24-hour news channels—and a brand new set of challenges.

A friend back home called me after an impressive presentation by one of the House managers and said, "You know, Mr. Chief Justice, that man is persuasive. But I had to tune into CNN to see whether it was effective—because I knew without the media's immediate stamp of approval, it wouldn't make a damn bit of difference.

He had a valid point. Mr. Chief Justice, the awesome power of the media with its instant analysis is frightening. A political event occurs. The TV commentators immediately offer their lofty opinions; overnight surveys are taken and many politicians are all too often cowed into submission by poll results.

In these proceedings, the House Managers of course provided a forest of evidence clearly indicating that the President of the United States perjured himself before a federal grand jury and obstructed justice. The imaginative White House attorneys of course chopped down a few trees here and there. We knew that the whole forest had burned down. The press gallery bought that whole concept.

Some years ago, there was a western movie starring Jimmy Stewart and John Wayne called "The Man Who Shot Liberty Valance." Stewart portrayed a tender-footed young lawyer who ran afoul of the local outlaw, Liberty Valance.

Through a twist of fate, the character played by Jimmy Stewart received credit for ridding the country of the outlaw, even though it was John Wayne's gun that brought Liberty Valance down. Yet it was Stewart who rode public acclaim into a political career in the United States Senate, while John Wayne's character faded into obscurity.

Late in life, Stewart's character, still a Senator, returned from Washington to attend John Wayne's funeral. Stewart felt guilty, of course, that the truth of Wayne's heroism remained untold. He related the entire story to the local newspaper, only to find the editor totally disinterested.

"When the legend becomes fact," the editor said, "print the legend." With its vote on Articles of Impeachment, the United States Senate is preparing to add to the legend of this whole sordid episode, Mr. Chief Justice.

We have the facts before us and we should heed those facts because truth must become the legend. We must not permit a lie to become the truth.

A couple of weeks ago, a Falls Church Episcopal minister, the Reverend John Yates delivered a remarkable sermon to his parishioners. The Reverend Dr. Yates had this to say about lying—and liars:

. . .if a person will lie, and develops a pattern of lying as a way of life, that person will do anything. Someone who becomes good at lying loses his fear of being discovered and will move on to any number of evil actions. He becomes arrogant and self-assured. He comes to believe he is above the law. You should fear people like this.

If such a person is caught red-handed in a lie and shown with the evidence, that sort of man or woman will be forced to admit it, but he won't like it, it will make him angry and vengeful. He will do all he can to move and leave it behind. It's what the Bible calls evidence of a seared conscience, not a sensitive conscience, but a seared conscience.

If we allow the lies of the President of the United States of America to stand, Mr. Chief Justice, then I genuinely fear for America's survival.

Shortly before I arrived, Senator Hubert Humphrey visited this chamber for the last time. He knew it was the last time; we knew it was the last time. Hubert's frail body was wracked with cancer, his steps were halting, his voice feeble. But as he walked down the aisle, Hubert saw me standing at my desk over there. He walked over to me, arms outstretched. Tears welled up in my eyes as Hubert hugged me softly saying, "I love you."

I loved Hubert Humphrey too, Mr. Chief Justice, and I told him so.

Hubert and I disagree on almost all policy matters, large and small. Often Hubert got the better of me in debates. A couple of times I did it to him. But I loved Hubert Humphrey because we agreed on so much more—duty, honor, patriotism, faith and justice, the very essence of America.

But we are obliged to ponder: What is the essence of America now? Public life once was about honest debate on the merits, but it is now often a debate on the merits of honesty. And it was the President of the United States who brought us where we are today.

In November of 1955, a young editor named William F. Buckley undertook an ambitious mission, now completed. Bill had decided to start a conservative journal of ideas that would fuel an entire political movement.

In his "Publisher's statement", printed in the very first edition of National Review, he declared that his magazine "stands athwart history yelling "Stop!'"

Mr. Chief Justice, I pledge with Senators to look around and see what Bill Clinton's scandal has wrought. National debate is now a national joke. Children tell their parents and teachers that it's okay to lie, because the President does it. Our citizens tune out in droves, preferring the daily distractions of everyday life to an honest appraisal of the depths to which the Presidency of the United States has sunk.

If this is progress and if this is the path history is taking, the Senate does have an acceptable alternative:

We simply must summon our courage and yell, "Stop tampering with the soul of America!"

Mr. HOLLINGS. Mr. Chief Justice, I shall vote with a clear conscience not to convict; rather, to acquit. And I have no better authority, of course, than my own Congressman, the manager, LINDSEY GRAHAM, when asked—and I will never forget it—by the Senators from North Carolina and Wisconsin: "Under the law and the facts as then submitted at the end of the prescription, I could find differently with respect to guilt?" and Congressman Graham said, "Why, of course," that reasonable people could differ. And when the manager says there is reasonable doubt, that ends the case.

But let's remember that the impeachment clause is not intended to punish the President, but to protect the Republic. And the mistake in this entire presentation on both sides, in my judgment, has been that they have been viewing a criminal case rather than a political case. What is really for the good of the country? I go to the understanding of the impeachment clause
with respect to the author himself, George Mason, who said, "must be guilty of high crimes and misdemeanors against the State." And Justice Story, in the midcentury, said that you could only impeach a President for conduct that only the President could engender.

I will never forget, when they gave us the booklet, in the Nixon impeachment, by the eminent professor of constitutional law, Charles Black, he said that an impeachable offense must constitute a deep wrong to the country, an abuse of Presidential power.

And everybody is talking about the polls and I think they are significant. When 80 percent of the people believe the President lied, and I believe he did—not on the perjury charge, and not on the obstruction of justice, of course, but I believe he lied—and 80 percent of the people believe he lied, but 70 percent of the people said keep him there. Why? Because there wasn't a deep wrong going on.

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

We must remember that the fooling around was between consenting adults, both of them sexually experienced. Incidentally, in private both of them are admitted liars. The President said he lied, Monica said that she grew up lying, was taught to lie.

But the managers said, "Oh, this isn't about sex, this is about crime." Really? I have been at the law too long. A sues B for the crime of adultery, sexual misconduct. A and B both swear under oath and through their pleadings and their testimony and not before a halfway grand jury. I always wondered, what if prosecutors went under oath before grand juries. We wouldn't have to build new courthouses. But be that as it may, they swear under oath in testimony before the judge who is trying the case on its merits, and A or B loses—whenever the loser—are they taken over to criminal court and charged for lying under oath and obstruction of justice?

I called a prosecutor in Congressman Graham's district, an 18-year experienced prosecutor, a Republican, George Duckworth. I said, "George, have you ever taken anyone under oath and obstruction of justice for sexual misconduct—have you ever taken that to criminal court?" He said, "It's never happened.

I then went to the chief of all the State prosecutors, John Justice, who happens to be from my State, and he said he had never heard of it.

So we are beginning to get to really what is going on, and that is not to say, anybody, everybody, to say he and we can go ahead and do that. We are not saying that at all, because the President can be charged with it, as anybody can. It might be a rare case, but we ought to remember, rather than that one witness that they found—and I guess they will find another one—but the Republican district attorneys who testified on the House side, the deputy attorney general in charge of the Criminal Division, William Weld, they said they would not bring the case.

This case never should have been brought. Any respectable prosecutor would have been embarrassed actually to so charge.

I will never forget when this commenced, David Pryor, the Senator from Arkansas almost 4 years ago, said: Wait a minute, 41 TDY FBI agents coming from one side of Arkansas to the other, 81 support personnel, asking, "Did you ever sleep with Bill Clinton? Do you know anybody who slept with him? I heard you know. We're going to take you before the grand jury." Locking up witnesses who did not testify to what they wanted attested to, paying off others and securing them and hiding the money and going; and thereafter subpoenaing the mother in tears; the Secret Service, the White House steward, the bookstore; some 4 1/2, 5 years and $50 million. And they come up with private sexual misconduct—this is not a public office. It is a public office, but we operate in private in our own offices. To make this thing public after all of that expense and effort, I would be embarrassed as a prosecutor to bring it.

But President Clinton. He Butts Saw Him. He wasn't embarrassed. He should never have taken it. A member of the Kirkland & Ellis law firm that had an interest in the case, the Jones case, was participating at the time. Instead of recusing himself, he immediately started pursuing that case with the official hand of Government.

There are seven former independent prosecutors expressed dismay at Starr's ethics. He was representing private clients inimical to the defendant, our President, The New York Times and other newspapers editorialized that he ought to step aside. But instead of removing himself, he continued to talk to political groups, all the time leaking information and, yes, holding up his findings after 4 1/2 years until after the election and saying he found nothing with respect to Filegate, Travelgate, Whitewater, or any of the other cases for which he was commissioned—to embarrass—our President.

He injected himself into the House proceedings to where finally his ethics advisor, Sam Dash—who, of course, had been the principal participant in Watergate—had to resign. Then he injected himself into the Senate, and last weekend, during a key moment, of course, he said he was going to bring a criminal indictment. He leaked that information.

Now we have the Justice Department, the independent prosecutor with his misconduct in the way he treated the main witness with respect to her access to counsel. And you have an 8-to-1 vote in the American Bar Association, which has been inserted; they say let this independent prosecutor thing die.

Yes, we have, like Bryant said, broad overreaching of power. Not by Clinton. He got into an eliciting affair, and he tried like everybody else to cover it up. They said they would not bring the case. They lied, they lied, they lied under oath. We had the chief of the managers; he lied not just from January till August, but 30 years—and others over there. The hypocrisy of that crowd.

Yes, we had broad overreaching of power, of course, of the reason that we declared our independence 223 years ago—"sending hither swarms of officers to harass our people and seek out their substance." We have it now, and we have a chance to try it. We have an impeachment case, but we are trying to impeach the wrong person. That is why the American people are as concerned as they are. That is what you find in the polls that we keep talking about.

Let's understand, of course, that President Clinton debased the Office of the Presidency, but let's say once and for all that we are not going to have the political hijacking of the Office of the Presidency. Let's be certain when we vote this week that we don't debase the Constitution.

Mr. Wyden. Mr. Chief Justice, our leaders, Senators Lott and Daschle, my colleagues, my friends.

I doubt that I will ever know what the President of the United States was up to when he lied to Betty Currie about the nature of his relationship with Monica Lewinsky. Did the President lie to Ms. Coming to the bottom of the Currie controversy and several others that we have been wrestling with for weeks now. If I might paraphrase a legal doctrine, this impeachment has become the fruit of a poisonous tree. This impeachment is a deadly plant that has flowered on the toxic soil of partisanship.

Given the highly contentious nature of the charges against the President, there is no question in my mind that the congressional leadership should have first established a bipartisan process for investigating the serious allegations.

It is my view that had the Founding Fathers decided that the first step in the impeachment process would be taken by the U.S. Senate, the Senate majority leader and the Senate minority leader would have produced a truly bipartisan inquiry, and we would have been able to find common ground on several of the key
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issues, I don’t think it would have produced a string of 100-0 votes, but I believe that we would have had a more bipartisan result than what we are going to see at the end of these deliberations. But this process began elsewhere, where I wanted to make one comment about the House.

In my view, the House didn’t even try to locate the common ground. And I use that word “try” specifically because it is one thing to work your head off and not be able to bring people together. It has been the experience that that is not what went on in the House. They didn’t even try to come together.

It has been well documented, for example, that the Speaker of the House and the House minority leader went for months at a time without even talking to each other. I am not going to assign fault to one or the other, but the fact is that by the end of last year, our two major political parties were at war with each other over the allegations against the President.

This toxic partisanship is not, in my view, what public service is all about. I am a Democrat, for good reasons; and there are sincere, important differences of philosophy on issues between the respective sides. But I have always felt doing what is right is more important than adhering to party dogma, and that is what I wanted to do in this matter.

The framers of the Constitution tried to give us a heads-up, a warning about how the impeachment process could become unduly partisan.

Alexander Hamilton, in Federalist 65, said that the types of crimes for which impeachment is the appropriate remedy are “political.” And he added, “the prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties, more or less friendly, or inimical, to the accused.”

Thomas Jefferson, after almost having been kept from office in a partisan maneuver to replace him with Aaron Burr, set a deeply moving tone for looking beyond partisan confrontation in his first inaugural address.

My colleagues and friends, it doesn’t have to be all partisan all the time. There is an alternative to slash-and-burn Government. And it is a topic, I regret to say, that I know a fair amount about.

I was very, very, very bitter Senate campaign against a man I am proud to call my friend, my colleague, Senator Gordon Smith. Our part of the country had never seen a campaign so relentlessly negative. The whole country was watching the race to succeed Bob Packwood, but our campaign didn’t enlighten very many people. It brought out the worst in us. I was so disgusted with it and what I had become, that with only a few short weeks to go in the campaign I got rid of all my ads and billboards.

Shortly after Senator Smith won his election, we got together and talked about how we regretted the bitter nature of the campaign and what we had become. We decided from that point on we would put the greater good, that of the people of Oregon, before any differences we might have. The New York Times has started to call us the “odd couple”—a few from the city, a Montaner, a Southerner, and they kind of odds would you have given for that kind of relationship? But it works.

The votes that we are going to cast now are in little doubt. So I wish to express my concern that as the Senate continues the impeachment that we have the ability to come back and tackle our other constitutional responsibilities in a bipartisan fashion.

The public is tired of us being at each other’s throats. They are tired of beltway politics that places toxic partisanship over the public interest. Gordon Smith and I found out the hard way, and they are right.

Perhaps even at this late hour we can find our way to agree and to want to ramp up this impeachment debate through a bipartisan statement that makes it clear that each of us finds the President’s conduct repugnant. If we miss that chance, let’s keep looking for every possible opportunity to come together.

Senator Frist and I have a bipartisan education bill. No speeches about partisan prosecution, but also to impose safeguards that are necessary, given the severity of the potential punishment—a political death penalty, as the framers intended.

In arriving at my decision in this case, I kept coming back to the reality that Congress has not once removed a President, not once in 211 years. The Constitution places the burden for such an action on the nation. We can either rise to the occasion by forging new and healthier ways to deal with our differences, or we can sink from the collective weight of a partisan mess that we have all helped to create.

I am often asked the question, who do you like and who do you dislike? The ones I especially like are very easy to name; and then when it comes to those I dislike, I cannot name one. I genuinely thank you for allowing me to participate with you in this difficult and historic time.

I want to also thank my colleague, Ron Wyden, for his comments about me yesterday. When Ron and I ran for the Senate, Ron and I have become friends. It was a remarkable thing to both of us that by doing something as simple as having a joint town hall meeting, Republican and a Democrat from the same State, it led to a full-page story in the New York Times. That is a sad commentary.

The truth of the matter is that if Ron Wyden and I can become friends and do things to the credit and benefit of our State, so can you all. I actually believe...
that this trial will bring us closer to truth...

Today, as Oregon’s other Senator, I cast two votes to convict and remove President Clinton from office.

You see, political prisoners around the world look to the United States for hope, not because we have a popular President, but because we have laws to protect the public trust, protecting the Constitution. The scales that Senator Edwards spoke to us about, the fulcrum of justice, won’t work if President Clinton’s conduct is sanctioned by this body or by any court. What President Clinton did was an attack on the Government, and specifically on the judicial branch of Government. You see, the courts aren’t supposed to be up to the task of removing President Clinton from office.

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protect us from a popular President. If the President of the United States is allowed to break our laws when they prove embarrassing to him or conflict with his political interests, then truly some public trust has been violated, a trust shared by everyone. As Hamilton says, "relates chiefly to injuries done immediately to society itself."

These felonies are impeachable offenses, and the Constitution makes our duty clear, even though it appears harsh. When the Justice calls my name, "Senator, how say ye?" I will say guilty twice, because I refuse to say that high political officials cannot be calibrated. When the President abuse his power and there-fore violate the Nation's trust in him? The President violated his Constitutional oath and he broke the law. His crimes do rise to the level of high crimes and misdemeanors prescribed in the Constitution. The President's actions cannot be defended by dancing on the pin head of legal technicality. Every act of the President must know actions have consequences. Even for presidents. All Americans must have faith in our laws and know that there is equal justice for all. The core of our judicial process is the rule of law.

Americans deserve to always expect the highest standard of conduct from their elected officials. If that expectation is defined down over time, it will erode the very fabric of our democracy and our Constitution in peril. That is the power to remove a President only if he has committed high crimes and misdemeanors against the state. President Clinton's conduct has debased his office and violated the soul of justice—truth. He has thereby debased and violated the American people. I have no other course to follow than to vote to convict President William Jefferson Clinton on both Articles of Impeachment.

The Constitution is very clear. It requires Members of the United States Senate to vote for or against each Article of Impeachment. No impeaching, no substitutions, no censures. No findings of fact. The completeness of the charges against the President is powerful. The power of the Senate is drawn carefully and narrowly by the Constitution of the United States, and it is a power to sit in judgment of a President only as a means of protecting our Nation from great harm. It is a power to remove a President only if he has committed treason, bribery or other high crimes and misdemeanors against the state.

As U.S. Senators, the Constitution must be our predominant guidepost. It must be the compass we come back to at every point of hesitation or ambiguity or doubt. "Treason, bribery, or other high crimes and misdemeanors"—these words are powerful, extraordinary, and carefully crafted. We know how very grave treason and bribery are, and we know that when they involve fundamental corruption of public office. But what about high crimes and misdemeanors? The words, "or other high crimes and misdemeanors," on its
face means high crimes and high misdemeanors.

Borrowing from my good friend, Senator Biden, the word, “treason,” was defined in the Constitution itself. The word, “bribery,” was not. It was a definition fixed at common law. These were both relatively definite terms. But “high crimes and misdemeanors” are indefinite.

In this setting, two rules of construction exist to add the word—Madison and Mason to add the word—or other—in their famous colouogy. The word, “other,” is, to me, fascinating, because what it does is essentially return us to the previous clause, which is “treason and bribery.” It says that “high crimes and misdemeanors” must necessarily be interpreted at the same level of, even though less definite than, “bribery and treason.”

I think that is clear. I think that is uncontested.

As U.S. Senators, the Constitution must be, as I said, our guidepost. We know from the statements of our founders that the phrase was intended in a very careful way—“high crimes and misdemeanors”—to cover only very grave and threatening abuses of Presidential duty and public office.

The House managers contend, as did Independent Counsel Ken Starr before them, that in the course of hiding his illicit affair from the world, the President committed perjury, obstruction of justice, and those crimes are so serious that they must, by definition, high crimes and misdemeanors, demand and immediate removal from office, something that has never happened before in the history of our Nation.

Most of this body are lawyers. And I think that most would agree—all of us would agree—the questions that must be answered by all of us in this Senate are:

First, did the President commit perjury or obstruction of justice as charged by the articles of impeachment?

Second, did the President's conduct rise to the level of high crimes and misdemeanors requiring removal?

The answer to both of these questions must be yes in order for the President to be removed from office. If either one of these questions fails, then by definition the Constitution demands that the President be acquitted.

On the case presented over the last several weeks, on the basis of the evidence and the deposition testimony, which I reviewed carefully and in full, and on the basis of the constitutional arguments made by each side, I have concluded unequivocally that the President committed perjury or obstructed justice. Their case is speculative, circumstantial, and contradicted by facts.

Admittedly, the burden of proof on the House managers is a very heavy one. We have a presumption in this country of innocence until proven guilty. And we have a presumption that national elections should be upheld.

With the fate of a twice-elected President before us in this Senate, I believe that the evidence must be the universally accepted standard of proof applied to other criminal cases. It must be proven beyond a reasonable doubt.

What does that mean, to prove a case beyond reasonable doubt? It means that it is proven to a moral certainty, that the case is clear, that the case is concise. It means that, if there are doubts about the evidence, about the case, then he must be acquitted.

In the case presented by the House managers in the managers' version of the Clinton-Lewinsky story, there are many, many reasonable doubts.

There are the doubts about the articles themselves, which are ambiguous, and what conduct actually purported to serious doubts about the perjury charge in which the President openly acknowledges his inappropriate behavior—and his effort to keep it secret from the Nation. There are doubts about the obstruction charges in which the President is accused of a vast conspiratorial scheme to influence witnesses and testimony, even though everyone involved has denied that any such effort occurred. No person, regardless of the position, could, or should be, convicted on evidence that is so ambiguous and so questionable, and to my way of thinking ultimately, weak.

Second, and equally important, no matter how deplorable the President's conduct, if it did not meet the constitutional test for conviction. They simply do not rise to the level of treason, bribery or other high crimes and high misdemeanors, as I would put it. If there is another conduct, any other charges are left in the judgment of the people in casting of their votes, and to the judgment of the courts once the President has left office.

Despite the anger that we feel at the President, despite misgivings that we have about his honesty, despite his lies to the American people, we cannot allow emotions—or, I might say, homilies—or partisanship to interfere with our judgment. The Constitution alone puts us in the box from which we dare not venture.

On impeachment, our constitutional history is well established. And we in the Senate and across the Nation must abide by it, and abide by it strictly. We owe that respect for using his great office to commit high crimes against the Nation, against the state, and against the people. There is no question in my mind that the President has not done this. We would be delict in ignoring his if we removed him for anything less.

So, given the weakness of the evidence supporting the charges made by the House, given the serious doubt in the Senate that the charges rise to the level of demanding removal from office, how do we find ourselves so far down this dangerous constitutional path?

How do we in the Senate find ourselves close to the threshold of removing a President from office without clear and compelling evidence that crimes against the state were committed?

How was an independent counsel investigation allowed to turn into a five-year, $50 million crusade against the President?

And, why have we not been able to debate the real issues for the future of our nation—strengthening Medicare, reforming Social Security, ending the steel import crisis so West Virginia steelworkers can get their jobs back?

It is clear that, in the end, justice will be done, and the Constitution will have protected the right I have been dismayed by growing partisanship, but the bottom line is that the President should not be removed from office, and he will not be removed from office.

With the greatest respect for each of my colleagues, I must say there is something very wrong with the fact that we have been forced to take this so far, and that the Senate has been rendered impotent for so long. Even in the face of unceasing calls to end this investigation—from people in every state, from every background and political party—it has marched on relentlessly.

I do not believe that it was ever the will of the House of Representatives or the Senate to pursue these charges against the President to such great and absurd lengths. Yet we have—and in the process, a growing crack in the civil and moral foundation of our government has been revealed.

It has become clear to me that a destructive momentum has taken hold, and supplanted the better judgment of some in this Congress and in this country.

From the start, there has been a core of political interests that has sought every opportunity and pursued every tactic to attack this Presidency. Every President faces critics who will go to great lengths to fight his policies. But the President has faced unprecedented and unyielding attempts by a small group of determined activists to destroy him, his family, and his work.

Unfortunately, these efforts at destruction have been aided by a media inside the beltway that has accepted nearly every rumor—unproven—and splashed it across the front page or put it at the top of the evening newscast. Ratings and revenues too often have taken priority over sound and judicious coverage of the news. Far from serving the public interest, this has only fueled the efforts of those who have sought to undermine the reasoned pursuit of truth and justice.
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As I made clear earlier, none of this diminishes my belief that the President’s actions were wrong and indefensible. His personal failures in this matter deserve our condemnation. But his failures do not deserve—and have never deserved—the relentless and baseless attempts at political and personal destruction that he has been subjected to. His failures do not deserve—and have never deserved—the triggering of a constitutional process that our Founding Fathers reserved for the most serious of our nation.

I do not say this to fan the flames of partisan division. After all, each of us—Republican or Democrat—has and will make mistakes, and each of us must be held accountable for our mistakes. But no member of the Senate, no member of the House, no elected official who serves this country to his or her best ability deserves the sort of vindictive venom that has become such a common part of our political discourse.

I must say that I am far more concerned by the fanaticism of those who have driven our great nation so close to the precipice. For our system of Democracy to be successful for another two centuries, it must be driven by people’s best instincts—not their worst. It must be founded in moral strength and guided by civil discourse. We must, as Minority Leader Gephardt has so eloquently stated, end the politics of personal destruction.

I have great hope that we can do this, because as I look around, I see a vast majority of Americans who are tired of good people being destroyed by a vindictive minority. I see a majority of Americans who understand clearly that President Clinton should not be removed from office for his deep personal failings. I see a majority of Americans who know better than to believe everything and anything they hear in the media.

The American people want us to seek the truth—they, in fact, demand it. But with equal vigor, they demand that we cast fair judgment, and they demand that we tell the truth; we do not seek to destroy lives and careers.

I believe that this Senate is prepared to cast a fair judgment on the President. We have been through a trying time in our nation’s history—a time that not one of us has relished or gained the least bit of satisfaction from. We have all done our best to seek impartial justice, and I am certain that history will judge us well in this pursuit.

But history will cast a very severe judgement if we do not go forward with the purpose of healing the wounds that this episode has caused, and restoring the moral and civil foundation of our political society.

I leave my colleagues with the wisdom of James Madison in Federalist Paper 62 when he addressed the important role of the Senate in tempering the excesses of the lower house: “The Senate possesses a salutary check,” he wrote, “as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government.”

By dismissing these charges against the President, we will have done our duty to provide that salutary check, and we will have taken the first step in restoring the trust and faith of the people of this nation. It is time to do as the American people have asked: end this sad episode and get back to work.

Mr. MURKOWSKI. Mr. Chief Justice, it seems to be a prerequisite to speak today for Senators to indicate the number of grandchildren each has. I am proud to say Nancy and I have 11, but I won’t indulge you with naming each of them.

I along with all of you will soon cast our votes on the Articles of Impeachment that have been presented against President Clinton. With the exception of the President’s role in the Monica Lewinsky affair, I can think of no more serious vote that a Senator will cast in his or her lifetime than on removing a President from office. History may or may not tell which vote is correct.

We have deliberated more than 67 hours. Five weeks ago, we met in the old Senate Chamber and on a 100-0 vote departed on a course of action to resolve this matter. The House Managers presented the case against the President. White House counsel presented their defense and then Senators spent two days submitting questions to both sides. We then resolved the question of witnesses by allowing the use of videotapes, and heard final arguments from both sides in the last two days. Senators have offered their statements on this matter and we are on target to reach a final vote on the two Articles in less than 48 hours. That’s our Constitutional duty. I am proud and honored to have participated in this historical deliberation and respect each of you and your words.

There are several recollections about the facts in this case that trouble me. Perhaps it is because I am not a lawyer.

In Ms. Lewinsky’s testimony, she indicated that on the first day she met the President, she was wearing a pink identification tag which provided limited access to the White House. The President reached out and held it and said: “Well, this could be a problem” or words to that effect. That tells us something about the President’s character.

Furthermore, after the Lewinsky story broke in the press, the President had Dick Morris conduct a poll and when Morris told the President that the public would forgive him for adultery but not for perjury or obstruction of justice, the President responded: “We will just have to win then.” That tells me something else about the President.

It should also be noted that we would not be here if Ms. Lewinsky had not been involved. It has been said that the DNA evidence implicating the President beyond a doubt. Without that evidence, it would have been an old story of “He said/She said.” Think about that.

Finally, we are all held accountable for our actions. But the President refuses to be held accountable. And I have a problem with the repeated reference from the First Lady that the President ministers to troubled people, suggesting that Monica Lewinsky was such a person.

What has been happening, not just here in Washington, but all around the country is something far more disturbing than the trial of a President. What we have been witnessing is a contest for the very moral soul of the United States of America—and that the great casualty so far of the national scandal is the notion of Truth.

Truth has been shown to us as an elastic commodity. It has been said that this trial is not about the partisan political gamesmanship between the President’s Democratic supporters and the Republican forces on the other side, as the media would have you think.

Indeed one pundit said that more Americans get their ideas and reactions of the impeachment process from Jay Leno than they do from CNN.

The polls show Americans favoring leaving the President in office while they say Republicans appear bent on political suicide.

It has been said that Republicans see accountability, discipline and punishment as fundamental to the very structure of American society and that the President ought to be the “stern father figure” and a figure of moral authority.

Clinton’s liberal supporters model American society on the “nurturing parent” concept. To them, the Presidency is less a figure of moral authority than a helpful and powerful friend capable of doing good.

Where were you when former President Nixon resigned? I wondered at the time whether the republic would survive Watergate. We did survive and believe we did it as a stronger nation because of that process.

In reaching a judgment in this case, I have reviewed the evidence presented by the House Managers and the able defense offered by the President’s counsel. I have concluded that the President is guilty on both Articles and that the two Articles more than satisfy the Constitutional standard of high crimes and misdemeanors.

I believe the President should be removed from office. Not because he engaged in irresponsible, reckless, and reprehensible conduct in the Oval Office with a White House intern. He should be removed from office because
he engaged in conduct designed to undermine the foundation, the very bedrock, of the concept of due process of law and, by extension, the very notion of the rule of law.

There is no question in my mind that President Clinton's intentional provision of false and misleading testimony and committed perjury before the Grand Jury when he told the Grand Jury he was "trying to figure out what the facts were" when he made the following statements to his Secretary Betty Currie after his civil deposition:

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

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

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

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

Mr. Chief Justice, it is just not credible to believe that these statements were designed to help the President elicit facts since he, and not Betty Currie, knew precisely the type of discreet activities he and Monica Lewinsky had engaged in. To believe his testimony would have to assume the unbelievable—that the President engaged in these acts with Ms. Lewinsky in the full expectation that Ms. Currie witnessed them.

It is only reasonable to assume that the statements to Ms. Currie, made on more than one occasion (twice), were designed for one, and only one simple purpose: to coach and influence her future testimony. He was clearly seeking to undermine judicial proceedings by encouraging her to lie under oath for the single purpose of protecting him. His conduct not only amounts to false testimony, but provides a clear basis to conclude that the President sought to obstruct justice.

Moreover, it is undisputed that gifts the President gave to Monica Lewinsky, gifts that were subpoenaed in the civil suit against the President, were removed from Ms. Lewinsky's possession and hidden under Betty Currie's bed. There is no rational reason that Ms. Currie, on her own, decided to seek the return of the gifts. The only inference that a reasonable person could conclude is that the President asked Ms. Currie to retrieve the gifts in an effort to conceal evidence from the civil case. Evidence that was clearly relevant in the civil case brought against the President, it was not a coincidence of events, but rather a concerted effort by the President to obstruct justice.

Mr. Chief Justice, the charges against the President concern perjury, witness tampering, and concealing of evidence. These offenses clearly rise to the level that is in the same sense that bringing a witness to testify falsely or destroying evidence amount to obstruction of justice.

Today, there are 115 people incarcerated in federal prisons because they perjured themselves. On Saturday, we heard the videotape testimony of Dr. Barbara Battalino who had been an attorney and a VA doctor. Her crime? She lied about sex under oath in a civil proceeding. Her penalty? She lost her medical license. She lost her right to practice law. She was fired from her job. The Clinton Justice Department prosecuted her for perjury and she was sentenced to 6 months of imprisonment under electronic monitoring and paid a $3,500 fine.

Should not the same apply to the President? Should not the Grand Jury be given the opportunity to determine whether the President obstructed justice?

Why should an individual not try to influence the testimony of a witness? Why should a citizen tell the truth in a courtroom when he does not serve his interest? There is no rational reason that the President would have been smeared in the press as a stalker and this case would be closed.

I hope my colleagues in good conscience can put party aside and uphold the oath we took a month ago to be impartial in our judgment of President Clinton. This is a sad day for our contemporary country but a magnificent day for the Founders who recognized that no man is above the law and gave us the tools to remove those who violate the public trust.

Mr. BYRD. Mr. Chief Justice:

I think my country sinks beneath the yoke, it weeps, it bleeds,

And each new day,

a gash is added to her wounds.

I am the only remaining Member of Congress who was here in 1954 when we added the words "under God" to the Pledge of Allegiance. That was on June 14. One year from that day we added the words "In God We Trust" to the currency and coin of this country. Those words were already on some of the coins. But I shall always be proud of our work. I shall always be proud of Dr. Barbara Battalino who had been convicted of perjury. On Saturday, we heard the videotape testimony of Dr. Battalino, when he testified before the Grand Jury. When she swore an oath to tell the truth, she lied. When a court room when it does not serve his interest, the President of the United States who swore an oath to preserve, protect and defend the Constitution, when he entered office and who swore an oath to tell the truth, is the President acting in the best interest of the Grand Jury? Or should we condone the standard of the President suggested in his Grand Jury testimony, when he testified that he "said things that were true, that may have been misleading"? Think about that statement! Mr. Chief Justice, the foundation of our republic is that we are a nation governed by laws, not by men. For the rule of law to be maintained, there must be a credible system of justice. Any effort to undermine the integrity of the judicial system subverts the principle of a nation of laws. And that system of justice depends for its very survival on maintaining the integrity of the oath that a person swears to tell the truth. It turns a blind eye and allow people to lie under oath, destroy or hide evidence, or conspire to present false and misleading testimony, the entire notion of justice and truth become meaningless.

The President's counsel on Monday asked the question: "Would it put at risk the liberty of the people to retain the President in office?" Unfortunately, I believe the answer is yes. The individual right to a fair trial is endangered when the President of the United States is protecting himself. I am convinced that the President's actions were designed to help the President obstruct justice and committing perjury.

Think about that statement! Mr. Chief Justice, the charges of perjury that the President faces mean much to us today as we remember the coins. But I shall always be proud of our work. I shall always be proud of Dr. Barbara Battalino who had been convicted of perjury. On Saturday, we heard the videotape testimony of Dr. Battalino, when she testified before the Grand Jury. When she swore an oath to tell the truth, she lied. When a court room when it does not serve his interest, the President of the United States who swore an oath to preserve, protect and defend the Constitution, when he entered office and who swore an oath to tell the truth, is the President acting in the best interest of the Grand Jury? Or should we condone the standard of the President suggested in his Grand Jury testimony, when he testified that he "said things that were true, that may have been misleading"? Think about that statement! Mr. Chief Justice, the foundation of our republic is that we are a nation governed by laws, not by men. For the rule of law to be maintained, there must be a credible system of justice. Any effort to undermine the integrity of the judicial system subverts the principle of a nation of laws. And that system of justice depends for its very survival on maintaining the integrity of the oath that a person swears to tell the truth.

Mr. Chief Justice, the nation has endured more than a year of what started as a scandal and turned into an obstruction of justice and an impeachment. Again, had there been no DNA evidence, Ms. Lewinsky might have been smeared in the press as a stalker and this case would be closed.

I hope my colleagues in good conscience can put party aside and uphold the oath we took a month ago to be impartial in our judgment of President Clinton. This is a sad day for our contemporary country but a magnificent day for the Founders who recognized that no man is above the law and gave us the tools to remove those who violate the public trust.

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Mr. Chief Justice, I thank you for presiding over this gathering with such grace and dignity. But the Chief Justice is not here because he wanted to be. He is not here because we asked him to come. He is here because the Constitution says he shall be. Senators are not here because you wanted them to be here today.

We are here because the Constitution said that the Senate shall have the sole power to try all impeachments. So when we will vote and, hopefully, end this nightmarish time for the nation. Like so many Americans, I have been deeply torn on the matter of impeachment. I have been angry at the President, sickened that his behavior has hurt us all and led to this spectacle. I am sad for all of the actors in this national tragedy. His family and even the loyal people around him whom he betrayed—all have been hurt. All of the institutions of government—the presidency, the House of Representatives, the Supreme Court, the system of justice and law, yes, even the media—all have been damaged by this unhappy and sorry chapter in our nation's history.

The events of this last year have engered so much disillusionment, distrust and discord among the people of the United States.

There can be, I fear, no happy ending, no final act that leads to a curtain call in which all the actors link hands and bow together amid great applause from the audience. No matter what happens, many, many people will be left feeling for that. But I can never forget the President lied to the American people, what he said: "Now I want you to listen to me..." Don't you Senators think that that was a bit overdone if the purpose was to protect his family? "O, what a tangled web we weave when once we practice to deceive." The impeachment of Damocles that hangs over the heads of presidents, vice presidents, and all civil officers, always ready to drop should it become necessary. But, the impeachment of a President is uniquely and especially grave. We must recognize the gravity and awesome consequences of, and act in accordance with the oath we took to do "impartial justice". We are the wielders of this weapon, responsible for using it sparingly and with prudence and wisdom.

This is only the second time that this nation has ever impeached a President. The first was in 1868 against President Johnson for violating the Tenure of Office Act. Both the country and the Congress were of the same mind that the President's offenses merited his removal. It was not a partisan political impeachment; it was a bipartisan act. But where political partisanship becomes the operative factor, it is much more difficult to put the country and the Congress at odds, as it has with this impeachment, something draws us back. We must be careful of the precedent we set. One political party, alone, should not be enough to bring Goliath's great sword out of the Temple.

Regrettably, this process has become so partisan on both sides of the aisle and particularly in the House and was so tainted from the outset, that the American people and the country will always view against it. The President lied to the American people, and, while a great majority of the people believe, as I do, that the President made false and misleading statements under oath, still, some two-thirds of the American people do not want the President removed from office. In that instance, the President's offenses merited his removal.

The Senate shall have the sole power to try all impeachments. So when we will vote and, hopefully, end this nightmarish time for the nation.
men and women can, of course, differ with my viewpoint. Even though the House of Representatives rejected the second article that came out of the Judiciary Committee, the evidence against Mr. Clinton shows that he willfully and knowingly lied, repeatedly gave false testimony under oath in judicial proceedings.

When the President of the United States, who has sworn to protect and defend the Constitution of the United States, and to see to it that the laws be faithfully executed, breaks the law himself by lying under oath, he undermines the system of justice and law on which this Republic—not this “democracy”—this Republic has its foundation.

In so doing, has the President not committed an offense in violation of the public trust? Does not this misconduct constitute an injury to society and its political character? Does not such injury to the institutions of Government constitute an impeachable offense, a political high crime or high misdemeanor against the state? How would you vote? How would Hamilton vote? How would Madison or Mason or Gerry vote? My head and my heart tell me that their answer to these questions would be, “Yes.”

But the matter does not end there. The Constitution states, without equivocation, that the President, Vice President or any civil officer, when impeached and convicted, shall be removed from office. Hence, one cannot convict the President without removing him from office.

Should Mr. Clinton be removed from office for these impeachable offenses? This question gives me great pause. The answer is, as it was intended to be by the framers, a difficult calculus. This is without question the most difficult, wrenching and soul-searching vote that I have ever, ever cast in my 46 years in Congress. A vote to convict and remove would strengthen, not weaken, our nation.

But should a President be removed from office? We are not preening and posturing about a former President. We are dealing with a former President here, Mr. Clinton, by a democracy which was elected to do. When the people believe that we who have been entrusted with their proxies, have been motivated mostly or solely by political partisanism on a matter of such momentous import as the removal of office of a twice-elected President, wisdom dictates that we turn away from that result to the seames of Damocles now, given the bitter political partisanship surrounding this entire matter, would only serve to further undermine a public trust that is too much damaged already. Therefore, I will reluctantly vote “Not Guilty.”

In 399 B.C., Socrates was convicted and sentenced by the Athenian jury to die. If only 30 votes on that Athenian jury had switched, Socrates would not have been convicted. If only twenty Senators—the one, by the way, who are expected to acquit, were to switch their votes, President Clinton would be convicted, and before this coming Sabbath day, he would be removed from the Oval Office. President Clinton will be acquitted by the Senate; yet, he will not be vindicated.

The crowds will still cheer the President of the United States, but the American people have been deeply hurt and, while they may forgive, they will not forget the consequences of history will not be expunged—ever.

Be assured that there will be no winners on this vote. The vote cast by every Senator will be criticized harshly by various individuals and sundry interest groups. Yet, it is well for the critics to remember that each Senator has not only taken a solemn oath to support and defend the Constitution, but also to do “impartial justice” to Mr. Clinton and to the nation, “So help God.” If I can honestly say, “I have not taken that oath; only Senators have done so. Carrying out that oath has not been easy. That oath does not say anything about political party; politics should have nothing to do with it.”

The frenzy of pro-and-con opinions on every aspect of this case emanating from every conceivable source in the land has made coming to any sort of “impartial” conclusion akin to perceiving a noisy, rowdy football stadium. It will be easy for the cynics and the critics who do not have to vote, to stand on the sidelines and berate us. But only those of us who have to cast the votes will bear the judgment of history.

Mr. Chief Justice, none of us knows whether the attitudes of the American people will take a different turn after this trial is over and this draft chapter of history is closed. Mr. Chief Justice, it is never an easy or an accident; riches take wings; those who cheer today may curse tomorrow; only one thing endures—character! It is the character of the Senate that will count. And while the politics of destruction may be satisfying to some, the rubble of political ruin provides a dangerous and unstable foundation for the nation.

And yet we must move ahead. The nation is faced with potential dangers abroad. No one can foresee what will happen in Russia or in North Korea or in Kosovo or in Iraq. To remove Mr. Clinton at this time could create an uncontrollable condition for our nation in the face of unforeseen and potentially dangerous happenings overseas.

Preceding Senators have sounded the clarion note of separation of powers! I have sounded that same trumpet many times when the line item veto was before the Senate, but to no avail. Some of the voices that have echoed through this chamber and these deliberations, were curiously still on that occasion. The Supreme Court of the United States saved the Constitution and struck that law down. But the Supreme Court has no voice on the question that confronts the Senate at this hour. It is for the Senate alone to make. When these Senate doors are flung open, we must hope that the vote that follows will strengthen, not weaken, our nation.

Let there be no preening and posturing and gloating on the White House lawn this time when the voting is over and done. The House of Representatives has already inflicted upon the President the greatest censure, the greatest condemnation, which the House can inflict upon any President. And it is called impeachment! That was an indelible judgment which can never be withdrawn. It will run throughout the pages of history and its deep stain can never be eradicated from the eyes and memories of man. God can forgive us all, but history may not.

Within a few hours, the mechanics of this matter will finally be concluded. But it will not yet be over. For the nation must still bear the unpleasant residue of these events. Mr. Chief Justice, hatred is an ugly thing. It can seize the psyche and twist sound reasoning. I have seen it unleashed in all its mindless fury too many times in my own life. In a chaotic political atmosphere, it can destroy all in its path with the blind fury of a whirlwind. I hear its ominous rumble and see its destructive funnel on the horizon in our land today. I fear for our nation if its storm clouds are not calmed and its storm clouds somehow dispersed. In the days to come, we must do all that we can to stop the feeding of its vengeful fires. Let us heap no more coals to fan.
the flames. Public passion has been aroused to a fever pitch, and we as leaders must come together to heal the open wounds, bind up the damaged trust, and, by our example, again unite our people. We would all be wise to cool the rhetoric.

For the common good, we must now put aside the bitterness that has infected our nation, and take up a new mantle. We have to work with this President and with each other, and with the members of the House of Representatives in dealing with the many pressing issues which face the nation. We must, each of us, resolve through our efforts to rebuild the lost confidence in our government institutions. We can begin by putting behind us the distrust and bitterness caused by this sorry episode, and search for common ground instead of shoring up the divisions that have eroded decency and good will and dimmed our collective vision. We must seek out our better natures and aspire to higher things.

I hope that with the end of these proceedings, we can, together, crush the seeds of enmity and mistrust which have taken root in the sacred soil of our republic, and, instead, sow new respect for honestly differing views, bipartisanship, and simple kindness towards each other. We have much important work to do. And, in truth, it is long past time for us to move on.

RECESS SUBJECT TO CALL OF THE CHAIR

Mr. LOTT. Mr. President, I move the House recess subject to the call of the Chair.

The motion was agreed to, and at 1:08 p.m., the Senate took a recess subject to the call of the Chair.

The Senate reassembled at 2:43 p.m., when called to order by the Presiding Officer.

The PRESIDING OFFICER. The acting majority leader is recognized.

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

PROVIDING FOR AN ADJOURNMENT OR RECESS OF THE TWO HOUSES

Mr. THOMAS. First, I ask unanimous consent that the Senate proceed to the consideration of House Concurrent Resolution 27, the adjournment resolution which was received from the House. I further ask unanimous consent that the resolution be agreed to, and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (H. Con. Res. 27) was agreed to, as follows:

Resolved by the House of Representatives (the Senate concurring), That when the House adjourns on the legislative day of Friday, February 12, 1999, it stand adjourned until 12:00 noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first; and that when the Senate recesses or adjourns at the close of business on Thursday, February 11, 1999, Friday, February 12, or Saturday, February 13, 1999, or Sunday, February 14, 1999, pursuant to a motion made by the Majority Leader, or his designee, pursuant to this concurrent resolution, it stand recessed or adjourned until noon on Monday, February 22, 1999, or such time on that day as may be specified by the Majority Leader or his designee in the motion to recess or adjourn, or until noon on the second day after Members are notified to reassemble pursuant to section 2 of this concurrent resolution, whichever occurs first.

SEC. 2. The Speaker of the House and the Majority Leader of the Senate, acting jointly under consultation with the Minority Leader of the House and the Minority Leader of the Senate, shall notify the Members of the House and the Senate, respectively, to reassemble whenever, in their opinion, the public interest shall warrant it.

STENNIS TECHNOLOGY HELPS FARMERS AND ENVIRONMENT

Mr. LOTT. Mr. President, I call my colleagues’ attention to a recent Associated Press article on the Gulf of Mexico “Dead Zone”, a large area that suffers from hypoxia, a lack of oxygen in the water. The article states that research scientists are working on a high technology system that may hold the key to reducing farm nitrogen runoff while improving crop yields. The NASA Commercial Remote Sensing Program Office at Stennis, in concert with the local farming industry, are developing a new technique known as precision farming. It is, in real-time, bringing space age technology down to earth. Precision farming uses emerging space-based instruments to monitor farmers’ soil content and computer technology to target fertilizer level to maximize crop yield. It will replace the widely used practice of fertilizing the entire crop to the same degree. Precision farming allows the farmer to give the land only what it needs.

Mr. Kent and Mr. Buckner of Perthsire Farms, in the Mississippi Delta town of Gunnison in Bolivar County, which is about 25 miles north of Greenville, monitors the health and soil consistency of his farm through NASA’s hyperspectral imaging techniques. This technique allows Mr. Hood to add fertilizer as needed in specific portions of his acreage. It also helps him detect crop stress, before it can be seen through the human eye. Stennis Space Center’s goal is to help Mr. Hood use less fertilizer, lower his costs, and improve his crop yield.

This is a win for the farmer and a win for the environment. Most importantly, this technology may yield a private sector incentive to voluntarily reduce farm fertilizer runoff, a far better solution than imposing regulatory burdens or subsidizing inefficient and less productive fertilizer limits.

NASA’s Commercial Remote Sensing Program Office at Stennis Space Center should be congratulated for developing practical and productive commercial uses of this technology. This imaging technique, I believe, has application in other areas as well, such as in highway planning, environmental monitoring, resource exploration, coastal zone management and timber management.

Mr. President, I encourage all of my colleagues with an interest to contact Mr. David Brannon of the Stennis Space Center’s Commercial Remote Sensing Program. I am sure many of my colleagues have farmers such as Mr. Hood who want to improve crop yield, decrease costs, and be good stewards of the environment. All they need to do is call Stennis and learn about what Mississippi has to offer.

A CALL FOR AN END TO THE POLITICAL WARS

Mr. DASCHLE. Mr. President, today’s votes on the Articles of Impeachment mark the end of a long and difficult journey. The story of this impeachment process suggests a number of lessons on which I expect we will all reflect individually and collectively for some time.

From the beginning of this process, I objected in the clearest terms to the President’s legal hairsplittings and attempts to find a legal excuse, or any excuse, for his deplorable personal conduct. In my view, the President violated the public trust and brought dishonor to the office he holds. For that, he will have to answer to the people of this country, and to history.

But it was every senator’s duty to put personal views aside and render impartial justice, based on constitutional standards and the evidence before the Senate. In my view, the President’s conduct did not, under our Constitution, warrant his removal from office. Others, acting on equally sincere motives, reached a different conclusion.

It is regrettable that something about this process led to a situation, particularly in Washington, where sincere voices on both sides were too often drowned out by partisan voices—again, on both sides. But, if we listen to the voices of the people, we hear the voices of citizens rather than of partisans, those voices tell us that something has gone terribly wrong in our public discourse.

Those citizens see the impeachment process not as a solemn constitutional event, which it assuredly was, but rather as another sad episode in the sorry saga of a bitter, partisan and negative political process that runs on the fuel of partisanship, which this sendee to many Americans, the Starr investigation, and the impeachment process it spawned, were all too familiar.