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Senate

[ERRATA]

The statement of the Senator from Maine [Ms. SNOWE], delivered in closed session while the Senate was sitting as a Court of Impeachment, was inadvertently omitted from the RECORD of Friday, February 12, 1999. The permanent RECORD will be changed to reflect the following:

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Ms. SNOWE. Mr. Chief Justice, distinguished colleagues, let me begin by expressing my appreciation to the Chief Justice for his wisdom, for his infinite patience, and for conferring upon this body the judicial temperament envisioned by the Framers.

I would also like to commend both the Senate majority and minority leaders for upholding the dignity of this body, by preserving judiciousness and fairness, and maintaining bipartisanship and civility.

Colleagues, we have arrived at a juncture in our public lives that will largely define our place before the judgment of history, and I think it will be said that justice and the Constitution were well served.

Indeed, the consequences of our decision are manifest in the words of Alexander Hamilton, who wrote of ''the awful discretion which a court of impeachment must necessarily have, to doom to honor or to infamy the most confidential and the most distinguished characters of the community.''

Those words should weigh heavily upon us. But while the gravity of our task is humbling, the genius of our Constitution is ennobling; for we deliberate not under the imposing shadow cast by the exceptional men who framed this Nation, but in the illuminating light of their wisdom.

Impeachment was designed by the Framers to be a circuitbreaker to protect the Republic, when ''checks and balances'' would not contain the darker vagaries of human nature. Impeachment empowers the Senate—under the most extraordinary of circumstances—to step outside its legislative role, reach into the executive branch, and remove a popularly elected President.

Impeachment was not, however, devised as an adjunct or independent arm of prosecution. It is not for the U.S. Senate to find solely whether the President committed statutory violations.

Rather, we have a larger question—whether there is evidence that persuades us, in my view beyond a reasonable doubt, that the President's offenses constitute high crimes and misdemeanors that require his removal.

Here is the precise point of our challenge—to give particular meaning to the elusive phrase, ''high crimes and misdemeanors.'' This task is critical, because impeachment is not so much a definition, as it is a judgment in a particular case—a judgment based not upon an exact or universal moral standard—but upon a contemporary and historical assessment of interest and need.

''High crimes and misdemeanors'' speak to offenses that go to the heart of matters of governance, social authority, and institutional power—offenses that, in Hamilton's words, ''relate chiefly to injuries done immediately to the society itself.''

And these crimes must be of such magnitude that the American people need protection, not by the traditional means of civil or criminal law—but by the extraordinary act of removing their duly elected President.

For removal is not intended simply to be a remedy; it is intended to be the remedy. The only remedy by which the people—whose core interests are meaningfully threatened by the President's conduct—can be effectively protected.

This, to me, is what President Woodrow Wilson meant when he referred to ''nothing short of the grossest offenses against the plain law of the land.'' This, to me, is what Framer George Mason meant when he emphasized ''great and dangerous offenses.''

So in determining whether this President has committed a ''great and dangerous offense'' requiring removal, we must first weigh all of the credible evidence to identify which acts were actually committed. Then, we must assess the gravity or degree of the misconduct. This process requires that we review the acts from their origin, and the circumstances in their totality.

The allegations in article I do not paint a pretty picture. Indeed, we are all struggling with having to reconcile the President's lowly conduct with the Constitution's high standards. And we should all be concerned with the minimal threshold that he has set, and the poor example he has created for leadership in this country.

The President himself admits he gave evasive and incomplete testimony. He admits he worked hard to evade the truth. He admits he misled advisers, Congress, and the Nation. And he looked all of America in the eye—wagging his finger in mock moral indignation when he did it.

The fact is, the truth is not our servant. The truth does not exist to be summoned only when expedient. And I find his attempts to contort the truth profoundly disturbing. A President should inspire our most noble aspirations. Unfortunately, he has fueled our darkest cynicisms.

And I resent the ordeal he has put this country through—and we should make no mistake about it—whatever else may be said, we are here today because of the President's actions. I resent the shadow he has cast on what should be—and I feel still is—an honorable profession; public service. And I

think all of us who take our oaths to heart should resent it.

Finally, as a woman who has fought long and hard for sexual harassment laws, I resent that the President has undermined our progress. No matter how consensual this relationship was, it involved a man in a position of tremendous power, with authority over a 21-year-old female subordinate, in the workplace—and not just any workplace. He has shaken the principles of these laws to their core and it saddens me deeply.

But as I work my way through my distaste, my dismay, and my disappointment, I return to the discipline that the Constitution imposes upon us as triers of fact. My job here is to review the evidence, and to measure that evidence against my standard of proof, and the constitutional standard of high crimes and misdemeanors.

So let's look at the evidence. Article I does not go to perjury about the underlying relationship—that charge was dismissed by the House. Instead, the article before us alleges perjury based on statements about statements about conduct. Unfortunately, what this comes down to is a case of ''perjury once removed''—an inherently tenuous charge.

As triers of fact, we are asked under article I not to find whether the President lied, but whether he committed the specifically defined act of perjury. Here, the law is clear that there must be proof that an untruth was told; that it was told willfully; and that it was told about a subject matter material to the case. These are the hard rules of the statute.

In this instance, article I alleges perjury in statements the President made explaining the nature and details of the relationship. Significantly, the underlying subject matter of most of these statements was ruled irrelevant and inadmissable in the underlying civil case that was itself dismissed and settled. To me, these facts undermine the materiality of these statements.

Article I also alleges perjury in the President's statements explaining his concealment of that relationship. Here, I find insufficient evidence of the requisite untruth and the requisite intent. Given, again, that we are talking here about ''perjury once removed,'' I cannot conclude that the President is guilty on article I.

As I look at article II, I have similar concerns and conflicts. Are there any among us who can look at the disturbing pattern that has been laid out for us and not be deeply troubled?

Just look at the allegations. The President may have influenced the filing of an affidavit. The President may have initiated the concealment of potential evidence. And the President may have accelerated a job search, in hopes of influencing a witness.

But for all of this, there is only circumstantial evidence. Despite a 64,000 page record and countless hours of argument and testimony, there is no direct evidence supporting any of these allegations.

To the contrary, where there is direct evidence, the testimony is against the allegations. Indeed, not one witness with firsthand knowledge has come forward since the beginning of this matter to corroborate the charges. So, while I can draw inferences from the evidence, I cannot draw conclusions beyond a reasonable doubt.

The Framers clearly prescribed caution when measuring high crimes, and such caution is all the more important when a case rests on purely circumstantial evidence. Mindful of this caution, I still find that one allegation stands out from the rest; the President's attempt to influence the potential testimony of his personal assistant.

Let's look at the facts. In the President's civil deposition, the President suggested, at least three times, that the attorneys should ask questions of his personal assistant. At the end of the deposition, the judge reminded him of the confidentiality order not to discuss the testimony with others.

Within 2½ hours, the President called his personal assistant to arrange a rare Sunday meeting. At that meeting, the President disclosed to her the contents of his deposition. In a manner that all but reveals the President's motives, he included in his discussion with her false statements about the circumstances of his relationship. Indeed, she would later testify that she believed the President sought her agreement with those statements he was posing.

Consider this critical exchange in the testimony of the President's assistant:

She was asked, ''Would it be fair to say then—based on the way he stated it and the demeanor he was using at the time he stated it to you—that he wished you to agree to that statement?'' The President's assistant nodded. She was then asked, ''And you're nodding your head yes, is that correct?'' And she answered, ''That's correct.''

And he again violated the gag order when he revisited these statements with her several days later.

As an experienced lawyer, the President knew that, by the force of his own testimony, he made his assistant a potential witness.

As a former State attorney general, the President knew he was violating the confidentiality order when he spoke with her.

As a defendant who repeatedly named his assistant, the President knew that his assistant would be subpoenaed.

And she was subpoenaed just 3 days later. But even if she hadn't, the President did not need absolute or direct knowledge that his assistant would testify. Under the law of obstruction, which, unlike perjury, does not expressly require materiality, he only had to know that she could offer relevant facts.

Make no mistake about it, I find the President's behavior deplorable and indefensible.

If I were a supporter, I would abandon him. If I were a newspaper editor, I would denounce him. If I were an historian, I would condemn him. If I were a criminal prosecutor, I would charge him. If I were a grand juror, I would indict him. And if I were a juror in a standard criminal case, I would convict him of attempting to unlawfully influence a potential witness under title 18 of the United States Code.

However, I stand here today as a U.S. Senator, in an impeachment trial, with but one decision—does the President's misconduct, even if deplorable, represent such an egregious and immediate threat to the very structure of our Government that the Constitution requires his removal?

To answer this broad question, we need to ask several finer questions.

Do the people believe that their liberties are so threatened that he should not serve his remaining 23 months? Is the President's violation on par with treason and bribery? What are the inescapable and unprecedented effects of removing a duly elected President? And can the President's wrongdoing be more effectively remedied by criminal prosecution, in a standard court of law, after he leaves office?

These are the questions which drive our consideration of the ''gravity'' and ''degree'' of the President's conduct. To this end, I return to the words of another Maine Senator, William Pitt Fessenden, who during the Andrew Johnson trial said that removal must ''be exercised with extreme caution'' and in ''extreme cases.'' It must, he said, ''address itself to the country and the civilized world as a measure justly called for by the gravity of the crime . . ''

In this case, I understand how reasonable minds could differ, for I have struggled long and hard with my own decision.

But the Constitution tempers our passion and measures our judgment. And the Constitution requires each of us to determine not just whether the President violated a statute. For had the Framers intended the offenses charged in this case to require removal in any and all circumstances, they would have specifically included them in the impeachment provisions of the Constitution.

Because they did not, we are compelled to ask ourselves whether the nature and circumstances of his conduct are such that we have no choice but to inflict upon him what one of the House managers called ''the political equivalent of the death penalty.''

If I could conclude that this President's conduct is of that nature, I would vote to remove him. Because if there is one thing I've learned throughout my 25 years in elective office, it is that the really tough decisions leave us with but one choice—doing what we know to be right and true.

In this instance, among the seven allegations charged in article II, I have

only been persuaded beyond a reasonable doubt that the President committed one of them. After due consideration of all the factual circumstances relating to this one finding, and the constitutional dictates and implications of this matter as a whole, I am persuaded that the President's wrongdoing can and should be effectively addressed by the additional remedy expressly provided by the Framers in the Constitution—namely, trial before a standard criminal court. And I am further persuaded that future Presidents, and future generations can be effectively deterred from such wrongdoing by this impeachment and a potential prosecution.

The President's behavior has damaged the Office of the Presidency, the Nation, and everyone involved in this matter. There are only two potential victims left—the Senate and the Constitution—and I am firmly resolved to allow neither to join the ranks of the aggrieved.

From the day I swore my oath of impartiality, I determined that the only way I could approach this case was to ask myself one question, ''if I were the deciding vote in this case, could I remove this President under these circumstances?'' The answer, I have concluded, is ''no''—and therefore, I will vote against both articles of impeachment.

Mr. Chief Justice, I came to this process with an open notebook and an open mind, determined to honor my oath to do impartial justice and serve the best interests of the Presidency, the American people, and the Nation. I stand confident that in doing so, my manner has been impartial, and my judgment has been measured. Therefore, in my mind and in my heart, I believe to a moral certainty that my verdict is just.

As men and women of honor, that is the highest expectation to which we can aspire. For we are writing history with indelible ink, but imperfect pens.

In the end, when future generations dust off the record of what we have done here, may they say we validated the Framers' faith in the Senate. May they say we reached within ourselves to discover our most noble intentions. And may they say we achieved a conclusion worthy not just of our time, but of all time.