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House of Representatives

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

Senate

SATURDAY, JANUARY 16, 1999

The Senate met at 10:01 a.m., and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

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

PRAYER

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

Gracious God, You have given us magnificent promises to claim for today. You have told us that if we wait on You, we will renew our strength. You have assured us that You will use our minds to think clearly in response to Your inspiration. Courage is offered, patience provided, and wisdom engendered.

In this quiet moment, grant the Senators Your power to persevere, Your peace for equipoise, Your judgment for the evaluation of the facts presented, and Your will to guide their decisions. As You have blessed us with this day, we praise You that You will show the way. Through our Lord and Savior. Amen.

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

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

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

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, it is my understanding that the House managers intend to extend their presentation until approximately 3 p.m., with a lunch break at approximately 12:40 or 12:45.

I remind all Senators to remain standing at their desk each time the Chief Justice enters and departs the Chamber. We want to maintain the very best decorum.

One other point. We had been scheduled to go from 10:05 straight through until 12:40, but we will probably take a very short 10-minute break after the presentation by Manager GRAHAM. It will be very important that Members tend to business and return promptly to the Chamber so that we can complete activity as early as possible this afternoon.

I yield the floor, Mr. Chief Justice.

THE JOURNAL

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

Pursuant to the provisions of Senate Resolution 16, the managers for the House of Representatives have 15 hours 37 minutes remaining to make the presentation of their case. The Senate will now hear you. The Presiding Officer recognizes Mr. Manager BUYER.

Mr. Manager BUYER. I thank you, Mr. Chief Justice. I thank the Senators, the counsel for the President.

I am STEVE BUYER, the House manager from the Fifth District of Indiana. I thank all of you for your attention the past several days. It has not been easy for the House managers to argue from a dry record. I ask for your patience. The House managers are prepared to call witnesses and offer to develop the evidence as the trial proceeds.

This morning, the managers on the part of the House are going to present why the offenses you have been hearing over the course of the last several days require the President's removal from office. I will discuss why the offenses attack the judicial system which is a core function of the Government, and how perjury and obstruction of justice are not private acts. These are public crimes and therefore quintessential impeachable offenses, for the President's premeditated assault on the administration of justice must be interpreted as a threat to our system of Government.

I will be followed by Mr. Manager GRAHAM of South Carolina who will discuss the precedents in impeachment cases, and then he will be followed by Mr. Manager CANADY. He will discuss how the felonies constitute high crimes and misdemeanors as envisioned by the Founding Fathers and why they warrant his removal from office.

While this is day 3 of our presentation, it is important for the Senate to be fully informed as to the facts, the law and the consequences. Please indulge me for a quick reiteration of the facts.

On May 27, 1997, nine Justices of the Supreme Court of the United States unanimously ruled that Ms. Jones could pursue her Federal civil rights actions against William Jefferson Clinton. On December 11, 1997, U.S. District

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

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Court Judge Susan Webber Wright ordered President Clinton to provide Ms. Jones with answers to certain routine questions relevant to the lawsuit.

Acting under the authority of these court orders, Ms. Jones exercised her rights, rights every litigant has under our system of justice. She sought answers from President Clinton to help prove her case against him, just as President Clinton sought and received answers from her. President Clinton used numerous means, then, to prevent her from getting fruitful answers.

On December 17, 1997, President Clinton encouraged a witness to file a false affidavit in the case and to testify falsely if she were called to testify in this case. Why? Because her truthful testimony would have helped Ms. Jones and hurt his case.

On December 23, 1997, he provided under oath false written answers to Ms. Jones' questions. On December 18, 1997, President Clinton began an effort to get the witnesses to conceal evidence that would have helped Ms. Jones. Throughout this period, he intensified efforts to provide the witness with help in getting a job to ensure that she carried out his designs.

On January 17, 1998, President Clinton provided under oath numerous false answers to Ms. Jones' questions during that deposition in the civil case. In the days immediately following the deposition, President Clinton provided a false and misleading account to another witness, his secretary, Betty Currie, in hopes that she would substantiate the false testimony he gave in the deposition.

All of these unlawful actions denied Ms. Jones her rights as a litigant, subverted the fundamental truth-seeking function of the U.S. District Court for the Eastern District of Arkansas, and violated President Clinton's constitutional oath to ''preserve, protect, and defend the Constitution of the United States.'' And, further, it violated his constitutional duty to ''take care that the laws be faithfully executed.''

Beginning shortly after his deposition, President Clinton became aware that the Federal grand jury impaneled by the U.S. District Court for the District of Columbia was investigating his unlawful actions before and during his civil deposition was the scope of inquiry. President Clinton made numerous false statements to potential grand jury witnesses in hopes that they would repeat these statements to the grand jury.

On August 17, 1998, President Clinton appeared before the grand jury by video under oath and he provided numerous false answers to questions asked. These actions impeded the grand jury's investigation, it subverted the fundamental truth-seeking function of the U.S. District Court for the District of Columbia, and they also violated President Clinton's constitutional oath to ''preserve, protect, and defend the Constitution of the United States'' and his constitutional duty as the Chief Executive Officer to ''take care that the laws be faithfully executed.''

Now, you will hear next week, perhaps from the President's lawyers, that the offenses charged by the House are not impeachable; in other words, that even if the allegations as set forth in the articles of impeachment are true, so what? See, the House managers have begun to refer to this as the ''so what'' defense. I am not offended by the ''so what'' defense, because if that is all you have, then try it. You see, there are only a few basic ways that you can actually defend a case. You can defend a case on the facts, you can defend a case on the law, you can defend a case on the facts and the law.

Now, here we hear in this case—we hear very often—that the facts are indefensible. And you also hear that if you are not going to call witnesses on the facts, then I guess you better argue on the law. So, then, what is the argument on the law? What you do, then, in the defending of a case, is you argue procedure, you attack the prosecutor, you attempt to confuse those who sit in judgment on the laws so you don't follow your precedent. You go out and obtain, from your political allies and friends in the academic world, signatures on a letter saying that the offenses as alleged in the articles of impeachment do not rise to the level of an impeachable offense. You see, this ''rise to the level'' has somehow become the legal cliche of this case. You have all so often heard it and you have even—some have even spoken it.

You see, the House managers chose not to go out into the academic world and obtain signatures on our own letter that would have said why the offenses are impeachable. And then we would have had this war of dueling academics. They have a letter of 400 signatures. We get a letter of 400 signatures. They add 500 to it; now they have 900. We go out and get 1,000. We chose not to do that. Do you know why? Because the House managers have the precedents of the Senate on our side. We have the precedents of the Senate. Mr. Manager GRAHAM will discuss those precedents.

Now, if I am prosecuting a defendant of perjury and obstruction of justice in White County Superior Court before Judge Bob Mrzlack in Monticello, IN, and I have this perjury and obstruction of justice case on a Thursday, and I know that the judge has three other cases—he has got a case on Monday, he has got a case on Tuesday, and he has got a case on Wednesday —so I am watching what the judge is going to do because I am curious with regard to the precedent.

So, on Monday of that week Judge Mrzlack tries a case of a public official for perjury and I watch what he does. He convicts him for perjury. On Tuesday he tries a public official for obstruction of justice and he convicts him. On Wednesday, Judge Mrzlack tries a public official for grand jury perjury and he convicts him. My case now comes up on Thursday, for a public official for obstruction of justice and grand jury perjury and perjury on top of perjury. I would say that, based on the precedents, it is not looking good for the defendant that I am about to prosecute.

The White House lawyers are hoping that those of you who have voted—those of you in this Chamber who have voted to remove Federal judges for similar offenses in the past—that you have a feigned memory. And if you don't have a feigned memory, then we will try to confuse you—they will attempt to confuse you on the law.

So, when I hear the ''so what,'' well, it is the position of the House that what the President did does matter; that by his actions, the President did commit high crimes and misdemeanors. The House is prepared to establish that the President, William Jefferson Clinton, willfully and repeatedly violated the rule of law and abused the trust placed upon him by the American people.

Now, let me address how the offenses charged in the articles of impeachment attack the judicial system. The offenses as charged in the articles of impeachment against our system of government are the core of the concept of high crimes and misdemeanors. You see, perjury and obstruction of justice are, therefore, quintessential impeachable offenses. Indeed, it is precisely their public nature that makes them offenses. Acts that are not crimes when committed outside the judicial realm become crimes when they enter the judicial realm. Lying to one's spouse about an extramarital affair is not a crime; it is a private matter. But telling that same lie under oath before a Federal judge, as a defendant in a civil rights sexual harassment lawsuit, is a crime against the state and is therefore a public matter.

Hiding gifts given to conceal the affair is not a crime; it is a private matter. But when those gifts are the subject of a court-ordered subpoena in a sexual harassment lawsuit, the act of hiding the gifts becomes a crime against the state called obstruction of justice and is, therefore, a public matter. Our law has consistently recognized that perjury subverts the judicial process. It strikes at our Nation's most fundamental value, the rule of law.

In ''Commentaries on the Laws of England,'' Sir William Blackstone differentiated between crimes that ''more directly infringe the rights of a public or commonwealth taken in its collective capacity, and those which, in a more peculiar manner, injure individuals or private subjects.'' This book was widely recognized by the Founding Fathers, such as James Madison. He described Blackstone's work at the time as ''a book which is in every man's hand.'' Blackstone's private category contained crimes such as murder, burglary, and arson. In the public category, however, he cataloged crimes that could be understood as an assault

upon the state. Within a subcategory denominated ''offenses against public justice,'' Blackstone included the crimes of perjury and bribery. In fact, in his catalog of public justice offenses, Blackstone placed perjury and bribery side by side.

Now, in the Constitution, article II, section 4, when you read the impeachment clause, ''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''—so, what did they mean when they thought ''other high crimes''? I would submit to you that perjury, obstruction of justice, fit in this category of ''other high crimes.'' Perjury and bribery are side by side.

You know, hypothetically—hypothetically, if, when William Jefferson Clinton sat at the table in the civil deposition in the Jones v. Clinton case, and as alleged in the record that he perjured himself, speaking hypothetically, if he had then offered Judge Susan Webber Wright a cash bribe, there would be no question in this body what we must—what you must do. But what I am saying unto all of you is that there is no difference here, and that is the pain of this case. There is no difference between a cash bribe or sitting before a Federal judge and perjuring one's self. Whether it be in the underlying civil deposition or, in fact, in the grand jury perjury. Perjury and bribery are side by side. Mr. Manager CANADY will develop that further.

The Constitution also recognizes that truth-telling under oath is central to the maintenance of our Republic.

We are all familiar with the Constitution. This is in its handwritten glory. The founders took such pride in the oath that it is mentioned in the Constitution on five separate occasions, not the least of which is the President's own oath to defend the Constitution. Article I, section 3, sets forth the requirement that the Senate be under oath when trying cases of impeachment, and I witnessed as that occurred. Article II, section 1, specifically prescribes the oath which must be taken before our President enter on the execution of his office.

The right against self-incrimination under the Constitution derives in some measure from the Republic's interest in preserving the truth-telling oath. You see, forced testimony is forbidden because it might lead many to violate their most solemn obligations and, over time, weaken the essential civic norm of the fidelity to that oath—fidelity.

The framers took significance of the oath very, very seriously. The crime of perjury was among the few offenses that the first Congress outlawed by statute as they met, and that affirms the framers' view of the seriousness. In 1790, in a statute entitled ''An Act for the Punishment of Certain Crimes Against the United States,'' Congress made the crime of perjury punishable by imprisonment of up to 3 years, a fine of up to $800, disqualification from giving future testimony and ''stand[ing] in the pillory for one hour.'' Now, today, we don't force individuals convicted of perjury to stand in the pillory for up to 1 hour.

Today, perjury is punishable by up to 5 years imprisonment in a Federal penitentiary if you perjure yourself in a Federal jurisdiction. Likewise, the Supreme Court has repeatedly noted the extent to which perjury subverts the judicial process and, thus, the rule of law. For example, in 1976, in a case of United States v. Mandujano, the Supreme Court emphasized:

> Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against this type of egregious offense are, therefore, imperative. Hence, Congress has made the giving of false answers a criminal act punishable by severe penalties. In no other way can criminal conduct be flushed into the open where law can deal with it.

Moreover, it is obvious that any testimony given to a grand jury must be truthful, for the grand jury process is, in fact, the truth-seeking process of our criminal justice system. As the Supreme Court stated in 1911 in the case of Glickstein v. the United States:

> It cannot be conceived that there is power to compel the giving of testimony where no right exists to require that the testimony shall be given under such circumstances and safeguards as to compel it to be truthful.

Indeed, giving false material testimony to a grand jury, perjuring one's self, totally destroys the value of one's testimony and interferes with the ability of a grand jury to accomplish its mission which, again, is to find the truth. Perjury before a grand jury is a crime against our system of Government and the American people, and in the case before us, this is a case of perjury upon perjury.

Before the grand jury, President Clinton testified that the testimony that he gave in the underlying civil case of Jones versus Clinton in a civil deposition, that it was truthful. We submit that that is a lie. So what we have is perjury on perjury.

You may hear the President's lawyers remark that the view of the founders is quaint, not really applicable to these settings today. Let's look at a few very recent examples to see if the view of the seriousness of telling the truth under oath, as envisioned by the Founding Fathers, has changed any here today.

In the case of the United States v. Landi in the Eastern District of Virginia in 1997, the defendant was convicted on two counts of perjury: one for lying in a declaration she made during a civil forfeiture case, and the other for lying to the grand jury in a related criminal investigation. Here is what the judge said in this case:

> . . .the defendant committed perjury on two separate occasions. There can be no question of it being done by mistake, and perjury is perhaps one of the most serious offenses that can be committed against the court itself. And the court does not believe that it's appropriate to consider probation in the case of somebody who's been convicted of perjury.

In a second case, United States v. Vincent Bono in the District of New Hampshire in 1998, the defendant was found guilty of lying before a grand jury in trying to cover his stepson's involvement in a robbery that the grand jury was investigating. Here is what the judge had to say about lying before a grand jury:

> As a [matter of policy], they—
>
> Meaning Congress—
>
> they don't want people lying to grand juries. They particularly don't want people lying to grand juries about criminal offenses. They particularly don't want people lying to grand juries about criminal offenses that are being investigated. They don't like that. And Congress has said we as a people are going to tell you if you do that, you're going to jail and you're going to jail for a long time. And if you don't get the message, we'll send you to jail again. Maybe others will. But we're not going to have people coming to grand juries and telling lies because of their children or their mothers or fathers or themselves. It's just not acceptable. The system can't work that way.

In another case in United States v. Ronald Blackley in the District of Columbia in 1998, the defendant was the former chief of staff to the Secretary of the U.S. Department of Agriculture. The defendant was found guilty at trial on three counts of making false statements to the grand jury in connection with his official duties. Here is what the judge had to say in this case:

> In my view, providing a false statement under oath is a serious offense. The fact that the proceeding is civil or administrative does not make the crime less serious. We cannot fairly administer any kind of system of justice in this country if we do not penalize those who lie under oath.
>
> The defendant stands before me as a high-ranking Government official convicted of making false statements under oath. This is such a serious crime that it demands an even longer term of imprisonment in this court's view. This court has a duty to send a message to other high-level Government officials that there is a severe penalty to be paid for providing false information under oath. There is a strong reason to deter such conduct and to dispel all of the nonsense that's being publicly discussed and debated about the seriousness of lying under oath by Government officials. A democracy like ours depends on people having trust in our Government and its officials.

See, there are many other cases, and you can go to your Lexis and Westlaw and you can research them. These three cases make it very clear that lying under oath is as serious today in the 106th Congress as it was in 1790 in the first Congress when it enacted the perjury statute. The first Congress recognized the seriousness of perjury and its attack on the judicial system.

Now, I would like to discuss article II, which is the obstruction of justice, and how it is an attack on our judicial system. In either a criminal or a civil case, obstruction undermines the judicial system's ability to vindicate legal

rights. If it is allowed to go unchecked, then the system will become a farce and ultimately a test of which side is better at using underhanded methods. Accordingly, Federal courts have called the Federal obstruction of justice statute ''one of the most important laws ever adopted'' in that it prevents the ''miscarriage of justice.''

This is ''Black's Law Dictionary.'' ''Black's Law Dictionary'' defines ''obstruction of justice'' as ''[i]mpeding or obstructing those who seek justice in a court, or those who have duties or powers of administering justice therein.'' It is very clear. Not only is obstruction of justice, on its own, a crime in the Federal Code, but, in addition, the Federal Sentencing Guidelines—the Federal Sentencing Guidelines—increase the sentence of a convicted defendant who has ''willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice during the investigation, prosecution, or sentencing'' of his offense. The commentary on the Guidelines specifically lists as examples of obstruction actions the House alleges that President Clinton has committed, including ''committing, suborning, or attempting to suborn perjury'' and ''destroying or concealing or directing or procuring another person to destroy or conceal evidence that is material to an official investigation or judicial proceeding. . . .''

Yesterday, you learned from Mr. Manager MCCOLLUM of Florida, when he discussed, that perjury and obstruction of justice is punished more severely in the Federal Sentencing Guidelines than bribery. As I stated earlier, Blackstone put bribery and perjury side by side.

At a hearing on the background and history of impeachment as part of the House impeachment inquiry, we were privileged to have the testimony of Judge Griffin Bell, an individual who has highly distinguished himself in public service. Judge Bell was appointed to the Federal bench by President John Kennedy, and he served as the U.S. Attorney General under President Carter. Judge Bell said that, ''I have thought about this a great deal. This is a serious matter. Trifling with the Federal courts is serious. And I guess I am biased because I used to be a Federal judge. But I cannot imagine that it wouldn't be a serious crime to lie in a Federal grand jury or to lie before a Federal judge, and that is where I come down.''

Judge Bell went on to say, ''And all the civil rights cases that I was in in the South depended on the integrity of the Federal court and the Federal court orders and people telling the truth and fairness. Truth and fairness are the two essential elements in a justice system, and all of these statutes I mentioned, perjury, tampering with a witness, obstruction of justice, all deal in the interests 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. We don't have a system.''

As you can see, according to Judge Bell, ''truth and fairness'' are the two cornerstones of our judicial system. President Clinton violated both of these bedrock principles.

Finally, Judge Bell spoke to the issue, if a President ever was convicted of a felony. Judge Bell stated: ''If the President were indicted and convicted of a felony, such as perjury or obstruction of justice or witness tampering, before impeachment proceedings began, would anyone argue that he should continue to be President? I don't think so. If the President were subsequently indicted and convicted of a felony, which [Judge Bell believes] the Constitution clearly allows, [he went on to say] would anyone argue that he should continue to be President? I don't think so.'' He stated this: He said, ''A President cannot faithfully execute the laws if he himself is breaking them.''

Judge Bell hit it right on the head. Judge Bell said: ''A President cannot faithfully execute the laws if he himself is breaking them. The statutes against perjury, obstruction of justice and witness tampering rest on vouchsafing the element of truth in judicial proceedings—civil and criminal—and particularly in the grand jury. Allegations of this kind are grave indeed.''

To borrow the words of constitutional scholar Charles J. Cooper, ''The crimes of perjury and obstruction of justice, like the crimes of treason and bribery, are quintessentially offenses against our system of government, visiting injury immediately on society itself, whether or not committed in connection with the exercise of official government powers.'' I believe all of you should have these charts at your table. ''In a society governed by the rule of law, perjury and obstruction of justice simply cannot be tolerated because these crimes subvert the very judicial processes on which the rule of law so vitally depends.''

It is no exaggeration to say that our Constitution and the American people entrust to the President singular responsibility for the enforcing of the rule of law. Perjury and obstruction of justice strike at the heart of the rule of law. A President who has committed these crimes has plainly and directly violated the most important executive duty. The core of the President's constitutional responsibilities is his duty to ''take Care that the Laws be faithfully executed.'' And because perjury and obstruction of justice strike at the rule of law itself, it is difficult to imagine crimes that more clearly or directly violate this core Presidential constitutional duty.

When President Clinton had the opportunity to personally uphold the rule of law, to uphold the truth-seeking function of the courts, to uphold the fairness in a judicial proceeding, he failed. Far from taking care that the laws be faithfully executed, if a President is guilty of perjury and obstruction of justice, he has himself faithlessly subverted the very law that the rest of us are called upon to obey.

You may hear arguments that perjury and obstruction don't really have much consequence in this case because it was a private matter and, therefore, not really a serious offense. I would like to arm you with the facts. The courts do not trivialize perjury and obstruction of justice.

According to the U.S. Sentencing Commission, in 1997, 182 Americans were sentenced in Federal court for committing perjury. Also in 1997, 144 Americans were sentenced in Federal court for obstruction and witness tampering.

States in State jurisdictions all across the country, they take the matter very seriously. I have chosen one State, the State of California, which brought 4,318 perjury prosecutions in 1997. There are now at least 115 persons serving sentences for perjury in Federal prisons. Where is the fairness to these Americans if they stay in jail and the President stays in the Oval Office?

If the allegations in the independent counsel's referral were made against a sitting Federal judge, would not the Senate convict? If William Jefferson Clinton were a sitting judge instead of the President, would not the Senate convict? While my colleague, Mr. Manager GRAHAM, will look into this further, let's look briefly at precedent for the moment. When we bring up the issues regarding the impeachment of former Federal judges Mr. Claiborne and Mr. Nixon, one standard was used: high crimes and misdemeanors. The Senate said the one standard that applies to the President and Vice President will also apply to these Federal judges and other civil officers.

You see, in the defense of Judges Claiborne and Nixon, the defense lawyers at the time in the trial here in the Senate argued that Federal judges should be treated differently from the President, that they could not be impeached for private misbehavior because it was extrajudicial. The Senate rejected that proposition as incompatible with common sense and the orderly conduct of government. You rejected that argument, the very same argument that we are about to hear, perhaps, from the White House defense team. And I believe this Senate will uphold your precedent, the precedent that Federal judges and the President should be treated by the same standard—impeachment for high crimes and misdemeanors.

Also, do not be tempted to believe the argument that lying under oath about sex doesn't matter, that it is private. I covered that earlier, but I want to bring it to your attention as some of the House managers did yesterday regarding American law. It makes rape a crime, domestic violence a crime, sexual harassment a civil rights violation, libel, a compensable offense. Without

the protections of perjury and obstruction, none of the rights of the victims of such cases could be vindicated. That is why the courts take these matters so seriously.

If the President's lawyers try to tell you that this case is simply about an illicit affair, I believe that it demeans our civil rights laws. If, indeed, the President is successful in trying to make everyone believe that this case is only about an illicit affair, what will the message be from those in this hollowed body who have in the past been passionate advocates of our civil rights laws, whether it be by race, gender, religion, or disability? If the evidence-gathering process is unimportant in Federal civil rights sexual harassment lawsuits—remember, that was the underlying basis of this case—what message does that send to women in America?

There are some important questions we need to ask. Are sexual harassment lawsuits, which were designed to vindicate legitimate and serious civil rights grievances of women across America, now somewhat less important than other civil rights? Which of our civil rights laws will fall next? Will we soon decide that the evidence-gathering process is unimportant with respect to vindicating the rights of the disabled under the Americans with Disabilities Act? Will the evidence-gathering process become unimportant with respect to vindicating the voting rights of those discriminated against based on race or national origin? Who will tell the hundreds of Federal judges across the Nation that the evidence-gathering process in these cases is now unimportant?

Consider postal worker Diane Parker who was convicted of perjury and sentenced to 13 months in prison for making a false material declaration during the discovery deposition in a sexual harassment lawsuit. Judge Lacey Collier said: ''One of the most troubling things in our society today is people who raise their hands, take the oath to tell the truth, and then fail to do that. . . . This, I hope, is sufficient punishment for you,'' the judge stated. The judge went on to say, ''But more importantly, I hope that it is a deterrence to others. So your story can be taken far and wide to demonstrate to others the seriousness of the responsibility of telling the truth in court proceedings.''

The Senate must now determine whether it is acceptable or whether it is appropriate to set a precedent to have an individual serve as President of the United States when that individual has committed, is alleged to have committed, serious offenses against our system of government while holding that office.

While we have been discussing how perjury and obstruction of justice are attacks on our judicial system, we must recognize how the judicial system is a core function of the government. When Mr. Manager HENRY HYDE speaks of the rule of law protecting us from the knock on the door at 3 a.m., what, exactly, was he referring to? Well, in totalitarian societies, rulers may drag the ruled off to prison at any time for any reason. Our system differs because we require our leaders to go through a judicial procedure before they put someone in prison or otherwise violate their individual rights. The President's offenses assault the administration of this judicial procedure. As such, they constitute an assault on the core function of the government and repudiate our most basic social contract. A core function of the government derives its role from the social contract that our civilized society has under which the fundamental exchange of rights takes place between those of us as individuals and unto the government.

We give up our individual rights to exercise brute force to settle our personal disputes. That is a situation where chaos reigns and the strongest most often prevails. Instead, we submit to the power delegated to the State under which the individual then submits to the governmental processes as part of the social contract. Indeed, when conflict arises in our society, we as individuals are compelled via the social contract to take disputes to our third branch of government—the courts. The judicial branch then peacefully decides which party is entitled to judgment in their favor after a full presentation of the truthful evidence.

Now, implicit in the social contract that we enter as a civilized society is the principle that the weak are equally entitled as the strong to equal justice under the law. Despite the tumbling tides of politics, ours is a government of laws, not of men. It was the inspired vision of our Founding Fathers that the judicial, legislative, and executive branch of government would work together to preserve the rule of law. The U.S. Constitution requires the judicial branch to apply the law equally and fairly to both the weak and the strong.

Once we as a society—and particularly our leaders—no longer submit to the social contract and no longer pay deference to the third branch of government, which is equally as important as the legislative and executive branches of government, we then begin to erode the rule of law and begin to erode the social contract of the great American experiment.

That, I believe, is why Judge Bell stated, ''A President cannot faithfully execute the laws if he himself is breaking them.''

The administration of justice is a core function of the Government precisely because of the importance we place on the fair resolution of disputes and on whom and for how long a person will be denied liberty for violating our criminal laws. Any assault on the administration of justice must be interpreted as a threat to our system of Government. Our President, who is our chief executive and chief law enforcement officer, and who alone is delegated the task under our Constitution to ''take care that the laws be faithfully executed,'' cannot and must not be permitted to engage in such an assault on the administration of justice.

The articles of impeachment adopted by the House of Representatives establish an abuse of public trust and a betrayal of the social contract in that the President is alleged to have repeatedly placed his personal interests above the public interest and violated his constitutional duties. For if he is allowed to escape conviction by the Senate, we would allow the President to set the example for lawlessness. We would allow our President to serve as an example of the erosion of the concept of the social contract embraced and embodied in our Constitution. I don't believe the Senate will allow that to happen.

As you undertake your examination of the facts, the law, and your precedents, the Senate must weigh carefully its judgment, for the consequences are deeply profound, not for the moment but for the ages. Should the Senate choose to acquit, it must be prepared to accept a lower standard, a bad precedent, and a double standard. However, should the Senate choose to convict, it would be reinforcing high standards for high office, maintaining existing precedents, and upholding the principle of equal justice under the law.

I think it is important to pause here and reflect upon the constitutional duties of the President of the United States. I agree with the defense argument that this has not been alleged as a dereliction of the President's exercise of executive powers. So let me talk about his executive duties.

The President is reposed with a special trust by the American people. The President is a physical embodiment of America and the hope and freedom for which she stands. When the President goes abroad, he is honored as the head of a sovereign nation; our Nation is acknowledged, not just the individual who occupies the Office of the Presidency. When he walks into a room and receives a standing ovation, the ovation is not that of the individual, it is for the Nation for whom he represents.

The President has a constitutional role as Commander in Chief. The President plays a unique and indispensable role in the chain of command. In Federalist 74, Alexander Hamilton stated that, ''Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities, which distinguish the exercise of power by a single hand.''

It is universally agreed that the President, in his role as Commander in Chief, is not an actual member of the military. However, as the ''single hand'' that guides the actions of the armed services, it is incumbent that the President exhibit sound, responsible leadership and set a proper example when acting as Commander in Chief.

That leadership is also at the core of the issue before us. In order to be an effective leader, an effective military leader, the President must exhibit the traits that inspire those who must risk their lives at his command. These traits include honor, integrity and accountability.

Admiral Thomas Moorer, a former Chairman of the Joint Chiefs of Staff, submitted testimony to the House impeachment inquiry. Admiral Moorer stated it this way:

> Military leaders also serve as role models for honorable and virtuous conduct.

You see, veracity and truthfulness are important components of a leader's character. In order to have the trust of their subordinates, military leaders must have honor and be truthful in all things. That trust, that bond between the leaders and the led, is an essential element of any successful military organization.

The President's own self-inflicted wounds have called his credibility into question. While a President's decisions are always critiqued, a President receives the benefit of the doubt in the decisionmaking process that he always places the interests of the Nation above his own. But by William Jefferson Clinton's present diminished veracity, he has now forfeited that benefit and has invited doubt into the decisionmaking process.

The lack of trust in the President's motives, his veracity and his judgment is inherently corrosive and can only have a detrimental effect on our military credibility overseas. This corrosion is difficult to measure, for it cannot be quantified easily in a readiness report or training exercise. But in squadbays and wardrooms around the world, and at bases in the United States, there can be heard whispers and conversations of those who know that had they merely been accused of the same offense, their careers would have ended long ago.

This is the intangible effect that the President's actions have had on our military. We cannot ignore the fact that the Commander in Chief's conduct sets a poor example to the men and women in the military. Worse, we cannot ignore the idea that to acquit the President would create a double standard.

The Constitution directs this body to provide advice and consent to the President's nominations for military officers. It is your singular responsibility to set high standards of conduct for these officers, and you have done that. The Senate has in the past—and you will likely again do so in the future—rejected those whose moral and legal misconduct makes them unsuitable to be officers in the military.

Let me indulge in a hypothetical. An officer is nominated by the President for promotion to the rank of major. After the list is submitted, but before the Senate's confirmation, an investigation of the individual's background results in a report that mirrors the allegations in the Office of Independent Counsel's referral. After a very careful review of the Uniform Code of Military Justice, this captain, after having committed similar offenses as are in the Office of Independent Counsel's referral, could be charged with article 105, false swearing, and face up to 3 years; he could be charged in article 107, false official statement, facing up to 5 years; he could be charged with article 131, perjury—probably several times—and face up to 5 years; he could be charged with article 133, conduct unbecoming an officer; he could be charged with article 134, prevent seizure of property, and face up to 1 year imprisonment; he could be charged with article 134, soliciting another to commit an offense, with a penalty of up to 5 years; he could be charged with article 134, subornation of perjury, and face confinement up to 5 years; he could be charged with article 134 again, obstructing justice, and face 5 years. I could probably come up with about four others, but I won't get into the salacious details.

You see, needless to say, the Senate would insist on this hypothetical officer's removal from the promotion list. You would do that. The Service would certainly relieve him of his duties.

In every warship, every squadbay, and every headquarters building throughout the U.S. military, those of you who have traveled to military bases have seen the picture of the Commander in Chief that hangs in the apex of the pyramid that is the military chain of command.

You should also know that all over the world military personnel look at the current picture and know that, if accused of the same offenses as their Commander in Chief, they would no longer be deserving of the privilege of serving in the military.

Some would say that what I just talked about doesn't matter—that in the military they live under different standards—they live under these high standards. They say words like ''duty,'' ''honor,'' ''country.'' They are instilled with core values and core virtues—that really doesn't matter in this case—that the President really doesn't have to follow those types of high standards—that it elevates some form of high standards, if he stands accused of high crimes—it really is not high crimes; it was about a private matter—that they don't rise to the level needed to remove the President from office.

I would like to remind you of Gen. Douglas MacArthur. In his farewell address at West Point, Gen. Douglas MacArthur stated, when he referenced the words I spoke of, ''duty'' and ''honor'' and ''country,'' and the high principles:

> The unbelievers will say they are but words, but a slogan, but a flamboyant phrase. Every pedant, every demagogue, every cynic, every hypocrite, every troublemaker, and I am sorry to say, some others of an entirely different character, will try to downgrade them to the extent of mockery and ridicule.

The ideal object must be held high even though we recognize that as humans we are not perfect. No matter how great we aspire, we are human and we will occasionally fail. But there must be the pursuit of such high ideals. We cannot degrade our standards as a people. By a conviction in the Senate of the President of the United States you will be upholding a high and lofty standard, not only for America, but in particular for those military leaders, rather than setting low standards for the President and a high lofty standard for military leaders.

Let me turn to the President's responsibility to see that ''the laws are faithfully executed.'' According to scholar Philip B. Kurland, it was probably George Washington rather than the Constitution that is responsible for our hierarchy of Cabinet officers that have been taken for granted over the years. And we have heard of the Presidents as the chief law enforcement officers of the land, and we can find it in the Constitution. So we have to give credit to George Washington and how he put together the Cabinet. And we have accepted it over time. So it has been accepted by custom, practice, and legislation that the executive branch is an entity for which the President is responsible both to Congress and to the public.

Mr. Kurland stated:

> The whole of the executive branch acts subordinately to the command of the President in the administration of Federal laws, so long as they act within the terms of those laws. Their offices confer no right to violate the laws, whether they take the form of constitution, statute, or treaty.

The President's Departments of Treasury and Justice seek to bring to account those who disturb our ''domestic tranquility.'' And those who seek to disturb our ''domestic tranquility,'' whether it be the drugpushers, or unabombers, gangsters, mobsters, church arsonists, violators of individual rights, dedicated men and women of the FBI, DEA, Customs, Secret Service, BATF, INS, the U.S. Marshals Office; they all pursue them methodically, thoughtfully, firmly, doggedly, applying the law while risking their lives to uphold the rule of law for our peace and security. They seek to ensure equal justice under the law for everyone.

In the book, ''The Imperial Presidency,'' Professor Arthur Schlesinger, Jr. states:

> The continuation of a lawbreaker as chief magistrate would be a strange way to exemplify law and order at home or to demonstrate American probity before the world.

By a conviction, the Senate will be upholding the high calling of law enforcement in protecting the rule of law and equal justice under the law.

''Equal justice under law''—that principle so embodies the American constitutional order that we have carved it in stone on the front of the Supreme Court building right across the street. The carving across the street shines like a beacon from the highest sanctum across to us here in

the Capitol, the home of the legislative branch, and it shines right down Pennsylvania Avenue to the White House, the home of the executive branch. It illuminates our national life and reminds those other branches that despite the tumbling tides of politics, ours is a government of laws and not of men. It was the inspired vision of our founders and framers, again, that the judicial, legislative, and executive branches would work together to preserve the rule of law.

But ''equal justice under law'' accounts for much more than a stone carving. Although we can't see it or hear it, this living, breathing force has very real consequences in the lives of every citizen every day in America. It allows Americans to claim the assistance of the government when someone has wronged us—even if the person is stronger or wealthier or more popular than we are. In America, unlike other countries, when an average citizen sues the Chief Executive of our Nation, they stand equal before the bar of justice. The Constitution requires the judicial branch of our government to apply the law equally to both. That is the living consequence of ''equal justice under law'' that shines brightly across our country.

The President of the United States must work with the judicial and the legislative branches to sustain that force. He is the temporary trustee of that office. But, unfortunately and sadly, William Jefferson Clinton worked to defeat it and to bring darkness upon that grand illumination. When he stood before the bar of justice, he acted without authority to award himself. Even if he believed in his heart that the case against him was politically motivated, he simply assumed unto himself that he had by virtue of his power special privileges that he could be clever, create his own definitions of words in his own mind—create what C.S. Lewis called ''verbicide.'' He murdered the plain spoken English slang so he could come up with these definitions in his own mind, state them, and then say, ''Well, I never committed perjury because this is what I meant by this word,'' even though it fails the reasonableness test, and it is absurd that no one would believe his own definitions. He assumed these special privileges, and then lied and obstructed justice to gain advantage in a Federal civil rights action in the U.S. District Court for the Eastern District of Arkansas. And he did so then again when a Federal grand jury began to investigate that lawlessness. And he did it before the grand jury in the U.S. District Court for the District of Columbia. His resistance brings us to this most unfortunate juncture for which you sit in judgment.

So ''equal justice under law'' lies at the heart of this matter. It rests on three essential pillars: an impartial judiciary, an ethical bar, and a sacred oath. If litigants profane the sanctity of the oath, ''equal justice under law'' loses its protective force.

The House, as does the Senate, has the responsibility to uphold the Constitution. We have all taken our oaths to defend the Constitution. The Founding Fathers created a system of checks and balances, a system of accountability between the functions of Government. See, I believe, as I am sure you do, that the Founding Fathers knew the nature of the human heart. Sometimes, as much as we try, we fail, in that the human heart does in fact struggle at times between good and evil. We recognize that no person has perfect virtue and that we each have our human failings. And the founders could foresee a time when corruption could invade the institutions of Government, and they provided the means to address it. The impeachment proceeding is one such means. We are seeking to defend the rule of law.

America, again, is a Government of laws, not of men. What protects us from that knock on the door in the middle of the night is the law. What ensures the rights of the weak and the powerless against the powerful is the law. What provides the rights to the poor against the rich is the law. What upholds the rightness of the minority view against the popular but wrong is the law. As former President Andrew Jackson wrote, ''The great can protect themselves, but the poor and the humble require the arm and shield of the law.''

When our Nation began its journey in history over 200 years ago, the United States was nearly unique in depending on the rule of law as opposed to, at that time, the rule of kings and czars and chieftains and monarchs. Now that our unique, grand American experiment has proved unto the rest of the world a success, others now seek to follow us. They seek to follow. And we have seen in the crumbling of the Soviet Union that the former Soviet nations, now infant republics, look and turn to us. They turn to us, a Government ruled by law.

For the sake of ourselves and the sake of generations yet unborn, we, and in particular you who sit in judgment in the Senate, must preserve the rule of law.

I will leave you with the words of the first President of the Senate and the second President of our Nation, John Adams. He said:

> Facts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence.

I believe John Adams was right. Facts and evidence. Facts are stubborn things. You can color the facts. You can shade the facts. You can misrepresent the facts. You can hide the facts. But the truthful facts are stubborn; they won't go away. Like the telltale heart, they keep pounding, and they keep coming, and they won't go away. What is also stubborn is the precedents of the Senate.

I will now yield the floor for Manager GRAHAM of South Carolina to discuss the precedents of the Senate.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GRAHAM.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. I sense the need for a 10-minute break, but, my colleagues, please tend to your business and return promptly so that we can get started with the proper decorum.

There being no objection, at 11:15 a.m., the Senate recessed until 11:29 a.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to begin with Manager GRAHAM. I have been asked about any changes in the schedule. It would depend on how things move forward. I would ask for consent to change it, depending on how things developed from this point, Mr. Chief Justice.

I yield the floor.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GRAHAM

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. I think I broke the code there. When I hear stomachs growling, I know it will be time to wrap this up.

This is an unbelievable occasion for all of us. I am LINDSEY GRAHAM from South Carolina. We talk about civil rights. I am a child of the South and I will give you my views on civil rights and how we progressed in this country, but I am going to talk to you a bit about some decisions this body has made regarding the crime of perjury and obstruction of justice and the impeachment clause in the Constitution as it applies to Federal judges. I am not so presumptuous to tell you I know more about what you did than you did. I am going to try to highlight some of the things that you did that I think served this country well in this area. But before we get there, a couple of observations.

As I was walking over through the Rotunda today, there was a group of Japanese tourists there, and I stopped and talked. My dad, who is now deceased, was a World War II veteran, and it struck me, 50 years plus, how resilient this world is. My dad's generation I don't think would have ever envisioned 50 years ago that his son, one, would be a Congressman, which is a great thing about this country, would be stopping and talking to Japanese tourists in the Capitol of the United States.

So when we talk about the consequences of this case, no matter what you decide, in my opinion, this country will survive. If you acquit the President, we will survive. If you convict him, it will be traumatic, and if you remove him, it will be traumatic, but we will survive.

This has been billed as a constitutional drama, by some of the pundits, that is called a snoozer. I can understand that a little bit. I am the 12th

lawyer you have had to listen to, and I think my colleagues have done a very good job. But it is a very long and tedious process in many ways. It is hard to sit here and listen to 12 lawyers talk to you. But you have done a wonderful job, I think. I am very proud of the U.S. Senate. You have paid great attention.

But the fact that people call this boring is not a bad thing to me. I think it shows the confidence we have achieved in 200 years as a Republic that people can go on about their business, and they are upset. I know my phone rings a lot, and your phone rings a lot, about what to do. But there is a calmness in this country in the midst of something so important like this that tells me we have done it right for a long time.

How many countries would love the chance to be bored when their government is in action? How many countries fear that the government won't work for them; that to get it right, you have to pick up a gun? That happens every day throughout this world. And the fact that we can come together and talk about something so important and the country can go on and people not be so anxious about their personal lives and their freedoms and their properties and their jobs is a compliment to every generation who has ever served this Republic.

Tom Brokaw has a book out called ''The Greatest Generation,'' and I recommend it to you to read, because we will be talking about that in a moment. But let's talk about some of this country's imperfections. Mr. BUYER talked about, very eloquently, the rule of law and how it makes us so different and how it is something that people literally do die for and have died for.

But let me tell you, as a lawyer, it is not a perfect legal system. If you are a poor person and you are charged with a crime, you are likely to get a public defender right out of law school and, hopefully, that public defender will do the best he can or she can. But it is not a perfect system. Don't ever think it is.

Civil rights have been advanced a lot in my lifetime, but we have a long way to go in South Carolina. I think we have a long way to go in this Nation. In my lifetime, I started school with no black person in my class. By the sixth grade—I think it was the sixth grade—integration hit in my area, and I can remember my mom and dad being scared to death about what it would do and what it would mean. But we made it, and we are better off as a country.

We are here to judge our President. We are here to say whether or not he is guilty, to begin with, of some serious offenses that are colored by sex, and there is absolutely no way to get around that, and I know it is uncomfortable to listen to.

My father and mother owned a restaurant, a beer joint, I guess is what we would say in South Carolina. I can remember that if you were black, you came and you had to buy the beer and you had to go because you couldn't drink it there. That is just the way it was, is what my dad said. I always never quite understood that. My dad and mom were good people, but that is just the way it was. That is not the way it is now, and we are better off for that.

In sexual harassment cases, it is always uncomfortable to listen to. That is just the way it is. It used to be in this country, not long ago, there was really no recourse if you were sexually harassed. We have changed things for the better.

The reason we are here today is not because somebody wanted to look into the personal life of the President for no good reason. We are here today because somebody accused him when he was Governor of picking them out of a crowd, asking her to come to a hotel room, and if you believe her, did something very crude and rude that you wouldn't want to happen to anybody in your family. Now only God knows what happened there. That case has been settled. The parties know and God knows. We will never know.

Let me just say this. I am proud of my country where you, as a low-level employee, can sue the Governor of your State and if that Governor becomes President, you can still sue.

The Supreme Court said 9 to 0—a shutout legally—''Mr. President, you will stand subject to this suit.'' We are going to talk about is this private or public conduct; does this go to the heart of being President, or is this just some private matter he could be prosecuted for after he gets out of office? Is this really a big deal about being President?

I contend, ladies and gentlemen of the Senate, it became a big deal about being President when he raised the defense, ''You can't sue me now because I am the President, I am a busy man, I have a lot going on.'' He used his office, or tried to, to avoid the day in court, but the Supreme Court said, ''No, sir, you will stand subject to suit under some reasonable accommodation.'' And we are here today.

If I had been on the Supreme Court, I don't know if I would have ruled that way. There is not much chance of that happening any time soon, if you are worried about that. I don't think that is going to be in my future. [Laughter.]

I may not have ruled that way, and we in Congress, if we don't like the way all this has come out, we can change that law, we can change that ruling by law. But it is the law of the land, because the Chief Justice and his colleagues said so.

What did our President do? He tried to say, ''You can't sue me because I am President.'' He participated in that lawsuit because he was told to, and I would argue, ladies and gentlemen, that we all assumed he would play fair. Now isn't there a lot of doubt about that?

Ladies and gentlemen of the Senate, what if he had not shown up? What if he refused to answer any court order? What if he had said, ''I am not going to play, that is it; I am not going to listen to you, judicial branch?'' You know the remedy we have to resolve problems like that when Presidential conduct gets out of bounds. Do you know where that remedy lies? It lies with us, the U.S. Congress. When a President gets out of bounds and doesn't do as he or she should do constitutionally—and I would argue that every President and every citizen has a constitutional duty not to cheat another citizen, especially the President—and they get out of bounds, it is up to us to put them back in bounds or declare it illegal.

And how do we do that? How do we regulate Presidential misconduct when it is done in a Presidential fashion? Through the laws and powers of impeachment. That is why we are here today.

It is going to take team work on our part to get this right, because I will argue to you in a moment that the President of the United States, through his conduct, flouted judicial authority and decisionmaking over him. When he chose to lie, when he chose to manipulate the evidence to witnesses against him and get his friends to go lie for him, he, in fact, I think, vetoed that decision.

It's worse than if he had not shown up at all. Is that out of bounds? That is what we are going to be talking about today. And we have some guidance as to what really is in or out of bounds for high Government officials. What is a high crime? How about if an important person hurts somebody of low means? It is not very scholarly, but I think it is the truth. I think that is what they meant by ''high crimes.'' It doesn't have to be a crime. It is just when you start using your office and you are acting in a way that hurts people, you have committed a high crime.

When you decide that a course of conduct meets the high crimes standard under our Constitution for the President, what are we doing to the Presidency? I think we are putting a burden on the Presidency. And you should consider it that way, that if you determine that the conduct and the crimes in this case are high crimes, you need to do so knowing that you are placing a burden on every future occupant of that office and the office itself. So do so cautiously, because one branch of the Government should never put a burden on another branch of the Government that's not fair and they can't bear.

Ladies and gentlemen of the Senate, if you decide, from the conduct of this President, that henceforth any officeholder who occupies the office of President will have this burden to bear—let me tell you what it is: don't lie under oath to a Federal grand jury when many in the country are begging you not to—can the occupant bear that burden?

I voted against article 2 in the House, which was the deposition perjury allegations against the President standing

alone. I think many of us may have thought that he didn't know about the tapes, that he and Ms. Lewinsky thought they had a story that was going to work, and he got caught off guard, and he started telling a bunch of lies that maybe I would have lied about, maybe you would have lied about, because it is personal to have to talk about intimate things; and our human nature is to protect ourselves, our family; that is just human nature.

But, ladies and gentlemen, what he stands charged of in this Senate happened 8 months later, after some Members of this body said, ''Mr. President, square yourself by the law. Mr. President, if you go into that Federal grand jury and you lie again, you're risking your Presidency.'' People in this body said that. Legal commentators said that. Professor Dershowitz and I probably don't agree on a lot. I think he would probably agree with that statement. That would be one thing we would agree on. He said —and he is a very smart, passionate man; and I like passionate people even if I don't agree with them—even he said that if you go to a grand jury and you lie as President, that ought to be a high crime.

So the context in which you are going to decide this case has to understand human failings, because if you don't do that, you are not being fair. And I know you want to be fair.

Human failings exist in all of us. Only when it gets to be so premeditated, so calculated, so much ''my interest over anybody else'' or ''the public be damned,'' should you really, really start getting serious about what to do. That happened in August, in my opinion, ladies and gentlemen. After being begged not to lie to the grand jury and end this matter, he chose to lie.

That is the burden you will be placing on the next President: ''Don't do that. Don't lie under oath when you are a defendant in a lawsuit against an average citizen. Have the courage to apply the law in a fair manner to yourself.''

Mr. BUYER talked about values and courage. Let me say something about President Clinton that I believe. I believe he does embrace civil rights for our citizens. I believe he has been an articulate spokesman for the civil rights for our citizens. I believe that may be one of the hallmarks of his Presidency. And I am not here to tell you that he doesn't. I am here to tell you that when it was his case, when those rights had to be applied to him, he failed miserably.

It is always easy to talk about what other people ought to do. The test of character is the way you judge people you disagree with: Don't cheat in a lawsuit by manipulating the testimony of others. Don't send public officials and friends to tell your lies before a Federal grand jury to avoid your legal responsibilities. Don't put your legal and political interests ahead of the rule of law and common decency.

If you find that these are high crimes, that is the burden you are placing on the next officeholder. If they can't meet that burden, this country has a serious problem. I don't want my country to be the country of great equivocators and compartmentalizers for the next century. And that is what this case is about, equivocation and compartmentalizing.

What I have described to you as the conduct of the President being a high crime I think is just his job description. We are asking no more of him than to be the chief law enforcement officer of the land—follow your job description. A determination that this conduct is a high crime is no burden that cannot be borne in a reasonable fashion by future occupants.

Now, why did I talk about constitutional teamwork? I am a child of the South. The civil rights litigation in matters that came about in the sixties was threefold: There was legislation passed in Congress, there were judicial decisions that were rendered, and the executive branch came in to help out. Remember when Governor Wallace was standing in the door of the University of Alabama? Remember how he was told to get aside?

What went on? It was a constitutional dance of magnificent proportions. You had litigation that was resolved for the individual citizen so they could go in and acquire the rights, full benefits, of a citizen of that State; you had legislation coming out of this body; and you had defiance against the Federal Government from the State level; and you had the President and the executive branch federalizing the National Guard. And Governor Wallace: ''Step aside.''

When it was 9 to nothing that Bill Clinton had to be a participant in the lawsuit and he chose to cheat in every manner you can cheat in a lawsuit, his conduct needs to be regulated, and it needs to be brought to bear under the Constitution. If you put him in jail after his office, that would not solve the constitutional problem he created. The constitutional conduct exhibited by the Executive, when he was told by the judicial branch, ''You've got to participate in a lawsuit,'' was so far afield of what is fair, what is decent, that it became a high crime, and it happened to be against a little person.

The Senate has spoken before about perjury and obstruction of justice and how it applies to high Government officials. And those Government officials were judges.

Before we start this analysis, it is important to know—and some of you know this better than I will ever hope to know, the history of this Senate, the history of this body and how it works and why it works—that when a judge is impeached in the United States of America, the same legal standard—treason, bribery, or other high crimes and misdemeanors—is applied to that judge's conduct as it is to any high official, just like the President. So we are comparing apples to apples.

Now, in Judge Claiborne's trial they seized upon the language, ''Judges shall hold their office during good behavior.'' And the defense was trying to say, unlike the President and other Government officials, high Government officials, the impeachment standard for judges is ''good behavior.'' That is the term. It's a different impeachment standard. You know these cases better than I know these cases. And you said ''Wrong.'' The good behavior standard doesn't apply to why you will be removed. It is just a reference to how long you will have your job.

Our President is two terms. A judge is for life, conditioned on good behavior. What gets you out of office is whether or not you violate the constitutional standard for impeachment, which is treason, bribery, or other high crimes and misdemeanors.

So as I talk to you about these cases and what you as a body did, understand we are using the same legal standard, not because I said so, but because you said so. Judge Claiborne, convicted and removed from office by the Senate, 90–7. For what? Filing a false income tax return under penalties of perjury. One thing they said in that case was, ''I'm a judge and filing false income tax returns has nothing to do with me being a judge and I ought not lose my job unless you can show me or prove that I did something wrong as a judge.'' They were saying cheating on taxes has nothing to do with being a judge.

You know what the Senate said? It has everything to do with being a judge. And the reason you said that is because you didn't buy into this idea that the only way you can lose your job as a high Government official under the Constitution is to engage in some type of public conduct directly related to what you do every day. You took a little broader view, and I am certainly glad you did, because this is not a country of high officials who are technicians. This is a country based on character, this is a country based on having to set a standard that others will follow with that.

This is Manager Fish:

> Judge Claiborne's actions raise fundamental questions about public confidence in, and the public's perception of, the Federal court system. They serve to undermine the confidence of the American people in our judicial system . . . Judge Claiborne is more than a mere embarrassment. He is a disgrace—an affront—to the judicial office and to the judicial branch he was appointed to serve.

That is very strong language. Apparently, you agreed with that concept because 90 of you voted to throw him out. What did he do? He cheated on his taxes by making false statements under oath.

Now we will talk more about public versus private. Senator Mathias, about this idea of public versus private:

> It is my opinion . . . that the impeachment power is not as narrow as Judge Claiborne suggests. There is neither historical nor logical reason to believe that Framers of the Constitution sought to prohibit the House

from impeaching . . . an officer of the United States who had committed treason or bribery or any other high crime or misdemeanor which is a serious offense against the government of the United States and which indicates that the official is unfit to exercise public responsibilities, but which is an offense which is technically unrelated to the officer's particular job responsibilities.''

This hits it head on:

Impeachable conduct does not have to occur in the course of the performance of an officer's official duties. Evidence of misconduct, misbehavior, high crimes, and misdemeanors can be justified upon one's private dealings as well as one's exercise of public office. That, of course, is the situation in this case.

It would be absurd to conclude that a judge who had committed murder, mayhem, rape or perhaps espionage in his private life, could not be removed from office by the U.S. Senate.

The point you made so well was that we are not buying this. If you are a Federal judge and you cheat on your taxes and you lie under oath—it is true that it had nothing to do with your courtroom in a technical sense, but you are going to be judging others and they are going to come before you with their fate in your hands, and we don't want somebody like you running a courtroom because people won't trust the results.

Judge Walter Nixon, convicted and removed from office for what? Perjury before a grand jury. What was that about? He tried to fix a case for a business partner's son in State court. He went to the prosecutor who was in State court and tried to fix the case. When they investigated the matter, he lied about meeting with the prosecutor. He lied about doing anything related to trying to manipulate the results. He was convicted and he was thrown out of office by the U.S. Senate.

I guess you could say, what has that got to do with being a Federal judge? It wasn't even in his court? It has everything to do with being a high public official because if he stays in office, what signal are you sending anybody else that you send to his courtroom or anybody else's courtroom?

The question becomes, if a Federal judge could be thrown out of office for lying and trying to fix a friend's son's case, can the President of the United States be removed from office for trying to fix his case? That is not a scholarly work but that is what happened. He tried to fix his case. He tried to turn the judicial system upside down, every way but loose. He sent his friends to lie for him. He lied for himself. Any time any relevant question came up, instead of taking the honorable way out, he lied and dug a hole, and we are all here today because of that.

I am not going to go over the facts again because you have been bombarded with the facts. If you believe he committed perjury and if you believe he obstructed justice, the reason he did it was to fix his case. And you have some records to rely upon to see what you should do with somebody like that.

Judge Hastings: this Federal judge was convicted and removed from office by the U.S. Senate. But do you know what is interesting about this case to me? He was acquitted before he got here. He was accused of conspiring with another person to take money to fix results in his own court. He gave testimony on his own behavior. The conspirator was convicted but he was acquitted.

You know what the U.S. Senate and House said? We believe your conduct is out of bounds and we are not bound by that acquittal. We want to get to the truth and we don't want Federal judges that we have a strong suspicion or reasonable belief about that are trying to fix cases in their court.

So the point I am trying to make, you don't even have to be convicted of a crime to lose your job in this constitutional Republic if this body determines that your conduct as a public official is clearly out of bounds in your role. Thank God you did that, because impeachment is not about punishment. Impeachment is about cleansing the office. Impeachment is about restoring honor and integrity to the office. The remedy of prosecuting William Jefferson Clinton has no effect on the problem you are facing here today, in my opinion.

Now, every case was tried before it got here with different results. Two of them were convicted; one of them was acquitted. You had a factual record to go upon. I urge you, ladies and gentlemen of the U.S. Senate, that that cannot happen in this case unless we have a trial in the true sense of the word. The evidence is compelling and overwhelming, but it has only been half told. The learned counsel for the President will have their chance, and they are excellent lawyers.

If this were a football game, we would be almost at half time. Please, please wait, because I have sat where they are sitting, dying to say something. I know there are things they want to tell you about what we have said that may put this in a different light. That is coming, and it ought to come.

But there is another thing that you will have to decide: Has the factual record been developed enough that I can acquit with good conscience or that I can convict and remove with good conscience? In these judge cases, there was a full-blown trial. Because we can't prosecute the President criminally, we can't do the things that happened in the judge cases, so we don't have that record. I just submit that to you for your wisdom. None of this matters unless you believe he committed the offense. And I am not going to go over that again.

You know the facts pretty well. If there is any doubt, let's call witnesses and let's develop them fully, and leave no doubt on the table, and make sure that history will judge us well. Everybody, the House and the President, will have a fair shot at proving their case, that these things occurred, the high crimes.

I don't believe, ladies and gentlemen, that when you look at the totality of what the President did and prior precedents of the Senate, the fact that he was told by the Supreme Court to go into this litigation matter and he cheated so badly, you would consider these not to be high crimes. Because you are not placing a burden on this office that the office can't bear, I think that will be resolved, I hope and pray, in a bipartisan fashion.

If we can do nothing else for this country, let us state clearly that this conduct is unacceptable by any President. These are in fact high crimes. They go to the core of why we are all here as a Nation and to the rule of law, the rules of litigation. He cheated, and you have to put him back in bounds, remove him. Determining this as a high crime puts it back into bounds.

This is a hard question. I am not going to tell you it is not. I do not want to be where you are sitting. I think the evidence will be persuasive that he is guilty. The logic of your past rulings and just fundamental fairness and decency, and helping the Supreme Court enforce their rules, if nothing else, will lead you to a high crime determination.

But we are asking you to remove a popular President. I don't know why all this occurred. And we have a popular President. I know this. The American people are fundamentally fair, and they have an impression about this case from just tons and tons and tons of talk, tons and tons and tons of speaking. One in five, they tell me, are paying close attention to this. The question you must ask is: If every American were required to do what I have to do, sit in silence and listen to the evidence, would it be different? You are their representatives; they will trust you. This is a cynical age, but I am optimistic that whatever you do, this country will get up and go to work the next day, and they will feel good, no matter what it is.

To set aside an election is a very scary thought in a democracy. I do not agree with this President on most major policy initiatives. I did not vote for this President. But he won; he won twice. To undo that election is tough.

Let me give you some of my thoughts. How many times have you had to go to a child, a grandchild, or somebody who works for you, and give them a lecture that goes along the lines: Don't do as I do, do as I say? Isn't that a miserable experience? The problem with keeping this President in office, in my opinion, is that these crimes can't be ignored by anybody who looks at the evidence. They can be explained away, they can be excused; but they have far-reaching consequences for the law. And in his role as chief law enforcement officer of the land, how can we say to our fellow citizens that this will not be 20 months of

''don't do as I do, do as I say.'' What effect will that have? I think it would be devastating.

This case is the butt of a thousand jokes. This case is requiring parents and teachers to sit down and explain what lying is all about. This case is creating confusion. This case is hitting America far harder than America knows it has been hit. It is tempting to let the clock tick, but I want to suggest to you, ladies and gentlemen of the Senate, if you believe he is a perjurer, that he obstructed justice in a civil rights lawsuit, the question is not, Should he stay? It is, what if he stays? If you believe this President committed perjury before a grand jury when he was begged not to, and people in this body told him, ''Don't do it, because your political career is at stake,'' and if you believe he obstructed justice in a civil rights lawsuit, don't move the bar anymore. We have moved the bar for this case a thousand times.

Remember how you felt when you knew you had a perjurer as a judge, when you knew you had somebody who had fundamentally run over the law that they were responsible for upholding. Remember how you felt when you knew that judge got so out of bounds that you could not put him back in court, even though it was unrelated to his court, because you would be doing a disservice to the citizens who would come before him. A judge has a duty to take care of the individuals fairly who come before the court. The President, ladies and gentlemen of the Senate, has a duty to see that the law applies to everyone fairly—a higher duty, a higher duty in the Constitution. You could not live with yourself, knowing that you were going to leave a perjurer as a judge on the bench.

Ladies and gentlemen, as hard as it may be, for the same reasons, cleanse this office. The Vice President will be waiting outside the doors of this Chamber. Our constitutional system is simple and it is genius all at the same time. If that Vice President is asked to come in and assume the mantle of Chief Executive Officer of the land and chief law enforcement officer of the land, it will be tough, it will be painful, but we will survive and we will be better for it.

Thank you.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager CANADY.

Mr. Manager CANADY. Mr. Chief Justice, distinguished counsel, ladies and gentlemen of the Senate, I am Representative CHARLES CANADY of the 12th District of Florida, and I rise now to conclude the argument that my two fellow managers have begun and to address the fundamental question now before the Senate: Do the offenses charged against the President rise to the level of ''high crimes and misdemeanors'' under the Constitution?

Are these crimes—perjury before a federal grand jury and obstruction of justice—offenses for which the President has properly been impeached by the House of Representatives and for which he may now properly be convicted by the Senate? Or are these serious felonies offenses for which a Chief Executive may not constitutionally be called to account by either the House or the Senate?

To properly answer these questions, it must be understood, as my fellow manager Mr. BUYER has argued, that perjury and obstruction of justice are serious offenses against the system of justice. To properly answer these questions, it must also be understood—as my fellow manager Mr. GRAHAM has discussed—that the Senate has already determined that as a serious offense against the system of justice, perjury is proper grounds for removal from office.

There are several additional points that I now ask you to consider as you deliberate on the momentous issue you must decide.

First, I will argue that restricting the impeachment process to crimes involving the abuse of Presidential power is contrary to common sense. This is a key point in this case. The President's defense hinges to a large extent on his claim that the offenses charged against him do not involve official misconduct.

I will then review the history and purpose of the impeachment process to show that its fundamental object is to maintain the supremacy of law against the misconduct of public officials. After reviewing the background of the impeachment process, I will briefly discuss the prevailing views on the seriousness of perjury at the time the Constitution was adopted, and show that perjury and obstruction of justice are akin to bribery in their purpose and effect.

To conclude, I will discuss the proper role of the Senate in exercising the removal power—emphasizing three essential points:

First, that the removal power is designed to preserve, protect, and strengthen our Constitution by setting a standard of conduct for public officers.

Second, that the Senate should not establish a lower standard of integrity for the President than the standard it has already established for federal judges.

Third, that the Senate should not allow a President who has violated his constitutional duty and oath of office, and made himself a notorious example of lawlessness to remain in office.

The President's lawyers have argued that the ''Constitution requires proof of official misconduct'' for impeachment and conviction, and that removal from office is not proper for crimes that do not involve an abuse of the power of office. This view is endorsed by various academics who have signed a letter in support of the President. The Senate must now decide if this is a proper interpretation of the Constitution.

In deciding this question you should be guided by common sense and good judgment. It is by no means an abstruse and mysterious matter of constitutional law.

Nor is it a new question before the Senate. It has been decided in the recent judicial impeachments which Mr. GRAHAM has discussed. And it is a question which arose 200 years ago in the course of the first impeachment trial conducted by the Senate.

At that trial in January of 1799, as the Senate met in Philadelphia, an argument was made by counsel for the respondent, Senator Blount of Tennessee, that the impeachment power was properly exercised only with respect to ''official offenses.'' Although Senator Blount escaped conviction on other grounds, the response to his claim that only official misconduct could justify impeachment and removal remains noteworthy. Robert Goodloe Harper of South Carolina, one of the House managers—and who, incidentally, subsequently served as a Member of this Senate representing the State of Maryland—refuted that claim by asking a simple question:

''Suppose a Judge of the United States were to commit a theft or perjury; would the learned counsel say that he should not be impeached for it? If so, he must remain in office with all his infamy * * * .''

Two hundred years to the month after Robert Goodloe Harper posed that question to the Senate, a very similar question is before the Senate today. Shall a President—if found guilty of perjury and obstruction of justice—be removed, or must he ''remain in office with all his infamy''?

Although a judge who commits crimes may be subjected to criminal penalties and prevented from discharging judicial functions, he can be divested of his office only by impeachment and removal. The tenure of a President will necessarily expire with the passage of time, but most scholars of constitutional law agree that while he remains in office he is immune from the processes of the criminal law. So long as he is President, the only mechanism available to hold him accountable for his crimes is the power of impeachment and removal. Unless that power is exercised, no matter what crime he has committed, he must ''remain in office with all his infamy.''

The argument of the President's lawyers that no criminal act by the President subjects him to removal from office unless the crime involves the abuse of his power is an argument entailing consequences which—upon a moment's reflection—this body should be unwilling to accept.

Would a President guilty of murder be immune from the constitutional process of impeachment and removal so long as his crime involved no misuse of official power? Would a President guilty of sexual assault or child molesting remain secure in office because his crime did not involve an abuse of office?

In support of their position, the President's lawyers have vigorously argued that a President who committed tax fraud—a felony offense not involving official misconduct—would not be subject to impeachment and removal. They erroneously cite the decision of the House Judiciary Committee rejecting an article of impeachment against President Nixon for tax fraud. The record of the House proceedings establishes that the tax fraud article against President Nixon was rejected due to insufficient evidence that he was in fact guilty of tax fraud. The House Judiciary Committee never determined that tax fraud by a President would not be grounds for impeachment.

But, leaving aside the inaccurate characterization of the House Judiciary Committee's action, the claim of the President's lawyers that a President could commit tax fraud and remain immune from impeachment and removal is quite telling. It reveals a great deal about the sort of standard they would set for the conduct of the President of the United States.

The claim that tax fraud—a felony—does not rise to the level of a high crime or misdemeanor was, as you have heard, unequivocally rejected by the Senate in 1986 in the case of Judge Harry Claiborne, who was removed from office for filing false income tax returns.

Then-Senator ALBERT GORE, Jr., summarized the judgment of the Senate that Judge Claiborne should be removed from office. The comments of Senator GORE bear repeating:

> It is incumbent upon the Senate to fulfill its constitutional responsibility and strip this man of his title. An individual who has knowingly falsified tax returns has no business receiving a salary derived from the tax dollars of honest citizens.

Of course, the rationale expressed by Senator GORE for the conviction of Judge Claiborne for his criminal tax offenses applies with equal—if not greater—force to similar offenses committed by the President of the United States. Professor Charles Black, Jr., in his essay on the law of impeachment, recognized the appropriate application of these principles to the office of the Presidency. Professor Black said, ''A large-scale tax cheat is not a viable chief magistrate.''

I would respectfully submit to the Senate that the argument of the President's lawyers concerning tax fraud by a President is not a viable argument.

Who can seriously argue that our Constitution requires that a President guilty of crimes such as murder, sexual assault, or tax fraud remain in his office undisturbed? Who is willing to set such a standard for the conduct of the President of the United States? Who can in good conscience accept the consequences for our system of government that would necessarily follow? Could our Constitution possibly contemplate such a result? What other crimes of a President will we be told do not rise to the level of ''high crimes and misdemeanors?'' These are grave questions that must be addressed by this Senate. The President's defense requires that these questions be asked and answered.

Contrary to the claims of the President's lawyers, there is not a bright line separating official misconduct by a President from other misconduct of which the President is guilty. Some offenses will involve the direct and affirmative misuse of governmental power. Other offenses may involve a more subtle use of the prestige, status and position of the President to further a course of wrongdoing. There are still other offenses in which a President may not misuse the power of his office, but in which he violates a duty imposed on him under the Constitution.

Such a breach of constitutional duty—even though it does not constitute an affirmative misuse of governmental power—may be a very serious matter. It does violence to the English language to assert that a President who has violated a duty entrusted to him by the Constitution is not guilty of official misconduct. Common sense indicates that official misconduct has indeed occurred whenever a President breaches any of the duties of his office.

As we have been reminded repeatedly, the Constitution imposes on the President the duty to ''take care that the laws be faithfully executed.'' The charges against the President involve multiple violations of that duty. A President who commits a calculated and sustained series of criminal offenses has—by his personal violations of the law—failed in the most immediate, direct, and culpable manner to do his duty under the Constitution.

In their defense of the President, his lawyers in essence contend that a President may be removed for misusing governmental power, but not for corruptly interfering with the proper exercise of governmental power. This argument exalts form over substance. It unduly focuses on the manner in which wrongdoing is carried out and neglects to consider the actual impact of that wrongdoing on our system of government. Whether the President misuses the power vested in him as President or wrongfully interferes with the proper exercise of the power vested in other parts of the government, the result is the same: the due functioning of our system of government is in some respect hindered or defeated.

There is no principled basis for contending that a President who interferes with the proper exercise of governmental power—as he clearly does when he commits perjury and obstruction of justice—is constitutionally less blameworthy than a President who misuses the power of his office. A President who lies to a federal grand jury in order to impede the investigation of crimes is no less culpable than a President who wrongfully orders a prosecutor to suspend an investigation of crimes that have been committed. The purpose and effect of the personal perjury and of the wrongful official command are the same: the laws of the United States are not properly enforced.

Although neither the Senate nor the House has ever adopted a fixed definition of ''high crimes and misdemeanors,'' there is much in the background and history of the impeachment process that contradicts the narrow view of the removal power advanced by the President's lawyers.

There is no convincing evidence that those who framed and ratified our Constitution intended to limit the impeachment and removal power to acts involving the abuse of official power.

The key phrase defining the offenses for which the President, Vice President and other civil officers of the United States may be removed—''treason, bribery or other high crimes and misdemeanors''—simply does not limit the removal power in the way suggested by the President's lawyers.

The truth is as we have heard already today, that treason and bribery may be committed by an official who does not abuse the power of his office in the commission of the offense. A President might, for example, pay a bribe to a judge presiding over a case to which the President is an individual party. Or a judge might commit an act of treason without exercising any of the powers of his office in doing so. By the express terms of the Constitution those offenses would be impeachable. And there is no reason to impose a restriction on the scope of ''other high crimes and misdemeanors'' that is not imposed on treason and bribery.

Although having a means for the removal of officials guilty of abusing their power was no doubt very much in the minds of the framers, the purpose of the removal power was not restricted to that object.

To properly understand the purpose impeachment process under our Constitution, consideration must be given to use of impeachment by the English Parliament. Impeachment in the English system did not require an indictable crime, but the proceeding was nevertheless of a criminal nature: punishment upon conviction could extend to imprisonment and even death. It was a mechanism used by the Parliament to check absolutism and to establish the supremacy of the Parliament. Through impeachment, Parliament acted to curb the abuses of exalted persons who would otherwise have free reign. Impeachment was used by the Parliament to punish a wide range of offenses: misapplication of funds; abuse of official power; neglect of duty; corruption; encroachment on the prerogatives of the Parliament; and giving harmful advice to the Crown. In the English practice, ''high crimes and misdemeanors'' included all of these.

During the impeachment of Lord Chancellor Macclesfield in 1725, Serjeant Pengelly summed up the purpose of impeachment. It was, he said,

for the ''punishment of offenses of a public nature which may affect the nation.'' He went on to say that impeachment was also for use in ''instances where the inferior courts have no power to punish the crimes committed by ordinary rules of justice . . . or in cases . . . where the person offending is by his degree raised above the apprehension of danger from a prosecution carried on in the usual course of justice; and whose exalted station requires the united accusation of all the Commons.''

In the case of Warren Hastings—which was proceeding at the time the Constitution was framed—Edmund Burke described the impeachment process as ''. . . a grave and important proceeding essential to the establishment of the national character for justice and equity.''

As the British legal historian Holdsworth has written, the impeachment process was a mechanism in service of the ''ideal . . . [of] government in accordance with law.'' It was a means by which ''the greatest ministers of state could be made responsible, like humble officials, to the law.'' According to Holdsworth:

''. . . [T]he greatest services rendered by this procedure to the cause of constitutional government have been, firstly, the establishment of the doctrine of ministerial responsibility to the law, secondly, its application to all ministers of the crown, and thirdly and consequently the maintenance of the supremacy of the law over all.''

Thus the fundamental purpose of the impeachment process in England was ''the maintenance of the supremacy of the law over all.'' Those who were impeached and called to account for ''high crimes and misdemeanors'' were those who by their conduct threatened to undermine the rule of law.

This English understanding of the purpose of impeachment serves as a backdrop for the work of the Framers of our Constitution. Despite some important differences in the functioning of impeachment in England and the United States, the fundamental purpose of impeachment remained the same: defending the rule of law.

The records of the proceedings of the Constitutional Convention also shed light on the meaning of ''high crimes and misdemeanors,'' and the underlying purpose of the impeachment mechanism. The primary focus of the relevant discussions at the Convention was on the need for some means of removing the President. Early in the proceedings with respect to impeachment, the Committee of the Whole agreed to make the President removable ''on impeachment and conviction of malpractice or neglect of duty,'' although concerns were expressed that impeachment would give the legislative branch undue control over the executive, and violate the separation of powers.

In the course of the proceedings, James Madison stated that ''some provision was needed to defend the community against the President if he became corrupt, incapacitated, or perverted his administration into a scheme of peculation or oppression.''

Arguing for a means of removing the President, George Mason said, ''No point is of more importance than that the right of impeachment should be continued. Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?''

Before the Convention settled on the language that was ultimately adopted, a proposal was considered that would have limited impeachable offenses to treason and bribery. An effort was made to broaden this proposal by including ''maladministration'' as an impeachable offense. Madison objected. He objected that the inclusion of a term as ''vague'' as maladministration would result in the President having tenure during the pleasure of the Senate. As a compromise, the term ''maladministration'' was dropped and ''high crimes and misdemeanors'' was substituted. From this course of proceedings it can reasonably be concluded that poor administration—at least if it does not involve corrupt motives—is not a sufficient ground for impeachment.

In the debate concerning the Constitution in the various state ratification conventions, the grounds for impeachment were with some frequency said to include abuse or betrayal of trust and abuse of power. ''Making a bad treaty'' was also frequently mentioned as justifying impeachment. At the Virginia Convention, Governor Randolph spoke of ''misbehavior'' and ''dishonesty,'' and James Madison gave two examples of impeachable conduct: pardoning a criminal with whom the President was in collusion, and summoning only a few Senators to approve a treaty.

One of the most extensive recorded discussions of impeachment occurred at the North Carolina ratification convention in remarks made by James Iredell. Iredell, who later served as a Justice of the Supreme Court, spoke of the supremacy of the law under the system of government proposed by the Constitution. He said:

> No man has an authority to injure another with impunity. No man is better than his fellow-citizens, nor can pretend to any superiority over the meanest man in the country. If the President does a single act, by which the people are prejudiced, he is punishable himself. . . . If he commits any misdemeanor in office, he is impeachable . . .

Iredell also expressed the view that impeachment may be used only in cases where there is some corrupt motive. He said:

> . . . [W]hen any man is impeached, it must be for an error of the heart, and not of the head. . . . Whatever mistake a man may make, he ought not to be punished for it, nor his posterity rendered infamous. But if a man be a villain, and wilfully abuse his trust, he is to be held up as a public offender, and ignominiously punished. . . . According to these principles, I suppose the only instances in which the President would be liable to impeachment, would be where he had received a bribe, or acted from some corrupt motive or other.

Iredell's comments buttress the view that impeachment is not to be used as a political weapon to resolve differences of policy between the legislative branch and the executive branch. Impeachment is not an appropriate remedy for errors—even serious errors—in the administration of government.

To justify impeachment, there must be ''some corrupt motive,'' a willful ''abuse of trust,'' an ''error of the heart.'' You will note there is nothing in Iredell's comments to suggest that a President who engaged in a corrupt course of conduct by obstructing justice and committing perjury would be immune from impeachment and removal.

Another major discussion of impeachment during the debate over ratification occurs in the Federalist number 65, to which reference has already been made in those proceedings, where Alexander Hamilton describes the impeachment process as ''a method of national inquest into the conduct of public men'' and discusses the powers of the Senate ''in their judicial character as a court for the trial of impeachments.''

Now, before I discuss his views of impeachment, I would like to say a word in defense of Alexander Hamilton—who is a widely acknowledged champion of our Constitution, widely acknowledged as one of the most eloquent expositors and defenders of the Constitution. Unfortunately, the reputation of Hamilton has in recent days been traduced. It is unjust to the memory of this great man to compare his personal sins with the crimes of President Clinton. When Hamilton was questioned about his affair he told the truth. He took responsibility for his conduct. There is no evidence that he ever engaged in acts of corruption. He never lied under oath. He never obstructed justice. Notwithstanding the efforts of his lawyers, President Clinton by no means benefits from a comparison with Hamilton.

In the Federalist Hamilton writes of the Senate:

> The subjects of its 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 recognized that the focus of the impeachment power is on the ''misconduct of public men'' or the ''abuse or violation of some public trust.'' Impeachment is a remedy against officials for ''injuries done . . . to the society itself.''

Despite the claims of the President's lawyers, the comments of Hamilton do not support the view that a President can be impeached and removed only for an abuse of power. The ''misconduct of public men,'' and ''the abuse or violation of some public trust'' to which

Hamilton refers are not restricted to offenses involving the misuse of official power. The ''misconduct of public men'' encompasses a whole range of wrongful deeds committed by those who hold office when those offenses are committed. The ''public trust'' is violated whenever a public officer breaches any duty he has to the public. ''Injuries done . . . to the society itself'' similarly may occur as the result of misconduct that does not involve the misuse of the powers of office.

Now, I would submit to the Senate that the English precedents, the records of the Constitutional Convention debates, and the general principles set forth by Hamilton, Iredell, and others in the debate over ratification do not provide a definitive list of high crimes and misdemeanors. But they do provide broad guidance concerning the scope of the impeachment power. The theme running through all these background sources is that the impeachment process is designed to provide a remedy for the corrupt and lawless acts of public officials.

Not surprisingly, those who have been on the receiving end of impeachment proceedings have been quick to argue for a restrictive meaning of ''high crimes and misdemeanors.'' President Clinton's lawyers follow in that well-established tradition.

They attempt to minimize the significance of the charges of perjury and obstruction of justice against the President. In essence, they argue that treason and bribery are the prototypical high crimes and misdemeanors, and that the crimes charged against the President are insufficiently similar in both their nature and seriousness to treason and bribery.

But, as the comments of my fellow manager, Mr. BUYER, have made clear, the crimes set forth in the articles of impeachment are indeed serious offenses against our system of justice. They were certainly viewed as serious offenses by those who drafted and ratified the Constitution.

As Mr. BUYER has mentioned, in his discussion of ''offenses against the public justice,'' Sir William Blackstone—whose work James Madison said was in ''every man's hand'' during the creation of the Constitution—listed the offenses of perjury and bribery side-by-side, immediately after he listed treason. In 1790, the First Congress adopted a statute entitled ''An Act for the punishment of certain crimes against the United States'' making perjury a crime punishable as a felony. Nothing could be clearer: perjury is a crime against the United States; it is not a private matter.

As Mr. CHABOT noted yesterday, John Jay, the first Chief Justice of the United States, said that ''there is no crime more extensively pernicious to Society'' than perjury. According to Jay, perjury ''discolors and poisons the Streams of Justice, and by substituting Falsehood for Truth, saps the Foundations of personal and public Rights. . . . [I]f oaths should cease to be held sacred, our dearest and most valuable Rights would become insecure.'' Given this understanding that was current at the time the Constitution was adopted, it is impossible to support the conclusion that perjury and the related offense of obstruction of justice are somehow trivial offenses that do not rise to the same level as the offense of bribery which is enumerated in the Constitution.

Moreover, perjury and obstruction of justice are by their very nature akin to bribery. When the crime of bribery is committed, money is given and received to corruptly alter the course of official action. When justice is obstructed, action is undertaken to corruptly thwart the due administration of justice. When perjury occurs, false testimony is given in order to deceive judges and juries and to prevent the just determination of causes pending in the courts. The fundamental purpose and the fundamental effect of each of these offenses—perjury, obstruction of justice and bribery alike—is to defeat the proper administration of government. They all are crimes of corruption aimed at substituting private advantage for the public interest. They all undermine the integrity of the functions of government.

The use of the impeachment process against misconduct which undermines the integrity of government is a central focus of two reports prepared in 1974 on the background and history of impeachment, and I would humbly bring these reports to your attention. I commend them to you for your consideration. One of the reports was prepared by the staff of the Nixon impeachment inquiry. The other was produced by the Bar of the City of New York. Both of these reports have gained bipartisan respect over the last 25 years for their balanced and judicious approach. They provide a well-informed analysis of the key issues related to impeachments. In doing so they stand in stark contrast to the recent pronouncements by some academics which substitute political opinion for scholarly analysis.

A review of these two important documents from 1974 supports the conclusion that the articles before the Senate set forth compelling grounds for the conviction and removal of President Clinton.

There has been a great deal of comment on the report on ''Constitutional Grounds for Presidential Impeachment'' prepared in February 1974 by the staff of the Nixon impeachment inquiry. Those who assert that the charges against the President do not rise to the level of ''high crimes and misdemeanors'' have pulled some phrases from that report out of context to support their position. In fact, the general principles concerning grounds for impeachment and removal set forth in that report indicate that perjury and obstruction of justice are high crimes and misdemeanors.

Consider this key language from the staff report describing the type of conduct which gives rise to the proper use of the impeachment and removal power:

In the report, they said:

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

The report goes on to state:

> 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.

Perjury and obstruction of justice, I submit to you, clearly ''undermine the integrity of office.'' I ask you, if these offenses do not undermine the integrity of office, what offenses would?

Their unavoidable consequence is to erode respect for the office of the President and to interfere with the integrity of the administration of justice. Such offenses are ''seriously incompatible'' with the President's ''constitutional duties and oath of office,'' and with the principles of our government establishing the rule of law. Moreover, they are offenses which have a direct and serious ''adverse impact on the system of government.'' Obstruction of justice is by definition an assault on the due administration of justice—which is a core function of our system of government. Perjury has the same purpose and effect.

The second report, to which I have referred, the thoughtful report on ''The Law of Presidential Impeachment'' prepared by the Association of the Bar of the City of New York in January of 1974 also places a great deal of emphasis on the corrosive impact of presidential misconduct on the integrity of government. The report summarizes the proper basis for impeachment and removal in this way. It says:

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

Perjury and obstruction of justice—serious felony offenses against the United States—by a President are acts of corruption which without doubt ''undermine that degree of public confidence in the probity of the [the President] that is essential to the effectiveness of government in a free society.''

Such acts are ''high crimes and misdemeanors'' because they inevitably subvert the respect for law which is essential to the well-being of our constitutional system.

A similar point is made by a contemporary commentator who has argued:

> . . . [T]here are certain statutory crimes that, if committed by public officials, reflect such lapses of judgment, such disregard for the welfare of the state, and such lack of respect for the law and the office held that the occupants may be impeached and removed, for lacking the minimal level of integrity and judgment sufficient to discharge the responsibilities of office.

Such a lack of the minimal level of integrity necessary for the proper discharge of the duties of the Presidency is evidenced by the commission of the statutory crimes of perjury and obstruction of justice.

Contrary to the claim that has been made by some, the issue before the Senate is not whether the offenses of this President will destroy our Constitution. We all know that our system of government will not come tumbling down because of the corrupt conduct of William Jefferson Clinton. Our Republic will survive the crimes of this President. No one doubts that. Of course, the same could be said of all the other federal officials who have been impeached and removed from office. And the same might be said of the crimes—serious as they were—of President Richard Nixon.

But the removal power is not restricted to offenses that would directly destroy our Constitution or system of government. The removal power is not so limited that it can be brought into play only when the immediate destruction of our institutions is threatened.

On the contrary, the removal power should be understood as a positive grant of authority to the Senate to preserve, protect and strengthen our constitutional system against the misconduct of federal officials when that misconduct would subvert, undermine, or weaken the institutions of our government. It is a power that has the positive purpose of maintaining the health and well-being of our system of government.

This power—the awesome power of removal vested in the Senate—carries with it an awesome responsibility. This power imposes on the Senate the responsibility to exercise its judgment in establishing the standards of conduct that are necessary to preserve, protect, and strengthen the Constitution which has served the people of the United States so well for more than two centuries.

Thus, the crucial issue before the Senate is what standard will be set for the conduct of the President of the United States. In this case, the Senate necessarily will establish such a standard. And make no mistake about it: the choice the Senate makes in this case will have consequences reverberating far into the future of our Republic. Will a President who has committed serious offenses against the system of justice be called to account for his crimes, or will his offenses be regarded as of no constitutional consequence? Will a standard be established that such crimes by a President will not be tolerated, or will the standard be that—at least in some cases—a President may ''remain in office with all his infamy'' after lying under oath and obstructing justice?

Regardless of the choice the Senate makes—whether it acquits or convicts the President—a standard will be established, and that standard will become an important part of our constitutional law of this Nation. The institutions of our Government will either be strengthened or weakened as a result. And if the Senate acquits this President, the conduct of future Presidents will inevitably be affected in ways that we cannot now confidently predict.

I would now like to take a very few minutes to examine some of the other specific arguments that have been made that this is not a proper case for use of the removal power.

Some have suggested that in setting a standard in this case the Senate should be guided by the popularity of the President. It is urged that a popular President—regardless of the offenses he may have committed—should not be removed from office. Such a view finds no support however, in our Constitution. On the contrary, the framers understood that a popular President might be guilty of crimes requiring his removal from office.

That is why they included the power of impeachment and removal in the Constitution. And that, no doubt, is why they specifically provided that an impeached official who was convicted and removed might also be perpetually disqualified ''to hold and enjoy any office of honor, trust, or profit under the United States.''

The potential threat posed to our institutions by Presidential misconduct would, in fact, be heightened by the popularity of the offending President. The harmful influence and example of a popular President would pose a far greater danger to the well-being of our Government than the influence and example of an unpopular President.

Moreover, the very framework of our Constitution establishing a representative democracy is at odds with the notion that the institutions of our Government should respond mechanically to the changing tides of public opinion. The Senate, in particular, was designed to act on the basis of the long-term best interests of the Nation rather than short-term political considerations.

When he was tried by the Senate 130 years ago, President Andrew Johnson was overwhelmingly unpopular. If the Senate had used Presidential popularity as a guide in the Johnson case, there is no doubt that he would have been convicted and removed from office. Yet today there is widespread agreement that such action by the Senate would have been an abuse of the constitutional process, and those who refused to use Presidential popularity as their guide are hailed as great statesmen and heroes. Those Senators who then stood against the tide of public sentiment today are revered as champions of constitutional government.

A popular President guilty of high crimes and misdemeanors should no more remain in office than an unpopular President innocent of wrongdoing should be removed from office. Under the standards of the Constitution, popularity is not a sufficient guide.

Nor should the Senate be swayed by the claims that setting a standard adverse to this President will weaken the institution of the Presidency. Describing the role of impeachment under our Constitution, Arthur M. Schlesinger, Jr.—who I will candidly admit takes a different view of the matter today—wisely observed that:

> The genius of impeachment lay in the fact that it could punish the man without punishing the office. For, in the Presidency as elsewhere, power was ambiguous: the power to do good meant also the power to do harm, the power to serve the republic also the power to demean and defile it.

Rather than weakening the Presidency, the removal from office of a President who has violated his constitutional duty and oath of office will reestablish the integrity of the Presidency. Setting a standard against the acts of perjury and obstruction of justice committed by President Clinton will reaffirm the dignity and the honor of the office of Chief Executive under our Constitution. That will strengthen—not weaken—the institution of the Presidency.

It has even been argued that the impeachment and removal of President Clinton would result in the virtual alteration of our system of government. It is contended that following the constitutional process in this case would move us toward a transformation of our Constitution: a quasi-parliamentary system, with the President serving at the pleasure of the legislative branch, would replace the framework based on the separation of powers.

I am, frankly, reluctant to dignify this argument by responding to it. President Nixon was driven from office for his crimes under threat of impeachment and removal. The disruption of the framework of our Government did not ensue. President Clinton may be removed from office for his crimes. The constitutional system will remain sound.

Who has so little confidence in the durability of the institutions of our Government that he would allow a President guilty of perjury and obstruction of justice to remain in office simply on the basis of a fanciful and irrational fear of the supposed consequences of his removal?

The Constitution contains wise safeguards against the misuse of the impeachment and removal power. As a

practical matter, as we all know, the requirement of a two-thirds vote for conviction virtually ensures that a President will only be removed when a compelling case for removal has been made. And the periodic accountability to the people of Members of both the House and the Senate serves as a check on the improvident use of the impeachment power for unworthy or insubstantial reasons. Those who would abuse the power of impeachment and removal will be deterred by the certain knowledge that they ultimately must answer to the people.

But, of course, the ultimate safeguard against the abuse of this power is in the sober deliberation and sound judgment of the Senate itself. The framers of the Constitution vested the removal power and responsibility in the Senate because, as Hamilton observed, they ''thought the Senate the most fit depositary of this important trust.'' The Senate was, in the view of the framers, uniquely qualified to exercise the ''awful discretion, which a court of impeachment must necessarily have.'' As Hamilton explained:

> 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 enough in its own situation, to preserve unawed and uninfluenced the necessary impartiality between an individual accused, and the representatives of the people, his accusers.

Ladies and gentlemen of the Senate, this is the great trust which the Constitution has reposed in you. It is a trust you exercise not only for those who elected you but for all other Americans, including generations yet unborn.

As you carry out this trust, we do not suggest that you hold this President or any President to a standard of perfection. We do not assert that this President or any President be called to account before the Senate for his personal failings or his sins. We will leave the President's sins to his family and to God. Nor do we suggest that this President or any President should be removed from office for offenses that are not serious and grave.

But we do submit that when this President, or any President, has committed serious offenses against the system of justice—offenses involving the stubborn and calculated choice to place personal interest ahead of the public interest—he must not be allowed to act with impunity.

Mr. Manager GRAHAM has reviewed the recent precedents of the Senate, establishing that offenses such as those committed by this President are grounds for removal from office. Those precedents, which were set in the impeachment trials of Federal judges, are rejected as totally irrelevant by the President's lawyers. They urge that a lower standard of integrity be established in this case for the President of the United States than the standard which the Senate has already established for Federal judges.

But the Constitution contains a single standard for the exercise of the impeachment and removal power. You have heard it before, but I will repeat. Article II, section 4, provides:

> 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.

And there is nothing in the Constitution suggesting that criminal offenses which constitute high crimes and misdemeanors if committed by one Federal official will not be high crimes and misdemeanors if committed by another Federal official. There is nothing in the Constitution to suggest that the President should be especially insulated from the just consequences of his criminal conduct.

Justice Joseph Story warned long ago against countenancing ''so absolute a despotism of opinion and practice, which might make that a crime at one time, or in one person, which would be deemed innocent at another time, or in another person.''

The Senate should heed the warning of Justice Story and refuse to arbitrarily establish a different standard for judging William Jefferson Clinton than the standard it has imposed already on others brought before the bar of the Senate sitting as a Court of Impeachment.

The Senate has never accepted the view that a separate standard applies to the impeachment and removal of Federal judges. Indeed, the Senate has specifically rejected attempts to establish such a separate standard for judicial officers. Every judge who has been impeached and removed from office has been found guilty of treason, bribery, or other high crimes and misdemeanors.

Contrary to the argument advanced by some, the constitutional provision that judges ''shall hold their offices during good Behaviour'' does not establish any authority to remove a judge for misconduct other than for those offenses involving treason, bribery, or other high crimes and misdemeanors. Rather than establishing a standard for removal, the ''good behavior'' clause simply provides for life tenure for all article III judges. To accept the ''good behavior'' clause, I would caution you to accept it as a separate basis for the removal of Federal judges would pose a serious threat to the independence of the judiciary under our Constitution.

Members of the Senate, the integrity of the administration of justice depends not only on the integrity of judges, but also on the integrity of the President. A President who has committed perjury and obstruction of justice is hardly fit to oversee the enforcement of the laws of the United States. As Professor Jonathan Turley has pointed out:

> As Chief Executive the President stands as the ultimate authority over the Justice Department and the Administration's enforcement policies. It is unclear how prosecutors can legitimately threaten, let alone prosecute, citizens who have committed perjury or obstruction of justice under circumstances nearly identical to the President's. Such inherent conflict will be even greater in the military cases and the President's role as Commander-in-Chief.

It would indeed be anomalous for the Senate to now hold the President of the United States to a lower standard of integrity than the standard applied to members of the judiciary. There is no sensible constitutional rationale for such a lower standard.

Who could successfully defend the view that in the framework established by our Constitution the integrity of the Chief Executive is of less importance than the integrity of any one of the hundreds of federal judicial officers? It is the President who appoints Justices of the Supreme Court and all other federal judges. It is the President who appoints the Attorney General. It is the President who appoints the Director of the Federal Bureau of Investigation. It is the President who has the unreviewable power to grant pardons.

The power of the President far surpasses the power of any other individual under our Constitution. The authority and discretion vested in him under the Constitution and laws is great and wide-ranging. The requirement that he act with integrity and that he be a person of integrity is essential to the integrity of our system of government.

Soon after the adoption of the Constitution, Alexander Hamilton wrote that ''an inviolable respect for the Constitution and the Laws'' is the ''most sacred duty and the greatest source of security in a Republic.'' Hamilton understood that respect for the Constitution itself grows out of a general respect for the law. And he understood the essential connection between respect for law and the maintenance of liberty in a Republic. Without respect for the law, the foundation of our Constitution is not secure. Without respect for the law, our freedom is at risk. Thus, according to Hamilton, those who ''set examples which undermine or subvert the authority of the laws lead us from freedom to slavery. . . .''

Early in this century, Justice Brandeis spoke of the harm to our system of government which occurs when officials of the government act in a lawless manner. Justice Brandeis said:

> Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizens. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.

To conclude, I would observe in the case before it now, the Senate must decide if William Jefferson Clinton as President will be ''subjected to the

same rules of conduct that are commands to the citizens.'' It is no answer that he may one day after leaving office perhaps be called to account in a criminal court proceeding somewhere. Justice delayed is justice denied. Because he has taken and violated the oath as President, William Jefferson Clinton is answerable for his crimes to the Senate here and now.

Will he as President be vindicated by the Senate in the face of crimes for which other citizens are adjudicated felons and sent to prison? Or will this Senate acting in accordance with the provisions of the Constitution bring him as President into submission to the commands of the law? Will the Senate give force to the constitutional provision for impeachment and removal which Justice Story said ''compels the chief magistrate, as well as the humblest citizen, to bend to the majesty of the laws''?

''For good or ill'' William Jefferson Clinton ''teaches the whole people by [his] example'' as President. The President is not only the head of government but also the head of State. As President he has a unique ability to command the attention of the whole nation. In his words and his deeds he represents the American people and the system of government in a way that no other American can. Great honor and respect accrue to him by virtue of the high office he holds. The influence of his example is far-reaching and profound.

By his conduct President William Jefferson Clinton has set an example the Senate cannot ignore. By his example he has set a dangerous and subversive standard of conduct. His calculated and stubbornly persistent misconduct while serving as President of the United States he has set a pernicious example of lawlessness —an example which by its very nature subverts respect for the law. His perverse example has the inevitable effect of undermining the integrity of both the office of President and the administration of justice.

Ladies and Gentlemen of the Senate, I humbly submit to you that his harmful example as President must not stand. The maintenance in office of a President guilty of perjury and obstruction of justice is inconsistent with the maintenance of the rule of law.

In light of the historic purpose of impeachment, the offenses charged against the President demand that the Senate convict and remove him. He must not ''remain in office with all his infamy.'' Our Constitution requires that this President who has shown such disrespect for the truth, such disrespect for the law, and such disrespect for the dignity of his high office be brought to justice for his high crimes and misdemeanors.

Thank you.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, if there is no objection, I ask unanimous consent that the court of impeachment proceedings stand in recess for one hour. We will return at 2:10 p.m.

There being no objection, at 1:08 p.m., the Senate recessed until 2:11 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to proceed now with the next manager. I believe it is Mr. Manager GEKAS.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager GEKAS.

Mr. Manager GEKAS. Mr. Chief Justice, the President's counsel, Members of the House who form our group of managers, and Members of the Senate, we bring you to what now may be the culmination of the work and effort of the managers and of the House of Representatives for, and what is fast closing in to be, your final consideration. And that is true—the moment of truth is fast approaching.

That moment of truth will swoop down on you at some point in the near future, at which time the millions of words that have been spoken thus far, the thousands of pages of documents, hundreds of exhibits, and dozens of individuals who have been involved in the preparation, annotation, and accumulation of all the data and evidence—all of that will be funneled into that last moment you will have right before you cast that final vote. That is an awesome moment in the history of this Chamber, in the personal history of your own careers in public service, and of your own life, as well, your personal life, your surroundings, your family, all that means anything and everything to you. That moment of truth encompasses all of that in one fell swoop at that final time that is upon us.

We would not have even had to contemplate this, nor would you have had to, if very early on in the factual situation that arose in this case President Clinton had faced his moment of truth. As I pointed out yesterday, that first moment of truth that faced the President in the legal proceedings that were to engulf him at a later point was his answers, the answers that affixed to that first set of interrogatories under oath. The moment of truth was staring him right in the face, and if he would have acknowledged it at that moment, had paid faith and allegiance to that moment, we would not be arguing here today, nor would we have even heard of a possible impeachment inquiry. But the President chose to sweep away that moment of truth that was at hand and proceeded down the course that has led us to this moment.

In the words of our colleagues who made magnificent presentations of the facts and law to you, the words ''truth'' and ''fairness'' were some of the strongest and most profound that we heard in various degrees in touching upon various subjects that were important to our presentation. When I heard my colleagues emphasize those words, it dawned on me that the element of fairness is something which I submit to you and certify to you that these managers, the members of the committee who prepared this case, exalted in making certain would apply to their endeavors and to all that we would present to you—fairness.

When the record of the independent counsel, the referral, reached our doorsteps back in September of 1997 and we first read the details and allegations contained therein, we did not, as some people began to accuse and to orate, adopt 100 percent of what the independent counsel said were the allegations and accept them as fact, and then move on and skip from September to this moment, not having used our intellect, our sympathies, our sense of right, our sense of wrong, our sense of fairness, our elements of truth, our experience, our own intellect, and our own consciences. We didn't set all of those aside and take the referral of Kenneth Starr and make that the final moment that precedes your moment of truth. Everyone should know that. But it is not recognized. We have been pilloried many times over the course of these proceedings on the notion that we simply adopted that referral and walked with it into the Senate Chamber.

One thing has to be said right at the outset. When I saw one allegation of the independent counsel that was encompassed around the question of executive privilege, an allegation that the assertion by President Clinton of executive privilege in the context of all that had transpired in this case constituted an abuse of power, I must tell you that that hit me right between the eyes. I could not, by even just reading it, accept it at face value. From that moment until this, I had serious, grave doubts that we should embark upon a course in which we would somehow denigrate the issue and privilege known as ''executive privilege.''

As I worried about this and as I moved on through the process, trying to do my duty, along with everyone else, there came a time in the deliberations of our committee, our managers group, that we felt—and we acted on that feeling—that executive privilege is something that is owed to the President, and that we cannot fairly strip that away from him or in any way diminish the power and the usability of executive privilege. We felt that that was a trapping and a power of the Executive, of the President of the United States, which, no matter how it is exerted, or thereafter possibly set aside by the court, which is always a possibility, and history has shown that it has occurred.

Nevertheless, the exertion of it, the assertion of it, the use of it, the feel for it that the President of the United States must have and should have in the first instance, to assert it, should not be a part of our criticism, our projection of this case.

We felt pretty strongly about it, and we took action on that front by deciding among ourselves that one of the proposed articles—and that was bound to reach you if we had not acted as we did—we decided that we were going to remove that from the allegations in any of the articles of impeachment and not refer to it, except in the context in which I am referring to it, which is reporting to you what happened with that particular issue.

We did that in the face of the knowledge that in all our readings, in all our literature, we noted that when President Nixon attempted to use executive privilege, it was soundly criticized, and part of the impeachment process carried his alleged abuse of executive privilege as one of the tenets of that proceeding. And the report shows executive privilege as being ill-used by President Nixon.

But here is the point. The managers and I and every Member of the Senate, every individual who is with us here today reveres the office of the Presidency. We respect the office of the Presidency. The Presidency is we. The Presidency is America. The Presidency is the banner under which we all work and live and strive in this Nation. We revere the Presidency. Any innuendo, or any kind of impulse that anyone has to attribute any kind of motivation on the part of these men of honor who have prepared this case for you today on any whim on their part other than to do their constitutional duty should be rebuffed at every conversation, at every meeting, at every writing that will ultimately flow from the proceedings that we have embarked upon. We revere the Presidency. As a matter of fact, when next week we face the prospect of the President of the United States entering the House of Representatives to deliver his State of the Union message, we will greet the President. We will accord him the respect for the office which he holds. He is our President. He occupies the Presidency. And we will honor that. And so should we all.

But we are capable of and must, in the face of the solemn duty that we have, compartmentalize in the purest sense in greeting the President and applauding his entrance into the State of the Union message. As we will accord him that privilege, we do not set aside the impeachment inquiry. We do not set aside the serious charges that are hoisted against him at that juncture, because we will resume the consideration of them in due course. But in the meantime, we compartmentalize ourselves as Americans recognizing that he holds the most powerful, most respected, and most admired office on the face of the globe. That is part of our duty, as it is our duty to impart our knowledge and our work, our theories, and our analysis to the impeachment proceedings which are at hand.

''These are times that try men's souls,'' someone said. It was not my mother. And it is true. But anyone who can feel that the final votes that will take place on the part of each individual Member of the Senate, that a vote for conviction is based on a distaste for Bill Clinton, hatred of Bill Clinton—that kind of vote for conviction should never be recognized or countenanced, and history will condemn any individual who does that. And if the votes at the last moment, at this moment of truth, are based on an admiration of President Clinton, of friendship with President Clinton, a deep tie to and with the President, on family and community and national matters, a vote of acquittal should not be based on that. But only the Senate and each individual conscience will determine how that final vote is cast.

We cannot account for the friendship or enmity that might exist with and for President Clinton. All we can do is to do the job that was thrust upon us, that was placed in our hands by a statute that this Congress created—that independent counsel statute. The Congress said that we had to listen to the referral, to accept the referral. The Congress said that we must look towards whatever recommendations might be contained in that. It was the Congress, our Congress—many of you who voted for that statute—which mandated that we consider all of this. We did not simply walk around one day and seize upon a moment of deep thought and say let's impeach the President; let's find something upon which we can base a full 6 months inquiry into the President's actions in front of a court.

This was a duty, much as it is your duty to stay here and listen to what I am saying. The duty that I have of presenting it to you and speaking to you is born of the same statute and of the same process and of the same constitutional background that we all share.

So it worries me and us that any awkward motivation would be attributed to any one of us or collectively to us. And once you render your vote, I am not going to question whether it was done out of blind loyalty or enmity or friendship with the President, or enmity with the President; I am going to judge it as an American citizen, a Member of the House of Representatives, a Member of Congress, an interested community leader, and, last but not least, as a pure American citizen eager to do one's duty.

As the moment of truth approaches, there is only one speaker left for us in the Senate Chamber here to contemplate, and that is the summation to be given by the esteemed chairman of our committee. You should know, as we all feel, that the most stringent duty that he ever performed, the gentleman from Illinois, was to manage the managers. But he did that just as well and as profoundly as he has approached every single facet of this case. For as he sums up, know for a certainty that he brings to the podium our collective thoughts, our collective emotions, our passions for our work and our duty, and with an eye towards serving you, as we serve our constituents, as we serve the Congress, as we serve America. We are 20 minutes closer now to that moment of truth. Keep in mind your own histories, the history of your relationship with your colleagues in the Congress, and above all, the duty to the United States.

Mr. HYDE.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HYDE.

Mr. Manager HYDE. Mr. Chief Justice, counsel for the President, distinguished Members of the Senate, 136 years ago, at a small military cemetery in Pennsylvania, one of Illinois' most illustrious sons asked a haunting question—whether a nation conceived in liberty and dedicated to the proposition that all men are created equal can long endure. America is an experiment never finished. It is a work in progress. And so that question has to be answered by each generation for itself, just as we will have to answer whether this Nation can long endure.

This controversy began with the fact that the President of the United States took an oath to tell the truth in his testimony before the grand jury, just as he had on two prior occasions sworn a solemn oath to preserve, protect, and defend the Constitution and to faithfully execute the laws of the United States.

One of the most memorable aspects of this proceeding was the solemn occasion wherein every Senator in this Chamber took an oath to do impartial justice under the Constitution.

But I must say, despite massive and relentless efforts to change the subject, the case before you Senators is not about sexual misconduct, infidelity or adultery—those are private acts and none of our business. It is not even a question of lying about sex. The matter before this body is a question of lying under oath. This is a public act.

The matter before you is a question of the willful, premeditated deliberate corruption of the Nation's system of justice, through perjury and obstruction of justice. These are public acts, and when committed by the chief law enforcement officer of the land, the one who appoints every United States district attorney, every Federal judge, every member of the Supreme Court, the Attorney General—they do become the concern of Congress.

That is why your judgment, respectfully, should rise above politics, above partisanship, above polling data. This case is a test of whether what the Founding Fathers described as ''sacred honor'' still has meaning in our time: two hundred twenty-two years after those two words—sacred honor—were inscribed in our country's birth certificate, our national charter of freedom, our Declaration of Independence.

Every school child in the United States has an intuitive sense of the ''sacred honor'' that is one of the foundation stones of the American house of freedom. For every day, in every classroom in America, our children and

grandchildren pledge allegiance to a nation, ''under God.'' That statement, is not a prideful or arrogant claim. It is a statement of humility: all of us, as individuals, stand under the judgment of God, or the transcendent truths by which we hope, finally, to be judged.

So does our country.

The Presidency is an office of trust. Every public office is a public trust, but the Office of President is a very special public trust. The President is the trustee of the national conscience. No one owns the Office of President, the people do. The President is elected by the people and their representatives in the electoral college. And in accepting the burdens of that great office, the President, in his inaugural oath, enters into a covenant—a binding agreement of mutual trust and obligation—with the American people.

Shortly after his election and during his first months in office, President Clinton spoke with some frequency about a ''new covenant'' in America. In this instance, let us take the President at his word: that his office is a covenant—a solemn pact of mutual trust and obligation—with the American people. Let us take the President seriously when he speaks of covenants: because a covenant is about promise-making and promise-keeping. For it is because the President has defaulted on the promises he made—it is because he has violated the oaths he has sworn—that he has been impeached.

The debate about impeachment during the Constitutional Convention of 1787 makes it clear that the Framers of the Constitution regarded impeachment and removal from office on conviction as a remedy for a fundamental betrayal of trust by the President. The Framers had invested the Presidential office with great powers. They knew that those powers could be—and would be—abused if any President were to violate, in a fundamental way, the oath he had sworn to faithfully execute the Nation's laws.

For if the President did so violate his oath of office, the covenant of trust between himself and the American people would be broken.

Today, we see something else: that the fundamental trust between America and the world can be broken, if a Presidential Perjurer represents our country in world affairs. If the President calculatedly and repeatedly violates his oath, if the President breaks the covenant of trust he has made with the American people, he can no longer be trusted. And, because the executive plays so large a role in representing the country to the world, America can no longer be trusted.

It is often said that we live in an age of increasing interdependence. If that is true, and the evidence for it is all around us, then the future will require an even stronger bond of trust between the President and the Nation: because with increasing interdependence comes an increased necessity of trust.

This is one of the basic lessons of life. Parents and children know this. Husbands and wives know it. Teachers and students know it, as do doctors and patients, suppliers and customers, lawyers and clients, clergy and parishioners: the greater the interdependence, the greater the necessity of trust; the greater the interdependence, the greater the imperative of promise-keeping.

Trust, not what James Madison called the ''parchment barriers'' of laws, is the fundamental bond between the people and their elected representatives, between those who govern and those who are governed. Trust is the mortar that secures the foundations of the American house of freedom. And the Senate of the United States, sitting in judgment in this impeachment trial, should not ignore, or minimize, or dismiss the fact that the bond of trust has been broken, because the President has violated both his oaths of office and the oath he took before his grand jury testimony.

In recent months, it has often been asked—so what? What is the harm done by this lying under oath, by this perjury? Well, what is an oath? An oath is an asking almighty God to witness to the truth of what you are saying. Truth telling—truth telling is the heart and soul of our justice system.

I think the answer would have been clear to those who once pledged their sacred honor to the cause of liberty. The answer would have been clear to those who crafted the world's most enduring written constitution.

No greater harm can be done than breaking the covenant of trust between the President and the people; among the three branches of our government; and between the country and the world.

For to break that covenant of trust is to dissolve the mortar that binds the foundation stones of our freedom into a secure and solid edifice. And to break that covenant of trust by violating one's oath is to do grave damage to the rule of law among us.

That none of us is above the law is a bedrock principle of democracy. To erode that bedrock is to risk even further injustice. To erode that bedrock is to subscribe, to a ''divine right of kings'' theory of governance, in which those who govern are absolved from adhering to the basic moral standards to which the governed are accountable. We must never tolerate one law for the ruler, and another for the ruled. If we do, we break faith with our ancestors from Bunker Hill, Lexington and Concord to Flanders Field, Normandy, Iwo Jima, Panmunjom, Saigon and Desert Storm.

Let us be clear: The vote that you are asked to cast is, in the final analysis, a vote about the rule of law.

The rule of law is one of the great achievements of our civilization. For the alternative to the rule of law is the rule of raw power. We here today are the heirs of three thousand years of history in which humanity slowly, painfully and at great cost, evolved a form of politics in which law, not brute force, is the arbiter of our public destinies.

We are the heirs of the Ten Commandments and the Mosaic law: a moral code for a free people who, having been liberated from bondage, saw in law a means to avoid falling back into the habit of slaves. We are the heirs of Roman law: the first legal system by which peoples of different cultures, languages, races, and religions came to live together in a form of political community. We are the heirs of the Magna Carta, by which the freeman of England began to break the arbitrary and unchecked power of royal absolutism. We are the heirs of a long tradition of parliamentary development, in which the rule of law gradually came to replace royal prerogative as the means for governing a society of free men and women. Yes, we are the heirs of 1776, and of an epic moment in human affairs when the founders of this Republic pledged their lives, fortunes and, yes, their sacred honor, to the defense of the rule of law. We are the heirs of a tragic civil war, which vindicated the rule of law over the appetites of some for owning others. We are the heirs of the 20th century's great struggles against totalitarianism, in which the rule of law was defended at immense cost against the worst tyrannies in human history. The ''rule of law'' is no pious aspiration from a civics textbook. The rule of law is what stands between all of us and the arbitrary exercise of power by the state. The rule of law is the safeguard of our liberties. The rule of law is what allows us to live our freedom in ways that honor the freedom of others while strengthening the common good.

Lying under oath is an abuse of freedom. Obstruction of justice is a degradation of law. There are people in prison for just such offenses. What in the world do we say to them about equal justice if we overlook this conduct in the President?

Some may say, as many have said in recent months, that this is to pitch the matter too high. The President's lie, it is said, was about a ''trivial matter;'' it was a lie to spare embarrassment about misconduct on a ''private occasion.''

The confusing of what is essentially a private matter, and none of our business, with lying under oath to a court and a grand jury has been only one of the distractions we have had to deal with.

Senators, as men and women with a serious experience of public affairs, we can all imagine, a situation in which a President might shade the truth when a great issue of the national interest or the national security was at stake. We have all been over that terrain. We know the thin ice on which any of us skates when blurring the edges of the truth for what we consider a compelling, demanding public purpose.

Morally serious men and women can imagine circumstances, at the far edge of the morally permissible, when, with the gravest matters of national interest at stake, a President could shade the truth in order to serve the common

good. But under oath, for a private pleasure?

In doing this, the Office of President of the United States has been debased and the justice system jeopardized.

In doing this, he has broken his covenant of trust with the American people.

The framers also knew that the Office of President of the United States could be gravely damaged if it continued to be unworthily occupied. That is why they devised the process of impeachment by the House and trial by the Senate. It is, in truth, a direct process. If, on impeachment, the President is convicted, he is removed from office—and the office itself suffers no permanent damage. If, on impeachment, the President is acquitted, the issue is resolved once and for all, and the office is similarly protected from permanent damage.

But if, on impeachment, the President is not convicted and removed from office despite the fact that numerous Senators are convinced that he has, in the words of one proposed resolution of censure, ''egregiously failed'' the test of his oath of office, ''violated the trust of the American people,'' and ''dishonored the office which they entrusted to him,'' then the Office of the Presidency has been deeply, and perhaps permanently damaged.

And that is a further reason why President Clinton must be convicted of the charges brought before you by the House and removed from office. To fail to do so, while conceding that the President has engaged in egregious and dishonorable behavior that has broken the covenant of trust between himself and the American people, is to diminish the Office of President of the United States in an unprecedented and unacceptable way.

Senators, please permit me a word on my own behalf and on behalf of my colleagues of the House. It is necessary to clarify an important point.

None of us comes to this Chamber today without a profound sense of our own responsibilities in life, and of the many ways in which we have failed to meet those responsibilities, to one degree or another. None of us comes before you claiming to be a perfect man or a perfect citizen, just as none of you imagines yourself perfect. All of us, Members of the House and Senate, know that we come to this difficult task as flawed human beings, under judgment.

That is the way of this world: flawed human beings must, according to the rule of law, judge other flawed human beings.

But the issue before the Senate of the United States is not the question of its own Members' personal moral condition. Nor is the issue before the Senate the question of the personal moral condition of the members of the House of Representatives. The issue here is whether the President has violated the rule of law and thereby broken his covenant of trust with the American people. This is a public issue, involving the gravest matter of the public interest. And it is not effected, one way or another, by the personal moral condition of any member of either House of Congress, or by whatever expressions of personal chagrin the President has managed to express.

Senators, we of the House do not come before you today lightly. And, if you will permit me, it is a disservice to the House to suggest that it has brought these articles of impeachment before you in a mean-spirited or irresponsible way. That is not true.

We have brought these articles of impeachment because we are convinced, in conscience, that the President of the United States lied under oath; that the President committed perjury on several occasions before a Federal grand jury. We have brought these articles of impeachment because we are convinced, in conscience, that the President willfully obstructed justice and thereby threatened the legal system he swore a solemn oath to protect and defend.

These are not trivial matters. These are not partisan matters. These are matters of justice, the justice that each of you has taken a solemn oath to serve in this trial.

Some of us have been called ''Clinton-haters.'' I must tell you, distinguished Senators, that this impeachment is not, for those of us from the House, a question of hating anyone. This is not a question of who we hate. It is a question of what we love. And among the things we love are the rule of law, equal justice before the law, and honor in our public life. All of us are trying as hard as we can to do our duty as we see it—no more and no less.

Senators, this trial is being watched around the world. Some of those watching, thinking themselves superior in their cynicism, wonder what it is all about. But others know.

Political prisoners know that this is about the rule of law—the great alternative to arbitrary and unchecked state power.

The families of executed dissidents know that this is about the rule of law—the great alternative to the lethal abuse of power by the state.

Those yearning for freedom know that this is about the rule of law—the hard-won structure by which men and women can live by their God-given dignity and secure their God-given rights in ways that serve the common good.

If they know this, can we not know it?

If, across the river in Arlington Cemetery, there are American heroes who died in defense of the rule of law, can we give less than the full measure of our devotion to that great cause?

I wish to read you a letter I recently received that expresses my feelings far better than my poor words:

DEAR CHAIRMAN HYDE: My name is William Preston Summers. How are you doing? I am a third grader in room 504 at Chase elementary School in Chicago. I am writing this letter because I have something to tell you. I have thought of a punishment for the president of the United states of America. The punishment should be that he should write a 100 word essay by hand. I have to write an essay when I lie. It is bad to lie because it just gets you in more trouble. I hate getting in trouble.

It is just like the boy who cried wolf, and the wolf ate the boy. It is important to tell the truth. I like to tell the truth because it gets you in less trouble. If you do not tell the truth people do not believe you.

It is important to believe the president because he is a important person. If you can not believe the president who can you believe. If you have to no one believe in then how do you run your life. I do not believe the president tells the truth anymore right now. After he writes the essay and tells the truth, I will believe him again.

WILLIAM SUMMERS.

Then there is a P.S. from his dad:

DEAR REPRESENTATIVE HYDE: I made my son William either write you a letter or an essay as a punishment for lying. Part of his defense for his lying was the President lied. He is still having difficulty understanding why the President can lie and not be punished.

BOBBY SUMMERS.

Mr. Chief Justice and Senators, on June 6, 1994, it was the 50th anniversary of the Americans landing at Normandy. I went ashore at Normandy, walked up to the cemetery area, where as far as the eye could see there were white crosses, Stars of David. And the British had a bagpipe band scattered among the crucifixes, the crosses, playing ''Amazing Grace'' with that peaceful, mournful sound that only the bagpipe can make. If you could keep your eyes dry you were better than I.

But I walked to one of these crosses marking a grave because I wanted to personalize the experience. I was looking for a name but there was no name. It said, ''Here lies in Honored Glory a Comrade in Arms Known but to God.''

How do we keep faith with that comrade in arms? Well, go to the Vietnam Memorial on the National Mall and press your hands against a few of the 58,000 names carved into that wall, and ask yourself, How can we redeem the debt we owe all those who purchased our freedom with their lives? How do we keep faith with them? I think I know. We work to make this country the kind of America they were willing to die for. That is an America where the idea of sacred honor still has the power to stir men's souls.

My solitary—solitary—hope is that 100 years from today people will look back at what we have done and say, ''They kept the faith.''

I'm done.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ADJOURNMENT UNTIL 9:30 A.M. TUESDAY, JANUARY 19, 1999

Mr. LOTT. Mr. Chief Justice, pursuant to the previous consent agreement, I now ask unanimous consent that the Senate stand in adjournment under that order.