

FALSE TESTIMONY CONCERNING OBSTRUCTION OF JUSTICE

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

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

Ms. Lewinsky testified that on December 28, 1997, she discussed with the President the subpoena's request for her to produce gifts, including a hat pin. She told the President that it concerned her, (ML 8/6/98 GJ, p. 151; H.Doc. 105-311, p. 871) and he said that it "bothered" him too. (ML 8/20/98 GJ, p. 66; H.Doc. 105-311, p. 1122) Ms. Lewinsky then suggested that she

give the gifts to someone, maybe to Betty. But rather than instructing her to turn the gifts over to Ms. Jones' attorneys, the President replied, "I don't know" or "Let me think about that." (ML 8/6/98 GJ, p. 152; H.Doc. 105-311, p. 872) Several hours later, Ms. Currie called Ms. Lewinsky on her cellular phone and said, "I understand you have something to give me" or "the President said you have something to give me." (ML 8/6/98 GJ, pgs. 154-155; H.Doc. 105-311, pgs. 874-875)

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

TESTIMONY CONCERNING MS. CURRIE

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

- (1) I was never really alone with Monica, right?
- (2) You were always there when Monica was there, right?
- (3) Monica came on to me, and I never touched her, right?
- (4) You could see and hear everything, right?
- (5) She wanted to have sex with me, and I cannot do that.

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

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

The President was asked specifically about these statements before the grand jury. He did not deny them, but said that he

was "trying to refresh [his] memory about what the facts were."
(WJC 8/17/98 GJ, p. 131; H.Doc. 105-311, p. 583) He added that he
wanted to "know what Betty's memory was about what she heard,"
(WJC 8/17/98 GJ, p. 54; H.Doc. 105-316, p. 506) and that he was
"trying to get as much information as quickly as [he] could."
(WJC 8/17/98 GJ, p. 56; H.Doc. 105-311, p. 508) Logic
demonstrates that the President's explanation is contrived and
false.

A person does not refresh his recollection by firing
declarative sentences dressed up as leading questions to his
secretary. If the President was seeking information, he would
have asked Ms. Currie what she recalled. Additionally, a person
does not refresh his recollection by asking questions concerning
factual scenarios of which the listener was unaware, or worse, of
which the declarant and the listener knew were false. How would
Ms. Currie know if she was always there when Ms. Lewinsky was
there? Ms. Currie, in fact, acknowledged during her grand jury
testimony that Ms. Lewinsky could have visited the President at
the White House when Ms. Currie was not there. (BC 7/22/98 GJ,
pgs. 65-66; H.Doc. 105-316, p. 679) Ms. Currie also testified
that there were several occasions when the President and Ms.
Lewinsky were in the Oval Office or study area without anyone

else present. (BC 1/27/98 GJ, pgs. 32-33, 36-38; H.Doc. 105-316, pgs. 552-553)

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

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

Lastly, the President stated in the grand jury that he was "downloading" information in a "hurry," apparently explaining that he made these statements because he did not have time to listen to answers to open-ended questions. (WJC 8/17/98 GJ, p. 56; H.Doc. 105-311, p. 508) But, if he was in such a hurry, why did the President not ask Ms. Currie to refresh his recollection

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

TESTIMONY ABOUT INFLUENCING AIDES

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

attributed to White House sources. They were also disseminated to the grand jury.

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

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

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

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

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

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

THE PRESIDENT'S METHOD

Again, the President carefully crafted his statements to give the appearance of being candid, when actually his intent was the opposite. In addition, throughout the testimony, whenever the President was asked a specific question that could not be answered directly without either admitting the truth or giving an easily provable false answer, he said, "I rely on my statement." 19 times he relied on this false and misleading statement; nineteen times, then, he repeated those lies in "answering"

questions propounded to him. (See eg. WJC 8/17/98 GJ, pg. 139; H.Doc. 105-311, p. 591)

THE HOUSE COMMITTEE'S REQUEST

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

THE PRESIDENT'S REPEATS HIS FALSITIES

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

In at least 15 answers, the President merely referred to "White House Records." He also referred to his own prior testimony and that of others. He answered several of the

requests by merely restating the same deceptive answers that he gave to the grand jury. We will point out several false statements in this Brief.

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

THE EARLY ATTACK ON MS. LEWINSKY

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

When the President testified at his deposition that he had no sexual relations, sexual affair or the like with Monica

Lewinsky, he felt secure. Monica Lewinsky, the only other witness was on board. She had furnished a false affidavit also denying everything. Later, when he realized from the January 18, 1998, Drudge Report that there were taped conversations between Ms. Lewinsky and Linda Tripp, he had to develop a new story, and he did. In addition, he recounted that story to White House aides who passed it on to the grand jury in an effort to obstruct that tribunal too.

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

MR. BENNETT'S REMARK

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

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

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

ADDITIONAL CALLS

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

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

He then called Bruce Lindsey again.

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

After that, the President again conversed with Bruce Lindsey.

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

THE PRESIDENT'S STATEMENTS TO STAFF

ERSKINE BOWLES

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

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

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

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

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

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

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

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

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

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

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

**JOHN PODESTA
JANUARY 21, 1998**

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

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

A. And we started off meeting - we didn't -

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

Q. What else did he say?

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

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

JANUARY 23, 1998

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

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

Then Podesta testified as follows:

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

A. Yes, he was more specific than that.

Q. Okay, share that with us.

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

Q. Okay.

A. - That they had not had oral sex.

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

SIDNEY BLUMENTHAL

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

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

And it was at this point that he gave his account of what had happened to me and he said that Monica - and it came very fast. He said, "Monica Lewinsky came at me and made a sexual demand on me." He rebuffed her. He said, "I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again."

She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker anymore.

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

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

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

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

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

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

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

specifically. Do you recall generally the nature of your response to the President?

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

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

BETTY CURRIE

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

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

session.

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

MOTIVE FOR LIES TO STAFF

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

grand jury. (WJC 8/17/98 GJ, pgs. 105-109; H.Doc. 105-311, pgs. 557-557)

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

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

WIN, WIN, WIN

President Clinton also implemented a win-at-all-costs

strategy calculated to obstruct the administration of justice in the Jones case and in the grand jury. This is demonstrated in testimony presented by Richard "Dick" Morris to the federal grand jury.

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

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

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

Morris recalls the following exchange:

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

WJC Well, we just have to win, then.

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

The President, of course, cannot recall this statement.

(Presidential Responses to Questions, Numbers 69, 70, and 71)

THE PLOT TO DISCREDIT MONICA LEWINSKY

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

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

Again:

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

From Gene Lyons, an Arkansas columnist on January 30:

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

From another "source" on February 1:

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

And on February 4:

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

Finally, on January 31:

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

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

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

Just hours after the story broke, one White House source made unsolicited calls offering that Lewinsky was the "troubled" product of divorced parents and may have been following

the footsteps of her mother, who wrote a tell-all book about the private lives of three famous opera singers.

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

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

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

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

WJC That's right. I think I was quite careful what I said after that. I may have said something to all these

people to that effect, but I'll also - whenever anybody asked me any details, I said, look, I don't want you to be a witness or I turn you into a witness or give you information that would get you in trouble. I just wouldn't talk. I, by and large, didn't talk to people about it.

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

WJC No.

Q And you've told us that you -

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

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

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

(WJC 8/17/98 GJ, pgs. 106-108; H.Doc. 105-311, pgs. 558-560)

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

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

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

The "Talking Points" state as follows:

Q. What acts does the President believe

constitute a sexual relationship?

- A. I can't believe we're on national television discussing this. I am not about to engage in an "act-by-act" discussion of what constitutes a sexual relationship.
- Q. Well, for example, Ms. Lewinsky is on tape indicating that the President does not believe oral sex is adultery. Would oral sex, to the President, constitute a sexual relationship?

A. Of course it would.

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

EFFECT OF THE PRESIDENT'S CONDUCT

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

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

The Fifth Amendment to the Constitution of the United States

provides that no person shall "be deprived of life, liberty or property without due process of law."

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

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

THE EFFECT ON MS. JONES' RIGHTS

Paula Jones is an American citizen, just a single citizen who felt that she had suffered a legal wrong. More important, that legal wrong was based upon the Constitution of the United States. She claimed essentially that she was subjected to sexual harassment, which, in turn, constitutes discrimination on the basis of gender. The case was not brought against just any citizen, but against the President of the United States, who was under a legal and moral obligation to preserve and protect Ms. Jones' rights. It is relatively simple to mouth high-minded platitudes and to prosecute vigorously rights violations by someone else. It is, however, a test of courage, honor and integrity to enforce those rights against yourself. The President failed that test. As a citizen, Ms. Jones enjoyed an absolute constitutional right to petition the Judicial Branch of government to redress that wrong by filing a lawsuit in the

United States District Court, which she did. At this point she became entitled to a trial by jury if she chose, due process of law and the equal protection of the laws no matter who the defendant was in her suit. Due process contemplates the right to a full and fair trial, which, in turn, means the right to call and question witnesses, to cross-examine adverse witnesses and to have her case decided by an unbiased and fully informed jury. What did she actually get? None of the above.

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

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

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

THE EFFECT ON THE OFFICE OF PRESIDENT

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

Make no mistake, the conduct of the President is inextricably bound to the welfare of the people of the United States. Not only does it affect economic and national defense, but even more directly, it affects the moral and law-abiding fibre of the commonwealth, without which no nation can survive. When, as here, that conduct involves a pattern of abuses of power, of perjury, of deceit, of obstruction of justice and of the Congress, and of other illegal activities, the resulting damage to the honor and respect due to the United States is, of necessity, devastating.

THE EFFECT ON THE SYSTEM

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

itself will implode.

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

DISREGARD OF THE RULE OF LAW

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

those supports, and the State will totter. Remove two and the structure will collapse altogether.

EFFECT ON THE JUDICIAL BRANCH

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

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

THE CONDUCT CHARGED WARRANTS CONVICTION AND REMOVAL

The Articles state offenses that warrant the President's conviction and removal from office. The Senate's own precedents establish that perjury and obstruction warrant conviction and removal from office. Those same precedents establish that the

perjury and obstruction need not have any direct connection to the officer's official duties.

PRECEDENTS

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

JUDGE NIXON

In 1989, Judge Walter L. Nixon, Jr., was impeached, convicted, and removed from office for committing perjury. Judge Nixon's offense stemmed from his grand jury testimony and statements to federal officers concerning his intervention in the

state drug prosecution of Drew Fairchild, the son of Wiley Fairchild, a business partner of Judge Nixon's.

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

After a lengthy criminal prosecution, Judge Nixon was convicted on two counts of perjury before the grand jury and sentenced to five years in prison on each count. Not long thereafter, the House impeached Judge Nixon by a vote of 417 to 0. The first article of impeachment charged him with making the false or misleading statement to the grand jury that he could not "recall" discussing the Fairchild case with the prosecutor. The second article charged Nixon with making affirmative false or misleading statements to the grand jury that he had "nothing whatsoever officially or unofficially to do with the Drew Fairchild case." The third article alleged that Judge Nixon made

numerous false statements (not under oath) to federal investigators prior to his grand jury testimony. See 135 Cong. Rec. H1802-03.

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

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

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

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

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

The Senate agreed, overwhelmingly voting to convict Judge Nixon of perjury on the first two articles (89-8 and 78-19,

respectively). As Senator Carl Levin explained:

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

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

JUDGE HASTINGS

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

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

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

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

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

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

JUDGE CLAIBORNE

In 1986, Judge Harry E. Claiborne was impeached, convicted, and removed from office for making false statements under penalties of perjury. In particular, Judge Claiborne had filed false income tax returns in 1979 and 1980, grossly understating

his income. As a result, he was convicted by a jury of two counts of willfully making a false statement on a federal tax return in violation of 26 U.S.C. § 7206(1). Subsequently, the House unanimously (406-0) approved four articles of impeachment. The proposition that Claiborne's perjurious personal income tax filings were not impeachable was never even seriously considered. As the House Managers explained:

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

Proceedings of the United States Senate Impeachment Trial of

Judge Harry E. Claiborne, S. Doc. No. 99-48, at 40

(1986) ("Claiborne Proceedings") (emphases added).

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

Honor in the eyes of the American people lies in public officials who respect the law, not in those who violate the trust that has been given to them when they are trusted with public office. Judge Harry E. Claiborne has, sad to say, undermined the integrity of the judicial branch of Government. To restore that

integrity and to maintain public confidence in the administration of justice, Judge Claiborne must be convicted on the fourth Article of Impeachment [that of reducing confidence in the integrity of the judiciary].

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

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

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

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

APPLICATION TO THE PRESIDENT

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

See generally Cooper Testimony, at 193.

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

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

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

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

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

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

Trial Committee, 99th Cong., 2^d Sess. 245 (1986) (hereinafter cited as "Senate Claiborne Hearings").

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

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

Moreover, even assuming that presidential high crimes and misdemeanors could be different from judicial ones, surely the President ought not be held to a lower standard of impeachability than judges. In the course of the 1980s judicial impeachments,

Congress emphasized unequivocally that the removal from office of federal judges guilty of crimes indistinguishable from those currently charged against the President was essential to the preservation of the rule of law. If the perjury of just one judge so undermines the rule of law as to make it intolerable that he remain in office, then how much more so does perjury committed by the President of the United States, who alone is charged with the duty "to take Care that the Laws be faithfully executed." See generally, Cooper Testimony at 194)

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

nation ruled by laws and not men.

PERJURY AND OBSTRUCTION ARE AS SERIOUS AS BRIBERY

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

Having established that point, the rest is easy. Bribing a witness is illegal because it leads to false testimony that in

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

HIGH CRIMES AND MISDEMEANORS

Although Congress has never adopted a fixed definition of "high crimes and misdemeanors," much of the background and history of the impeachment process contradicts the President's claim that these offenses are private and therefore do not warrant conviction and removal. Two reports prepared in 1974 on the background and history of impeachment are particularly helpful in evaluating the President's defense. Both reports support the conclusion that the facts in this case compel the conviction and removal of President Clinton.

Many have commented on the report on "Constitutional Grounds for Presidential Impeachment" prepared in February 1974 by the staff of the Nixon impeachment inquiry. The general principles

concerning grounds for impeachment set forth in that report indicate that perjury and obstruction of justice are impeachable offenses. Consider this key language from the staff report describing the type of conduct which gives rise to impeachment:

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

1974 Staff Report at 26 (emphases added).

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

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

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

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

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

That the President's perjury and obstruction do not directly involve his official conduct does not diminish their significance. The record is clear that federal officials have been impeached for reasons other than official misconduct. As set forth above, two recent impeachments of federal judges are compelling examples. In 1989, Judge Walter Nixon was impeached,

convicted, and removed from office for committing perjury before a federal grand jury. Judge Nixon's perjury involved his efforts to fix a state case for the son of a business partner -- a matter in which he had no official role. In 1986, Judge Harry E. Claiborne was impeached, convicted, and removed from office for making false statements under penalty of perjury on his income tax returns. That misconduct had nothing to do with his official responsibilities.

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

The record of Judge Claiborne's impeachment proceedings affirms that conclusion. Representative Hamilton Fish, the

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

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

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

Claiborne Hearings, at 81) Kastenmeier's response was repeated by the House of Representatives in its pleading opposing Claiborne's motion to dismiss. (Opposition to Claiborne Motion at 2)

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

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

CONCLUSION

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

convicted felon or a traitor will need to be concerned.

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

Dated: January 11, 1999