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# The Trial of President William Jefferson Clinton: "Impartial Justice," the Court of Impeachment and Ranked Vignettes of Praiseworthy Senatorial Rhetoric

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# THE TRIAL OF PRESIDENT WILLIAM JEFFERSON CLINTON: "IMPARTIAL JUSTICE," THE COURT OF IMPEACHMENT AND RANKED VIGNETTES OF PRAISEWORTHY SENATORIAL RHETORIC

ROBERT F. BLOMQUIST<sup>1</sup>

## I. INTRODUCTION

As observed in overarching terms by Richard A. Posner in his incomparable book about the Clinton impeachment process, *An Affair of State*,<sup>2</sup> the Senate of the United States "like the Roman Senate or the

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1. Professor of Law, Valparaiso University School of Law. B.S. University of Pennsylvania (Wharton School), 1973. J.D. Cornell University, 1977. My thanks go to a number of people who inspired and made possible the writing of this Article: Jay Conison, my law school dean, who provided a grant for me to travel to the Nation's Capitol to witness part of the Clinton Impeachment Trial in the United States Senates' Court of Impeachment; Senator Richard Lugar, Indiana's senior United States Senator, who generously provided a rare full day pass to the impeachment trial; Sally Holterhoff, Valparaiso University School of Law's excellent and resourceful Government Documents Librarian, who helped me locate and borrow both Congressional materials as well as historical accounts of the Impeachment Trial of Andrew Johnson; and to the Valparaiso University School of Law Student Bar Association, which invited me to speak at a 1998 forum on the possible impeachment of President Clinton. Last, but most importantly, I dedicate this Article to my parents who raised me with the highest ideals about the meaning of American democracy.

2. RICHARD A. POSNER, *AN AFFAIR OF STATE: THE INVESTIGATION, IMPEACHMENT AND TRIAL OF PRESIDENT CLINTON* 117 (1999). Judge Posner is a prolific, eclectic and brilliant legal mind, both on and off the bench of the United States Court of Appeals for the Seventh Circuit, where he is presiding judge. See, e.g., Robert F. Blomquist, *Playing on Words: Judge Richard A. Posner's Appellate Opinions, 1981-82—Ruminations on Sexy Judicial Opinion Style During an Extraordinary Rookie Season*, 68 U. CIN. L. REV. (forthcoming 2000). Judge Posner's book, *AN AFFAIR OF STATE*, has drawn considerable fire, especially from legal philosopher, Ronald Dworkin, author of, among other well-known books, *LAW'S EMPIRE* (1986). See, e.g., Ronald Dworkin, *Philosophy & Monica Lewinsky*, N.Y. REVIEW OF BOOKS, March 9, 2000, at 48. Posner provided a thoughtful reply to this line of attack. See Richard A. Posner, *Dworkin, Polemics and the Clinton Impeachment Controversy*, 94 NW. U. L. REV. 1023 (2000); PETER BAKER, *THE BREACH: INSIDE THE IMPEACHMENT AND TRIAL OF WILLIAM JEFFERSON CLINTON* (2000) (providing a journalistic account of the Clinton impeachment).

English House of Lords, was conceived [by the Founders during the Constitutional Convention of 1787] to be a . . . *deliberative* rather than merely a representative body."<sup>3</sup> Compelling evidence of this deliberative role, contemplated for the Senate by the Founders, "is shown by the fact that the Constitution entrust[s] [the Senate] with sole responsibility for ratifying treaties and confirming the President's judicial and executive appointments."<sup>4</sup> Moreover, when it came to deciding the wisdom of impeaching federal officials, "[i]t was natural . . . to repose [communal] judicial responsibilities in [the Senate as a Court of Impeachment], especially since the Justices of the Supreme Court, who might have been thought the more logical judges of an impeachment, were appointed by the President."<sup>5</sup> Indeed, the United States Senate has been referred to, by some, as the "world's greatest deliberative body."<sup>6</sup> Throughout American history, on many matters of public importance to the Nation and the world, this reputation for deliberative debate has been justified. Some prominent illustrations of impressive Senate rhetoric and debate include the following diverse list: On the Compromise of 1850;<sup>7</sup> on the Force Bill of 1833;<sup>8</sup> foreign policy in the 1920s and 1930s;<sup>9</sup> on Kansas statehood in 1856,<sup>10</sup> on the Mexican War of 1846;<sup>11</sup> on the Missouri Compromise of 1820;<sup>12</sup> on the nullification debate of 1830;<sup>13</sup> and, arguably (albeit after voting had taken place and after the untranscribed, real behind-closed-doors-deliberations had taken place) on the Impeachment Trial of President

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3. POSNER, *supra* note 2, at 117 (emphasis added). For a fascinating study of the institution of the ancient Roman Senate, see generally ROBERT C. BYRD, *THE SENATE OF THE ROMAN REPUBLIC: ADDRESSES ON THE HISTORY OF ROMAN CONSTITUTIONALISM* (1995). Byrd has been a distinguished United States Senator from the State of West Virginia since he was elected to his first term in 1958. See MICHAEL BARONE & GRANT UJIFUSA, *THE ALMANAC OF AMERICAN POLITICS: 2000 1711* (1999) (discussed *infra* note 76 and accompanying text).

4. POSNER, *supra* note 2, at 117 (footnote omitted).

5. *Id.*

6. PAUL DICKSON & PAUL CLANCY, *THE CONGRESS DICTIONARY: THE WAYS AND MEANINGS OF CAPITOL HILL 388* (1993).

7. See ROBERT C. BYRD, *THE SENATE 1789-1989: ADDRESSES ON THE HISTORY OF THE UNITED STATES SENATE 188-93* (1988).

8. See *id.* at 122-24.

9. See *id.* at 479-95.

10. See *id.* at 208-09.

11. See *id.* at 177-79.

12. See *id.* at 74-76.

13. See *id.* at 109-15.

Andrew Johnson in 1868.<sup>14</sup>

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14. See generally WILLIAM H. REHNQUIST, *GRAND INQUESTS: THE HISTORICAL IMPEACHMENTS OF JUSTICE SAMUEL CHASE AND PRESIDENT ANDREW JOHNSON* 240-46 (1992) (discussing the post-voting "written opinions" filed by thirty of the fifty-four senators who had participated in the Johnson trial). In the Johnson Impeachment Trial, the Senate voted on the Articles of Impeachment first, and then were given two days to file a "written opinion, to be printed with the proceedings." U.S. CONGRESS-SENATE, *TRIAL OF ANDREW JOHNSON, PRESIDENT OF THE UNITED STATES, ON IMPEACHMENT BY THE HOUSE OF REPRESENTATIVES FOR HIGH CRIMES AND MISDEMEANORS*, VOL. 2 (of 3) at 478, 40th Cong., 2nd Sess. (1868). The written opinions of the senators, who filed an opinion, are found at *id.*, Vol. 3 at 3-353. While filed after the votes on impeachment, the substance of the written opinions are written as if they were attempts to persuade other senators how to vote and to justify the particular senator's vote who authored the opinion. For a synoptic congressional account of the Johnson Impeachment Trial, containing extracts of the proceedings, see S. DOC. NO. 62-876, *EXTRACTS FROM THE JOURNAL OF THE UNITED STATES SENATE IN ALL CASES OF IMPEACHMENT PRESENTED BY THE HOUSE OF REPRESENTATIVES, 1798-1904*, 62nd Cong., 2nd Sess. at 161-327 (1912). Yet, closed door deliberations prior to the actual vote on the Johnson Articles of Impeachment did transpire; the record of the actual "real-time," closed-door deliberations, however, was apparently never officially transcribed. See Remarks by Senator Patrick Leahy *On the Motions to Open to the Public the Final Deliberations on the Articles of Impeachment*, worthy of selective quotation:

In relation to the earlier vote [by the Senate to keep the final deliberations of the Senate's considerations of the Articles of Impeachment against President Clinton behind closed doors] I have these thoughts. Accustomed as we and the American people are to having our proceedings in the Senate open to the public and subject to press coverage, the most striking prescription in the "Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials" has been the closed deliberations required on a question, motion and now on the final vote on the Articles of Impeachment.

The requirement of closed deliberation more than any other rule reflects the age in which the rules were originally adopted in 1868. Even in 1868, however, not everyone favored secrecy. *During the trial of President Johnson, the senior Senator from Vermont, George F. Edmunds, moved to have the closed deliberations on the Articles transcribed and officially reported "in order that the world might know, without diminution or exaggeration, the reasons and views upon which we proceed to our judgment."*

145 CONG. REC. S1406 (daily ed. Feb. 9, 1999) (quoting CONG. GLOBE SUPP'L IMPEACHMENT TRIAL OF PRESIDENT ANDREW JOHNSON, 40th Cong., 2nd Sess., Vol. 4, at 427 (1868) (emphasis added)).

Senator Leahy went on in his remarks to observe:

The Senate sitting as an impeachment court is unlike any jury in any civil or criminal case. A jury in a court of law is chosen specifically because the jurors have no connection or relation to the parties or their lawyers and no familiarity with the allegations. Keeping the deliberations of regular juries secret ensures that as they reach their final decision, they are free from outside influence or pressure.

*As the Chief Justice made clear on the third day of the [Clinton] Impeachment trial, the Senate is more than a jury; it is a court. Courts are called upon to explain the*

But what of the quality of the Senate's debate and deliberation during the Impeachment Trial of President William Jefferson Clinton in early 1999?<sup>15</sup> How should the performance of the United States Senate

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*reasons for decisions.*

*Id.* (emphasis added). See also the remarkable and rare unsuccessful application made to the United States Senate by the Cable News Network ("CNN"): *In the U.S. Senate Sitting as a Court of Impeachment, In re Impeachment of William Jefferson Clinton, President of the United States, Application of Cable News Network for a Determination That the Closure of These Proceedings Violates the First Amendment to the United States Constitution*, 145 CONG. REC. S1407-09 (daily ed. Feb. 9, 1999) ("CNN respectfully submits this application for a determination that the First Amendment to the United States Constitution requires that the public be permitted to attend and view the debates, deliberations and proceedings of the United States Senate as to the issue of whether William Jefferson Clinton shall be convicted and as to other related matters.").

15. In a fashion that was similar, but slightly different, to the Impeachment Trial of President Andrew Johnson, *supra* note 14, in the case of the Impeachment Trial of President William Jefferson Clinton, the Senate voted to proceed to have transcribed, but sealed, deliberations behind closed doors and then to vote on the Articles of Impeachment. However, Senators were also given several days to file additional written statements to be put in the Record. A "unanimous consent order" passed by the Senate, in this regard, on February 9, 1999, is as follows, as explained by Majority Leader Trent Lott:

Senators will recall the motion approved on February 9, 1999, which permitted each Senator to place in the CONGRESSIONAL RECORD his or her own statements made during final [transcribed] deliberations in closed session.

I ask unanimous consent that public statements made by Senators subsequent to the approval of that motion, with respect to his or her own statements made during the closed session, be deemed to be in compliance with the Senate rules. This would permit a Senator to release to the public his or her own statement made during final deliberation in closed session, except that, in doing so, a Senator may not disclose any remarks of the other Senators made during deliberations, without the prior consent, of course, of that Senator.

145 CONG. REC. S1457-58 (daily ed. Feb. 12, 1999). So, it appears that some of the Senators in the Clinton Impeachment Trial gave oral statements in closed session, before the vote was taken on February 12; that other Senators provided post-vote written statements and did not give any oral remarks in the Senate chamber; that some Senators provided both an oral statement before the vote and written submissions thereafter; and that some Senators provided no oral or written justification of their vote. My research uncovered a total of 72 oral statements of Senatorial justification for impeachment that were printed in the CONGRESSIONAL RECORD.

For the procedural history of the Senates' decision to formally deliberate in the Senate chamber, behind closed doors, before votes were taken on the Articles of Impeachment against President Clinton, see 145 CONG. REC. S1365 (daily ed. Feb. 8, 1999) (highlighting notice in writing by various Senators to suspend portions of the *Rules of Procedure and Practice in the Senate when sitting on Impeachment Trials* "in regard to any deliberations by Senators on Articles of Impeachment during the trial of President William Jefferson Clinton"); Majority Leader Trent Lott's motion "that the doors of the final deliberation be closed", 145 CONG. REC. S1387-88 (daily ed. Feb. 9, 1999). For the procedural history of the Senate's decision to allow individual Senators to release to the public, after closed door final deliberations on the Articles of Impeachment, individual senatorial statements see 145 Cong.

in the execution of its Constitutionally-mandated duty to deliberate on the fate of the President be judged? Will history smile on the various senators' justifications for their votes on the two Articles of Impeachment against Clinton, or turn away in disgust?

The purpose of this Article is to suggest tentative and incomplete answers to the foregoing questions. I shall proceed as follows. First, the Article provides some background information on the nature of the Articles of Impeachment brought against President Clinton by the House of Representatives and the course of impeachment proceedings in the Senate.<sup>16</sup> Second, discussion shifts to a brief account of classical rhetorical theory; here, I review what makes a speech eloquent.<sup>17</sup> Third, before offering some parting conclusions, the Article rates and ranks the best Senatorial speeches on the Clinton impeachment votes, using rhetorical principles to make this assessment.<sup>18</sup>

## II. BACKGROUND

### A. *A Personal View of the Senate Proceedings*

I meet my mother at Union Train Station in Washington, D.C. on Thursday, January 21, 1999—she is down from New Jersey by Amtrak shuttle; I am out from Indiana via O'Hare and Ronald Reagan Airports to witness something special: a slice of what is only the second impeachment trial of a President during over two centuries of the

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Rec. S1386 (daily ed. Feb. 9, 1999) (Joint Motion by Majority Leader Trent Lott and Minority Leader Thomas Daschle "[t]hat the record of the proceedings held in closed session for any Senator to insert their final deliberations on the Articles of Impeachment shall be published in the CONGRESSIONAL RECORD at the conclusion of the trial"); *id.* at S1386-87 (colloquy between Majority Leader Trent Lott and Senator Larry Craig whereby Lott indicated that Craig's statement was "an accurate understanding", to wit: "[It] is my understanding . . . that your motion would keep this session of deliberations closed, except for those Senators who would choose to have their statements become a part of the CONGRESSIONAL RECORD, and that it would be the choice of the individual Senators, and that the deliberations of the closed session would remain closed unless otherwise specified by each individual Senator, specific to their statements . . ."); *id.* at S1387 (colloquy between Majority Leader Trent Lott and Senator John Kerry regarding Lott's view that in the give and take colloquy between Senators during closed door final deliberation on the Articles of Impeachment "we will be understanding of each other and try to make these deliberations genuine deliberations . . . . [That] would benefit us all in the final result.").

16. See *infra* notes 19-33 and accompanying text.

17. See *infra* notes 34-52 and accompanying text. It should be noted that my focus on rhetoric conforms with a traditional notion that the rhetoric is part and parcel of the legal process. See, e.g., PAUL W. KAHN, *THE CULTURAL STUDY OF LAW* 45 (1999).

18. See *infra* notes 53-235 and accompanying text.

American Republic.<sup>19</sup> I pick up my rectangular, canary-colored all-day ticket to the public gallery of the United States Senate at Senator Richard Lugar's Senate office in the marble-embellished Hart Senate Office Building along Constitution Avenue, a few hundred yards away from the United States Capitol Building. The Senator's assistant informs me that I will have to return the ticket at the end of the day so that Lugar can donate it to an Indiana museum as an historical artifact. To provide me with a personal souvenir, however, the Senator's assistant makes me a photocopy of the original ticket.

The January day is cold and raw. It occurs to me that President Clinton took his first oath of office almost exactly six years ago on the western steps of the majestic Capitol, fronting on the Mall, which rolls down to the Washington Monument and, slightly beyond, to the Lincoln Memorial. His second Oath of Office as President of the United States was taken in the same place, two years ago, yesterday.

My mother insists that I use the ticket first, while she reads her book on one of the benches in the Capitol Rotunda. "Then," she says, "you can come back and I'll take a look at all this monkey business." After an hour's wait in a long, snaking line of other ticket-holders, I make my way into the Senate Gallery at around 2 p.m.—a little less than an hour after the start of the impeachment proceedings for the day—on the upper level overlooking the hushed blue-carpeted chamber of the United States Senate. I get a front row seat, so I am able to look down on the rare assembly of *all* of the Nation's one hundred senators. They sit quietly, and for the most part attentively, behind their customized wooden desks,<sup>20</sup> listening to attorney David Kendall speak in clear and measured tones to the august gathering,<sup>21</sup> from a podium near the black

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19. For the official record of the proceedings in the Senate on January 21, 1999, where lawyers for President Clinton were permitted to make "opening statements," see 145 CONG. REC. S831-49 (daily ed. Jan. 21, 1999).

20. See U.S. CONGRESS, S. NO. DOC. 99-17, *THE CAPITOL: A PICTORIAL HISTORY OF THE CAPITOL AND THE CONGRESS* (9th ed. 1987) at 107. The origin of the customized Senate desks goes back to the War of 1812:

When British troops set the Capitol ablaze in 1814, they heavily damaged the Senate chamber and destroyed its furnishings. As part of the renovation to reopen the Chamber in 1819, the Senate ordered 48 desks at a cost of \$34 each from Thomas Constantine, a New York cabinetmaker, who also built the desks for the House of Representatives. Many of these desks remain in the Senate Chamber today, and desks of a similar design have been added as each new State entered the Union.

*Id.*

21. See 145 CONG. REC. S832 (daily ed. Jan. 21, 1999). At the outset of his remarks that afternoon, Kendall described his relevant background as follows:

marble dias of the presiding officer of the Senate. My eyes wander to the white busts of some past American Vice Presidents—the Vice President is, under the Constitution, the President of the Senate—in alcoves arranged along the top portion of the gallery. I sense that this is an historical conclave: there, in the presiding officer's chair, sits the Chief Justice of the United States, William Rehnquist, who is constitutionally charged to act as the presiding officer at impeachment trials of the President.<sup>22</sup> Scattered across the floor of the chamber I spot famous personages who have achieved national, and even worldwide, fame: Senators Kennedy, McCain, Moynihan, Spector, Byrd, Lott and Daschle.

As I listen to the drone of Kendall's voice, excoriating the actions of Ken Starr in pressing for the Articles of Impeachment and of the House of Representatives in bringing on the charges, I think for a moment how each Senator will decide the ultimate question at the end of this unique proceeding—whether or not to convict and remove the President. And I also ponder, from my perspective as an American law professor,<sup>23</sup> what

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Mr. Chief Justice, Members of the Senate, managers from the House of Representatives, good afternoon. I am David Kendall of the law firm of Williams & Connolly. Since 1993 it has been my privilege to represent the President in the tortuous and meandering Whitewater investigation which, approximately a year ago, was transformed in a remarkable way into the Lewinsky investigation.

*Id.*

22. Uncannily, Chief Justice Rehnquist, in 1992, authored a book about two famous impeachment trials: the 1805 impeachment trial of United States Supreme Court Justice Samuel Chase and the 1868 impeachment trial of President Andrew Johnson. *See* Rehnquist, *supra* note 14. Interestingly, some Senators during their speeches in explanation of their votes on the Articles of Impeachment against President Clinton made passing reference to Chief Justice Rehnquist's book. With regard to the deliberations of the United States Senators during the Chase and Johnson impeachment trials, Rehnquist observed that, as to Justice Samuel Chase, facing a Senate trial in 1805, "[n]o Senator made any comment on the floor of the Senate explaining his votes on any of the Articles of Impeachment." *Id.* at 108. Moreover, according to Rehnquist's account, "[w]e know much less about the members of the Senate in 1805 than we know about the members of that body today. And in 1805 there were no media interviewers waiting in the halls of the Capitol to pose the inevitable questions of why and wherefore." *Id.*

For details on the deliberative procedure utilized by the United States Senate in 1868 to arrive at and explain their votes on the Articles of Impeachment lodged against President Andrew Johnson *see supra* note 14 and accompanying text.

23. Law professors have tended to have strong opinions about the Clinton impeachment. *See, e.g.,* Neal Devins, *Bearing False Witness: The Clinton Impeachment and the Future of Academic Freedom*, 148 U. PA. L. REV. 165, 165 (1999) ("By signing letters about the constitutional standards governing impeachment, an issue most of them know very little about, many academics placed partisanship and self-interest above all else" since "[w]hen academics join forces to send a purely political message, their reputation as truth-seekers will diminish and, with it, their credibility"); Cass Sunstein, *Professors and Politics*, 148 U. PA. L.



reasons will be given by individual Senators in justifying their decision on their final vote as members of the Court of Impeachment.

Later on that afternoon, after my mother has had a chance to use my ticket to briefly view the proceedings, we take a cab ride through the pelting Washington, D.C. rain to the Monocle Restaurant—about three blocks from the Capitol. We are early for dinner. Our waiter sits us by a comforting fire in a room adorned with framed, autographed photographs of power brokers past and present. Pictures of JFK and his young family are in a special place of prominence. Political quotations like, "If you want a friend in this town, get a dog," are inscribed on the molding around the ceiling. Over drinks and a sumptuous feast of Maryland crab cakes, we talk, with enthusiasm, about the privilege and dread of being able to witness—if only for a portion of a day—an Impeachment Trial of the President of the United States.

### *B. How the Clinton Case Got to the Senate*

The substantive issues involved in the Clinton Impeachment Trial, heard by the United States Senate in January and February of 1999, were determined by a tortuous antecedent procedural history which reached back in time nearly eight years, to an alleged "sexual" encounter by Arkansas state employee, Paula Jones, with Arkansas Governor Bill Clinton in a Little Rock hotel room on May 8, 1991.<sup>24</sup> From that point on, the relevant legal and political procedural history of what would become the Clinton Impeachment Trial is as follows:

November 3, 1992	Clinton is elected President.
May 6, 1994	Jones sues Clinton for sexual harassment asking for \$700,000 in damages.
August 9, 1994	Kenneth Starr is appointed Counsel to investigate Whitewater real estate deal.

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REV. 191, 202 (1999) ("I agree with Devins' concerns about skepticism with respect to truth, . . . but as a class, law professors are hardly skeptical of the idea of truth, and I do not see why Devins believes that there is, within law schools, much 'discomfort with truthseeking'. Law professors founded their overwhelming opposition to the Clinton impeachment on a commitment to truth, not on skepticism about truth.") (footnote omitted).

24. POSNER, *supra* note 2, at ix.

July 1995	Monica Lewinsky becomes a White House intern.
November 15, 1995	Clinton begins a sexual relationship with Lewinsky.
April 5, 1996	Lewinsky is transferred to the Pentagon.
November 5, 1996	Clinton is re-elected President.
March 29, 1997	Clinton's last sexual encounter with Lewinsky.
May 27, 1997	The Supreme Court rules that the Jones suit can go forward.
November 1997	Lewinsky enlists Vernon Jordan's aid in her New York job search.
December 5, 1997	Lewinsky's name appears on the witness list in the Jones case.
December 28, 1997	Betty Currie picks up gifts from Lewinsky, hides them under her bed.
January 7, 1998	Lewinsky signs an affidavit in the Jones case.
January 13, 1998	Lewinsky accepts job offer (later rescinded) from Revlon.
January 16, 1998	Kenneth Starr is appointed to investigate the Lewinsky matter.
January 17, 1998	Clinton is deposed in the Jones case.

January 18, 1998	Clinton meets with Currie to discuss his deposition.
January 21, 1998	<i>The Washington Post</i> reveals the Clinton-Lewinsky affair and investigation.
April 1, 1998	The district court dismisses the Jones suit.
July 28, 1998	Lewinsky agrees to cooperate with the Independent Counsel.
August 17, 1998	Clinton testifies before the grand jury via closed-circuit television, then addresses nation.
September 9, 1998	The Starr report is submitted to Congress.
September 21, 1998	Clinton's grand jury testimony is broadcast.
October 8, 1998	The House of Representatives votes to conduct an impeachment inquiry.
November 3, 1998	Mid-term Congressional elections; Democrats do better than expected.
November 9-10, 19, 1998	Hearings are held before the House Judiciary Committee.
November 19, 1998	Jones suit is settled for \$850,000.
November 27, 1998	Clinton answers eighty-one questions pre-pounded to him by the House Judiciary Committee.

December 1, 8-10, 1998	Further hearings are held before the House Judiciary Committee.
December 11-12, 1998	The House Judiciary Committee approves four Articles of Impeachment.
December 19, 1998	The House of Representatives approves two of the Articles; President Clinton is impeached.
January 7, 1999	The trial of President Clinton by the Senate begins.
February 6, 1999	Videotaped witness testimony is presented to the Senate.
February 12, 1999	The trial ends; the President is acquitted[.] <sup>25</sup>

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25. *Id.* at ix-xi. According to Judge Posner's excellent summary, the "dramatis personae" in the wide-ranging Clinton scandal, who were involved directly or indirectly in some role in President Clinton's Senate trial were as follows:

Monica Lewinsky—White House intern, then employee; Clinton girlfriend and witness in his Senate trial.

William Clinton—President of the United States.

Kenneth Starr—Independent Counsel, investigating the President.

Betty Currie—The President's personal secretary.

Evelyn Lieberman—Deputy White House Chief of Staff.

Paula Jones—Plaintiff in a sexual harassment suit against Clinton.

Susan Webber Wright—District judge in the Jones case.

Bill Richardson—U.S. Ambassador to the United Nations.

Vernon Jordan—Washington lawyer; Clinton friend and witness in his Senate trial.

Based on the Starr Report<sup>26</sup> and its own hearings,<sup>27</sup> the House

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Ronald Perelman—Chairman of the executive committee of Revlon, Inc.

Sidney Blumenthal—Assistant to the President; witness in Clinton's Senate trial.

Webster Hubbell—Former Associate Attorney General.

Linda Tripp—Pentagon employee; confidante of Lewinsky.

Kathleen Willey—Volunteer worker in the White House.

Lucianne Goldberg—Conservative literary agent; friend of Linda Tripp.

Gennifer Flowers—Former girlfriend of Clinton.

Vince Foster—Former Deputy White House Counsel; a suicide.

Richard Mellon Scaife—Clinton opponent.

Robert Fiske—Starr's predecessor as Independent Counsel.

James Carville—Political consultant; Clinton defender.

Robert Bennett—Clinton's lead lawyer in the Jones case.

David Kendall—Clinton's lead lawyer in the Starr investigation.

Henry Hyde—Chairman of the House Judiciary Committee; chief prosecutor of Clinton in the Senate trial.

Tom DeLay—House Republican whip.

Charles Ruff—White House Counsel; the President's lead lawyer in the impeachment and trial[.]

*Id.* at vii-viii. (dashes added in list of *dramatis personae*).

26. *Referral From the Independent Counsel Kenneth W. Starr*, H. R. DOC. NO. 105-310, 105th Cong. 2nd Sess. (Sept. 11, 1998). The House Judiciary Committee also printed, and presumably relied upon, five additional volumes of excerpts, edited by the Committee, from the supporting evidence to THE STARR REPORT (much of these additional volumes consisted of Grand Jury testimony of various witnesses). See *Appendices to the Referral to the U.S. House of Representatives*, H. R. DOC. NO. 105-311, 105th Cong., 2d Sess. (Parts I & II) (Sept. 18, 1998) (there are two volumes of Appendices, and the Supplementary Materials are contained in Volume II); POSNER, *supra* note 1, at 16, n. 1. For an example of virulent anti-Starr rhetoric, contemporaneous with the Clinton Impeachment Trial, see ALAN M. DERSHOWITZ, *SEXUAL MCCARTHYISM: CLINTON, STARR AND THE EMERGING CONSTITUTIONAL CRISIS* (1999).

27. See POSNER, *supra* note 2, at 121-22; *Impeachment of William Jefferson Clinton*, H.

Judiciary Committee approved four articles of impeachment against President Clinton;<sup>28</sup> however, the entire House of Representatives approved only two articles of impeachment.<sup>29</sup> The two articles of impeachment were as follows:

#### Article I

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

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

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

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

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R. Rep. No. 105-830, 105th Cong. 2d Sess. (Dec. 15, 1998).

28. See POSNER, *supra* note 2, at 36-37, 56-58, 131-32, 158, 195.

29. H. R. RES. 611, 144 CONG. REC. H11968-12042 (daily ed. Dec. 19, 1998). On the same date the House also adopted H. R. RES. 614, notifying the Senate of its actions and making initial appointment of its thirteen trial prosecutors or "House Managers." 144 CONG. REC. H12042-43 (daily ed. Dec. 19, 1998).

## Article II

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

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

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

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

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

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

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

and misleading statements were subsequently acknowledged by his attorney in a communication to that judge.

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

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

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

Wherefore, William Jefferson Clinton, by such conduct, warrants impeachment and trial, removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.<sup>30</sup>

As observed by Judge Posner in *An Affair of State*: "On January 7, 1999, the Senate trial of President Clinton began. Truncated and anticlimatic—indeed, a parody of legal justice—the trial ended on February 12 with the President's acquittal."<sup>31</sup> Specifically, "[t]he vote to convict was 45 to 55 on the perjury article [Article I], and 50 to 50 on the obstruction of justice article [Article II]".<sup>32</sup> Interestingly:

Although the [Senate] trial nominally lasted more than a month, there was only one real day of trial—February 6, when the prosecution and defense presented the relevant portions of the videotaped depositions of three witnesses (Monica Lewinsky,

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30. H. R. RES. 611, 144 CONG. REC. H. 11774 (House Article I) (daily ed. Dec. 18, 1998); *id.* at H11774-775 (House Article III).

31. POSNER, *supra* note 2, at 1-2 (footnotes omitted).

32. *Id.* at 2, n.3. See also 145 CONG. REC. S1458-59 (daily ed. Feb. 12, 1999).



Vernon Jordan, and Sidney Blumenthal) whom the Senate had authorized the House Managers . . . to call.<sup>33</sup>

### III. A BRIEF PRIMER ON RHETORICAL THEORY

#### A. *The Classical Nature and Scope of Rhetoric*

Rhetoric, in the classical tradition, is deemed to be one of the seven liberal arts. When these seven arts are divided into the *trivium*, or three language arts, and the *quadrivium*, or four mathematical arts, rhetoric has been viewed as belonging to the former group along with grammar and logic rather than with the latter group consisting of arithmetic, geometry, astronomy, and music.<sup>34</sup>

"The purpose and scope of rhetoric are capable of broad and narrow definitions."<sup>35</sup> The narrow view focuses on rhetoric as the art of persuasion in the realm of practical affairs; rhetorical skill, so defined,

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33. POSNER, *supra* note 2, at 1, n.2. As Posner points out, with regard to the term Senate "trial," "[t]here is a semantic problem here. The term 'trial' is used in the impeachment context to refer to the entire proceeding in the Senate, embracing both pretrial proceedings (preliminary motions and pretrial discovery) and the evidentiary hearing, which corresponds to a conventional trial." *Id.*

For a comprehensive, 41 page bibliography on the general subject of impeachment, which was printed at the time the House of Representatives was considering impeaching President Clinton, see LIBRARY OF CONGRESS-LAW LIBRARY, REPORT FOR CONGRESS—IMPEACHMENT: A BIBLIOGRAPHY OF FEDERAL LAW SOURCES IN THE LIBRARY OF CONGRESS, LL 99-2 (Dec. 1998). Among the most important sources cited therein, focusing on the Senate's role in Presidential impeachments, see U.S. CONGRESS, SENATE MANUAL EMBRACING THE STANDING RULES AND ORDERS OF THE SENATE, S. DOC. NO. 103-1 (1890) (including the twenty-four rules of procedure and practice for impeachment trials); CHARLES L. BLACK, JR., IMPEACHMENT: A HANDBOOK (1974); MICHAEL J. GERHARDT, THE FEDERAL IMPEACHMENT PROCESS: A CONSTITUTIONAL AND HISTORICAL ANALYSIS (1996); THOMAS C. KINGSLEY, THE FEDERAL IMPEACHMENT PROCESS: A BIBLIOGRAPHIC GUIDE TO ENGLISH AND AMERICAN PRECEDENTS, HISTORICAL AND PROCEDURAL DEVELOPMENT, AND SCHOLARLY COMMENTARY (1974); JOHN R. LABOVITZ, PRESIDENTIAL IMPEACHMENT (1978); FLOYD M. RIDDICK & ALAN S. FRUMIN, RIDDICK'S SENATE PROCEDURE: PRECEDENTS AND PRACTICES, S. NO. DOC. 101-28 (1992); Karen A. Kalmanir, *Trial by Senate: Identifying Evidentiary Principle in Impeachment Proceedings*, 37 FED. B. NEWS & J. 289 (1990); William Swindler, *High Court of Congress, Impeachment Trials, 1797-1936*, 60 A.B.A. J. 420 (1974); Rose Auslander, Note, *Impeaching the Senate's Use of Trial Committees*, 67 N.Y.U.L. REV. 68 (1992); Stanley N. Futterman, *The Rules of Impeachment*, 24 U. KAN. L. REV. 105 (1975); Edward McWhinney, *Comment, Congress and the Presidency and the Impeachment Power*, 7 IND. L. REV. 833 (1974).

34. 3 THE GREAT IDEAS 645 (Mortimer J. Adler, ed. 1985).

35. *Id.* There is also a modern cynical view of rhetoric, especially in Congress. See DICKSON & CLANCY, *supra* note 6, at 292 ("[I]n criticisms of congressional politics and speech-making, rhetoric tends to be described as 'artificial eloquence' or 'posturing.' The 'usual rhetoric' is what is said to accompany half-thought-out proposals.").

"consists in getting others to embrace certain beliefs, to form the opinions or make the judgments which the speaker or writer wishes them to adopt."<sup>36</sup> Thus, under the narrow definition of rhetoric, *action*—moving persons to act or refrain from acting—is the ultimate goal.<sup>37</sup> The broad view of rhetoric, however, sees rhetoric as a handmaiden of poetics; together they encompass "the art of eloquence in any sort of discourse."<sup>38</sup> A key proponent of this view was Socrates (who spoke of a skillful rhetorician as one able to mix pleasure and truth in a coherent whole).<sup>39</sup>

Since it is apparent that the vast majority of Senators in the Clinton Impeachment Trial were predisposed to vote for or against the two Articles of Impeachment passed by the House of Representatives on the basis of partisan politics, it would be a hollow exercise to focus discussion of the Senators' closing speeches on the narrow conception of rhetoric involving mere persuasion. Accordingly, for pragmatic reasons, the rhetorical analysis of the most praiseworthy senatorial speeches, which follows, adopts the broad conception of rhetoric as more akin to the *art of eloquence*.<sup>40</sup> I take this approach because I contend that what was said by the United States Senators, in their justificatory remarks to one another sitting as a Court of Impeachment, *matters*—from the standpoint of history and justice—whether or not the votes on the Articles of Impeachment against President Clinton were preordained.

### B. Aristotle's Conception of Rhetoric

The Aristotelean conception of the artistic nature of rhetoric has had an enormous influence on Western thought, largely by dint of his two books: *Rhetoric* and *Poetics*.<sup>41</sup> According to Aristotle, rhetoric consists of three interrelated and parallel means of artistic persuasion: emotions (*pathos*), character (*ethos*) and argument (*logos*).<sup>42</sup> As explained by one source:

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36. GREAT IDEAS, *supra* note 34, at 645.

37. *Id.*

38. *Id.*

39. *Id.* at 648.

40. See *supra* notes 38-39 and accompanying text. Moreover, I assume that even if one views the senatorial rhetoric in the Clinton Impeachment Trial in a modern, cynical vein, see *supra* note 35, it is appropriate to, nevertheless, examine the relative eloquence of the speeches.

41. GREAT IDEAS, *supra* note 34, at 650.

42. See MORTIMER J. ADLER, HOW TO SPEAK, HOW TO LISTEN 30-44 (1983).

The orator must consider how to arouse and use the passions of his audience, as well as calculate how far to go in displaying his emotions. He must consider the moral character of the audience to which he is appealing, and in this connection he must try to exhibit his own moral character in a favorable light. Finally, he must know the various types and source of rhetorical argument—not only what sorts or arguments are available for a particular purpose, but also how to employ each argument most persuasively.<sup>43</sup>

The analysis, which follows, of senatorial closing arguments in the Clinton Impeachment Trial will seek, in part, to identify and evaluate the deployment of Aristotelean *pathos*, *ethos* and *logos*, as viewed through the Socratic rhetorical lens of *eloquence*, by the best speakers.<sup>44</sup>

### C. Post-Aristotelean Rhetorical Theory

In the aftermath of Aristotle, classical theorists have generally analyzed rhetorical discourse as consisting of three substantive components: "*invention* (the finding of arguments or proofs), *disposition* (the arrangement of such materials), and *style* (the choice of words, verbal patterns, and rhythms that will most effectively express and convey these materials)."<sup>45</sup> Moreover, in the Aristotelean tradition, three main classes of oratory have been identified:

1. **Deliberative** – to persuade an audience (such as a legislative assembly) to approve or disapprove of a matter of public policy, and to act accordingly.
2. **Forensic** – to achieve (for example, in a judicial trial) either the condemnation or approval of some person's actions.
3. **Epidictic** – "display rhetoric," used on appropriate, usually ceremonial, occasions to enlarge upon the praiseworthiness (or sometimes, the blameworthiness) of a person or a group of persons, and in so doing, to display the orator's own talents and skill at rising to the rhetorical demands of the occasion. Abraham Lincoln's "Gettysburg Address" is a famed instance of epideictic oratory. In America, it remains traditional for a chosen speaker to meet the challenge of the Fourth of July or

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43. GREAT IDEAS, *supra* note 34, at 650.

44. See *supra* notes 42-43 and accompanying text.

45. M. H. ABRAMS, A GLOSSARY OF LITERARY TERMS 180 (6th ed. 1993). For an analysis of "style" in the context of published judicial appellate opinions, see, e.g., Blomquist, *supra* note 2.

other dates of national significance by appropriately ceremonious oratory. The *ode* is a poetic form often used for epideictic purposes.<sup>46</sup>

My discussion of the closing speeches of various United States Senators in the Clinton Impeachment Trial will be attentive to both the substantive components of rhetorical discourse,<sup>47</sup> as well as the classes of oratory.<sup>48</sup> Regarding the latter, it is worth noting that the senatorial closing arguments in the Clinton Impeachment Trial theoretically consisted of a rare rhetorical setting: all three classes of oratory, braided together in different ways and in different proportions by each individual senator. The closing arguments were, first, supposed to be *deliberative* (although practically they were not for partisan political reasons) since they were made, unlike the opinions of the senators in the Andrew Johnson Impeachment Trial,<sup>49</sup> *before* the vote on the Articles of Impeachment were taken. Second, the senatorial closing statements in the Clinton Impeachment Trial were *forensic*—akin to the closing arguments of a trial lawyer in a civil or criminal case,<sup>50</sup> but different in

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46. ABRAMS, *supra* note 45, at 180-81. For further discussion of rhetorical theory, as an aspect of literary discourse, see generally WAYNE C. BOOTH, *THE RHETORIC OF FICTION* (2d ed. 1983) (a work divided into three principal parts: "Artistic Purity and the Rhetoric of Fiction;" "The Author's Voice in Fiction;" and "Impersonal Narration"); WILFRED L. GVERIN ET AL., *A HANDBOOK OF CRITICAL APPROACHES TO LITERATURE*, 281-85, 334-36, 338-39 (3d ed. 1992) (discussing "rhetorical criticism" and "rhetoric and reader-response theory"); *THE NEW PRINCETON HANDBOOK OF POETIC TERMS* 257-63 (T. V. F. Brogan ed., 1994) (addressing issues of "Interpretation" and "Composition" and containing an extensive bibliography). For a reliable textbook approach to rhetoric within the context of debate see generally, ROBERT JAMES BRANHAM, *DEBATE AND CRITICAL ANALYSIS: THE HARMONY OF CONFLICT* (1991) (discussing, among other topics, "The Nature and History of Debate;" "The Structures of Advocacy and Opposition;" "Research and Evidence;" "Argument Anticipation and Briefing;" "Refutation;" "Strategies for Moral Argument;" and "The Form and Techniques of Debate").

47. See *supra* note 45 and accompanying text.

48. See *supra* note 46 and accompanying text.

49. See *supra* note 14.

50. See ROBERT P. BURNS, *A THEORY OF THE TRIAL* (1999) (analyzing a courtroom trial from a theoretical, interpretative posture). Professor Burns' discussion of "closing argument" in a trial, is thought provoking:

In opening statement the lawyer provides a full narrative of the events that have brought the case to trial, a God's-eye account. That account has the internal plausibility that comes from structural elements of the story, its consistency with factual and normative commonsense generalizations, and it should invite the jury to finish the story so that the dimly perceived harmonies of the moral world are restored.

By the time closing argument begins, each lawyer cannot but be aware that the

that the statements were also like the oral remarks of appellate judges in chambers trying to persuade colleagues to vote in favor of their tentative disposition of a case.<sup>51</sup> Third, the senators' remarks at the termination of the Clinton Impeachment Trial were *epideitic* in nature: "display rhetoric" to blame or to praise President Clinton in various ways, reminiscent of the funeral orations of Brutus and Antony in Shakespeare's play, *Julius Caesar*.<sup>52</sup> Indeed, because of the preconceived views of most senators, it can be said that the predominant nature of the closing oratory was *epideictic* because of the largely gratuitous nature of the deliberative and forensic aspects of the speeches.

#### IV. RATING THE SENATORS' COURT OF IMPEACHMENT SPEECHES: SORTING OUT AND RANKING THE BEST

##### A. A Cornucopian Overview

Despite the tawdry nature of the underlying facts in the Clinton Impeachment Trial—matters of farcical sexual escapades and coverup—it is surprising to find an assortment of witty and wise and humorous ideas, quotations, historical references and literary allusions in a number of the senators' closing speeches. For example, among the individual senatorial speeches at the close of the Clinton Impeachment Trial one refers to the defense theory of "immaculate obstruction" whereby "jobs are found, gifts are concealed, false affidavits are filed, and the character

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enabling simplicities of opening have largely disappeared. The "vivid and continuous dream" [of the opening] is only a memory, now more distant than the patchy and ambiguous presentation of events that has emerged in the evidentiary phase. The jury has now seen the case from enumerable perspectives, and the lawyer's task is to coax the jury back into seeing it sufficiently from his perspective, into accepting his "theory and theme" just enough that they will be prepared to act in precisely the way that the advocate urges . . . . In the most effective closings, he will directly and reasonably deal with the inevitable factual and moral difficulties that a triable case presents. He will be both *reconstructing* the narrative he provided in opening and *deconstructing* the narrative offered by his opponent.

*Id.* at 67-8 (footnotes omitted).

In the Clinton Impeachment Trial, of course, the Senators did not give opening statements—that task was performed by the House Managers, on behalf of the House of Representatives, and the Presidents's lawyers on behalf of the President defending against the House's Articles of Impeachment. See POSNER, *supra* note 2, at 1-2.

51. See FRANK COFFIN, ON APPEAL 149-69 (1994) (discussing appellate judges' conferences).

52. See DANIEL J. KORNSTEIN, KILL ALL THE LAWYERS?: SHAKESPEARE'S LEGAL APPEAL, 108-17 (1994) (describing the "oral advocacy" of the funeral orations in the play).

of a witness is publicly impugned, all without the knowledge, or direction of the President, who is the soul beneficiary of these actions;"<sup>53</sup> another cites the eighteenth century sexual scandal of Secretary of the Treasury Alexander Hamilton who had an affair with a Washington D.C. married woman and who ended up "paying off the husband of the wife that he was having an affair with,"<sup>54</sup> one mentions the thoughts of the Nation's first Chief Justice of the United States, John Jay, on the subject of "lying under oath;"<sup>55</sup> another references the debates of the Founders at the Philadelphia Constitutional Convention of 1787 on the standard for impeaching the President;<sup>56</sup> one observes that a beneficial quality of assessing the issues in the Clinton Impeachment Trial is to "approach [the] process unencumbered by a law degree,"<sup>57</sup> and chronicles and compares the American military officers in the news who were sanctioned for sexually abusing or getting sexually involved with inferiors such as Kelly Finn, the woman B-52 pilot, and Sergeant Major Gene McKinney;<sup>58</sup> one pontificates on arcane points of Scottish law dealing with three types of available verdicts, to wit, "guilty, not guilty and not proved;"<sup>59</sup> another analyzes various types of oaths from the Boy Scout Oath to the Girl Scout Promise, from the U.S. Armed Forces Oath to the Oath of Office for a United States Senator, from the oath taken by a witness in a federal trial to the Oath of Office of the President of the United States;<sup>60</sup> one quips that, as a senator hearing the evidence and arguments in the Clinton Impeachment Trial, that he "often felt . . . as if [he] were trapped in a work of fiction," that "[I]like all really interesting fiction, the story now before us reduces itself to an examination of the human soul," that "even more than by historians, the truest judgment of these events will be written as novels and plays," while "these works will deal with some or all of the seven deadly sins" of "[p]ride, anger, greed, gluttony, sloth, envy, and, yes, especially lust."<sup>61</sup>

*Item:* Senator Brownback quotes,

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53. 145 CONG. REC. S1475 (daily ed. Feb. 12, 1999) (statement of Sen. Richard Lugar, R-IN).

54. *Id.* at S1501 (daily ed. Feb. 12, 1999) (statement of Sen. John Breaux, D-LA.).

55. *Id.* (daily ed. Feb. 12, 1999) (statement of Sen. Pete Domenici, R-NM).

56. *See id.* at S1510 (daily ed. Feb. 12, 1999) (statement of Sen. Chuck Robb, D-VA).

57. *Id.* at S1513 (daily ed. Feb. 12, 1999) (statement of Sen. Connie Mack, R-FL).

58. *See id.*

59. *Id.* at S1535 (daily ed. Feb. 12, 1999) (statement of Sen. Arlen Specter, R-PA).

60. *See id.* at S1562 (daily ed. Feb. 12, 1999) (statement of Sen. Wayne Allard, R-CO).

61. *See id.* at S1574 (daily ed. Feb. 12, 1999) (statement of Sen. Harry Reid, D-NV).

The great southern writer Walker Percy who once stated that his greatest fear for our future was that of 'seeing America, with all of her great strength and beauty and freedom . . . gradually subside into decay through default and be defeated . . . from within by weariness, boredom, cynicism, greed, and in the end, helplessness before its great problems.'<sup>62</sup>

*Item:* Senator Dorgan references Mark Twain who "once said, with tongue in cheek, that 'the next best thing to a lie, is a true story no one will believe.'"<sup>63</sup> *Item:* Senator DeWine invokes Thomas Paine's impassioned line: "Let a crown be placed on the law by which the world may know that, so far as we approve of monarchy, in America the law is king."<sup>64</sup> *Item:* Senator Lincoln, "the youngest female Senator in the history of our country,"<sup>65</sup> in her maiden speech in the United States Senate, recalls the wisdom of her grandmother who told her that "[r]ight and wrong becomes more difficult for each of us as we grow older, because the older we get the more we know personally about our own human frailties."<sup>66</sup> Senator Lincoln goes on to observe that:

It is striking . . . that we are at a crossroads in our Nation at this entrance into the 21<sup>st</sup> century. We are being tested—not by war or by pestilence—but by conflict that is our own trouble from within. This requires us to reflect on not only the lessons we have learned but, more importantly, those that we want to leave. These lessons should not only demonstrate how we as a country prosper, or how our people advance, but how we treat and relate to one another as individuals.<sup>67</sup>

### B. A Methodological Note

Initially, I located three separately bound daily issues of the *Congressional Record* containing the senators' Court of Impeachment closing statements.<sup>68</sup> As previously mentioned, these closing statements

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62. *Id.* at S1608 (daily ed. Feb. 12, 1999) (statement of Sen. Sam Brownback, R-KS).

63. *Id.* at S1619 (daily ed. Feb. 12, 1999) (statement of Sen. Byron Dorgan, D-ND).

64. *Id.* at S1623 (daily ed. Feb. 12, 1999) (statement of Sen. Mike Dewine, R-OH).

65. *Id.* at S1625 (daily ed. Feb. 12, 1999) (statement of Sen. Blanche Lincoln, D-AR). Senator Lincoln's rise to the United States Senate is extraordinary. See BARONE & UJIFUSA, *supra* note 3, at 139-40.

66. 145 CONG. REC. S1626 (daily ed. Feb. 12, 1999) (statement of Sen. Blanche Lincoln, D-AR).

67. *Id.*

68. See 145 CONG. REC. S14620-1637 (daily ed. Feb. 12, 1999) (containing 66 senatorial

were subject to a unanimous consent order that individual senators could choose to have a transcript of their oral statement, delivered behind closed doors on the Senate floor, published in the *Congressional Record*, along with any additional printed material (not actually spoken on the floor of the Senate) explaining their impeachment votes.<sup>69</sup> Secondly, I read through the entire text of the printed senatorial closing statements as well as the additional printed material in the *Congressional Record* in an attempt to justify the final impeachment votes. As part of this exercise, I also came across an assortment of other miscellaneous senatorial speeches and printed, but unspoken, statements dealing with aspects of the Clinton Impeachment Trial that did not directly pertain to a justification for the final impeachment votes.<sup>70</sup> I focused on the ostensibly oral remarks of each senator and ignored, for purposes of ranking and rhetorical evaluation, written statements inserted in the *Congressional Record* to justify a senator's final impeachment vote. Immediately after reading each senatorial speech actually delivered on the floor of the Senate, I subjectively rated the speech on a scale of zero to ten in terms of rhetorical eloquence.<sup>71</sup> a "zero," in theory, was my initial judgment that the speech was rhetorically worthless; a "ten," in theory, was my initial judgment that the speech was rhetorically brilliant; ratings in between "zero" and "ten" reflected, in theory, my assessment of the speeches' varying degrees of rhetorical worth. Thirdly, after an initial reading and rating of the justificatory speeches, I noted the speeches that were rated

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speeches); 145 CONG. REC. S1669-71 (daily ed. Feb. 12, 1999) (containing the closing statement of Sen. Olympia Snowe, R-ME; a preface to this "errata" edition of the Congressional Record notes "the statement of the Senator from Maine [Ms. Snowe], delivered in closed session while the Senate was sitting as a Court of Impeachment, was inadvertently omitted from the Record of Friday, February 12, 1999. The Permanent Record will be changed to reflect [the statement of Senator Snowe]"); 145 CONG. REC. S1775-90 (daily ed. Feb. 23, 1999) (containing 5 senatorial speeches).

69. See *supra* note 15 and accompanying text.

70. See, e.g., 145 CONG. REC. S1546-47 (daily ed. Feb. 12, 1999) (stating the oral remarks of Sen. Olympia Snowe, R-ME, in support of a censure resolution; this statement appears to have been inadvertently included in the midst of spoken senatorial closing statements justifying the final impeachment vote); *Senator Dodd's Historic Speech in the Old Senate Chamber*, 145 CONG. REC. S1790-91 (daily ed. Feb. 12, 1999) (Jan. 8, 1999 statement by Senator Christopher Dodd, D-CT, at the commencement of the Senate impeachment trial of President William Jefferson Clinton); *Appreciation of Service of Chief Justice Rehnquist*, 145 CONG. REC. S1794 (daily ed. Feb. 23, 1999); *Appendices A-L to Senator Levin's Impeachment Trial Statement of February 12, 1999*, 145 CONG. REC. S1794 (daily ed. Feb. 23, 1999) (various letters from lawyers involved directly and indirectly in the Clinton Impeachment Trial and from Members of Congress).

71. See *supra* notes 34-52 and accompanying text.



"eight" or more.<sup>72</sup> I then re-read all of the "high" rated remarks and came up with a revised, numerical rating. I ended up with a penultimate qualitative ranking of what I considered to be the best rhetorical speeches. Finally, I drafted a written analysis of the rhetorical quality of these speeches, and, then, made a final ranking determination.<sup>73</sup>

I frankly admit that I am a registered Republican (something very odd for American law professors and academics, in general) and that I have tended to support the case of impeachment against President Clinton. While I acknowledge that my rhetorical ratings may, therefore, have been unconsciously impacted by my admitted political bias, it is interesting that I concluded that the best closing speeches were delivered by Democrats, and those few Republicans, who voted against conviction.<sup>74</sup>

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72. The Senatorial speeches which received an initial rating of "eight" or more were as follows: Senator John Ashcroft (R-MO) with a rating of "nine"; Senator Robert Byrd (D-WV) with a rating of "ten;" Senator Ben Nighthorse Campbell (R-CO) with a rating of "ten;" Senator Sue Collins (R-ME) with a rating of "nine;" Senator Paul Coverdell (R-GA) with a rating of "eight;" Senator Tom Daschle (D-SD) with a rating of "ten;" Senator Pete Domenici (R-MD) with a rating of "eight;" Senator Byron Dorgan (D-ND) with a rating of "eight;" Senator Richard Durbin (D-IL) with a rating of "eight;" Senator Peter Fitzgerald (R-IL) with a rating of "eight;" Senator Bill Frist (R-TN) with a rating of "eight;" Senator Orrin Hatch (R-UT) with a rating of "eight;" Senator John Kerry (D-MA) with a rating of "nine;" Senator Jon Kyle (R-AZ) with a rating of "nine;" Senator Joe Lieberman (D-CT) with a rating of "ten;" Senator Mitch McConnell(R-KY) with a rating of "ten;" Senator Daniel P. Moynihan (D-NY) with a rating of "nine;" Senator William Roth (R-DE) with a rating of "eight;" Senator Paul Sarbannes (D-MD) with a rating of "nine;" Senator Olympia Snowe (R-ME) with a rating of "ten;" Senator Ted Stevens (R-AK) with a rating of "nine;" Senator Fred Thompson (R-TN) with a rating of "eight;" Senator Strom Thurmond (R-SC) with a rating of "nine;" and Senator Ron Wyden (D-OR) with a rating of "ten." While I had originally placed Senator Christopher Bond (R-MO) on the tentative "best" list, with a rating of "eight", upon closer examination it appears that, somehow, Bond gave a statement after the impeachment vote, 145 CONG. REC. S1507-09 (daily ed. Feb. 12, 1999), as well as a statement before the impeachment vote, 145 CONG. REC. S1777 (daily ed. Feb. 23, 1999). The rating of his pre-vote statement, however, was below "eight."

73. See *infra* notes 75-232 and accompanying text. Two excellent books provided raw inspiration for my project of ranking the best closing speeches of United States Senators in the Clinton Impeachment Trial: MICHAEL S. LIEF, H. MITCHELL CALDWELL & BEN BYCEL, *LADIES AND GENTLEMEN OF THE JURY: GREATEST CLOSING ARGUMENTS IN MODERN LAW* (1998); MICHAEL H. HART, *THE 100: A RANKING OF THE MOST INFLUENTIAL PERSONS IN HISTORY* (1978).

74. See *infra* notes 75-232 and accompanying text.

### C. *The Very Best Speeches*

#### 1. The Gold Medal: Senator Robert Byrd's Majestic Sermon<sup>75</sup>

Democratic Senator Robert C. Byrd—described by knowledgeable political commentators as, perhaps, "com[ing] closer to the kind of senator the Founding Fathers had in mind than any other"<sup>76</sup>—possessed, in Aristotelean terms, the most substantial *ethos* of any United States Senator serving in that body at the time of the Clinton Impeachment Trial. His closing speech to his colleagues built on the foundation of his esteemed reputation by carefully adding an impeccable layer of *pathos* (his deeply felt emotions about American history, the institution of the United States Senate, and the moral wrongfulness of the President's actions) topped off by a capstone of *logos*, which exhibited deep wisdom and which explained why, in spite

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75. The multiple definitions of "sermon" are: "a spoken or written discourse on a religious or moral subject, [especially] a discourse based on a text or passage of Scripture and delivered in a service by way of religious instruction or exhortation;" "a piece of admonition or reproof; [or] a lecture; a moral reflection suggested by natural objects, etc.". THE OXFORD DICTIONARY AND THESAURUS 1381 (American Ed. 1996) (numbers omitted).

76. BARONE & UJIFUSA, *supra* note 3, at 1711. Byrd, a Democrat, is the Senior Senator from West Virginia, serving continuously since his first election to the Senate in 1958. *Id.* at 1717. In 1999, he was "former Chairman and . . . ranking Democrat on the Appropriations Committee . . ." *Id.* at 1711.

He comes from the humblest of beginnings, and when first elected to the Senate as part of the large and talented Democratic class of 1958, he was scarcely noticed. Now he is the last member of that class still in the Senate, and even in the minority an authentic power. From a background as grindingly poor as that of any American politician, he has continuously moved up with awesome persistence. Son of a coal miner, he was a welder in wartime shipyards and a meat cutter in a coal company town when he won his seat in the House of Delegates in 1946; he campaigned in every hollow in the county, playing his fiddle . . . He worked hard in the legislature, and won a U.S. House seat when the incumbent retired in 1952; he made such a name for himself in West Virginia that by 1958, when he was 40, he was elected to the Senate even though the United Mine Workers initially opposed him and the coal companies never supported him.

*Id.*

Senator Byrd is scholarly, by bent, and:

[i]t should be added that Byrd's positions are not just parochial but are the product of serious study of the Constitution and of history. He always carries a copy of the Constitution in his left breast pocket . . . [In addition to publishing books on the history of the United States Senate and the Senate of the Roman Republic] Byrd . . . systematically read[s] the classics and takes to quoting Shakespeare, Thucydides [and] Cato the Younger . . . [He has asserted that]: "After 200 years [the United States Senate] . . . is still the anchor of the Republic, the morning and evening star and the American constitutional constellation."

*Id.* at 1712.

of his shock and revulsion at Clinton's behavior, he was voting against both Articles of Impeachment.

Senator Byrd began his closing statement with poetry and, then, referenced God and Country:

I think my country sinks beneath the yoke,  
It weeps, it bleeds,  
And each new day,  
a gash is added to her wounds.

I am the only remaining Member of Congress who was here in 1954 when we added the words "under God" to the Pledge of Allegiance. That was on June 7, 1954. One year from that day we added the words "In God We Trust" to the currency and coin of this country.<sup>77</sup>

Alluding to his experience and longevity in Congress, Byrd articulated the rarity and weight of the moment by observing:

This is my 47th year in Congress. I never dreamed that this day would ever come. And, until 6 months ago I couldn't place myself in this position. I couldn't imagine that, really, an American President was about to be impeached.<sup>78</sup>

The words of Senator Byrd—the longest serving Democrat in the United States Senate—rang with credibility and resonance when he condemned, in heartfelt phrases, the actions of the President of the United States. Byrd spoke:

A few years ago, when my youngest grandson, who is now a Ph.D. in Physics, was just a little tot, he came up to my den and looked around and said, "Papa, who made this mess?" Now, Senators who made this mess? The mess was created at the other end of Pennsylvania Avenue. The House of Representatives didn't make it. The U.S. Senate didn't make it. But, nevertheless, we sit here today in judgment of a President.

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77. 145 CONG. REC. S1634 (daily ed. Feb. 12, 1999).

78. *Id.*

Soon we will vote and, hopefully, end this nightmarish time for the nation. Like so many Americans, I have been deeply torn on the matter of impeachment. I have been angry at the President, sickened that his behavior has hurt us all and led to this spectacle. I am sad for all of the actors in this national tragedy. His family and even the loyal people around him whom he betrayed—all have been hurt. All of the institutions of government—the presidency, the House of Representatives, the Senate, the system of justice and law, yes, even the media—all have been damaged by this unhappy and sorry chapter in our nation's history.

The events of this last year have engendered so much disillusionment, distrust, bitter division and discord among the people of the United States. There can be, I fear, no happy ending, no final act that leads to a curtain call in which all the actors link hands and bow together amid great applause from the audience. No matter what happens here, many, many people will be left tasting only the bitter dregs of discontent.

...

There are those—without my repeating the sordid details of what we have all heard over and over and over again—there are those who say that the President lied to protect his family. We all understand that.... But I can never forget his standing before the television cameras and saying to the American people, what he said: "Now I want you to listen to me..." Don't you Senators think that that was a bit overdone if the purpose was to protect his family?

"O, what a tangled web we weave when once we practice to deceive."<sup>79</sup>

And yet, the most effective and stylistically memorable portion of Senator Byrd's closing statement was the ending; it was at this point in his speech—its long and sweeping peroration—that the full rhetorical force of his words became apparent. In this regard, using a classical mythological allusion, Byrd opined, in the first instance, that:

Impeachment is a sword of Damocles that hangs over the heads of presidents, vice presidents, and all civil officers, always ready to drop should it become necessary. But, the impeachment of a President is uniquely and especially grave. We must

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79. *Id.* at S1634-35.

recognize the gravity and awesomeness of it, and act in accordance with the oath we took to do "impartial justice." We are the wielders of this weapon, responsible for using it sparingly and with prudence and wisdom.<sup>80</sup>

In the second instance, moving toward the climax of his address, Senator Byrd expressed regret for the extreme partisanship that the Clinton Impeachment process had assumed—by both Democrats and Republicans. In contrast, Byrd compared the process that had taken hold with the Clinton Impeachment, with the bipartisanship of the threat of impeachment that had forced President Richard M. Nixon to resign from office nearly a quarter century before.<sup>81</sup> He warned that "where political partisanship becomes such an overwhelming factor as to put the country and the Congress at odds . . . something draws us back."<sup>82</sup> In Biblical phraseology, Senator Byrd cautioned his colleagues: "We must be careful of the precedent we set. One political party, alone, should not be enough to bring Goliath's great sword out of the Temple."<sup>83</sup> Then, in the third aspect of his ending, Byrd verbally linked the partisanship that he had seen with the favorable general reaction of the American people, indicated in opinion surveys, that President Clinton should not be removed from office. Some of his thoughts on this subject were expressed as follows:

Regrettably, this process has become so partisan on both sides of the aisle and particularly in the House and was so tainted from the outset, that the American people have rebelled against it. The President lied to the American people, and, while a great majority of the people believe, as I do, that the President made false and misleading statements under oath, still, some two-thirds of the American people do not want the President removed from office. I do not think that this is just a reflection of the American people's traditional bias for the underdog, but rather, of the much more basic American dislike of unfairness . . .

Indeed, the atmosphere in Washington has become poisoned by politics and even by personal vendettas. As a result, perspective and a clear sense of proportion and balance have been lost by all too many people. As a byproduct of the venom,

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80. *Id.* at S1635.

81. *See id.*

82. *Id.*

83. *Id.*

a process intended to be serious and sober has, instead, devolved into a virulent, off-color soap opera event, watched by an incredulous people grown weary of its content.<sup>84</sup>

Engaging in deliberative—albeit mooted—oratory, Byrd would have preferred a pre-trial dismissal of the case because the Senate "kn[ew] for weeks that the votes were not here to convict this President."<sup>85</sup> He explained to his colleagues that as one "[a]lways with a weather eye open concerning the image of the Senate and its place in history,"<sup>86</sup> he made the—unsuccessful—motion to dismiss "out of genuine concern for the divisive effect that an ultimately futile trial would have on the Senate and on the nation."<sup>87</sup> Moving into the fourth, and penultimate, aspect of his closing, in a stellar instance of forensic oratory, Senator Byrd roundly denounced and condemned the actions of the President, explaining how—but for the exigencies of the nation's welfare—he would have voted to convict Clinton and remove him from office:

The House Articles charged the President with having committed perjury. This word "perjury"—lawyers can dance all around the head of a pin on that word. I won't attempt to dance . . . . The President plainly lied to the American people. Of course, that is not impeachable, but he also lied under oath in judicial proceedings.

Mr. Clinton's offenses do, in my judgment, constitute an "abuse or violation of some public trust." Reasonable men and women can, of course, differ with my viewpoint . . . .

When the President of the United States, who has sworn to protect and defend the Constitution of the United States, and to see to it that the laws be faithfully executed, breaks the law himself by lying under oath, he undermines the system of justice and law on which this Republic . . . has its foundations.

*In so doing, has the President not committed an offense in violation of the public trust? Does not this misconduct constitute an injury to the society and its political character? Does not such injury to the institutions of Government constitute an impeachable offense, a political high crime or high misdemeanor against the state? How would Washington vote? How would Hamilton vote?*

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84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

*How would Madison or Mason or Gerry vote? My head and my heart tell me that their answers to these questions would be "yes."*<sup>88</sup>

Rhetorically creating tension and drama by his apparent willingness to convict the President as charged, Senator Byrd completed his speech in an exquisite, stunningly eloquent finale of words—laden with logic, emotion and a grave sense of *his* struggle to do what was right for the nation, what he called "without question the most difficult, wrenching and soul-searching vote that I have ever, ever cast in my 46 years in Congress."<sup>89</sup>

He spoke:

But the matter does not end there. The Constitution states, without equivocation, that the President, Vice President or any civil officer, when impeached and convicted, shall be removed from office. Hence, one cannot convict the President without removing him from office.

Should Mr. Clinton be removed from office for these impeachable offenses? This question gives me great pause. The answer is, as it was intended to be by the framers, a difficult calculus . . . . A vote to convict carries with it an automatic removal of the President from office. It is not a two-step process. Senators can't vote maybe. The only vote that the Senator can cast, under the rules, as written, is a vote either to convict and remove or a vote to acquit.<sup>90</sup>

The fulcrum in Senator Byrd's oration arose at the point in his speech when logic conflicted, in his seasoned and respected view, with wisdom.<sup>91</sup> The *way* that Byrd explained how he resolved this conflict in favor of wisdom—the invention and disposition of his arguments—is the most powerful part of his extraordinary address. Weaving a rhetorical

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88. *Id.* at S1635-36 (emphasis added).

89. *Id.* at S1636.

90. *Id.*

91. Byrd noted:

So should I vote "Guilty" when my name is called, believing that President Clinton's offenses constitute high misdemeanors? Should I vote guilty and vote to remove him from office? Some critics may say—some of my colleagues may say—they may ask, if you believe he is guilty, how can you not vote to remove him from office?

There is some logic to the question, but simple logic can point one way while wisdom may be in a quite different direction.

tapestry from strands of history, philosophy, psychology and practical politics, Senator Byrd stressed the following poignant themes:

It is not a popularity contest, of course. But remember our English forebearers, who, on June 20, 1604, submitted to King James I the Apology of the Commons, in which they declared that their rights were not derived from Kings, and that, "The voice of the people in things of their knowledge is [as] the voice of God. Vox populi, vox Dei."<sup>92</sup>

...

In the end, the people's perception of this entire matter as being driven by political agendas all around, and the resulting lack of support for the President's removal, tip the scales for allowing the President to serve out the remainder of the 22 months of his term, as he was elected to do. . . . To drop the sword of Damocles now . . . would only serve to further undermine a public trust that is too much damaged already. Therefore, I will reluctantly vote to acquit.<sup>93</sup>

In 399 B.C. Socrates was convicted and sentenced by the Athenian jury to die. If only 30 votes on that Athenian jury had switched, Socrates would not have been convicted. If only twenty Senators—or less—on my side of the aisle who are expected to acquit, were to switch their votes, President Clinton would be convicted, and before this coming Sabbath day, he would be removed from the Oval office. President Clinton will be acquitted by the Senate; yet, he will not be vindicated.<sup>94</sup>

The crowds will still cheer the President of the United States, but the American people have been deeply hurt and, while they may forgive, they will not forget. The pages of history will not be expunged—ever!<sup>95</sup>

...

The frenzy of pro-and-con opinions on every aspect of this case emanating from every conceivable source in the land has made coming to any sort of "impartial" conclusion akin to performing brain surgery in a noisy, rowdy football stadium. It will be easy for the cynics and the critics who do not have to vote,

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92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*



to stand on the sidelines and berate us. But only those of us who have to cast the votes will bear the judgment of history.<sup>96</sup>

Mr. Chief Justice, none of us knows whether the attitude of the American people will take a different turn after this trial is over and this drab chapter is closed. "Fame is a vapor; popularity an accident; riches take wings; those who cheer today may curse tomorrow; only one thing endures—character!" It is the character of the Senate that will count. And while the politics of destruction may be satisfying to some, the rubble of political ruin provides a dangerous and unstable foundation for the nation.<sup>97</sup>

And yet we must move ahead. The nation is faced with potential dangers abroad. No one can foresee what will happen in Russia or in North Korea or in Kosovo or in Iraq. To remove Mr. Clinton at this time would create an unstable condition for our nation in the face of unforeseen and potentially dangerous happenings overseas.<sup>98</sup>

...

Let there be no preening and posturing and gloating on the White House lawn this time when the voting is over and done. The House of Representatives has already inflicted upon the President the greatest censure, the greatest condemnation, that the House can inflict upon any President. And it is called impeachment! That was an indelible judgment which can never be withdrawn. It will run throughout the pages of history and its deep stain can never be eradicated from the eyes and memories of man. God can forgive us all, but history may not.<sup>99</sup>

Within a few hours, the mechanics of this matter will finally be concluded. But it will not yet be over. For the nation must still digest the unpleasant residue of these events. Mr. Chief Justice, hatred is an ugly thing. It can seize the psyche and twist sound reasoning. I have seen it unleashed in all its mindless fury too many times in my own life. In a charged political atmosphere, it can destroy all in its path with the blind fury of a whirlwind. I hear its ominous rumble and see its destructive

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96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.*

funnel on the horizon in our land today. I fear for our nation if its turbulent winds are not calmed and its storm clouds somehow dispersed. In the days to come, we must do all that we can to stop the feeding of its vengeful fires. Let us heap no more coals to fan the flames. Public passion has been aroused to a fever pitch, and we as leaders must come together to heal the open wounds, bind up the damaged trust, and, by our example, again unite the people. *We would all be wise to cool the rhetoric.*<sup>100</sup>

In ending his speech, Senator Byrd spoke of "the common good,"<sup>101</sup> the need to "search for common ground,"<sup>102</sup> the imperative to "seek our better natures and aspire to higher things,"<sup>103</sup> observe that "in truth, it is long past time for us to move on."<sup>104</sup>

Perhaps the hallmark of Senator Byrd's speech is its perfect sense of balance and proportionality between the serious misdeeds of Clinton—on the one hand—and the political death sentence that a vote to convict and remove the President would mean—on the other hand—for the institutions of American government, the foundations of democratic society, and the overall safety and security of the nation. No other senatorial closing speech during the Clinton Impeachment Trial rises to the level of rhetorical eloquence, in my judgment, as demonstrated by the Senior United States Senator from West Virginia.

## 2. The Silver Medal: Senator Mitch McConnell's Compelling Phillippic<sup>105</sup>

Republican Senator Mitch McConnell, "Kentucky's senior senator [and] the architect of its 6-1 Republican congressional delegation and a major leader on several national issues,"<sup>106</sup> masterfully delivered a

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100. *Id.* at S1636-37 (emphasis added).

101. *Id.* at S1637.

102. *Id.*

103. *Id.*

104. *Id.*

105. A "phillippic" is "a bitter verbal attack or denunciation." OXFORD DICTIONARY, *supra* note 75, at 1120. The word is derived from the ancient Greek orator, Demosthenes' speeches against Philip II of Macedon and the ancient Roman orator, Cicero's, tirades against Mark Antony. *Id.*

106. BARONE & UJIFUSA, *supra* note 3, at 667. McConnell's "origins were modest and his rise anything but inevitable." *Id.* "He grew up in Alabama, where he overcame polio, and after age 13 moved to Louisville. He has been in politics almost his whole career: he was an intern for Senator John Sherman Cooper in 1964 and, after finishing law school, became a staffer for Senator Marlow Cook." *Id.* at 667-68. As a United States Senator since 1984:

forensic and epideictic condemnation of the wrongdoing of President Clinton, forcefully and effectively summing up the case for conviction and removal. The most striking characteristic of his speech was its *logos*: the sweep and logical momentum created by his skillful use of a core metaphor that Clinton had repeatedly come to a "crossroads" but had intentionally decided to do the expedient, rather than the right, thing.<sup>107</sup> The *logos*, however, did not exist in isolation in McConnell's address; drawing upon salient traditions of American history and compelling statements of his senatorial colleagues on the other side of the aisle, he ignited *pathos* in demonstrating the righteousness of Clinton's conviction and removal.

Senator McConnell commenced his closing statement by invoking the memory and words of one of the most respected United States Senators in American history: Senator Henry Clay of the Commonwealth of Kentucky.<sup>108</sup> McConnell started with these words:

Henry Clay is best remembered for two things: (1) the Compromise of 1850, and (2) a famous statement he made after being told that advocating the Compromise of 1850 would doom his chances for the presidency. "I had rather be right than be President."<sup>109</sup>

Launching into his "crossroads" theme, Senator McConnell articulated a rhetorical contrast between the statement of Henry Clay and the actions of President Clinton:

In many respects, William Jefferson Clinton had a similar

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McConnell has a mostly conservative record and high party loyalty. Yet he was willing to penalize a fellow Republican when as Ethics Committee chairman in 1995 he led the investigation of Bob Packwood for sexual harassment; the committee recommended expulsion, and Packwood ultimately resigned. McConnell has been a strong backer of product liability and medical malpractice reform, and is a lead sponsor of the Auto Choice Plan that would let car owners pay less for insurance by disclaiming pain and suffering damages . . . . McConnell's greatest expertise is on campaigns and elections. He has fought one battle after another against campaign finance bills that in his view limit free speech and vigorous electoral competition.

*Id.* at 668.

107. 145 CONG. REC. S1562-66 (daily ed. Feb. 12, 1999).

108. *Id.* at S1562-63. See generally, JOHN F. KENNEDY, PROFILES IN COURAGE (Illustrated ed. 1956) 56-57 (Clay described as one of "the three most gifted parliamentary leaders in American history," along with Senator John C. Calhoun of South Carolina and Senator Daniel Webster of Massachusetts).

109. 145 CONG. REC. S1563 (daily ed. Feb. 12, 1999).

choice over the past several months. He could do the right thing. Or he could cling to his Presidency—regardless of the costs and regardless of the consequences. Consequences to his family, to his friends, to his aides, to his Cabinet, and, most importantly, to his country.

Time after time, the President came to a fork in the road. Time after time, he had the opportunity to choose the noble and honorable path. Time after time, he chose the path of lies and lawlessness—for the simple reason that he did not want to endanger his hold on public office.<sup>110</sup>

Before his discussion of the "evidence before the Senate,"<sup>111</sup> in a rhetorical framework of six "crossroads" choices that President Clinton confronted<sup>112</sup> between "the noble and honorable path" and "the path of lies and lawlessness,"<sup>113</sup> Senator McConnell created a vivid meta-crossroads image for his colleagues to ponder. As McConnell said, drawing effective attention to Clinton's prior political relationship with the odious consultant, Dick Morris:<sup>114</sup>

Nowhere is the President's cold, calculated choice more clear than in the private conversation he had with his confidant and long-time advisor, Dick Morris, just after he raised his right hand to God and testified under oath in a civil rights lawsuit that he had not had any sexual relations with a young intern named Monica Lewinsky.

After that critical denial, the President did what he does best: he put his finger to the wind to determine which path he should take. He asked Mr. Morris to conduct a poll to determine whether the American people would forgive him for adultery, for perjury and for obstruction of justice. Morris came back with

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110. *Id.*

111. *Id.*

112. See *infra* notes 120-140 and accompanying text.

113. 145 CONG. REC. S1563 (daily ed. Feb. 12, 1999).

114. Judge Posner mentions that "[o]n January 25, 1999, during the President's trial in the Senate, a number of Republican Senators asked the President to respond to ten questions" but "[h]e refused" because "[f]alse answers would have been unbelievable" and "true answers would either have been confessions of criminal guilt or led onto further questions the answers to which would have revealed the truth about certain . . . of the crimes with which Clinton was charged." POSNER, *supra* note 2, at 52-53. One of the ten asked by the Senators was: "Why did Dick Morris conduct a poll on whether the American people would forgive you for committing crimes?" *Id.* at 53 (citing for the full text of the Republican Senators' Ten Unanswered Questions to President Clinton, *The President's Trial*, N.Y. TIMES, Jan. 26, 1999, at A16).

bad news.

The public in Morris' words was "just not ready for it." They would forgive him for adultery, but not for perjury and obstruction of justice.

The President then faced a fundamental choice. He could tell the truth—and admit that he perjured himself in the Jones suit. Or he could cling to public office—and deny, delay and obstruct.

The choice for President Clinton was clear. He told Morris: "Well, we just have to win."

And, thus the course was charted. The President would seek to win at any cost . . . . If it meant lying to his Cabinet. If it meant lying to a federal grand jury. If it meant tampering with witnesses and obstructing justice. If it meant falsely branding a young woman with the scarlet labels of liar and "stalker." The name of the game was winning. Winning at any cost.<sup>115</sup>

This meta-crossroads prelude, or *exordium*,<sup>116</sup> is rhetorically interesting and effective for a number of reasons. First, it is flush with alliteration.<sup>117</sup> Second, it insightfully employs the device of *alloiosis*—"[p]ointing out 'the differences between men, things, and deeds' . . . by breaking down a subject into alternatives."<sup>118</sup> Third, in repeating the phrase, "if it meant," McConnell's prelude exemplifies masterful deployment of *epimone*.<sup>119</sup>

115. 145 CONG. REC. S1563 (daily ed. Feb. 12, 1999).

116. An *exordium*, in rhetorical parlance, "catches the audience's attention." RICHARD A. LANHAM, *A HANDLIST OF RHETORICAL TERMS* 171 (2nd ed. 1991).

117. "Alliteration" is defined as "recurrence of an initial consonant sound (and so a type of Consonance)." *Id.* at 6-7. "Consonance" entails the "[r]esemblance of stressed consonant-sounds where the associated vowels differ. So Churchill said that Asquith 'reigns supine, sodden and supreme.'" *Id.* at 40. Interestingly, from a political perspective:

Alliteration has, for some reason, made a comeback in American political rhetoric, from Spiro Agnew to Jesse Jackson's recent: "My style is public negotiations for parity, rather than private negotiations for position." "Alliteration and assonance . . . are really identical; both are concerned with overdetermination of sound sequence." . . . Both serve "if nothing else to intensify any attitude being signified."

*Id.* at 7 (sources omitted).

118. *Id.* at 7 (citing the classic ancient Roman oratorian Quintilian). An example of *alloiosis* is: "In youth we seek either glory or money." *Id.*

119. *Id.* at 68. "Epimone" is defined as:

Frequent repetition of a phrase or question, in order to dwell on a point, as in Anthony's choral repetition of "And Brutus is an honorable man" in his "Friends,

Senator McConnell labeled each of the six crossroads that he used to characterize the evidence against Clinton. In "Crossroads #1: An Illicit Relationship With A Young Intern," McConnell described "[t]he first fork in the President's road [was] . . . November 15, 1995, when he met a young, White House intern named Monica Lewinsky."<sup>120</sup> McConnell went on to observe: "He could be her boss. He could even be her friend. Or, he could choose to be in a relationship with her that was clearly inappropriate."<sup>121</sup> Describing Clinton's choice as being morally flawed, Senator McConnell noted:

The President chose the wrong path. As we heard Ms. Lewinsky testify, on the day of their first meeting, which also happened to be the day of their first sexual encounter, President Clinton looked at Ms. Lewinsky's intern pass, tugged on it and said, "This is going to be a problem."

But the President persisted down that problematic path. He had approximately 10 more sexual encounters with Ms. Lewinsky over the next 21 months.

It is important, however, to note that had the President stopped there, we would not be here. At that point, the President's defenders could have credibly argued, "it's a private matter; it's just about sex."

But, Bill Clinton did not stop there.<sup>122</sup>

The "Crossroads #1" rhetoric exhibited various noteworthy oratorical flourishes including, most prominently, an *antistrephon* argument, "that turns one's opponent's argument or proof to one's own

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Romans, Countrymen" speech [in Shakespeare's play *Julius Caesar*]. [Another example derives from Spenser's *Faire Queene*]:

*So downe he fell*, and forth his life did breath,  
That vanisht into smoke and cloudes "swift;"  
*So downe he fell* that th'earth him underneath  
Did grone as feeble so great load to lift;  
*So downe he fell*, as an huge rockie clift,  
Whose false foundation waues haue washt away,  
With dreadfull poyse is from the mayneland rift,  
And rolling downe, great *Neptune* doth dismay;  
*So downe he fell*, and like an heaped mountaine lay.

*Id.* at 68-69 (emphasis added).

120. 145 CONG. REC. S1563 (daily ed. Feb. 12, 1999).

121. *Id.*

122. *Id.*

purpose,"<sup>123</sup> in the reference to the "it's just about sex" argument of the Clinton apologists.

In "Crossroads #2: A Job and an Affidavit and Gifts"<sup>124</sup> McConnell focused on the evidence of President Clinton's learning that Monica Lewinsky had been targeted by the lawyers for Paula Jones as a potential witness to show similar instances of sexual harassment by Clinton of subordinate women employees. Eloquently explaining the significance of Clinton's efforts to encourage Lewinsky to not tell the truth, Senator McConnell stated:

At this point, the President had a choice. He could tell Ms. Lewinsky to obey the law, tell the truth, and turn over the gifts. Or he could not.

Again, President Clinton chose the path of lies and deceit. Let's again, hear this account from Ms. Lewinsky:

"[I]t wasn't as if the President called me and said, 'You know, Monica, you're on the witness list, this is going to be really hard for us, we're going to have to tell the truth . . .' And by him not calling me and saying that, you know, I know what that meant . . .

[A]s we had on every other occasion and every other instance of this relationship, we would deny it."

The evidence indicates that the President was not interested in the truth, but rather, was only interested in getting Ms. Lewinsky to sign a false affidavit and getting her a job in New York where, from the President's way of thinking, she was less apt to be contacted by the Jones lawyers.<sup>125</sup>

In "Crossroads #3: False Statements In A Civil Rights Lawsuit",<sup>126</sup> McConnell continued to build tension in his remarks on the floor of the Senate. He explained how "[t]he President came to another fork in the road where he had to decide whether to testify truthfully under oath regarding his relationship with Ms. Lewinsky. And, again, the President chose the path of lies and deceit."<sup>127</sup> Using the argumentative technique

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123. LANHAM, *supra* note 116, at 191.

124. 145 CONG. REC. S1563 (daily ed. Feb. 12, 1999).

125. *Id.*

126. *Id.*

127. *Id.* McConnell, deploying action words, stated:

of *commoratio*—"emphasizing a strong point by repeating it several times in different words"<sup>128</sup>—Senator McConnell reflected: "But, again, as egregious as those actions were, had the President stopped there, we still might not be here."<sup>129</sup>

In "Crossroads #4: Tampering With A Loyal Secretary,"<sup>130</sup> McConnell opined how "[t]he stakes for President Clinton continued to go higher and higher."<sup>131</sup> The Senator noted that "[f]ollowing his deposition, the President had to decide what to do with his loyal secretary, Ms. Betty Currie. And, again, the undisputed evidence shows that the President took the path of lies and deceit."<sup>132</sup> Weaving twin emotional appeals of *diasyrmus*—"disparagement of opponent's arguments"<sup>133</sup>—and *bathos*—an "appeal that . . . evokes laughter . . . which sinks rather than soars"<sup>134</sup>—McConnell honed in on the incredible, and progressively desperate, behavior of Clinton who was, at this juncture, treading on serious federal legal standards:

Contrary to federal obstruction of justice laws and contrary to Judge Wright's Protective Order instructing President Clinton "not to say anything whatsoever about the questions . . . asked, the substance of the deposition, . . . [or] any details . . . ," President Clinton left the deposition, went back to the White House, and called Ms. Currie at home to ask her to come to the White House the next day—which, I might add, was a Sunday.

At that somewhat surreal Sunday afternoon meeting, the President—in violation of Judge Wright's Protective Order—told Ms. Currie that he had been asked several questions about Monica Lewinsky at his deposition. Then the President—in violation of the federal obstruction of justice law—fired off a string of fundamentally declarative statements to his secretary:

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He walked into the deposition room, raised his right hand, swore to tell the truth . . . and then proceeded to give false statements. In a civil case about alleged sexual misconduct with a subordinate government employee, the President testified under oath that he never had a "sexual relationship", a "sexual affair" or "sexual relations" with a subordinate government employee named Monica Lewinsky.

*Id.*

128. LANHAM, *supra* note 116, at 190.

129. 145 CONG. REC. S1563 (daily ed. Feb. 12, 1999).

130. *Id.*

131. *Id.*

132. *Id.*

133. LANHAM, *supra* note 116, at 187.

134. *Id.* at 186.



You were always there when she was there, right?  
We were never really alone.

You could see and hear everything.  
Monica came onto me, and I never touched her, right?  
She wanted to have sex with me and I couldn't do that.

And, of course, the President didn't stop there. According to Ms. Currie, the President again called her into the Oval Office a few days later, and again, repeated the same false statements to her that he had made under oath in his civil deposition.<sup>135</sup>

The crescendo of Senator McConnell's characterization of the facts of the case was "Crossroads #5: False Statements To Senior Officials And To The American People"<sup>136</sup> and "Crossroads #6: False Statements To The Grand Jury."<sup>137</sup> Regarding the President's statements to officials, McConnell said: "The winding road continued its perilous twists and turns. The President next came to a point where he had to decide whether to tell the truth to his Cabinet, his top aides, and, most importantly, to the American people."<sup>138</sup> Citing testimony of a top aide, John Podesta, who was then Clinton's Deputy Chief of Staff, McConnell's speech concentrated, however, on the President's televised statement to the American people by effective use of *philophroneis*—an "attempt to mitigate anger by gentle speech and humble submission":<sup>139</sup>

And, as everyone in America knows, the President lied to the nation. I do not need to recite the defiant, indignant, finger-wagging denial that the President gave to 270 million Americans who had placed their trust in him as the chief law enforcement officer of this land.

But it didn't have to go any further. I think that there's still a chance that had the President stopped there at that awful

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135. 145 CONG. REC. S1563-64 (daily ed. Feb. 12, 1999).

136. *Id.* at S1564.

137. *Id.*

138. *Id.*

139. LANHAM, *supra* note 116, at 187.

disgraceful moment, we would not be here, today.<sup>140</sup>

Senator McConnell's remarks concerning President Clinton's false statements to the grand jury were framed, in the parlance of the crossroads metaphor, as "the most important crossroads."<sup>141</sup> McConnell's elocution at this critical juncture of his speech was essentially a *dinumeratio*—"a recapitulation or summary"<sup>142</sup>—of the President's missteps at other, less important "crossroads," seguing to a legal interpretation by McConnell that Clinton had committed perjury and obstruction of justice that constituted impeachable "high crimes and misdemeanors:"

[President Clinton] stood before a federal criminal grand jury—a federal criminal grand jury that was trying to determine whether he had committed perjury and obstructed justice. He had one last chance to do the right thing. He could tell the truth, the whole truth, and nothing but the truth to the grand jury. Or, he could commit perjury.

Again, President Clinton chose the wrong path. During that criminal probe, the President admitted to an "inappropriate" relationship with Ms. Lewinsky, but continued to falsely deny ever having sexual relations with her, in the face of corroborating evidence that included an undisputed DNA test and the testimony of Ms. Lewinsky and two of her therapists.

The President's strained, persistent, and—in the words of his own lawyer—"maddening" denials of the obvious were blatantly and patently false.

The President also declared under oath to the grand jury that his post-deposition coaching of Betty Currie about his relationship with Monica Lewinsky was a mere attempt to refresh his "memory about what the facts were." This statement is also blatantly and patently false.

In fact, there is no reasonable interpretation that would make the President's statements about coaching Ms. Currie to be true. Ms. Currie was not always there. She could not always see and hear everything. She could not know whether the President ever touched Ms. Lewinsky. And, she did not know whether Ms. Lewinsky ever had sex with the President. It is difficult to

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140. 145 CONG. REC. S1564 (daily ed. Feb. 12, 1999).

141. *Id.*

142. LANHAM, *supra* note 116, at 192.

comprehend how the President could be refreshing his own memory through the act of making false statements to a potential witness.

Moreover, it is my opinion that these false statements by the President under oath were clearly material. A false and misleading denial of a sexual relationship with a subordinate government employee and a false and misleading denial of tampering with a potential witness goes to the very heart of whether the President obstructed justice or committed perjury.

Based on the evidence in the record, I am firmly convinced that the President has committed both perjury and obstruction of justice. He lied to the grand jury about the nature of his relationship with Ms. Lewinsky. He lied to the grand jury about coaching his loyal secretary, Betty Currie. He obstructed justice by encouraging Ms. Lewinsky to give false testimony, by participating in a scheme to conceal gifts that were subpoenaed, by tampering with his secretary on two occasions, and by lying to top aides that he knew could be called to testify before the grand jury.

...

The Senate's inquiry, however, does not end there. We must decide whether perjury and obstruction of justice are high crimes and misdemeanors.<sup>143</sup>

After his "crossroads" rhetoric, concerning the facts of his case, Senator McConnell began his legal argument. He started with his conclusion: "Based on the Constitution, the law, and a clear Senate precedent, I conclude that [President Clinton's perjury and obstruction of justice] are high crimes and misdemeanors."<sup>144</sup> McConnell's legal argument was divided into five parts: "Senate Precedent," "Constitution and Federal Law," "Crossroads for the United States Senate," "An Earlier Crossroads for the Senate," and "Losing Balance."<sup>145</sup> In the first part, "Senate Precedent," he vigorously sought to demonstrate that Senate precedent "establishes that false statements under oath by a public official are high crimes and misdemeanors."<sup>146</sup> In support of this contention McConnell cited (a) the impeachment and removal of federal judge Harry Claiborne, in 1986, for filing false income tax

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143. 145 CONG. REC. S1564 (daily ed. Feb. 12, 1999).

144. *Id.*

145. 145 CONG. REC. S1564-65 (daily ed. Feb. 12, 1999).

146. 145 CONG. REC. S1564 (daily ed. Feb. 12, 1999).

returns which, "under the pains and penalties of perjury" failed "to disclose certain amounts of income;"<sup>147</sup> (b) the 1989 impeachments and removals of federal judges Hastings and Nixon, "both of whom had been accused of making false statements under oath;"<sup>148</sup> (c) the explanation provided by Democratic Senator Herb Kohl, of Wisconsin, for voting to convict and remove Judge Nixon for failing "to tell the truth and the whole truth," despite Nixon's insistence that his false statements were "not material;"<sup>149</sup> (d) the vote of 89 Senators, including "then-Senator, now-Vice President Al Gore" to convict Judge Nixon; and (e) a rhetorical question stemming from the earlier Senate conviction and removal of Judge Nixon:

Of those 89 Senators [who voted to convict and remove Judge Nixon in 1989 for making false statements "directly to a criminal grand jury"] 48 of us are still here in this distinguished body. Will we send the same message about the corrosive impact of perjury on our legal system or will we simply lower our standards for the nation's chief law enforcement officer?<sup>150</sup>

In the second part of Senator McConnell's legal argument to his colleagues on the Court of Impeachment, "Constitution and Federal Law", McConnell forcefully asserted, through the argumentative technique of *apodixis*—"rejecting an argument indignantly as impertinent or absurdly false"<sup>151</sup>—that he was "completely and utterly perplexed by those who argue that perjury and obstruction of justice are not high crimes and misdemeanors."<sup>152</sup> McConnell mustered the following pertinent points in support of this assertion: (a) the essential equivalence, under federal law, of the criminal offenses of perjury and obstruction of justice with the offense of bribery, which is explicitly mentioned in Article II, Section 4 of the Constitution as a high crime and misdemeanor;<sup>153</sup> (b) the "mandate [for] a harsher punishment for perjury than for bribery and a harsher punishment for obstruction of justice than for bribery" under the federal sentencing guidelines;<sup>154</sup> (c)

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147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.*

151. LANHAM, *supra* note 116, at 191.

152. 145 CONG. REC. S1564 (daily ed. Feb. 12, 1999).

153. *Id.*

154. *Id.* McConnell posed another rhetorical question to his colleagues on this point

Supreme Court dicta;<sup>155</sup> (d) the prosecutorial track record of the "President's own Justice Department" in seeking to punish perjury and obstruction of justice;<sup>156</sup> and (e) the eloquent ethical-policy observation that "[p]erjury and obstruction [of justice] hammer away at the twin pillars of our legal system: truth and justice"<sup>157</sup> since:

Every witness in every deposition is required to raise his or her right hand and swear to tell the truth, the whole truth, and nothing but the truth, so help them God. Every witness in every grand jury proceeding and in every trial is required to raise his or her right hand and swear to tell the truth. Every official declaration filed with the court is stamped with the express affirmation that the declaration is true. In the words of our Nation's first Supreme Court Chief Justice, John Jay: "if oaths should cease to be sacred, our dearest and most valuable rights would become insecure."

The facts clearly show that the President did not value the sacred oath. He was interested in saving his hide, not truth and justice. I submit to my colleagues that if we have no truth and we have no justice, then we have no nation of laws. No public official, no president, no man or no woman is important enough to sacrifice the founding principles of our legal system.

On this point, I am proud to quote Justice Louis Brandeis—a native of my hometown of Louisville and the man for whom the University of Louisville Law school is named:

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when he mentioned, "[i]f Federal law mandates a harsher penalty for perjury and obstruction of justice, how can this Senate—who drafted, debated, and passed those Federal laws—now argue that perjury and obstruction of justice are lesser offenses than bribery?" *Id.*

155. *Id.* McConnell cited two relatively recent Supreme Court precedents:

Listen to the Supreme Court's declaration: "[f]alse testimony in a formal proceeding is intolerable," *ABF Freight System v. NLRB*, 510 U.S. 317, 323 (1994). Moreover, the high Court has labeled perjury as an "egregious offense," *United States v. Mandujano*, 425 U.S. 564, 576 (1976), calling it "an obvious and flagrant affront to the basic concepts of judicial proceedings." *Id.*

156. *Id.* McConnell noted the irony that:

Even the President's own Justice Department understands that our nation of laws cannot tolerate perjury and obstruction of justice. President Clinton and his Justice Department have prosecuted approximately 600 cases of perjury since he came to office. And today—as we debate whether perjury is a serious offense—over 100 people are locked behind bars in federal prison for committing the criminal act of perjury.

*Id.* at S1564-65.

157. *Id.* at S1565.

"In a government of laws, existence of the government will be imperiled if it fails to observe the laws scrupulously. Our government is the potent, the omnipresent teacher. For good or ill, it teaches the whole people by its example. Crime is contagious. If the government becomes a law breaker; it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy."

William Jefferson Clinton is not and should not be a law unto himself.<sup>158</sup>

The third, relatively short, part of Senator McConnell's legal argument against the President, "Crossroads for the United States Senate," represents a kind of *metanoia*—"qualifying a statement by recalling it and expressing it in a different way"<sup>159</sup>—by suggesting that "President Clinton's decisions have led the United States Senate to its own critical crossroads,"<sup>160</sup> and further musing out loud as follows:

And, now we must choose our path.

We can do the right thing. Or we can lower our standards and allow Bill Clinton to cling to public office—regardless of the consequences to our nation, to our system of justice, and to our future generations.

More than 150 years ago, Alexis de Tocqueville wisely observed that "man rarely retains his customary level in very critical circumstances; he rises above or sinks below his usual condition, and the same thing is true of nations."

So what will we do this day? Will we rise above or will we sink below? Will we condone this President's conduct or will we condemn it? Will we change our standards or will we change our President?<sup>161</sup>

Senator McConnell addressed "An Earlier Crossroads For The Senate"<sup>162</sup> in the fourth part of his legal argument. This portion of his argument focused on former Republican Senator Robert Packwood of Oregon where, McConnell explained, "[i]t was one of our own who had clearly crossed the line. It was one of our own who had engaged in

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158. *Id.*

159. LANHAM, *supra* note 116, at 193.

160. 145 CONG. REC. S1565 (daily ed. Feb. 12, 1999).

161. *Id.*

162. *Id.*

sexual misconduct and obstruction of justice."<sup>163</sup> Senator McConnell's speech employed *antithesis*—"conjoining contrasting ideas"<sup>164</sup>—with *antistrophe*<sup>165</sup>—in demonstrating how Democrats in the Packwood case had explicitly or implicitly rejected the types of justifications many were using in an attempt to downplay the significance of Clinton's criminal violations in the context of a sexual harassment case. For example, McConnell said:

At that critical moment in Senate history, we could have taken the wrong path and called it a private matter, saying "it's just about sex." But, my friend, Senator Dianne Feinstein [Democrat of California] was right when she said: "This is not private, personal conduct. This is conduct that took place in public service, and many of the people involved are themselves Federal employees."

...

The Senate could have said, "We can't overturn a federal election. After all, he'll be out of office in a few years." Or: "He may be prosecuted in the courts, so there's no reason for us to act."<sup>166</sup>

In the fifth, and final, part of Senator McConnell's legal argument, "Losing Balance,"<sup>167</sup> he asserted that, like President Richard Nixon in an earlier time, President Clinton had "lost his balance": "He has lost his sense of right and wrong. Of truth and justice. And, by doing so, he has—to paraphrase Alexander Hamilton in Federalist No. 65—abused and violated the trust of the American people."<sup>168</sup>

In his two final paragraphs, McConnell summarized and amplified the reasons for his two guilty votes against the President:

I firmly believe that the evidence establishes beyond a reasonable doubt that William Jefferson Clinton made statements to the federal grand jury, regarding the nature of his relationship with a subordinate government employee and the purpose of his post-deposition conversation with a loyal secretary

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163. *Id.*

164. LANHAM, *supra* note 116, at 184.

165. See *supra* note 123 and accompanying text.

166. 145 CONG. REC. S1565 (daily ed. Feb. 12, 1999).

167. *Id.*

168. *Id.*

that were false, misleading, and perjurious, and warrant removal from office. Thus, I find the President guilty under Article I.

I believe with equal conviction that the evidence establishes beyond a reasonable doubt that William Jefferson Clinton willfully engaged in a deliberate course of conduct designed to delay, impede, cover-up, and conceal the existence of evidence and testimony relating to a Federal civil rights action against him, and that this conduct warrants removal from office. Thus, I find the President guilty under Article II.<sup>169</sup>

### 3. The Bronze Medal: Senator Joseph Lieberman's Patriotic Chorographia<sup>170</sup>

Democratic Senator Joseph Lieberman, Connecticut's junior senator, "has come to occupy a unique place in the Senate, exerting influence out of proportion to his seniority, committee position or political clout, an influence that comes from respect for his independence of mind, civility of spirit" and other personal virtues.<sup>171</sup>

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169. *Id.* at S1566.

170. A "chorographia" is a "description of a nation." LANHAM, *supra* note 116, at 185. An extract from Shakespeare's *Richard II* (Act II, scene i) provides a chorographia of England:

This royal throne of kings, this scepter'd isle,  
This earth of majesty, This seat of Mars,  
This other Eden, demi-paradise,  
This fortress built by Nature for herself  
Against infection and the hand of war,  
This happy breed of men, this little world,  
This precious stone set in the silver sea,  
Which serves it in the office of a wall  
Or as a moat defensive to a house,  
Against the envy of less happier lands  
This blessed plot, this earth, this realm, this England . . .

LANHAM, *supra* note 116, at 34.

171. BARONE & UJIFUSA, *supra* note 3, at 345.

In a bitterly partisan time he is one of the least partisan Democrats on Capitol Hill, one of the very few Democrats not to engage in lockstep White House defense in the Clinton scandals. Yet Lieberman is anything but a political innocent, and he has had close associations with Bill Clinton at different points of his career. He grew up in Stamford, the son of a liquor store owner, went to Yale, became chairman of the *Yale Daily News*, worked summers for Senator Abraham Ribicoff and the Democratic National Committee. In college he wrote a revealing yet admiring biography of that quintessential political boss John Bailey. He helped found a reform and antiwar caucus of Connecticut Democrats; in 1970 he ran for state Senate in New Haven against the Senate majority leader, and won with volunteer help



Lieberman's closing statement in the Clinton Impeachment Trial is essentially an *epideictic* condemnation of President Clinton within a larger rhetorical framework of an *epideictic* tribute to the genius of enduring American principles of ordered liberty. Drawing upon his *ethos* for bipartisanship and intellectual thoughtfulness, Lieberman's remark mined the rich ore of American national pride for past history and institutions of government to create a *pathos* of moderation and transcendence.

Senator Lieberman began his address by invoking two icons of American democracy: the Constitution and nineteenth-century Senator Daniel Webster. Effectively deploying alliteration<sup>172</sup> of letters and *epimone* of the words "each time,"<sup>173</sup> he said:

[T]hroughout the history of this great country, we have endured trials that have strained the sinews of our democracy and sometimes even threatened to tear apart our unparalleled experiment in self-government. Each time the nation has returned to the Constitution as our common lodestar, trusting in its vision, its values and its ultimate verity. Each time we have emerged from these tests stronger, more resilient, more certain of Daniel Webster's claim of "one country, one constitution, one destiny." (Speech to a Whig Party rally in New York City, March 15, 1837.) And each time our awe of the Founders' genius has been renewed, as has our reverence for the brilliantly-calibrated instrument they crafted to guide their political progeny in the unending challenge of governing as a free people.<sup>174</sup>

Senator Lieberman made it clear, early in his oration, that the *logos*

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from Yale Law student Bill Clinton. In 1980 he ran for an Open House seat and lost 52%-46%; in 1982 he was elected attorney general where he took action against fake charities, crooked car dealers, and gouging merchants. *Id.* at 345-46. As a United States Senator since 1989 "Lieberman has made a distinctive mark in foreign policy . . . [o]n economic issues, he has backed capital gains tax cuts for small business . . . and urged President Clinton to sign the 1996 Welfare Reform Bill—both stands opposed by many Democrats." *Id.* at 346. Interestingly, "[i]n highly publicized campaigns Lieberman has joined with *Book of Virtues* author William Bennett and others to denounce obscene entertainment." *Id.*

After "Clinton's August 17 [1998] speech in which he grudgingly admitted lying about the Lewinsky affair for seven months" Lieberman made a statement on the floor of the Senate in September 1998 and said: "Such behavior is not only inappropriate it is immoral and it is harmful." *Id.* at 347.

172. See *supra* note 117.

173. See *supra* note 119.

174. 145 CONG. REC. S1600 (daily ed. Feb. 12, 1999).

of his approach to the present "test"—deciding whether or not to convict and remove the President for his wrongdoing—was an *argumentum ad verecundiam*, "appealing to reverence for authority, to accepted traditional values," in spite of the unprecedented nature of the Clinton Impeachment Trial.<sup>175</sup>

At this moment, we face a test that, although not as grave or perilous as some before, is nevertheless unlike anything this nation has ever experienced. As my colleagues well know, the impeachment trial of William Jefferson Clinton marks the first time in our history that the United States Senate has convened as a court of impeachment to consider removing an elected President from office. But what also makes this trial unprecedented are the underlying charges against President Clinton, which stem directly from his private sexual behavior. The facts of this case are complicated, embarrassing, demoralizing, and infuriating. They raise questions that Madison, Hamilton, and their brethren could never have anticipated that the Senate would have to address in the solemn context of impeachment.<sup>176</sup>

Lieberman expressed frustration with the partisan nature of the run-up to the impeachment trial, the "degraded and devalued . . . public discourse," and the shocking apathy of the American people.<sup>177</sup> Yet, regarding the trial in the Senate's Court of Impeachment—a forum where Lieberman noted each Senator had taken a traditional oath to render "impartial justice"<sup>178</sup>—Senator Lieberman was more sanguine, observing:

Yet despite the significant pain this trauma has caused for the country, I take heart from the fact that we have once again reaffirmed our commitment to the Constitution and the fundamental principles underpinning it. The conduct of the trial here in the Senate has been passionate at times, but never

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175. LANHAM, *supra* note 116, at 192.

176. 145 CONG. REC. S1600 (daily ed. Feb. 12, 1999).

177. *Id.* Lieberman found it offensive that public discussion on the Clinton Impeachment left "a pornographer to assume the role of arbiter of our political mores" (referring to *Hustler* publisher Larry Flynt) and noted, with disgust, that the low quality of the public discussion which did transpire "so alienated the American people that many of them are hardly paying attention to a trial that could result in the most radical disruption of the presidency—excepting assassination—in our nation's history." *Id.*

178. *Id.*

uncivil . . . . Indeed, throughout the past several weeks we as a body have grown closer as we have continually measured our actions with the same constitutional yardstick, and each of us has sought to remain faithful to the Founders' vision as we understand it in fulfilling our responsibilities as triers of the President. This, I believe, is in the end a remarkable testament to the foresight of our forefathers, that even in this most unusual of crises, we could and would rely on the Constitution as our compass to find a peaceable and just resolution.<sup>179</sup>

Lieberman spent a few minutes condemning the actions of President Clinton, explaining that he was "deeply disappointed and angered by this President's conduct—that which is covered in the Articles [of Impeachment], and the more personal misbehavior that is not . . . ." <sup>180</sup> Lieberman amplified these remarks by revealing that he had "struggled uncomfortably for more than a year with how to respond" to Clinton's actions, characterizing the President's misdeeds as having encompassed "engag[ing] in an extramarital sexual relationship with a young White House employee in the Oval Office, which, though consensual, was irresponsible and immoral, and thus raised serious questions about his judgment and his respect for the high office he holds."<sup>181</sup> This foundational layer of misbehavior, Lieberman noted, had led to an even more serious second level layer: when Clinton "made false or misleading statements about that relationship [with Lewinsky] to the American people, to a Federal district court judge in a civil deposition, and to a Federal grand jury."<sup>182</sup> "[I]n so doing," Senator Lieberman said, "[Clinton] betrayed not only his family but the public's trust, and undermined his moral authority and public credibility."<sup>183</sup>

The middle portion of Senator Lieberman's address concerned the precise question confronted by him and his colleagues as a Court of Impeachment. Initially, in this regard, Lieberman elucidated that:

The judgment we must now make is not about the rightness or wrongness of the President's relationship with Monica Lewinsky and his efforts to conceal it. Nor is that judgment about whether the President is guilty of committing a specific

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179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

183. *Id.*

crime. That may be determined by a criminal court, which the Senate clearly is not, after he leaves office.

No, the question before us now is whether the President's conduct—as alleged in the two articles of impeachment—makes his continuance in office a threat to our government, our people, and the national interest. That, I conclude, is the extraordinarily high bar the Framers set for removal of a duly-elected President, and it is that standard we must apply to the facts to determine whether the President is guilty of "high Crimes and Misdemeanors."<sup>184</sup>

Secondly, in reaching his interpretation of the key standard—"high crimes and misdemeanors"—Lieberman drew upon a variety of current and historical arguments. Among the arguments, and their sources, Senator Lieberman delineated the following persuasive commentaries:

The House Managers, for their part, have presented the facts and argued the Constitution so effectively that they impelled me more than once to seriously consider voting for removal [of President Clinton];<sup>185</sup>

...

[T]he right of the people to choose their leaders is paramount in America, derived directly, as Thomas Jefferson wrote in the Declaration of Independence, from the equality of rights endowed to the people by our Creator. The supremacy of this first democratic principle was well described by Alexis de Tocqueville in *Democracy in America*: "The people reign in the American political world as the deity does in the universe."<sup>186</sup>

...

The phrase "high Crimes and Misdemeanors" [in the U.S. Constitution, Art. II, sec. 4] [is] a term of art... and it meant something very different from ordinary crimes, the response to which must be left to the criminal justice system. The Framers chose the term high crimes, to connote a very specific type of offense, like treason or bribery, which has a direct impact on the government and undermines the chief executive's ability or will to continue serving without corruption and in the national interest. As Alexander Hamilton explained in the *Federalist Papers*, high crimes and misdemeanors are "those offenses which

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184. *Id.* at S1600-01.

185. *Id.* at S1601.

186. *Id.*

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."<sup>187</sup>

...

"Loss of capacity or corruption" [by the chief magistrate]—that is the evil at which the Constitution's impeachment clauses were directed, in Madison's view [during the Constitutional Convention debates of 1787]."<sup>188</sup>

Thirdly, Senator Lieberman pointed out a "linguistically driven irony" that needed to be placed in proper context for the senators to arrive at a proper interpretation of the meaning of the constitutional impeachment standard, "high crimes and misdemeanors." Lieberman made clear that the "Constitution's impeachment clauses employ the language of criminal law to authorize a process entirely outside of and distinct from the criminal justice system—[language] that has created so much confusion over our precise task here."<sup>189</sup> Senator Lieberman sought to dispel this confusion by a citation to a book written by a Yale law professor, Charles Black, which stood for the proposition, Lieberman contended, that "criminality in and of itself is neither a necessary nor a sufficient basis for concluding that a President has committed a high crime or misdemeanor, because our goal is to protect the nation's interests, not to punish a President for violating the criminal law."<sup>190</sup>

Fourthly, Senator Lieberman continued his analysis of the meaning of the impeachment standard of "high crimes and misdemeanors" by rejecting the argument put forth by Clinton's counsel that "Congress has no authority to remove a President for any offense not committed through the use of official power";<sup>191</sup> Lieberman premised his thinking on the Madisonian gloss which he previously articulated.<sup>192</sup> In a remarkable instance of clear and candid public discourse, Senator Lieberman reasoned:

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187. *Id.* (quoting FEDERALIST PAPER NO. 65).

188. *Id.* (quoting II RECORDS OF THE FEDERAL CONVENTION OF 1787 65-66 (Farrand ed. 1888)).

189. *Id.* at S1602.

190. *Id.* (citing CHARLES BLACK, IMPEACHMENT: A HANDBOOK 39-40 (1998 ed.)).

191. *Id.*

192. See *supra* note 188 and accompanying text.

I reject the contention that a President's giving false or misleading statements under oath or his impeding the discovery of evidence in a lawsuit arising out of his personal conduct may never constitute a high crime or misdemeanor. *I have no doubt that under certain circumstances such offenses could demonstrate such a level of depravity, deceit and disregard for the administration of justice that we would have no choice but to conclude that the President could no longer be trusted to use the authority of his office and make the decisions entrusted to him as Chief Executive in the best interest of the nation. It is because I hold this position that I found reaching a decision in this case such a difficult matter.*<sup>193</sup>

Fifthly, Lieberman completed the middle portion of his address by drawing insight from numerous legal sources—including his own past statement concerning the Impeachment Trial of U.S. District Court Judge Alcee Hastings in 1989<sup>194</sup>—to conclude that the "appropriate standard of proof" in the case against the President was that of "clear and convincing evidence."<sup>195</sup>

The final part of Senator Lieberman's oration—what he considered "the crux of this case"<sup>196</sup>—consisted of a careful, prudent and articulate "appl[ication] [of] the [clear and convincing] standard of proof . . . to the evidence the Managers have presented."<sup>197</sup> As a preliminary matter, Lieberman found that "[a] number of specific allegations contained in the Articles lack sufficient legal or evidentiary support,"<sup>198</sup> thereby justifying a summary rejection by the Senate of these allegations. Specifically, Lieberman reasoned: (a) it was "highly doubtful that an obstruction case can be made from the President's statements to aides who later testified to the grand jury" when there was "no evidence showing that the President made those statements for the purpose of having them repeated to the grand jury,"<sup>199</sup> and; (b) "the Managers have not offered a convincing legal theory showing how the President obstructed justice simply by failing to dispute his attorney's statements

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193. 145 CONG. REC. S1602 (daily ed. Feb. 12, 1999) (emphasis added).

194. *Id.*

195. *Id.* at S1603.

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

about his relationship with Ms. Lewinsky during the President's deposition."<sup>200</sup>

As a secondary matter, Senator Lieberman addressed the "slightly more weighty evidence concerning the involvement of the President and his friend, Vernon Jordan" in the Lewinsky job search in relation to Lewinsky's "filing a false affidavit in the Jones case."<sup>201</sup> While he admitted that the evidence left him "suspicious," he was, nevertheless, unconvinced that it could logically and equitably lead to "any settled conclusion on the matter" because, as he explained, the evidence was (a) "highly circumstantial, amounting largely to an overlap in the timing between Ms. Lewinsky's appearance on the Jones' witness list and Mr. Jordan's efforts to find Ms. Lewinsky a job at the President's request";<sup>202</sup> and (b) "[b]oth Ms. Lewinsky and Mr. Jordan testified that there was no connection between the two events."<sup>203</sup>

As a tertiary matter, Senator Lieberman forthrightly confronted "more persuasive evidence [provided by the House Managers] to support a number of other allegations."<sup>204</sup> These persuasive allegations, according to Lieberman, were threefold and entailed: (a) "the President's grand jury testimony that he did not have sexual relations with Ms. Lewinsky within the meaning of the definition offered him in his Jones deposition";<sup>205</sup> (b) the "President's including in his prepared grand jury testimony the statement that 'I regret that what began as a friendship came to include this [inappropriate] conduct' [when] . . . according to Ms. Lewinsky, she and the President engaged in 'this conduct' on the first day they met;"<sup>206</sup> and (c) "[t]he series of questions which Betty Currie . . . testified that the President asked her on the day after his deposition in January 1998 and again a few days later."<sup>207</sup> The tenor of Lieberman's remarks indicate that—as to the three aforesaid persuasive sets of allegations—it would be quite conceivable that Clinton could be held liable for either perjury or obstruction of justice in a criminal proceeding.<sup>208</sup> Yet, that legal determination, according to

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200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.*

204. *Id.*

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

Lieberman, "[was] not for [him] to decide."<sup>209</sup>

The gravamen of Senator Lieberman's final portion of his Senate speech was his substantial and impressive explanation of why the House Managers, in his judgment, had not "presented clear and convincing evidence that the President... committed a high crime or misdemeanor"—translated in Lieberman's view to an explanation why "[the President's] misconduct has so compromised his capacity to govern in the national interest that he must be removed."<sup>210</sup> In eloquent language and cadenced measure Senator Lieberman said:

I recognize that [it] would be a dereliction of my duty to substitute public opinion polls for reasoned judgment about our national interest in resolving this constitutional crisis. But it would also be a serious error to ignore the people's voice, because in exercising our authority as a court of impeachment we are standing in the place of the voters who re-elected the President two years ago. In this case, the prevailing public opposition to impeachment has particular relevance, for it provides substantial evidence that the President's misconduct has not been so harmful as to shatter the public's faith in his ability to fulfill his Presidential duties and act in their interest.<sup>211</sup>

Senator Lieberman, then, focused in on what he referred to a "question of context."<sup>212</sup>

[S]urveys have routinely shown that, as a consequence of this scandal, less than one-fifth of the American people claim that they share the President's moral and ethical values, a result I find stunning and which may be unparalleled in our history.

How can so many Americans simultaneously hold the views that the President has demeaned his office and yet should not be evicted from it? We will be trying to answer that question and to weigh the consequences of those seemingly conflicting opinions for a long time to come. But I believe the explanation must have something to do with the context of the President's actions. As the record makes abundantly clear, the President's false or misleading statements under oath and his broader deception and cover-up stemmed directly from his private sexual behavior,

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209. *Id.* at S1604.

210. *Id.*

211. *Id.*

212. *Id.*



something that no other sitting American president to my knowledge has ever been questioned about in a legal setting. The President neither lied about nor was trying to conceal presidential malfeasance or a heinous crime, such as murder or rape, but instead sought to hide a sexual relationship with an intern that was deeply embarrassing, shameful, even indefensible, yet not illegal.<sup>213</sup>

In Senator Lieberman's eyes, the "context matters in judging the President's misconduct"<sup>214</sup>—in spite of his empathy and sharing of "frustration;"<sup>215</sup> in spite of "powerful evidence [through conversations with parents and children] that the President . . . undercut his moral authority and undermined public confidence in his word;"<sup>216</sup> and in spite of "anger with the President's actions [that] were reawakened as [he] listened to the evidence the Managers . . . presented."<sup>217</sup> And, to make matters worse, in Senator Lieberman's opinion, the instrument of impeachment and removal of a President, as crafted by the Founders, is a narrow and refined tool since, as he summarized:

[The Senate's] responsibility is not to pass judgment on the morality of the President's behavior, or to find whether he committed a specific crime. Impeachment is not an instrument of protest, or of prosecution, but one of protection, of our country, its people, and our democratic ideals. When the role is called on each article and I answer "not guilty," I want it understood that I am saying "not guilty of a high crime or misdemeanor," and that is all I can say.<sup>218</sup>

Yet Senator Lieberman indicated that he would have preferred to have had the Senate entertain a "resolution of censure"<sup>219</sup> against President Clinton's misconduct, ending his address by concurring with the observation of Republican House Manager, Henry Hyde, that "cynicism is an acid eating away at the vital organs of American public life."<sup>220</sup> In a gracious attempt to reach out to the Americans who were

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213. *Id.*

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. *Id.*

219. *Id.* at S1605.

220. *Id.*

deeply troubled as a result of President Clinton's misconduct, Lieberman concluded as follows:

The long and painful process of impeachment is about to come to an end, and thankfully so, but the enormous challenge we face in restoring the public's faith in our public institutions and those who serve in them is just beginning. This is the great test for the President and for each of us, the fight against cynicism's corrosive influence and the loss of public trust. If we once again seek the help of our common Creator and the counsel of our shared Constitution, and through our actions express their ideals and fulfill their expectations, I am confident we can in time renew a sense of common purpose and reassure the citizenry we serve that America is indeed, as Webster proclaimed, one country with one destiny.<sup>221</sup>

#### *D. Honorable Mention Speeches*

Closing speeches by four United States Senators, while not qualifying for a "medal,"<sup>222</sup> constitute superb rhetorical performances. A concise description and assessment of the rhetorical merit of these speeches, in alphabetical order by Senator,<sup>223</sup> follows.

Senator Ben Nighthorse Campbell, Colorado's senior United States Senator, "the only Native American Indian in the Senate—only the eighth to serve in Congress, and a former Democrat who switched to the Republican Party . . . in 1995,"<sup>224</sup> delivered a breathtakingly emotional statement—one of the shortest of any Senatorial closing addresses in the Clinton Impeachment Trial. Starting with an endearing joke about his decision to keep one of the misprinted souvenir pens given to each Senator,<sup>225</sup> Campbell firmly based his remarks on his uniquely admirable

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221. *Id.*

222. *See supra* notes 75-216 and accompanying text.

223. I do not intend to rank the various Senators in this "honorable mention" class. *See supra* notes 219-223 and *infra* notes 224-232 and accompanying text.

224. BARONE & UJIFUSA, *supra* note 3, at 320.

225. Senator Campbell quipped:

Mr. Chief Justice and colleagues, my friends, I am not going to try to dazzle you with my knowledge of the law which is minimal, or the forty hand-written pages I've taken during these proceedings. But, I signed the same oath you did with a pen that should have had on it "United States Senate," but did not. It said, "Untied States

*ethos* of "[a]n imperfect Senator being asked to judge an imperfect President;"<sup>226</sup> noting that he was "[t]he offspring of an alcoholic father and a tubercular mother [and] in and out of orphanages [and] a law breaker and high school drop out who lied, cheated, stole and did many other shameful things"<sup>227</sup> that he thought made him "a poor judge indeed of someone else who used poor judgment."<sup>228</sup> Nevertheless, Senator Campbell concluded that he would vote "guilty on both articles"<sup>229</sup> against the President because he said that as a high public official "[b]eing honest and truthful becomes [vital] . . . because we must set the examples."<sup>230</sup>

Senator Tom Daschle, South Dakota's Democratic senior United States Senator and Senate minority leader, has a sterling reputation: his "capacity for dogged hard work, his seemingly mild manner and ability to stay unruffled, his efforts at building consensus and fellow feeling have made the Democratic Caucus more united than in many years . . . ."<sup>231</sup> His closing oration is notable for its clear-sighted, fair and persuasive *logos*. Two portions of his speech deserve quotation. First, his initial incisive observation provided the big picture review of the Republicans' case against the President:

As I look at this case, I am compelled to consider it from beginning to end—from the circumstances under which the House fashioned and approved the articles, to the trial here in the Senate when the House pressed its arguments for conviction. And I find a case troubled from the beginning to end—one marked by constitutional defects, inconsistencies in presentation, surprising concessions by the Managers against their own position and even damage done to that position by their own witnesses.<sup>232</sup>

Second, Daschle ended his statement with his relentless pursuit for

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Senate."

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

145 CONG. REC. S1504 (daily ed. Feb. 12, 1999).

226. *Id.*

227. *Id.*

228. *Id.*

229. *Id.*

230. *Id.*

231. BARONE & UJIFUSA, *supra* note 3, at 1460.

232. 145 CONG. REC. S1776 (daily ed. Feb. 23, 1999).

consensus and accommodation among his Senate colleagues by hoping, that after the voting on impeachment, all Senators could agree with the proposition that "in 1999, 100 Senators acted as the Constitution required, honoring their oath to do impartial justice and acting in the best interests of this country they so dearly love."<sup>233</sup>

Senator Olympia Snowe, Maine's Republican senior United States Senator, enjoys a political track record of thoughtful independence.<sup>234</sup> Her relatively short closing statement at the Clinton Impeachment Trial is another example of her hard-headed Yankee pragmatism, mixed with eloquent insight and historical consciousness. Key extracts from her speech, which illustrate its excellent oratorical qualities are as follows:

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

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

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

...

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

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233. *Id.* at S1777.

234. BARONE & UJIFUSA, *supra* note 3, at 722-23. They note that,

In the Senate she was the least conservative of the 11 freshmen Republicans elected in 1994. She has supported Republican positions on most economic issues, calling for a balanced budget, but has also backed abortion rights and family leave. Her record on foreign and defense issues has been solidly conservative. But she was one of the few Republicans to support the Clinton Administration EPA's air-quality standards.

*Id.* at 723.

articles of impeachment.<sup>235</sup>

Senator Ron Wyden, Oregon's Democratic senior United States Senator, with a legislative "genius for coming up with sensible-sounding ideas no one else has thought of and a knack for making . . . counter-intuitive political alliances,"<sup>236</sup> exhibited the same brand of counter-intuitive brilliance in choosing the words of his closing statement in the Clinton Impeachment Trial. In characterizing the impeachment vote in the Senate as an opportunity to end the "toxic partisanship" in American politics, Wyden bowed to worthy Republican colleagues who had demonstrated bipartisanship, but with whom he disagreed in the vote on impeachment, and, in indicating his decision to vote for acquittal said:

My point is that this impeachment process has brought us to a critical moment in our history. We can either rise to the occasion by forging new and healthier ways to deal with our differences, or we can sink from the collective weight of a partisan mess that we have all helped to create.

...

What I want to be able to tell my grandchildren is that this was the point in American history where we drew a line in the sand and said "no more" to the excessive partisanship. A time when we said "no more" to a brand of politics that each of us knows is bringing out the worst in good people.<sup>237</sup>

## V. CONCLUSION

After spending many hours reading through the small print and thin pages of the *Congressional Record* in an attempt to understand and assess the rhetorical significance of the closing statements of our United States Senators in the Clinton Impeachment Trial, I have arrived at three modest conclusions.

First, despite the "[t]runcated and anticlimactic" nature of the Senate trial of President Clinton—leading Judge Posner to conclude that the trial was "a parody of legal justice"<sup>238</sup>—the overall quality of the

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235. 145 CONG. REC. S1670-71 (daily ed. Feb. 12, 1999).

236. BARONE & UJIFUSA, *supra* note 3, at 1327.

237. 145 CONG. REC. S1629 (daily ed. Feb. 12, 1999).

238. See *supra* notes 32-33 and accompanying text.

rhetoric—in the best, classical sense of the word—spoken in the Senatorial closing statements before the Court of Impeachment was impressive. While a few speeches were unimpressive—too partisan, too one-sided, too bombastic<sup>239</sup>—most orations were noteworthy for their judicious and skillful blends of logic, appropriate emotion, and ethics.

Second, what I have judged to be "the very best speeches"—the "gold medal" of Senator Byrd, the "silver medal" of Senator McConnell and the "bronze medal" of Senator Lieberman<sup>240</sup>—were extraordinary performances of rhetorical artistry. These three speeches are worthy of praise and comparison with the best tradition of speeches delivered on the floor of the United States Senate. Moreover, the four senatorial speeches in the Clinton Impeachment Trial that I labeled "honorable mentions" are strong, effective and compelling speeches in their own right.<sup>241</sup>

Third, at least as to these seven superb senatorial addresses, one can conclude that these speeches made the best out of a flawed underlying impeachment process and negative national mood by examining the larger, overarching questions of national interest and constitutional law at stake in only the second Presidential impeachment trial in the Nation's history.<sup>242</sup>

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239. I have neither identified nor discussed those senatorial closing arguments that I found to be unimpressive. I have, rather, in this article attempted to look for the positive. I leave negative and cynical assessments to other authors.

240. See *supra* notes 75-216 and accompanying text.

241. See *supra* notes 217-232 and accompanying text.

242. These seven United States Senators, then, defied the 21st century tendency for our Senators to act like "pygmies" in their public actions. See Burt Solomon, *Gone Are The Giants*, 32 NAT'L J. 1668 (May 27, 2000).

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