

in the Kirkwood community for many years to come.●

THE IMPEACHMENT OF PRESIDENT WILLIAM JEFFERSON CLINTON

● Mr. CLELAND. Mr. President, let me begin by saying that the reason we are here today, the reason the United States Senate is being asked to exercise what Alexander Hamilton termed the "awful discretion" of impeachment, is because of the wrongful, reprehensible, indefensible conduct of one person, the President of the United States, William Jefferson Clinton. Indeed, I believe it is conduct deserving of the censure of the Senate, and I will support such a resolution when it comes before us.

The question before the Senate, however, is not whether the President's conduct was wrong, or immoral, or even censurable. We must decide solely as to whether or not he should be convicted of the allegations contained in the Articles of Impeachment and thus removed from office. In my opinion, the case for removal, presented in great detail in the massive 60,000 page report submitted by the House, in many hours of very capable but often repetitive presentations to the Senate by the House Managers and the President's defense team, and in many additional hours of Senators' questioning of the two sides, fails to meet the very high standards which we must demand with respect to Presidential impeachments. Therefore, I will vote to dismiss the impeachment case against William Jefferson Clinton, and to vote for the Senate resuming other necessary work for the American people.

To this very point, I have reserved my judgment on this question because of my Constitutional responsibility and Oath to "render impartial justice" in this case. Most of the same record presented in great detail to Senators in the course of the last several weeks has long been before the public, and indeed most of that public, including editorial boards, talk show hosts, and so forth, long ago reached their own conclusions as to the impeachment of President Clinton. But I have now heard enough to make my decision. With respect to the witnesses the House Managers apparently now wish to depose and call before the Senate, the existing record represents multiple interrogations by the Office of the Independent Counsel and its Grand Jury, with not only no cross-examinations by the President's counsel but, with the exception of the President's testimony, without even the presence of the witnesses' own counsel. It is difficult for me to see how that record would possibly be improved from the prosecution's standpoint. Thus, I will not support motions to depose or call witnesses.

In reaching my decision on impeachment, there are a number of factors which have been discussed or speculated about in the news media which were not a part of my calculations.

First of all, while as political creatures neither the Senate nor the House can or should be immune from public opinion, we have a very precise Constitutionally-prescribed responsibility in this matter, and popular opinion must not be a controlling consideration. I believe Republican Senator William Pitt Fessenden of Maine said it best during the only previous Presidential Impeachment Trial in 1868:

To the suggestion that popular opinion demands the conviction of the President on these charges, I reply that he is not now on trial before the people, but before the Senate . . . The people have not heard the evidence as we have heard it. The responsibility is not on them, but upon us. They have not taken an oath to "do impartial justice according to the Constitution and the laws." I have taken that oath. I cannot render judgment upon their convictions, nor can they transfer to themselves my punishment if I violate my own. And I should consider myself undeserving of the confidence of that just and intelligent people who imposed upon me this great responsibility, and unworthy of a place among honorable men, if for any fear of public reprobation, and for the sake of securing popular favor, I should disregard the convictions of my judgment and my conscience.

Nor was my decision premised on the notion, suggested by some, that the stability of our government would be severely jeopardized by the impeachment of President Clinton. I have full faith in the strength of our government and its leaders and, more importantly, faith in the American people to cope successfully with whatever the Senate decides. There can be no doubt that the impeachment of a President would not be easy for the country but just in this Century, about to end, we have endured great depressions and world wars. Today, the U.S. economy is strong, the will of the people to move beyond this national nightmare is great, and we have an experienced and able Vice President who is more than capable of stepping up and assuming the role of the President.

Third, although we have heard much argument that the precedents of judicial impeachments should be controlling in this case, I have not been convinced and did not rely on such testimony in making my decision. After a review of the record, historical precedents, and consideration of the different roles of Presidents and federal judges, I have concluded that there is indeed a different legal standard for impeachment of Presidents and federal judges. Article 11, Section 4 of the Constitution provides that "the President, Vice President, and all civil officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors." Article III, Section 1 of the Constitution indicates that judges "shall hold their Offices during good Behavior." Presidents are elected by the people and serve for a fixed term of years, while federal judges are appointed without public approval to serve a life tenure without any accountability to

the public. Therefore, under our system, impeachment is the only way to remove a federal judge from office while Presidents serve for a specified term and face accountability to the public through elections. With respect to the differing impeachment standards themselves, Chief Justice Rehnquist once wrote, "the terms 'treason, bribery and other high crimes and misdemeanors' are narrower than the malfeasance in office and failure to perform the duties of the office, which may be grounds for forfeiture of office held during good behavior."

And my conclusions with respect to impeachment were not based upon considerations of the proper punishment of President Clinton for his misdeeds. During the impeachment of President Nixon, the Report by the Staff of the Impeachment Inquiry concluded that "impeachment is the first step in a remedial process—removal from office and possible disqualification from holding future office. The purpose of impeachment is not personal punishment; its function is primarily to maintain constitutional government." Regardless of the outcome of the Senate impeachment trial, President Clinton remains subject to censure by the House and Senate, and criminal prosecution for any crimes he may have committed. Whatever punishment President Clinton deserves for his misdeeds will be provided elsewhere.

Finally, I do not believe that perjury or obstruction of justice could never rise to the level of threatening grievous harm to the Republic, and thus represent adequate grounds for removal of a President. However, we must approach such a determination with the greatest of care. Impeachment of a President is, perhaps with the power to declare War, the gravest of Constitutional responsibilities bestowed upon the Congress. During the history of the United States, the Senate has only held impeachment trials for two Presidents, the 1868 trial of President Johnson, who had not been elected to that office, and now President Clinton. Although the Senate can look to impeachment trials of other public officials, primarily judicial, as I have already said, I do not believe that those precedents are or should be controlling in impeachment trials of Presidents, or indeed of other elected officials.

My decision was based on one overriding concern: the impact of this precedent-setting case on the future of the Presidency, and indeed of the Congress itself. It is not Bill Clinton who should occupy our only attention. He already stands rebuked by the House impeachment votes, and by the words of virtually every member of Congress of both political parties. And even if we do not remove him from office, he still stands liable to future criminal prosecution for his actions, as well as to the verdict of history. No, it is Mr. Clinton's successors, Republican, Democrat or any other Party, who should be our concern.

The Republican Senator, Edmund G. Ross of Kansas, who "looked down into my open grave" of political oblivion when he cast one of the decisive votes in acquitting Andrew Johnson in spite of his personal dislike of the President explained his motivation this way:

... In a large sense, the independence of the executive office as a coordinate branch of the government was on trial . . . If . . . the President must step down . . . upon insufficient proofs and from partisan considerations, the office of President would be degraded, cease to be a coordinate branch of government, and ever after subordinated to the legislative will. It would practically have revolutionized our splendid political fabric into a partisan Congressional autocracy.

While our government is certainly on a stronger foundation now than in the aftermath of the Civil War, the basic point remains valid. If anything, in today's world of rapidly emerging events and threats, we need an effective, independent Presidency even more than did mid-19th Century Americans.

While in the history of the United States the U.S. Senate has never before considered impeachment articles against a sitting elected official, we do have numerous cases of each House exercising its Constitutional right to, "punish its Members for disorderly behavior, and, with the concurrence of two-thirds expel a Member." However, since the Civil War, while a variety of cases involving personal and private misconduct have been considered, the Senate has never voted to expel a member, choosing to censure instead on seven occasions, and the House has rarely chosen the ultimate sanction. Should the removal of a President be subject to greater punishment with lesser standards of evidence than the Congress has applied to itself when the Constitution appears to call for the reverse in limiting impeachment to cases of "treason, bribery and other high crimes or misdemeanors"? In my view, the answer must be NO.

Thus, for me, as one United States Senator, the bar for impeachment and removal from office of a President must be a high one, and I want the record to reflect that my vote to dismiss is based upon a standard of evidence equivalent to that used in criminal proceedings—that is, that guilt must be proven "beyond a reasonable doubt"—and a standard of impeachable offense which, in my view, conforms to the Founders' intentions that such an offense must be one which represents official misconduct threatening grievous harm to our whole system of government. To quote Federalist #65, Hamilton defined as impeachable, "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself." As I have said before, I can conceive of instances in which both perjury and obstruction of justice would meet this test, and I

certainly believe that most, if not all, capital crimes, including murder, would qualify for impeachment and removal from office. However, in my judgment, the current case does not reach the necessary high standard.

In the words of John F. Kennedy, "with a good conscience our only sure reward, with history the final judge of our deeds," I believe that dismissal of the impeachment case against William Jefferson Clinton is the appropriate action for the U.S. Senate. It is the action which will best preserve the system of government which has served us so well for over two hundred years, a system of checks and balances, with a strong and independent chief executive.

In closing, I wish to address those in the Senate and House, and among the American public, who have reached a different conclusion than have I in this case. I do not question the sincerity or legitimacy of your viewpoint. The process itself pushes us to make absolute judgments—yes or no to conviction and removal from office—and the nature of debate yields portraits of complex issues in stark black-and-white terms, but I believe it is possible for reasonable people to reach different conclusions on this matter. Indeed, I recognize that, while my decision seeks to avoid the dangers of setting the impeachment bar too low, setting that bar too high is not without risks. I believe the House Managers spoke eloquently about the need to preserve respect for the rule of law, including the critical principle that no one, not even the President of the United States, is above that rule. However, I have concluded that the threat to our system of a weakened Presidency, made in some ways subordinate to the will of the legislative branch, outweighs the potential harm to the rule of law, because that latter risk is mitigated by:

An intact, independent criminal justice system, which indeed will retain the ability to render final, legal judgment on the President's conduct;

A vigorous, independent press corps which remains perfectly capable of exposing such conduct, and of extracting a personal, professional and political price; and

An independent Congress which will presumably continue to have the will and means to oppose Presidents who threaten our system of government.

By the very nature of this situation, where I sit in judgment of a Democratic President as a Democratic Senator, I realize that my decision cannot convey the non-partisanship which is essential to achieve closure on this matter, one way or the other. Indeed, in words which could have been written today, the chief proponent among the Founding Fathers of a vigorous Chief Executive, Alexander Hamilton, wrote in 1788, in No. 65 of The Federalist Papers, that impeachments "will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimi-

cal, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence."

I have, however, in making my decision laid out for you the standards which I believe to be appropriate whenever the Congress considers the removal from office of an elected official, whether Executive Branch, or Legislative Branch. I will do my best to stand by those standards in all such cases to come before me while I have the privilege of representing the people of Georgia in the United States Senate, regardless of the party affiliation of the accused. I only hope and pray that no future President, of either Party, will ever again engage in conduct which provides any basis, including the basis of the current case, for the Congress to consider the grave question of impeachment.●

#### MOTIONS TO DISMISS AND TO SUBPOENA WITNESSES

● Mr. FEINGOLD. Mr. President, during yesterday's impeachment trial proceedings, I voted against the motion to dismiss offered by the senior Senator from West Virginia, Senator BYRD. I also voted in favor of allowing the House Managers to depose a limited number of witnesses in this case. I would like to explain the reasons for my votes.

Let me state first that I understand that this trial is a unique proceeding; it is not precisely a "trial" as we understand that term to be used in the criminal context. The Senate, for example, as the Chief Justice made clear in upholding Senator HARKIN's objection early in the trial, is both judge and jury, with the final authority to determine not only the "guilt" or "innocence" of the defendant, but also the legal standard to apply and what kind of evidence is relevant to the decision.

Nonetheless, Sen. BYRD's motion was a motion to dismiss, which I believe gives the motion a legal connotation we must not ignore. I believe that in order to dismiss the case at this point, a Senator should be of the opinion that it is not possible for the House Managers to show that the President has committed high crimes and misdemeanors, even if they are permitted to call the witnesses that they want to call. Even apart from the possibility of witness testimony, in order to vote for the motion, a Senator should believe that regardless of what occurs in the closing arguments by the parties and in deliberations in the Senate, that a Senator would not vote to convict.

So for me, this motion to dismiss was akin to asking the judge in this case not to send the case to the jury. In a