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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 2, 1999, at 12:30 p.m.

Senate

FRIDAY, JANUARY 22, 1999

The Senate met at 1:03 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

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

PRAYER

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

Spirit of the living God, fall afresh on us. We need Your strength. The wells of our own resources run dry. We need Your strength to fill up our diminished reserves—silent strength that flows into us with artesian resourcefulness, quietly filling us with renewed power. You alone can provide strength to think clearly and to decide decisively.

Bless the Senators today as they trust You as Lord in the inner tribunal of their own hearts. You are Sovereign of this land, but You are also Sovereign of the inner person inside each Senator. May these hours of questions bring exposure of truth and resolution of uncertainties. O God of righteousness and grace, guide this Senate at this decisive hour. You are our Lord and Savior. Amen.

The CHIEF JUSTICE. Senators may be seated. The Sergeant at Arms will make a proclamation.

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

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

THE JOURNAL

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

Pursuant to the provisions of Senate Resolution 16, the Senate is provided up to 16 hours during which Senators may submit questions in writing directed to either the managers, on the part of the House of Representatives, or counsel for the President. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. This afternoon, the Senate will begin the question-and-answer period for not to exceed 16 hours, as provided in Senate Resolution 16. I have consulted several times about this procedure with Senator DASCHLE and others, and we have determined that the majority will begin the questioning process with the first question, and we will then alternate back and forth.

As I noted yesterday, this has not been done in quite a while, so we will just have to go forward in a way that we feel is fair and comfortable. We ask that you give the benefit of the doubt to us in how we send the questions up to the Chief Justice. Senator DASCHLE and I will try to make sure that the time stays pretty close to even as we go through the day. Of course, the Chief Justice, I am sure, will make sure the deliberations and the answers are fair. We hope the answers will be succinct and that they will respond to the questions.

One question that has arisen from Senators on both sides is, can we direct a question to both sides, the White House counsel and the House managers, simultaneously, and the answer is no. Under our rules, we will direct the question to one side or the other, and our questions for either side may go to either one of the parties, but only one can answer that question.

Of course, there is the possibility for a follow-up question that might be directed to one side or the other. We will just deal with that as we go forward.

I expect, for the information of all Senators, that we will go approximately 5 hours today. I don't know how many questions we can get done in an hour, but I suspect by 6 o'clock on Friday we will have exhausted a series of questions that will entitle us to a break at that point. But, again, we will just have to see how we feel about it. We would not stop, obviously, in the middle of a question.

We will resume again on Saturday at 10 a.m., alternating between both sides. The schedule at this point is undecided. We need to see how many questions are left that Senators really feel need to be asked and, again, we will have to see how the day progresses.

I did have Senators come up to me yesterday and talk to me about we need some reasonable limit on that. But I am thinking in general terms of not going beyond 4 o'clock on Saturday. We will converse and make those announcements after consultation as we go forward tomorrow or during the day even tomorrow.

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

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I hope we can complete our questioning period by the close of business tomorrow, but if we go with the times I basically mentioned, we are talking about 10 hours, not 16. So we will have to consult and determine if we ask the basic questions or if we want to continue it later or even over on Monday.

I believe, Mr. Chief Justice, that completed the explanation that I wanted to give at this time.

I do have the first question prepared to send to the Chief Justice, but I thought perhaps he had some further business he might want to address before I did that.

The CHIEF JUSTICE. Yes. I would like to advise counsel on both sides that the Chair will operate on a rebuttable presumption that each question can be fully and fairly answered in 5 minutes or less. (Laughter.)

Mr. LOTT. Mr. Chief Justice, I do send the first question to the desk.

The CHIEF JUSTICE. Senators ALLARD, BUNNING, COVERDELL and CRAIG ask the House managers:

Is it the opinion of the House Managers that the President's defense team, in the presentation, mischaracterized any factual or legal issue in this case? If so, please explain.

Mr. Manager BRYANT. Mr. Chief Justice, distinguished colleagues, and Members of the Senate, there are—first of all, let me thank you for the opportunity to respond to questions. We hope we can do that in a succinct manner today.

There are a number of mischaracterizations in statements that we disagree with that the President's defense team made. I will not attempt to cover all of these. And I would like to highlight just a few of these, and perhaps might, in a short manner, exceed the rebuttal presumption of 5 minutes.

Mr. Craig made the argument on behalf of the President that this is a lot about an oath versus oath perjury case. Article I is the perjury allegation—one word against another person's word, ''he said, she said.'' However, we would submit that there was not discussed in their presentation the fact that there is ample corroboration which is provided for under the law as it being necessary.

But we believe factually there was much corroboration; that is, another person or other evidence to support the fact that the President did commit the perjury, and particularly those aspects of the perjury charge that deal with the personal relationship that Ms. Lewinsky and the President had.

Very clearly, White House records and phone logs, along with Ms. Lewinsky's incredible recollection of particular names and events, and the circumstances surrounding these particular occasions, that have already been highlighted in the past—and we all know about those types of telephone conversations. And she was very clear in the facts. The people have all corroborated her on her presence in the White House at certain times.

No. 2, the Secret Service testimony that placed her inside the Oval Office, on occasion alone; the fact that there have been contemporaneous statements made by Ms. Lewinsky describing the details of this relationship. And as we all know, the law permits this contemporaneous statement to, in this case, at least eight friends and two professional counselors detailing the particular relationship while it was ongoing.

The blue dress is very clearly corroboration, and the DNA testing that resulted from that. Also, the transfer of Ms. Lewinsky from the White House, and the later surreptitious efforts with Ms. Currie to sneak her back into the White House, again, indication that efforts had been made to move her, to relocate her, away from the President to protect him from those circumstances.

Also, the President's prepared statement in the grand jury is another example that was not mentioned. And in particular, I highlight the statement that he made that would lead you to believe that this relationship evolved over a period of time, and that being that he was sorry that what had started out as a friendship turned into this type of relationship, where, in fact, Ms. Lewinsky's testimony is very clear that that relationship began immediately, the very first day that he actually spoke to her.

Mr. Ruff's statement that the managers' case was misleading is also incorrect, I believe. He used words like ''fudging the facts,'' ''a witches' brew,'' and ''be wary of a prosecutor who feels like he must deceive the court.'' And this comes to somewhat of a surprise to many of us at this table who know that Mr. Ruff is familiar with the facts of this case.

And just last month, when he testified before the Judiciary Committee, he said: I have no doubt that the President walked up to that line that he thought he understood. Reasonable people—reasonable people—and you may have reached that conclusion that he could have crossed over that line and that what for him was truthful but misleading or nonresponsive or misleading and evasive was in fact false.

Now, he didn't tell you in his presentation that just a month ago he took the position that reasonable people can disagree, and yet before this Senate, and the audience that we have watching, he asserts that anyone who would accuse his client of perjury is guilty of ''fudging the facts,'' ''brewing a witches' brew,'' and ''deception.'' And even Mr. Craig, unfortunately, borrowed many of those same words in that characterization. It may be good theater, but it is simply not the case that these managers are engaged in that type of practice before the Senate and the American people.

White House Counsel Cheryl Mills spoke in a similar manner and tone to this House about inconvenient and stubborn facts—oh, those stubborn facts. In her meticulous presentation, she passed over—she completely missed—the second occasion wherein President Clinton attempted to coach Ms. Currie.

Did anyone hear about the second event? As carefully as she tried to make innocent the wrongful effort of the President to tamper with the potential witness, she just as carefully skirted the entire similar episode 2 or 3 days after the first one where he again tampered with her testimony. According—according to Ms. Currie—he spoke with her, just recapitulating. Remember that in our presentation?

Likewise, in her review of witness tampering, she mischaracterized the law—the law—stating that a threat—an actual threat was required. 18 U.S.C. 1503 states that obstruction of justice occurs when a person corruptly endeavors to influence the testimony of another person. And ''corruptly'' has been interpreted by the District Court here in D.C. to mean acting for an improper purpose.

And, clearly, this was an improper purpose when the President was trying to get her to testify falsely, but a threat is not a part of the law and not needed.

And I will just quickly, if I might, just mention two more quick ones.

Mr. Ruff stated the President gave the same denial to his aides that he gave to his country and family. You recall him specifically saying that he just has said nothing different to the American public and his family that he told the aides that we talked about—John Podesta, Sidney Blumenthal.

Well, that's not right. ''He told''—the President told Mr. Podesta—and this is Mr. Podesta talking—''He told me that he never had sex with her and that he never asked—you know, he repeated the denial. But he was extremely explicit in saying he never had sex with her in any way whatsoever, that they had not had oral sex.''

And Blumenthal—Mr. Blumenthal—he told Mr. Blumenthal an entirely different story, that ''Monica Lewinsky came at me and made a sexual demand on me. [And I, the President,] rebuffed her.'' He said that ''I've gone down that road before [and] . . . caused pain for a lot of people and I'm not going to do that again.''

''She threatened him.'' Ms. Lewinsky threatened the President. And ''[s]he said that she would tell [other] people [that she] had an affair, that she was known as a stalker among her peers, and that she hated [that], and if she had an affair . . . [with the President] she wouldn't be . . . anymore.''

That is not the story that he told the American people and that he told his family. These are embellishments that are very important, because he anticipated that they would go into the grand jury and repeat those misstatements.

And finally, the affidavit of Monica Lewinsky. White House defense lawyers spoke so eloquently about the procurement of this affidavit—as he glided

through how the President believed that Monica Lewinsky could have filed a truthful affidavit while still skirting their sexual relationship sufficiently to—sufficiently to—avoid testifying in the Paula Jones case.

This is an important issue. As it was specifically raised in the answer before this Senate, the President's lawyers brought this statement into this Senate as part of their answer that he could have advised her that she could have filed an affidavit that would have been truthful while still at the same time denying a sexual relationship sufficiently that she would not be called as a witness.

I know opposing counsel makes light of the hairsplitting and the legal gymnastics that people have talked about here, but that is an incredible statement that you can do the twister enough to go into a deposition where the purpose of being there is to discover this type of information, who you might have had an affair with, and have her tell a truthful affidavit and still not to be able to testify.

Had she told a truthful affidavit, she would have been immediately called. Plus, the President was given an opportunity by Ms. Lewinsky to review the affidavit.

Remember the statement that he didn't need to, he had seen 15 just like it? If he had that ''out'' for her where she could have told the truth and still not been able to testify, don't you think he owed it to her to cause her not to have to commit perjury in that affidavit—which she did—not to have to commit a crime? Wouldn't he have shared that with her if he had that information at that time?

I suggest that he didn't. I have others that I would like to talk to, but in the interest of time and fairness I will stop my presentation at this point.

I thank the Senate.

Mr. DASCHLE. Mr. Chief Justice.

The CHIEF JUSTICE. I recognize the minority leader.

Mr. DASCHLE. Could I inquire as to the length of time that response took.

The CHIEF JUSTICE. Approximately 9 minutes.

Senator SARBANES asks:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question from Senators ALLARD, BUNNING, COVERDELL and CRAIG?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice.

It may be that I will need to call on some of my colleagues to be of assistance here, but let me begin, and we will strive mightily to stay within the rebuttal of 5 minutes.

Mr. Manager BRYANT began by suggesting that there really is corroboration on the key issue that he focussed on, which as you know, is the nature of the specific details of the relationship between the President and Ms. Lewinsky. And he suggested that among the corroborating matters that he would point to were her recollection of events, which is alleged to be detailed; records reflecting that she was, indeed, in the White House on particular days; Secret Service records; DNA testing. None of those have anything to do with the essential issue that Congressman BRYANT raised, because nobody disputes the fact that Ms. Lewinsky was in the White House engaged in inappropriate conduct with the President on a particular day.

The only point that I think the manager raises that is new and needs to be addressed is this notion that contemporary, consistent statements made to third parties about these events are somehow corroborative of Ms. Lewinsky's testimony in this regard. And as all of you who had the pain of suffering through an evidence course will know, or have had the pain of trying lawsuits in which this issue arises, so-called prior consistent statements are not, in fact, viewed as some corroborating evidence that can be introduced by the prosecutors in this Senate; for they know, and I am sure those of you who suffered through these pangs know, as well, that the law rejects the notion that merely because you tell the same story many times it is corroborative of the underlying credibility of the witness' version, and that there are only certain very limited areas in which prior consistent statements are, in fact, admissible.

A couple of others and I will turn this briefly over to Ms. Mills.

Manager BRYANT suggests that I have somehow gone too far in suggesting that the prosecutors here have in my words ''engaged in fudging.'' I have never suggested that the entire presentation is so, and I made very clear in my comments to the Senate the other day the specific examples which I think we documented quite fully. But beyond that, let me go back to his reference to my earlier testimony before the House Judiciary Committee in which I did, indeed, in response to questions, comment that the President may well have walked up to the line believing he didn't cross it, but that reasonable people might conclude otherwise.

The only problem with that example, as broached by Mr. Manager BRYANT, is that I was talking there—and the record is very clear—I was talking about his testimony in the Jones deposition which, as everyone in this room will fully understand, is not before you because the House of Representatives specifically decided that the President's testimony in the Jones deposition was not a basis for impeachment.

With that, without having used, I hope, all of my time, Mr. Chief Justice, I will allow Ms. Mills, if she would, to come forward and respond specifically to the point raised with respect to her presentation.

Ms. Counsel MILLS. Thank you.

I just want to address briefly two issues that the House managers raised. With regard to the statute on obstruction of justice, with respect to witness tampering, the House managers focused on 1512, with respect to Ms. Currie which does require a threat or intimidation and, indeed, specifically addressed that—they wanted to focus on 1512—when they were addressing her and the situation where the President spoke with her.

With regard to 1503, though, to the extent that the House managers suggest that the President's actions and his conversation with Ms. Lewinsky violated 1503, I think probably you all might recall from my presentation that we discussed the Aguilar case in which it is clearly necessary that you have a nexus between the actual conduct and the official proceeding that would be going forward. In that case, we had a judge who lied to an FBI agent who indicated that he was going to—that this might, might come up in a grand jury proceeding, and Mr. Chief Justice, in his opinion, indicated that was insufficient to find the nexus that was necessary to violate 1503.

And if you all have my package, you can look back. I provided you with a specific quotation. So in this instance, we clearly wouldn't have the nexus between the President's conversation with Ms. Currie, who was not yet a witness. There was no suggestion that she was going to be a witness in the Jones case; indeed, no one even mentioned that fact to him, as you actually did have in Aguilar.

In addition, with regard to both statutes, the specific intent is not fulfilled. That is something we spoke about when I gave my presentation before.

With regard to the President's conversation with Ms. Currie, which happened on the 18th and again on a subsequent day, in that instance it also happened prior to all of the media attention and other matters that came out. So in effect, all of the same issues apply because there was no—at that point—no indication that the independent counsel was involved in this matter, and the President still was concerned about the Jones proceeding; indeed, he was concerned that the media attention would be significant, and he was accurate as it began to grow and grow.

Thank you.

Mr. LOTT. Mr. Chief Justice, we send our next question to the desk.

The CHIEF JUSTICE. Senators ENZI and COVERDELL ask the House managers:

> Please elaborate on whether the President's defense team failed to respond to any allegations made by the House managers.

Mr. Manager HUTCHINSON. Mr. Chief Justice, ladies and gentlemen of the Senate, as to the areas that were not covered by the President's defense team, I think that my fellow Manager BRYANT already mentioned one, but I thought it was significant that in the questioning of Ms. Currie, or the statements made to Betty Currie after the President's deposition on January 17 where he brought her into the office and he went through that series of questions—''I was never alone, right,''

and that series of questions everybody is so familiar with, they discussed that primarily in the terms that she was not a witness. But during 3 days of presentation they never discussed the fact that it was 2 days later that the same series of questions or statements or coaching were addressed to Ms. Currie.

So the President's defense that, ''Well, I was just trying to refresh my recollection on the facts so I could respond to media inquiries,'' does not make sense in light of the fact that it was done on one day—the series of questions. But Betty Currie testified that 2 days later she was called into the office, the same series of statements, declarations, coaching was made to her, and the only possible explanation for that is that the President was trying to make a very clear statement to her—''This is what I remember; this is what I want you to do,'' and for 3 days, for 3 days of presentations, the President's defense lawyers never, never mentioned that.

Now, I want to come back to what Ms. Mills just said because this was a big issue in the presentation of Mr. Ruff. In fact, I have the quotes here. I hope that that will be turned over to you. But whenever Betty Currie was questioned, they say, well, she wasn't a witness. There was never any clue she was going to be a witness, that the Jones lawyers never anticipated she was going to be a witness, and that it was never put at all on the witness list. That's very significant.

I just want to drive this point home. This is Mr. Ruff—talk about prosecutorial fudging; how about defense fudging? Mr. Ruff said this:

> Ms. Currie was neither an actual nor prospective witness.
>
> In the entire history of the Jones case, Ms. Currie's name had not appeared on any witness list, nor was there any reason to suspect that Ms. Currie would play a role in the Jones case.
>
> Discovery was down to its final days.

That was Counsel Ruff.

> Yet, in the days and weeks following the deposition, the Jones lawyers never listed her, never contacted her, never added her to any witness list.

That was the presentation of Mr. Ruff, and it was also that of Ms. Mills. Yet, if you look at the facts in the Jones case, the deposition was concluded on January 17. There was a holiday on the 18th. In fact, on January 22, within 5 days of the deposition, a subpoena was issued for Betty Currie. Within 5 days, a subpoena was issued for Betty Currie, and, in fact, on the 23rd, there was a supplement to the witness list by the Jones lawyers, which included Betty Currie's name as 163. This was served on Mr. Bennett and the other lawyers for the President.

In addition, I have—which I will distribute to you—the actual subpoena that was issued for Betty Currie, as I indicated, which was issued on January 22nd, and the proof of service in which Betty Currie was served as a witness in that case on January 27—the proof of service. So the statements by Mr. Ruff that there was never any indication that the Jones people knew she was going to be a witness is totally not within the record. In fact, it is clear that the subpoena was issued; it was served.

Whenever that deposition was over of the President, both the President left there and the Jones lawyers left there knowing immediately that Betty Currie was going to be a witness. She had to be a witness, with the President asserting, ''ask Betty, ask Betty, ask Betty,'' so many times during that. That is why the President came back and had to deal with Betty Currie being a witness, and the Jones lawyer went out and immediately amended the witness list so as to do that, and then issued a subpoena, which was served on Betty Currie. That is the record. Those are the facts. We will distribute this to you.

The CHIEF JUSTICE. Senator LEVIN asks White House counsel:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. Let me respond very briefly to Manager HUTCHINSON's last remarks, because I owe him indeed an explanation and he is correct in one respect. I did not accurately reflect the fact that after the January 21 story in the Washington Post, the Jones lawyers did, in fact, attempt to track the entire independent counsel investigation. And I think Mr. HUTCHINSON will tell you, they indeed issued a long list of subpoenas. For that misleading statement, I apologize, and I trust we will hear equally candid assessments from the managers. But more importantly, let me return to the substance of that issue because it is important to note, without the chart being up there, that indeed, at the moment, which is the critical moment, when the President was talking about Betty Currie, whether it be on the 18th or on the 20th or 21st—the 21st, you remember, is when the story breaks. The answer is the same. He had no reason to believe at that stage—and that is the critical stage because that's what's in his mind and that is what you have to ask if you are talking about obstruction of justice or witness tampering—at that stage, he had no more reason to know that Ms. Currie was going to be a witness than he did, as we explained it, both I and Ms. Mills, in our earlier presentations.

The fact that the Jones lawyers, once this story became a matter of public knowledge, which it did on the 21st, thereafter dumped a series of subpoenas and deposition notices literally in the closing days of discovery does not bear on the question of what was in the President's mind, which is the critical moment for testing his intent, at the moment when he first had his conversations with Betty Currie.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators THURMOND, GRASSLEY, CHAFEE and CRAIG direct to the House managers:

> President Clinton has raised concerns about whether the articles of impeachment are overly vague and whether they charge more than one offense in the same article. How do you respond to this concern?

Mr. Manager CANADY. Mr. Chief Justice and Members of the Senate, I will be pleased to do my best to address this question.

The President has made two claims against the forum in which the articles of impeachment have been drafted. I submit to you that neither of these claims has any merit, and I will be pleased to address both claims as briefly as I can.

First, the President claims that the two articles of impeachment are vague and lack specificity and, therefore, prevent him from knowing what he has been charged with.

Second, the President asserts that the articles are flawed because they charge multiple defenses in a single article. With respect to the first claim, it is clear in the President's trial memorandum and his presentation here that President Clinton and his counsel know exactly what he is being charged with. And I submit to you that if President Clinton had suffered from any lack of specificity in the articles, he could have filed a motion for a bill of particulars. He did not choose to do so.

Moreover, articles of impeachment have never been required to be drafted with the specificity of indictments. After all, this proceeding is not a criminal trial. If it were, then we, as the prosecutors, would not only be entitled to call witnesses, but would be required to call them to prove our case. We would certainly not be put in the position of defending the appropriateness of witnesses.

President Clinton wants all the benefits of a criminal trial without bearing any of its burdens. Impeachment is a political and not a criminal proceeding. That has been clear from the institution of this proceeding in our Constitution. As recognized by Justice Joseph Story, the Constitution's greatest interpreter during the 19th century, ''Impeachment is designed not to punish an offender by threatening deprivation of his life, liberty, or property, but to secure the State by divesting him of his political capacity.'' Justice Story thus found the analogy of articles of impeachment to an indictment to be invalid. I quote what Justice Story had to say, which is directly pertinent to this question:

> The articles need not and indeed do not pursue the strict form and accuracy of an indictment. They are sometimes quite general in the form of the allegations, but ought to contain certainty as to enable the party to put himself upon the proper defense, and also in the case of acquittal, to avail himself of it as a bar to another impeachment.

Indeed Alexander Hamilton had commented on the same point in the Federalist. We have heard many references

to Federalist number 65, and in this trial today I will refer once again to what Alexander Hamilton said in the Federalist on this particular point. There Alexander Hamilton stated that impeachment proceedings:

> . . . can never be tied down by such strict rules, either in the delineation of the offense by the prosecutors, or in the construction of it by the judges, as in common cases served to limit the discretion of courts in favor of personal security.

By that, he means in criminal cases. I think this statement from Alexander Hamilton refutes the argument of the President's counsel directly.

I also point out that unlike the judicial impeachments in the 1980s, President Clinton has not committed a handful of specific misdeeds that can be easily listed in separate articles of impeachment. In order to encompass the whole assortment of misdeeds that caused the House of Representatives to impeach the President, the Judiciary Committee looked to the more analogous case, that of President Nixon. In 1974, in the proceedings with respect to President Nixon, the committee also was faced with drafting articles of impeachment of a reasonable length against a President who had committed a series of improper acts designed to achieve an illicit end.

The first article against President Nixon charged that in order to cover up an unlawful entry into the headquarters of the Democratic National Committee and to delay, impede, and obstruct the consequent investigation and for certain other purposes, he engaged in a series of acts such as ''making or causing to be made false or misleading statements to lawfully authorized investigative officers, endeavoring to misuse the Central Intelligence Agency, and endeavoring to cause prospective defendants and individuals, duly tried and convicted, to expect favored treatment and consideration in return for their silence or false testimony.

The articles did not—I repeat ''did not''—list each false or misleading statement, did not list each misuse of the CIA, and did not list each respective defendant and what they were promised. That is the record. Anyone who is familiar with the Nixon case—President Nixon case—is familiar with those facts.

In like fashion, the articles of impeachment against President Clinton charged him with providing perjurious, false, and misleading testimony concerning four subjects, such as sexual relations with a subordinate government employee, engaging in a course of conduct designed to prevent, obstruct, impede the administration of justice, which of course included four general acts, such as an effort to secure job assistance for that employee.

I would submit to you that an argument can be made that the articles of impeachment against President Clinton were drafted with more specificity than the articles that were drafted against President Nixon.

I will do my best to briefly address the second claim which has been asserted by the President's lawyers against the form of the articles of impeachment; that is, that they are invalid, charging multiple offenses in one article. The articles of impeachment allege that President Clinton made one or more perjurious, false and misleading statements to the grand jury and committed one or more acts in which he obstructed justice.

Once again, these articles are modeled after the articles adopted by the House Committee on the Judiciary against President Nixon and were drafted with the rules of the Senate. Specifically in mind, the Senate rules explicitly contemplate that the House may draft articles of impeachment in this manner and prior rules of the Senate have held that such drafting is not sufficient and will not support a motion to dismiss.

Rule XXIII of the Rules of Procedure and Practice in the Senate When Sitting On Impeachment Trials now states that an article of impeachment ''shall not be divisible for the purpose of voting thereon at any time during trial.'' When the Senate Committee on Rules and Administration amended rule XXIII in 1986, it explained that. And I quote this at length. And this goes right to the heart of the matter. This is what the Rules Committee in its report said. It said:

> The portion of the amendment effectively enjoining the division of an article into separate specifications is proposed to permit the most judicious and efficacious handling of the final question both as a general matter and, in particular, with respect to the form of the articles that proposed the impeachment of President Richard M. Nixon. The latter did not follow the more familiar pattern of embodying an impeachable offense in an individual article but, in respect to the first and second of those articles, set out broadly based charges alleging constitutional improprieties followed by a recital of transactions illustrative or supportive of such charges. The wording of Articles I and II expressly provided that a conviction could be had thereunder if supported by ''one or more of the enumerated specifications. . . . [I]t was agreed to write into the proposed rules language which would allow each Senator to vote to convict under either the first or second articles if he were convinced that the person impeached was 'guilty' of one or more of the enumerated specifications.''

The Senate rules themselves, thus, specifically contemplate that an article of impeachment may include multiple specifications of impeachable conduct as in the case of President Nixon. The Senate itself has recognized the articles against President Nixon as an appropriate model to be followed. The House has, in the articles now before the Senate, simply followed that model.

Moreover, I would point out in conclusion that the Senate has convicted a number of judges on such omnibus articles, including Judges Archibald, Louderback and Claiborne.

I would submit to the Members of the Senate that the articles of impeachment against President Clinton present his offenses and their consequences in an appropriately transparent and understandable manner. They are not constitutionally deficient.

Thank you.

The CHIEF JUSTICE. This question is sent by Senators DODD and LEAHY:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question by Senators Thurmond, Grassley, Chafee, and Craig; particularly what would have stopped or limited the House in specifying precisely the statements on which the articles were based?

Mr. Counsel CRAIG. In our case, we are talking about an allegation of perjury. In the Nixon case—in the 1974 Nixon case—he was not charged with perjury. I think our argument was that perjury is a different kind of thing. You have to be very specific in what you charge, and you have to be very clear as to what the statement is when you are charging perjury. And that is the tradition of our criminal justice system and of our jurisprudence.

The danger here is that if you do not, if you are overly broad, as we contend in article I, that at any given moment you can fill the vessel with what your meaning is.

Let me give you a little history of these allegations of grand jury perjury against the President.

The Starr referral had three allegations. The Starr referral was September 9. Mr. Schippers, when he made his presentation to the Judiciary Committee, had two allegations. One was different. He incorporated one of Starr's. When Starr appeared and testified on November 19 in front of the Judiciary Committee, he almost spent no time on this at all—one or two sentences. But he added a new charge, which was that the President was not truthful when he testified that he had been truthful in the deposition.

Then, we appeared and made our representations and our defense on behalf of the President on the basis of what Mr. Starr had written in his referral and what Mr. Schippers had presented to the Judiciary Committee and in addition to what Mr. Starr had said when he appeared. But then when Mr. Schippers gave his closing argument the following day, we saw the new articles. We had, by my count, 10 allegations from Mr. Schippers. Two had to do with the definition of sexual relations. Three had to do with the prepared statement. Two had to do with things that were never alleged again and never surfaced again in the course of the case. And they had to do with Mr. Bennett and his proffer of the Lewinsky affidavit.

Then, on December 16 we had a whole new additional collection of reports of allegations. And on January 11, the file brief here set forth eight examples.

Just to highlight the danger of not being specific, of not tying yourself to a definition, let me compare, for example, the trial brief that was submitted

by the House managers 3 days before Mr. Rogan made his presentation.

The precise statement that the President is accused of testifying falsely in front of a grand jury was that he was lying when he said that the reason that he was seeing Betty Currie was to refresh his recollection. In the trial brief—they make that reference one, two, three, four times—that the statement that is specific here in the trial brief is he lied when he said he was going to refresh his recollection. That is not even mentioned in Mr. ROGAN's presentation. He changes it. And he says he lied when he said he wanted to ascertain what the facts were, trying to ascertain what Betty's perception was—a very different statement requiring a very different defense. And 2 days before, 3 days before we even hear the allegations on the floor of the Senate, we still don't know precisely what they are.

Mr. Counsel RUFF. Mr. Chief Justice, if I may absorb whatever rebuttal time is still available to us, may I for just a moment, sir?

The CHIEF JUSTICE. Sure.

Mr. Counsel RUFF. Thank you.

I want to talk briefly about just two aspects of Manager CANADY's presentation.

First of all, he asks why didn't we seek a bill of particulars. Well, let me all remind the Senators, although I don't think any of you were here at the time of the trial of Judge Louderback who also saw a bill of particulars, and the House of Representatives at the time made it clear that the managers do not have the authority to rewrite the articles, though they certainly have, I suggest, attempted to do so on the fly, but that it would have required a remand to the House of Representatives in order to have a bill of particulars to judge what they themselves meant when they had passed these articles.

Second, just very briefly, I spoke to the issue of multiplicity, duplicity, the other day, and the question of whether the rule 23 revision makes any difference. As I pointed out—and I won't embarrass him any further—one Member of this body spoke at length about the importance of not loading up multiple offenses into one count well after the revision of rule 23, clearly with no sense that this body had been precluded from dealing with the critical issue of whether a two-thirds vote can sensibly be taken on an article that contains multiple and, particularly as my colleague, Mr. Craig, indicated, multiple nonspecific violations.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators THOMPSON and GRASSLEY, THURMOND, ALLARD, FRIST, BURNS, and INHOFE direct this question to the President's counsel:

If the President were a Federal judge accused of committing the same acts of perjury and obstruction of justice and the Senate found sufficient evidence that the acts alleged were committed, should the Senate vote to convict?

Mr. Counsel RUFF. This will sound half hearted, but it is not. I am glad you asked that question. This really goes right to the heart of the managers' argument here, which is that there is no difference in the consideration of the impeachment process between an allegation against a Federal judge and an allegation against the President of the United States.

I will not repeat the extended discussion of this subject of a few days ago, but let me try to summarize very briefly. It is absolutely crystal clear from the history of the drafting of the impeachment clause that the concern of the framers was, is there such action as to subvert our Government that we can no longer persist in permitting, in their case, the President of the United States to remain in office. That question must be dramatically different when you ask it about the conduct of 1 of 1,000 judges.

Beyond that, it is also clear that there has been extended debate in many forums and at many times in the past 210 years about, indeed, just what the standard is for the impeachment of judges.

I hesitate to do this, and I do it apologetically, Mr. Chief Justice, but the Chief Justice himself in an earlier time and an earlier guise spoke to this issue and made it clear—this during his tenure as assistant attorney general for the Office of Legal Counsel—when the issue was being debated whether there was a nonconstitutional, nonimpeachment device for disposing of judges alleged to have engaged in misconduct that may not fall within the high crimes and misdemeanors provision of the impeachment clause, that, indeed, the good behavior standard for judges was something far broader than the standard to be applied under the high crimes and misdemeanors standard. And, indeed, that debate was resumed many years later in the context of a further effort to establish a nonconstitutional device for removing judges.

That history, and just the core question, do you ask the same questions about the trauma that the Nation suffers when you are removing a judge and you are removing a President, the answer must be no. You must ask, what is the nature of the perjury that has been committed? What is the nature of the offense that has been committed? What is the factual setting in which it occurs? And, ultimately, does it so subvert the accused's ability to perform the duties of his office that you must remove him?

That question for Judge Nixon, convicted and imprisoned, has got to be different from—''different'' is much too mild a word—stunningly different from the question you ask against the backdrop of our history when you ask whether the President of the United States should be removed and the will of the electorate overturned.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators DORGAN and BAUCUS and SCHUMER to the President's counsel:

In Counselor Ruff's presentation, he set forth a time line that undermined the managers' theory that Judge Wright's December 11 discovery letter triggered an intensification of the President's and Jordan's efforts to assist Lewinsky in finding a job. In response to Mr. Ruff's presentation, the managers handed out a press release outside the Senate Chamber asserting that it was the December 5 issuance of the witness list in the Jones case and not the judge's discovery order on the 11th that triggered the intensification of the job search. It does not appear consistent with assertions made by the House managers in their trial brief and oral presentations. Please comment.

Mr. Counsel KENDALL. It was the assertion very clearly voiced in Mr. Manager HUTCHINSON's presentation and very clearly made in the trial brief of the House managers that it was, indeed, the December 11 order that—I used the word ''jump-started'' yesterday—that catalyzed, that pushed forward, the job search.

If you look at page 21 of the House managers' brief, you see them say this sudden interest was inspired by a court order entered on December 11, 1997. Now, their position could not have been clearer until we began our presentations, and then, all of a sudden, it wasn't the December 11 order; it was, instead, the December 5 witness list.

Well, there are a number of things to be said about that. One of them is that they have very clearly said that there was no urgency at all after the witness list arrived to help Ms. Lewinsky. They have said that Mr. Jordan met with the President on December 5 but that meeting had nothing to do with Ms. Lewinsky. This was in the majority report at page 11. They said that very clearly.

So they have now suddenly—because it has been clear that the December 11 order was entered at a time when Mr. Jordan was flying to Europe, he could not have known about it. He had met with Ms. Lewinsky earlier that day. And, indeed, that December 11 meeting had sprung from actions taken by Ms. Lewinsky in a phone call with Mr. Jordan in November. They had set that—they agreed that when Mr. Jordan returned to the country, they would set up a meeting. They did that on December 5, or she tried to get in touch on December 5. They tried to get—they finally succeeded in getting in touch on December 8, and that was not at a time she knew she was on the witness list.

So the point is these were two entirely separate chains of events going forward—the job search and the witness list. And nothing supports the intensification theory presented by the managers, certainly not this new, ''Well, it wasn't the December 11th order; it was the December 5th order.''

The CHIEF JUSTICE. Senators ASHCROFT and HATCH—is there anyone on the floor who can't hear me? This is for the House managers:

The White House makes much of the fact that Vernon Jordan was on a flight to Holland on December 11 before Judge Wright

ruled that afternoon that other women who may have had relationships while in President Clinton's employ were relevant to the Jones suit. However, the President was faxed a witness list on December 5 and actually reviewed it no later than the 8th. Thus, isn't the White House argument that the President had no incentive to assist Ms. Lewinsky's job search until December 11 just a red herring?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. And I appreciate the opportunity to respond here.

Just let me say, by way of preface, that we are lawyers. We are trying to do three things at once. Usually you have an opening statement where you outline where you want to go in a case, then you have a presentation of the evidence, then you have a closing argument. And we are trying to do it all at the same time.

It is for that reason, as I said at the very beginning of my presentation, that you need to pay attention to the record and to the facts. That is what you depend upon. And I get carried away in my argument. I am arguing, just as they are arguing their theory of the case. We are both arguing a point of view here, and it is up to you to make the determination.

I have great respect for these counselors. They are admirable. They are doing a great job for their client, and they are presenting their theory of the case. We are arguing our point of view, and it is the facts that make the determination.

Now, let me go back to—and you have it in front of you—my presentation, exhibit C, which I guess is the third exhibit, which is really the White House exhibit that Mr. Ruff had up here for a number of days, because they were really trying to hammer home this statement that I made in my presentation. I hope you all have that.

Mr. GRAMM. Just tell us.

Mr. Manager HUTCHINSON. I will tell it to you then. Thank you.

Exhibit C—which I hope you have; we asked them to distribute that—is a statement that Mr. Ruff portrayed, from me, which in my presentation I said: ''The judge—the witness list came in, the judge's order came in, that triggered the president into action and the president triggered Vernon Jordan into action.''

Now there are two things that I am pointing to as the trigger mechanisms for the job search intensification. One of them is the witness list that comes in on December 5, the President knows about, at the latest, on December 6. The other thing that intensified that effort was the judge's order on December 11.

They went through this long circumstance of Mr. Jordan being in Holland and the time of the phone call with the judge and all of that, showing that the judge's order of December 11 could not have triggered any action on the 11th. There is no question about that. That is obvious from the facts, as it was obvious when I made my presentation. The meetings on the 11th, with Vernon Jordan and Monica Lewinsky, were triggered by the witness list coming on the 5th, that the President knew about on the 6th, that he discussed with Vernon Jordan as well.

Now, we say that the judge's order of the 11th, which was filed that day—the only thing that was filed on the 12th was their memorandum of that telephone conversation—that triggered additional action down the road. The job search was not over; the activity continued into January. And, so, that all put pressure on the ultimate fact, in January when the job was obtained, the false affidavit was filed.

Now let me just point to a couple of other things along that line. We need to look at this because they basically make the point that there is not any connection between the false affidavit—and that is my characterization—that was filed, and the job search. But if you look at the testimony of Vernon Jordan, and that is exhibit—I think they are giving them out now—F, that I am presenting to you, the sworn testimony of Vernon Jordan which was on March 3 of 1998, he testifies in answer to a question:

> Counselor, the lady comes to me with a subpoena in the Paula Jones case that I know, as I have testified here today was about sexual harassment. . . . you didn't have to be an Einstein to know that that was a question that had to be asked by me at that particular time because heretofore this discussion was about a job.

And then he says, ''The subpoena changed the circumstances.'' And I think this is important, that Mr. Jordan, who is filled with common sense, he says you don't have to be an Einstein. You don't have to be learned, like Mr. Ruff or any of the other White House counsel, to apply common sense. Common sense tells you that whenever he knew about the subpoena, it escalated to a new arena and obviously the witness list would have the same impact.

And, so, Mr. Jordan himself makes the connection, the job search was one thing but whenever she became a witness in the Jones case, that changed everything. That changed the circumstances. And let me tell you, that is a friend of the President who is making that statement.

And, so, we have to take this picture, that they were related as they were going two tracks, they became interconnected and became one track.

The final point—and this was raised on the job search issue—that the call by Mr. Jordan to Mr. Perelman, the CEO of the parent company of Revlon, really had no impact on Monica Lewinsky getting a job because there is a misinterpretation as to how well she did on the interview. But if you look back to the testimony, the grand jury testimony, there was a connection, because Mr. Jordan calls Mr. Perelman and, as he characterized it: Make it happen if it can happen. Mr. Perelman then calls Mr. Durnan, and then Mr. Durnan calls Ms. Seidman, who was actually doing the interview the next day with Monica Lewinsky.

So the person who was going to make the decision whether to hire Monica Lewinsky got the word down through the channel before that interview took place and before the decision was made. And of course the important thing is: What was the intent? Not the result, but the intent. And I think that you can see that there was an intent to make sure that Monica Lewinsky was taken care of. Again she was on board, part of the team, before she actually would have to give testimony or the President would have to give testimony.

The CHIEF JUSTICE. This question from Senator BOXER, and it is to counsel for the President:

> In light of the concession of Manager HUTCHINSON that Judge Wright's order had no bearing on the ''intensity'' of the job search, can you comment on the balance of his claim on the previous question?

Mr. Manager HUTCHINSON. Mr. Chief Justice, could I object to the form of the question? That was not proper characterizing what I just stated.

The CHIEF JUSTICE. I don't think managers—I am not sure whether the managers—can the managers object to a question? (Laughter.)

Mr. Manager HUTCHINSON. I withdraw my objection.

The CHIEF JUSTICE. Very well. I think—the Parliamentarian says they can only object to an answer, not to a question, which is kind of an unusual thing, but——

Mr. Counsel RUFF. Mr. Chief Justice, I was going to remark that they can if they have the courage.

I want to link up my response to Manager HUTCHINSON's most recent comments with the previous discussion about vagueness. If there was ever a moving target, we have just seen it in motion: Well, it really wasn't December 11, because now we know it didn't happen on December 11, so let's go to December 19, or maybe January 8, and somewhere in there we are going to find the right answer.

I suggest to you that that is reflective of both the difficulty we have had in coming to grips with these charges and, candidly, the difficulty that the House might have had figuring out what those charges really were.

Let me just respond briefly to Mr. Manager HUTCHINSON's argument. And let me focus, first, on another portion of his presentation in which he states, and there—and he is referring now to Ms. Lewinsky—she is referring to a December 6 meeting with the President in which, as you will recall, she has testified that there was a brief discussion about her efforts to get a job through Mr. Jordan and the President sort of vaguely said, ''Yes, I'll do something about that.'' And this is Mr. Manager HUTCHINSON's characterization of that moment. December 6, you will recall, is the day after the witness list comes out and the day on which she learns of it:

So you can see from that that it was not a high priority for the President either. It was, ''Sure, I'll get to that, I will do that.'' But then the President's attitude suddenly changed. What started out as a favor for Betty Currie dramatically changed after Ms. Lewinsky became a witness and the judge's order was issued again on December 11.

But to the extent the managers now seek to drag the intensification process back into the December 5 or 6 period, which is when Ms. Lewinsky went onto the witness list, you must look at what they say.

Page 11, majority brief, Mr. Jordan met President Clinton the next day, December 7, but they didn't discuss the job at all. Now, it is absolutely clear that the President knew that Ms. Lewinsky was on the witness list when he met with Mr. Jordan on December 7, and yet the issue of Monica Lewinsky didn't even surface.

I am getting some help here.

''The first''—''the first,'' their words, page 11, majority brief, majority report—''The first activity calculated to help Ms. Lewinsky actually get a job took place on December 11. There was no urgency.''

It is possible, of course, as their trial brief reflects, to bob and weave and dodge around the facts here, but their trial brief says:

There was obviously—

Referring to the period after she appears on the witness list—

There was obviously still no urgency to help Ms. Lewinsky.

And even they acknowledge that the December 7 meeting with Mr. Jordan was unrelated to Ms. Lewinsky.

But let me point, because I think this really goes to the heart of it, to what the managers ask you to think about in this context in which now, whether we call it a confession or simply an acknowledgment, what they asked you to do when you heard the recitation about the December 11 events. We now know Mr. Jordan is flying over the Atlantic at the critical moment, and here is what Mr. Manager HUTCHINSON asks you to do with Vernon Jordan, distinguished citizen, distinguished lawyer:

Now, if we had Mr. Jordan on the witness stand—which I hope to be able to call Mr. Jordan—you would need to probe where his loyalties lie, listen to the tone of his voice, look into his eyes and determine the truthfulness of his statements. You must decide whether he is telling the truth or withholding information.

There is only one message there: Vernon Jordan must have been lying or at least there is enough question about his credibility and his honesty and his decency to explore whether he was lying. If you predicate that question on the, shall we say, erroneous recitation of events on December 11, you need to know nothing more about what the time line and the chronology and the managers' theory of this case is all about.

Thank you, Mr. Chief Justice.

Mr. CHIEF JUSTICE. This question is from Senators SESSIONS, GRAMM of Texas, SMITH of New Hampshire, INHOFE, ALLARD, and ROBERTS. It is directed to the House managers:

In defense of the President, Ms. Mills has repeatedly stated, and has just reiterated, that the crime of witness tampering requires some element of threat, intimidation or pressure. Isn't it true that section 1512(b) criminalizes anyone who corruptly persuades or engages in misleading conduct with the intent to influence the testimony of any person in an official proceeding? Please explain.

Mr. Manager BARR. Mr. Chief Justice, we appreciate the question from the Senators, since it bears on a number of different questions and a great deal of the evidence that you all have heard in this case.

One can talk around the law, one can talk about the law, one can ignore the law and, as we have seen, one can break the law, but one has to deal with the law in court and in these proceedings. And that is why throughout these proceedings the Senators have heard us, as the House managers on behalf of the House of Representatives, and as the presenters of this case against the President, refer repeatedly and explicitly to the actual language of the statutes which form the basis for the articles of impeachment against President William Jefferson Clinton.

Counsel Mills has, in fact, misrepresented the law of tampering with witnesses as set forth very explicitly in section 1512 of title 18 of the United States Code. In her arguments 2 days ago, Ms. Mills quite expressly stated that one of the elements that a prosecutor must charge and that must be found here, if, indeed, article II, which is obstruction of justice, should lie as the basis for a conviction thereon, one must find that tampering under 1512 requires threats or coercion. Nothing could be further from the truth.

Now, if, in fact, Ms. Mills had stated to this body that one of the bases, one of several bases on which a prosecutor or we, as House managers, could, indeed, show this body that tampering with a witness would lie, includes, as an alternative, as an option, threats or coercion, she would have, instead of being misleading, been absolutely correct. That was not her position.

Section 1512 of the United States Code expressly does not require threats of force, intimidation or coercion. It may be based on the person corruptly persuading another person or engaging in misleading conduct toward another person, both of which are terms, the definitions for which are not found in the ether but are found, yet further reading, in title 18. Neither of them requires threats, intimidation or coercion.

Moreover, in considering whether or not section 1512 or, indeed, its companion section, 1503, also obstruction of justice under the U.S. Criminal Code, which also does not require for a conviction to lie thereon threats of force, intimidation or coercion, but also may be and is based on corruptly influencing, those terms are expressly defined and dealt with not only in the definitional provisions of title 18, and including specifically definitions that apply to these provisions, these sections, but also in the case law.

We would respectfully direct the attention of the Senators in reviewing the law of obstruction of justice and the law of tampering with witnesses to some of the very cases cited by the attorneys for the President in their effort to deflect attention away from these particular provisions of the law as they apply to the conduct of the President.

For example, in her presentation, Presidential Counsel Mills relied on the Supreme Court case of United States versus Aguilar in her statements. In that case, the Court held that a lie told to a criminal investigator was insufficient to prove witness tampering.

What Ms. Mills failed to disclose, however, was that the Court's decision in that case, in that Aguilar case, was based on a specific finding not applicable to the facts of this case that the evidence was insufficient to prove that the defendant could have even thought that the investigator was a potential witness at the time that he lied to him.

The overwhelming body of evidence in this case, as we have heard yet this morning, most recently in response to questions, is that not only could the President, and the President did in fact reasonably presume, indeed almost invite, the lawyers in the Jones case to subpoena Ms. Currie as a witness, but we have found, contrary to the prior misleading statements of Counsel Ruff, she was, in fact, subpoenaed and called as a witness.

Therefore, we believe that on both arguments raised by counsel for the President seeking to deflect attention away from and render inapplicable both obstruction provisions, 1503 and 1512, because they, one, require—as we have shown they do not—but they would argue they require coercion, threats, intimidation or force or, two, they are inapplicable because the President could not have reasonably believed or did not know that Ms. Currie was a witness, could reasonably be expected to be a witness at the time the coercion took place.

I would yield for 1 minute to House Manager GRAHAM.

The CHIEF JUSTICE. I believe the House managers' time has expired.

Mr. Manager BARR. I will not yield to House Manager GRAHAM.

The CHIEF JUSTICE. Senator BYRD, to the President's counsel:

Alexander Hamilton, in Federalist essay No. 65, states that ''The subjects of impeachment are ''those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.'' Putting aside the specific legal questions concerning perjury and obstruction of justice, how does the President defend against the charge that, by giving false and misleading statements under oath, such ''misconduct'' abused or violated ''some public trust''?

Mr. Counsel RUFF. Mr. Chief Justice, this, too, goes to the very heart of the deliberations in which you must engage at the end of these proceedings.

As I have tried to make clear in my earlier arguments, it is not enough simply, I think, to ask does a particular generic form of misconduct, however serious it may be, lead inexorably to the conclusion that the President of the United States has committed an impeachable offense?

As the framers made clear, and I think the history that lay behind their deliberations and the history that has followed make clear, when we speak of the kind of political—in caps, which is what it was in Federalist 65—offenses against the man in his public role, we speak of offenses which this body must ultimately judge as being so violative of his public responsibilities that our system cannot abide his continuing in office.

Let us assume for a moment—and we will disagree with each and every element of the accusation—but let us assume for a moment that this body were to conclude that the President lied in the grand jury about his relationship with Ms. Lewinsky. That in and of itself does not lead to the judgment, and in our view must not lead to the judgment, that he needs to be removed from office. It must give you pause. You must think carefully about it.

But ultimately you must ask, despite our rejection of any such conduct—whether it be a judge or a President or any other civil officer—have the framers instructed us to remove from his office, and overturn the will of the electorate, a President who, admittedly, if you conclude that he did violate the law in this regard, has violated a public trust in the broadest sense, as each of us does who serves the public, if we do anything other than that which are our properly assigned responsibilities, and do them with the utmost of integrity? Each of us violates that trust if we don't meet that standard.

But the one thing we can be certain of is that the framers understood the frailties with which they were dealing. They understood the nature of the offense that had been the background of impeachment proceedings in England. And certainly the framers, in their debate, made it clear that it has to be at the highest level of public trust—the breach of the public trust that is embodied in the words ''treason,'' ''bribery,'' ''selling your office'' and similar other high crimes and misdemeanors.

And so all I ask the Senators in this regard is not to simply leap, as the managers would have you do it, from the definition of the offense or the statute governing their conduct, but to ask the constitutional question, as I know you will, the framers' question. If we have not convinced you on the facts, I hope we will convince you that the framers would have asked: Is our system so endangered that we must not only turn the President over to the same rule of law that any other citizen would be put under, after he leaves office, but must we cut short his term and overturn the will of the Nation? And in our view, in the worst case scenario, you can find the answer to that question must still be no.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senator LOTT asks the House managers:

> Do the managers wish to respond to the answer just given by the President's counsel?

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, we would briefly respond to the response just given by counsel for the President. We believe that the response and the position taken by the counsel for the President here really involves two great errors. One error is in establishing a standard of conduct for the Presidency that is too low. The other error is in attempting to minimize the significance of the offenses that this President has been charged with and which we submit to you the evidence supports the charges.

Now, we do not submit that any President—this President, whoever it may be—should be impeached and removed from office for trivial or insubstantial offenses. We believe that an essential part of the focus of your inquiry must be on whether there was a serious, corrupt intent involved in the underlying conduct.

A President should not be impeached and removed from office for a mistake of judgment. He should not be impeached and removed for a momentary lapse. Instead, he should be impeached and removed if he engages in a conscious and deliberate and settled choice to do wrong, a conscious and deliberate and settled choice to violate the laws of this land.

We submit that he must be impeached and removed if he does that, because in doing so he has violated his oath of office and in doing so he has turned away from the unique role which he has under our Constitution, as the Chief Executive, charged with ensuring that the laws be faithfully executed. He steps aside from that role and takes on the role of one who attacks the rule of law. And it is for that reason that we believe that this President should be removed. And we would further submit that the attempt to minimize the significance of the conduct of this President does a disservice to the laws of this land.

The attempt to minimize this course of conduct, which started out as an effort to deprive a plaintiff in a civil rights case of her just day in court, is a serious course of conduct, a course of conduct which brings disrespect on the office of the Presidency and, indeed, undermines the integrity of the office of the Presidency, the integrity of the judicial system. And it is for all of those reasons that we would submit to you that the President's counsels' efforts to persuade you that this course of conduct is not impeachable are not persuasive and should not be accepted by the Senate in this case.

The CHIEF JUSTICE. Senators TORRICELLI and ROCKEFELLER ask, to the President's counsel:

> The House managers have made the overly broad argument that ''[n]othing in the text, structure, or history of the Constitution suggests officials are subject to impeachment only for official conduct.'' Can this unbending argument be reconciled with the following statement from Justice James Wilson: ''Our President . . . is amenable to [the laws] in his private character as a citizen, and in his public character by impeachment''—and with the standard adopted by a bipartisan majority in the Watergate proceedings?

Mr. Counsel RUFF. Mr. Chief Justice, Senators, I could probably simply say no, given the articulate framing of that question, and I would have said as much as needed to be said.

I think the managers have, in their strawman-building role, tried to suggest that our position somehow is so distant from constitutional realities and the realities of the operations of our Government that we could not conceive of a situation in which private conduct, no matter how egregious, would lead to removal. Of course, that is not the case. None of us could contemplate a setting in which even personal conduct—and I need not go through any examples—was so egregious that the people simply could not contemplate the notion of a President remaining in office.

But other than that, if there is one message that comes out, not only of Judge Wilson but of the entire debate of 1787 and all of the commentary since then, it is that, indeed, the focus of attention must be—and this goes back to, in large measure to Senator BYRD's question—must be on the public character of the man; the political, in a broader sense, character of the man; and of his acts.

And if you look back at the 1974 writings of the House Judiciary Committee, both majority and minority, this is not a partisan view. It makes it absolutely—they make it absolutely clear that the House then believed something which they must either not believe today or have ignored as they engaged in their discussions, which is that the test to be applied is whether the President in this case has so abused the public trust, so abused the powers of his office, that he goes to the very heart of what the framers had in mind in 1787 when they carefully confined and carefully limited the range of activity that could lead to contemplation of removal, and that is not a range of activity that, with all due respect, touches anywhere near the conduct that you have before you today.

The CHIEF JUSTICE. Senator NICKLES asks the House managers:

> President's counsel stated the President did not commit perjury. Please respond.

Mr. Manager ROGAN. Mr. Chief Justice, I trust that the presumption of 5 minutes is a rebuttable one, correct? I will do my best not to have to go beyond the time. I thank the Senator for the question.

First, just as a predicate, obviously in 5 minutes I could not do a comprehensive review on the perjury aspects of this case, so let me just start with a preliminary issue and we can

move on with different questions and revisit the issue at another time. If anybody wants a lesson in legal schizophrenia, please read the President's trial brief on this very subject. They skirt the issue by saying nowhere in the President's grand jury deposition did he ever affirm the truth of his civil deposition testimony. But they won't come out and say he lied, they won't come out and say he perjured himself, and they try to ignore the actual fact of when the President was asked questions about his oath that he took during the grand jury.

I read, therefrom:

Question to the President:

You understand the oath required you to give the whole truth that is a complete answer to each question, sir.

Answer: I will answer each question as accurately and fully as I can.

Question to the President:

Now, you took the same oath to tell the truth, the whole truth, and nothing but the truth, on January 17, 1998, in a deposition in the Paula Jones litigation, is that correct, sir?

Answer: I did take an oath there.

Question: Did the oath you took on that occasion mean the same to you then as it does today?

Answer: I believed then that I had to answer the questions truthfully, that's correct.

The colloquy goes on. It is in your materials.

They attempt to say that that somehow inoculates the President from having to admit that he perjured himself during the Paula Jones deposition.

But let's take a quick look at some of the answers he gave during the Paula Jones deposition that he affirmed in his grand jury testimony that we now know is false.

Question to the President:

If she [Monica Lewinsky] told someone she had a sexual affair with you beginning in November 1995, would that be a lie?

Answer: It certainly would not be the truth.

Question: I think I used the term ''sexual affair;'' and so the record is completely clear, have you ever had sexual relations with Monica Lewinsky as that term is defined in deposition exhibit No. 1?

Answer: I have never had sexual relations with Monica Lewinsky. I've never had an affair with her.

Then they go on to ask:

Is it true that when Monica Lewinsky worked at the White House, she met with you several times?

Answer: I don't know about ''several times.'' There was a period when the Republican Congress shut the government down. The whole White House staff was being run by interns. She was assigned to work back in the Chief of Staff's Office. We were all working there. I saw her on two or three occasions then. And then when she worked at the White House I think there were one or two times when she brought some documents down to me.

Question: At any time were you and Monica Lewinsky in the hallway between the oval office and the kitchen area?

Answer: I don't believe so unless we were walking back to the dining room with pizzas. I just don't remember. I don't believe we were in the hallway, no.

This colloquy goes on and on. I invite the Senate to review the President's deposition testimony.

He clearly was giving answers that were false. They were not part of the record. He wasn't doing it to protect himself from embarrassment; he was doing it to defeat Paula Jones' sexual harassment case. When the President testified in August before the grand jury, he never denied the truth of those testimonies. He refused to admit he lied during the deposition. He reiterated the truth of those because he knew he would be subject to perjury.

The question for the President's counsel is this, and it is a simple question: Did the President lie under oath on January 17 when he was asked questions about the nature of his relationship with Monica Lewinsky? Did he lie when the U.S. Supreme Court had said Paula Jones had a right to proceed in a sexual harassment case? Did he lie when Judge Susan Webber Wright ordered him to answer those basic questions under oath? And if the answer to that question is yes, then we have an incredible admission; if the answer is no, I invite them to point to the record where that is demonstrated.

The CHIEF JUSTICE. To the President's counsel from Senators CONRAD and TORRICELLI:

The House of Representatives rejected two proposed articles of impeachment, including an article of alleged perjury in the Jones deposition. Do you believe that the Senate may, consistent with its constitutional role, convict and remove the President based on the allegations under the rejected articles, including the allegations of perjury?

Mr. Counsel CRAIG. Mr. Chief Justice, article II was defeated. But more importantly, article I specifically incorporates by reference, or tries to incorporate by reference, all the elements of article II. And the House of Representatives, when they voted to reject article II, I think, voted also to eliminate these issues that you have just heard about.

Now, we predicted—and our prediction has come true—that the managers would like to argue this case. If you look at—if you look at the majority point that comes out before the vote occurs on all four articles and you go to article I and you try to find out where in article I they define those perjurious statements that compose subpart (2), the civil deposition, you will see in the majority report they say go look at article II—which is the argument about the civil deposition—and the House of Representatives specifically voted to take out all those accusations and allegations of misconduct with respect to the civil deposition.

Now, I have testified, as did Mr. Ruff, before the Judiciary Committee on this issue. I said that the President's responses in the Jones deposition were surely evasive, that they surely were incomplete, that they surely were intended to mislead; and it was wrong for him to do all that. But they were not perjurious.

If you want to try a perjury case about all of the things and the statements that the House of Representatives did not want to accuse him of, that would be inconsistent, I think, with your duty as members of this court. You cannot impeach the President on the issues that are included in article II. He was not impeached; you cannot remove.

Mr. LOTT. Mr. Chief Justice, I believe we have had an equal number of questions, although the timing may not be exactly equal.

I ask unanimous consent that we take a 15 minute recess at this point.

There being no objection, at 2:41 p.m., the Senate recessed until 3:01 p.m.; whereupon the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready to resume the questions, and I believe this will be question No. 16. We send the question to the Chief Justice.

The CHIEF JUSTICE. This is a question from Senator SANTORUM, SMITH of Oregon, and THOMAS to the House managers:

Please respond to the presentation made by counsel to the President, including the argument made by Mr. Craig, to the effect that the rejection of article II had the effect of eliminating that portion of article I. Did the House conclude that lying in a civil deposition is not impeachable, but that lying to the grand jury about whether the witness lied in a civil deposition is impeachable?

Mr. Manager ROGAN. Mr. Chief Justice, I thank the Senators for the question and for the opportunity to rebut the presentation a few minutes ago by counsel for the President, Mr. Craig.

In his response he asks the Senate to do specifically what none of the attorneys can do in their presentations, and that is go beyond the record. Specifically, Mr. Craig is asking the Senate to make assumptions as to why the House of Representatives defeated what was then known as article II, a stand-alone article of impeachment that the President lied during the civil deposition. And he goes so far in his presentation to say because the House of Representatives defeated what was then article II, the Senate should not consider any of the language relating to the President's perjury during the civil deposition.

First, I ask the Senate not to make those assumptions because if there was any reasonable inference to be drawn, it would be that it was cumulative. Why is it cumulative? Why did the House not want this to be a stand-alone article? It is cumulative because, if Mr. Craig would read article I, he would see that one of the allegations of perjury is that the President committed perjury in the grand jury when he referenced his civil deposition answers and reiterated those to the grand jury. And so the House made a decision not to use a separate stand-alone article. But I would respectfully submit to this body that that is the only inference that can be drawn.

The other thing that I want to mention briefly about Mr. Craig's presentation on that issue is what I found to be a startling admission on his part. Assuming, of course, that the Senate is going to look at article I as it was drafted and passed by the House and is presented to you dealing with civil deposition perjury, Mr. Craig said that the President's testimony in the Jones case was evasive and incomplete.

He goes even further in his testimony, or statement to the Senate a couple days ago, and I am quoting. He said, ''The President's testimony in the Jones case, the President was evasive, misleading, incomplete in his answers.''

That begs the question. What kind of oath did the President take in the civil deposition? Did he take an oath, did he raise his hand and swear to tell the truth, the evasive truth, and nothing but the evasive truth? Did he take an oath to tell the truth, the misleading truth, and nothing but the misleading truth? Did he take an oath to tell the truth, the incomplete truth, and nothing but the incomplete truth? Because, if he did, if that was the language that the President used when he took his oath and testified, then perhaps Mr. Craig's position is well taken. But a brief review of the oath that the President took clearly states that he took an oath and was obliged under the law to tell the truth, the whole truth, and nothing but the truth—not the incomplete or misleading truth, the truth, the whole truth, and nothing but the truth.

And so this body has to make a determination when they review that testimony, both given during the civil deposition and reiterated during the grand jury, whether the President fulfilled his legal obligation in a sexual harassment lawsuit. And if he did, then clearly that should be stricken, and you should not consider that. But if he did not, if you find that in fact he testified, as Mr. Craig says he testified, incompletely, evasively, and misleadingly, then I believe this body has an obligation to cast a vote accordingly.

The CHIEF JUSTICE. Senator REED of Rhode Island asks the White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question.

Mr. Counsel RUFF. I thank you, Mr. Chief Justice.

You know, Mr. Manager ROGAN asked you not to make assumptions about what the actions of the House mean, and then proceeded to make a series of assumptions about what the House might have meant.

The problem with Mr. Manager ROGAN's analysis is twofold: One, he and his colleagues in the House on the Judiciary Committee drafted these four articles. They believed, at least 20 of the majority believed, that it should be an impeachable offense, as he now puts it: did he fulfill, did the President fulfill his obligation in the Jones deposition? You don't need to make a lot of assumptions to understand merely on the face of the action that was taken that the full House said, no, it is not, even if we were to conclude, as the House Judiciary majority wishes us to conclude, an impeachable offense.

And so the managers have had to find a way to drag back into article I all of the problems that they see in the President's testimony in the Jones deposition. The problem is that—and you can listen to it in the language that Mr. Manager ROGAN has used not only today but earlier and that is used in the brief filed by the House managers—that the President, in his words, referenced and reiterated his testimony in the Jones case. Senators, that is not so.

Now, they try to hook onto a statement, as best we are able to tell in searching their position and their writings on the subject, the managers hook onto a statement in which the President said, I tried to walk through the minefield of the Jones deposition without violating the law and think I did. And, on that frail hook—which is clearly a statement of the President's state of mind about whether he succeeded or didn't succeed in testifying without violating the law in the Jones case—on that hook they hang every single item. They didn't tell us what they were—but they hang every single item that the House rejected out of hand in article II.

Now, wholly apart from the inadequacy of the predicate that they lay, if there was ever an example of a situation that Mr. Craig talked about earlier and that I talked about on Tuesday, in which I challenge anybody in this room to tell me how you would have known coming into this Chamber what it was that the managers were alleging with respect to the Jones deposition, this is it.

If you listened—look at the trial brief. If you look at Manager ROGAN's presentation of the other day, if you listened to his presentation today, where, amongst all that, do we pick and choose to find the statements? Even if you agree with Mr. Manager CANADY that it is all right just to sort of generally charge, as a constitutional proposition—and I firmly disagree with that. I don't care under what level you are operating—the lowest trial court in the country—nobody would ever say: Now, Mr. Defendant, I want you to understand that you are being charged with what you'll find at page, whatever it is, of the majority report where we refer you over to this list of other things that was rejected by—just let us say the grand jury—and somewhere in there you are going to find the charges to which we ask you to respond.

The bottom line is, you can go down that list. Some of them you will never hear mentioned in this Chamber—haven't heard them mentioned yet. I defy anybody in this Chamber, including the managers, to justify asking the President of the United States to defend against a reference from one page of a brief to another in order to tell the charges that he has been accused of.

If you read his grand jury testimony, you see he addressed a number of issues that he addressed in the Jones deposition. He clarified. He elaborated. He told the truth in the grand jury. Not once was he ever asked by the independent counsel and all his lawyers there who had been pursuing this investigation for 7 months when they had him in the grand jury—not once did they ask him this simple question: Is everything you testified to in the Jones deposition true? Or, go down the list and say: Is what you testified to on page 6, or page 8, or page 87 true?

And when they got through with that deposition, 4 hours, professional prosecutors, and they went back and spent from August 18 to September 9, when they sent their referral up, looking back, using a fine-tooth comb on that transcript, and they went back and said—where are the violations? Even they don't say that there is some sort of wholesale importation of the Jones deposition into the grand jury. And, yet, not the House but the Judiciary Committee majority report and the managers, with that big, vacant, empty spot in the middle, the rejection of article II by the House of Representatives, would have you believe that, indeed, what the independent counsel's office didn't believe happened and didn't force to make happen, did happen. And they are asking you to remove the President from office on that kind of logic.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. This is from Senators SHELBY and SNOWE to the House managers.

There has been much debate regarding the nature of the offenses that fit within the definition of ''high crimes and misdemeanors.'' When employing this phrase in the Constitution, the Framers relied on precedents supplied by Colonial and English common law to provide context and meaning. Please explain whether or not the offenses charged in the two Articles fit within the types of impeachable offenses contemplated by the Framers as they interpreted Colonial and English common law precedent.

Mr. Manager CANADY. Mr. Chief Justice and Members of the Senate, I will be happy to respond to this question because it is a question that goes to the heart of the matter that is before us.

On Saturday I made a presentation which focused on the history of the impeachment process in Great Britain and the way in which that serves as a backdrop for the work of the framers. I would like to refer you, again, to a document to which I made reference during the course of the proceedings on Saturday. This is a document which has also been referred to repeatedly by counsel for the President. It is the report prepared by the staff of the impeachment inquiry in the case of President Nixon entitled ''Constitutional Grounds for Presidential Impeachment.''

I believe that in that report they grapple with the very issue that you have now raised. And in characterizing the background of impeachment and characterizing the things that the framers focused on both in the course of the Constitutional Convention and in the ratification debates and also—it goes a little beyond your question—the course of impeachment proceedings over the last 200 years here in the House of Representatives and in the Senate, they came to this conclusion, and this is what they said. They said:

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

They went on to say: ''Impeachment was evolved by Parliament to cope with both the inadequacy of criminal standards''—and one of the issues that they were concerned with was whether there had to be a criminal violation in order for there to be a high crime or misdemeanor, and they concluded, I believe rightly, that there need not be a criminal offense, but they said, ''Impeachment was evolved by Parliament to cope with both the inadequacy of criminal standards and the impotence of courts to deal with the conduct of great public figures.''

They concluded, then, by saying, ''Because impeachment of a President is a grave step for the nation''—which all of us in this Chamber concede—''it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the Presidential office.''

That is the standard which they set forth, which I believe encapsulates the whole history of the experience of the English Parliament, as well as the discussions in the Constitutional Convention and the ratification debates as well as anything I have seen.

Let me point out that this was a product of the staff of the Rodino committee. This is not something that the House managers here today have come up with to support our case; it is there as part of the record.

Let me refer to another part of the—that particular report, which I think gets to the essence of the matter here. They said, ''Each of the thirteen American impeachments''—of course, there have been more impeachments since the time this was written—''involved charges of misconduct incompatible with the official position of the officeholder. This conduct falls into three broad categories.''

I think that this is a very sensible division of the types of conduct that may fall—the types of conduct that constitute high crimes and misdemeanors.

(1) exceeding the constitutional bounds of the powers of the office in derogation of the powers of another branch of government; (2) behaving in a manner grossly incompatible with the proper function and purpose of the office; and (3) employing the power of the office for an improper purpose or for personal gain.

I would submit to you, in conclusion, that what we have before the Senate in this case is conduct that clearly falls within the scope of category 2, which I just read, which I will repeat—''behaving in a manner grossly incompatible with the proper function and purpose of the office''—for the very reasons I explained a few moments ago. When the President of the United States, who has taken an oath of office to support and defend the Constitution, who has a constitutional duty to take care that the laws be faithfully executed, engages in a calculated course of criminal conduct, he has, in the most direct, immediate, and culpable manner, violated his oath of office, breached his duty under the Constitution, and for that reason has behaved in a way that is grossly incompatible with the proper function and role of the high office to which he has been entrusted—which has been entrusted to him by the people of the United States.

The CHIEF JUSTICE. This question from Senator BINGAMAN to White House counsel:

Would you please comment on any of the legal or factual assertions made by the Managers in their response to the previous question?

Mr. Counsel RUFF. Mr. Chief Justice, Senators, let me make a couple of points, if I might. The question that was put to the managers started by asking what we can learn from looking back into English roots of impeachment and how that might bear on the decisions that you face in the coming days.

I will not, in any sense, hold myself out as a scholar or at least enough of one to be able to answer the question with any specificity, but I do know enough about the parliamentary form of government and its experience with impeachment to know that a couple of lessons can be drawn from it.

First, that impeachment was a developing tool over the course of the 14th, 15th, 16th and 17th centuries as a weapon in the battle between the Parliament and the Crown. It was one of the ways—indeed, one of the very few ways—the Parliament could reach out and remove the King's ministers or the Queen's ministers, and that was really where the battleground was.

Even in that setting, when it was an avowed political tool, history, I think, will tell us that Parliament did ask itself, Was the conduct of the minister at issue—whoever that minister might be—so subversive of the constitutional form of government that removal of the minister, or in some cases even more severe sanctions, was necessary?

If you transport that into the experience of the framers, it does two things, I believe: One, it tells you what the framers knew of the seriousness of the offenses that had to be addressed through impeachment and what the need for impeachment was as the ultimate solution to the ultimate problem.

But it also tells you very clearly that the framers did not want to bring that English experience in wholesale because they recognized it for what it was, which was, indeed, a weapon in the battle between the Parliament and the Crown, and the government that they had created needed balance among the legislature and the executive and the judicial branch. The use of impeachment, as it was reflected over the four or five centuries that had been developed, was not consistent with what these framers were creating. And so they very carefully chose, and the debates reflect that, to limit the scope of impeachment and to use it as they viewed it: only as a matter of constitutional last resort.

In doing so, they foretold, I think, the positions staked out both by the majority and the minority at the time of Watergate. And let me pause here just for a moment to say that I will not go into detail respecting the conduct engaged in by former President Nixon, except to say and suggest to you that it is so far distant from anything that has been charged here that it doesn't belong in the same sentence, paragraph, or certainly article.

But if you look at what came out of the House Judiciary Committee in 1974, I agree entirely with the theme of the majority staff report at the time, as did the minority. Their theme was the theme that I hope I have sounded, probably too often, over the last few days. And I am going to read to you again—I apologize to you—something I read to you earlier, which is the minority view on the meaning of impeachment:

It is our judgment, based upon this constitutional history, that the framers of the United States Constitution intended that the President should be removable but by the legislative branch only for serious misconduct dangerous to the system of Government established by this Constitution. Absent the element of danger to the State, we believe the delegates to the Federal Convention of 1787—

I will skip over a little language here—

struck the balance in favor of stability in the executive branch.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Senators GRASSLEY, SMITH of New Hampshire, BUNNING and CRAIG ask the House managers:

In your presentation, you made the case that the Senate should call witnesses. In light of the White House's response to this argument, do you still hold this position? Please elaborate.

Mr. Manager MCCOLLUM. Mr. Chief Justice and Senators, the House definitely holds to the position that we should call witnesses. But I think the issue here is what has been related to us in anything we have heard in the past few days by the White House counsel that would say we don't need them, or I think just the contrary, what have we heard that says we are more likely to need them, or you are more likely to need them. First of all, I would like to

point out to you that the White House counsel is trying to have it both ways.

They have been arguing to you on a lot of technicalities of the law, the criminal law, for the last few days, and that is understandable.

As I said to you a few days ago, I think this is a two-stage process. We, the managers, do. You have to determine if the President committed crimes, and if he did, should he be removed from office: two separate questions. They have argued to you that you should use the standard, beyond a reasonable doubt, which is a criminal standard, and I might add that standard is only for facts, it is not for whether you remove; it isn't to determine law.

You wear the hat as finders of fact as well as the judges, finders of the law, and so forth. But if you choose to use that standard, you need to know, A, that it doesn't mean it excludes any doubt. You probably need to hear a jury instruction, which we can provide at some reasonable point for you, about how a Federal court would charge a jury about that.

But the point I am making is that they have claimed that, and they claim there is a lack of specificity in the charges. We are not in court in the sense of a real trial here. We don't have to be specific like that. The whole history of the articles of impeachment that have come over here in the past on judges have never gotten down into the technical specificity of a courtroom and been thrown out because they were not exactly right.

My point is they have gone and built up a whole case about we ought to follow these rules and have a criminal proceeding and judge the crimes on that basis, and yet they have said you wouldn't have witnesses or we shouldn't call witnesses.

In any criminal trial, you are going to call witnesses; you need to judge their credibility. I want to walk through what else they have said to you in the last couple of days that makes that point very clear with regard to testimony, with regard to judging who you believe or who you don't believe and how important that is.

First of all, let's just take a few glimpses, but as we do this, remember the big picture is the scheme the President has engaged in. The whole basis for our discussion here today in each of these two articles of impeachment involves the questions of the President trying to thwart the Jones court will, trying to hide evidence from the court and planning not to tell the truth in that deposition in January. Whether that is over here on a perjury count or not is irrelevant. It is critical to this case for both obstruction of justice and perjury that you accept and understand, as I think clearly you do from listening to all of this, that the President lied many times in that deposition in the Jones case because he didn't want them to get the facts, the true facts of his relationship with Monica Lewinsky.

Well, in that process of looking at that, he needed Monica, if you recall, to file a false affidavit. He needed to obscure the fact that there were gifts there. He needed to obscure the trail that led to him in any detailed relationship with her.

So let's take, for example, the gift-exchange discussion counsel had out here a couple of days ago with us. They were pointing out to you—the White House counsel—that on December 28, that Monica Lewinsky, in her grand jury testimony, testified that the President said to her—with respect to what she should do about those gifts, and she raised giving them to maybe Betty Currie—I don't know or let me think about that.

The counsel said, well, let's go back and look at 10 different times where she said about that subject all kinds of different ways. I submit to you that her grand jury testimony, after she got the immunity to testify, is clearly the most credible. We presented that to you, and that is what the President said.

It is significant what he said, because that is part of your chain you have to lead down the road to figure out whether or not he had the requisite intent to go and influence the outcome of what was done with the gifts.

The reality of this is that when you look at it, you have to question her testimony; you have to question her believability. You ought to bring her out here. She should be brought out here, if they are going to challenge her like this, and give an opportunity for us to examine her on both sides and determine what is her best testimony about that, if that is important to you, and apparently it is to White House counsel.

The same thing is true of the questions with regard to Ms. Currie and the phone call dealing with the question of coming over to get the gifts. There White House counsel is saying, in essence, Ms. Lewinsky is not telling the truth; Ms. Currie is. If you don't have them here to listen to, who are you going to believe? I suspect if Ms. Lewinsky came out here, that 1-minute phone conversation, which was not part of the Starr referral—we discovered that subsequent to that—would be something she could comment on and explain, and maybe Ms. Currie could, too. But we do not have that. And they made a big to-do over that in the last couple days.

Last, but not least, what I put up on the chart here is dealing with this affidavit. Now, this affidavit is very important. It is a central part of the obstruction of justice. It is the very first obstruction of justice and the question of truthfulness. And who you believe in this pattern is very, very important.

The White House counsel have been arguing the last few days that, indeed, with regard to the cover stories, that there was no discussion of cover stories in a timely way during the December 17 phone conversation when the President suggested Monica Lewinsky file an affidavit, and that the cover story idea somehow isn't tied into the issue of putting into her head that she should tell a lie.

Well, I call your attention to what I read to you the other day. It is up here on this board. And I refer it back to you on the chart. This is one of the charts where she testified before the grand jury—Monica Lewinsky did:

> At some point in the conversation, and I don't know if it was before or after the subject of the affidavit came up—

I don't know if it was before or after, but it was during that conversation on December 17 when the affidavit did come up—

> he sort of said, ''You know, you can always say you were coming to see Betty or that you were bringing me letters.'' Which I understood was really a reminder of things that we had discussed before.

And she went on to say the famous quote: ''And I knew exactly what he meant [by this].''

And if you remember—I read that to you the other day—she also said: ''It was the pattern of the relationship, to sort of conceal it.''

I am not going to put the other board up here, but in the same context they have been saying, with respect to this affidavit issue again, ''No one asked me to lie.'' Remember that was repeated over and over and over again. And I, again, point out to you that you need to bring her in here, I think, based on what they are saying and arguing, to find out for yourself if she is going to corroborate this.

She said in the grand jury testimony:

> For me, the best way to explain how I feel what happened was, you know, no one asked or encouraged me to lie, but no one discouraged me either.

And she went on to say: ''And by him not calling me and saying that''—that she shouldn't lie; I didn't read the whole paragraph—''I knew what [he] meant.''

''Did you understand all along that he would deny the relationship also?''

She says: ''Mm-hmmm. Yes.''

The question: ''And when you say you understood what it meant when he didn't say, 'Oh, you know, you must tell the truth,' what did you understand that to mean?''

She says: ''That—that—as we had on every other occasion and every other instance of this relationship, we would deny it.''

If you believe her, then the President is not telling the truth. The affidavit clearly is something he was trying to get her to file falsely. It makes sense that he would, because he relied on it in the deposition. He patterned it after the cover stories in the affidavit—what he had to say—the lies he told about the relationship. It makes common sense to me.

The CHIEF JUSTICE. Mr. MCCOLLUM, I think you have answered the question.

Mr. Manager MCCOLLUM. Thank you very much.

My point is, you ought to bring the witnesses.

The CHIEF JUSTICE. The question from Senator BRYAN to the White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question, focusing on the need for witnesses and the time likely required to prepare for and conduct discovery?

Mr. Counsel KENDALL. Mr. Chief Justice, the first question to ask about the need to call witnesses is, What would the witnesses add? That has not been described. What you have heard are vague expressions of credibility and hope. You have not heard specifically what these witnesses would add. And the answer to that is, they would add nothing to what is not already there.

Yesterday, I held up the five volumes of testimony, thousands and thousands of pages. You have it before you. Now, those five volumes represent 8 or 9 months of activity by the independent counsel. The independent counsel called many, many, many witnesses, many, many, many times. They proceeded with no limitation on their budget, on their resources. They turned things upside down. And they repeatedly—I think abusively—but they repeatedly called witnesses—like Ms. Currie, Mr. Jordan, Ms. Lewinsky—back to the grand jury for repeated interviews. It is all right there. And the managers have really told you nothing that could be added to this record.

Second, they have not made a representation about what the witnesses would really say that is different. And the reason they have not is that they themselves don't know. They themselves have done no investigation. They don't know what these witnesses would say. They are hoping that maybe something will turn up.

Now, what they have done, they have taken those five volumes, and more, from the independent counsel. And I am reminded of the old bureau that many newspapers had called ''Rewrite.'' That was not a bureau which did independent reporting. When an editor read something that was incomprehensible, he or she would say, ''Get me Rewrite.'' So what the House has done is gotten ''Rewrite'' to write up its own report. They cannot tell you—they can tell you what they hope—they cannot make a representation or a proffer to you about what any witnesses would say.

Now, their third, and really their only argument, is the credibility argument—got to see these witnesses. Well, in point of fact, in the real world, when you have witnesses, their stories often differ in some ways. They differ not because anybody is lying; they differ only because people don't always have precisely the same recollection of things. Now, that doesn't mean that looking at them will add anything other than getting for you the 6th, 7th, 8th, 9th, 10th account of what some witnesses said.

For example, in our trial brief, we quote—and Mr. MCCOLLUM referred to this—at pages 66 to 67, 11 accounts that Ms. Lewinsky has given on the gift exchange. Now, I do not think you are going to learn anything from a 12th account. And by the way, with respect to the question of, well, she might have testified differently after she got immunity, 9 out of 11 of these accounts were given, as you will see from the dates and the testimony, after she got immunity. Calling witnesses will add nothing to the record now before you. All the major witnesses have testified, and their testimony is right there.

Now, in response to the question of how long it will take, I must tell you, we have never had a chance to call witnesses ourselves, to examine them, to cross-examine them, to subpoena documentary evidence—at no point in this process. It would be malpractice for any lawyer to try even a small civil case, let alone represent the President of the United States when the issue is his removal from office, without an adequate opportunity for discovery.

And I think if they are going to begin calling witnesses, and going outside the record, which we have right now—I think the record is complete; and we are dealing with it as best we can without having had an ability ourselves to subpoena people and cross-examine them and depose them—but I think you are looking realistically at a process of many months to have a fair discovery process.

The CHIEF JUSTICE. This question is from Senator CHAFEE. It is to the House managers:

The White House defense team makes a lot out of Monica Lewinsky's statement that she delivered the presents to Betty Currie around 2:00 or 2:30 and about the fact that the phone call came from Betty Currie at 3:32. Isn't it reasonable to assume that Ms. Currie meant that she delivered the presents to Ms. Currie in the afternoon?

If the President was unconcerned about the presents, as he said in his grand jury testimony, why didn't he simply tell Ms. Lewinsky not to worry about it?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice.

Let me just broadly review the whole gift issue and the discrepancy in the testimony.

First of all, I want to go back to Mr. Ruff's presentation during the last 3 days.

He argued that I unfairly characterized Betty Currie as having a fuzzy memory whenever she was unclear. And she was clear that it was her memory that Monica Lewinsky called to initiate the retrieval of the gifts. And of course that is in conflict with the testimony of Monica Lewinsky.

Further, they argue that Monica Lewinsky's time sequence as to when she went to pick up the gifts, when Betty Currie went to pick up the gifts, destroys her credibility. Her time sequence does not fit. Let's look at her testimony on this particular point. This is what Betty Currie has testified to, and this is exhibit H–A in your folder on my presentation; exhibit A. These are statements of Betty Currie in her deposition testimony about when she picked up the gifts.

Now the first one is her testimony on January 27, 1998. She was asked when she picked up the gifts, and she said, ''Sometime in the last 6 months;''

Now, in May she was asked when she picked up the gifts, and she said, ''A couple of weeks'' [after the December 28 meeting]; in the May 6 testimony, it was after the 28th meeting; and then in her last testimony, July 22, in the ''fall maybe.''

That is Betty Currie's testimony. Contrast that to that of Monica Lewinsky.

This is her recollection as to when Betty Currie came to pick up the gifts. You will see that she has testified in her proffer of February 1, ''Later that afternoon''; July 27, she said Currie called ''several hours after leaving the White House;'' ''about 2 o'clock''; ''Later in the day''; and August 6, called ''several hours'' after Lewinsky left the White House. Her memory is fairly good about this.

The question is, the cell phone call, which really corroborates what Monica Lewinsky said, that it was Betty Currie who called to retrieve the gifts, and said the President said, ''You have something for me,'' or something to that effect. That came about 3:30. The cell phone record was retrieved after Monica Lewinsky's testimony.

Now, does this destroy her credibility, particularly in contrast to that of Betty Currie? I think it reflects that you are trying to remember—you remember that it was a call specifically from Betty Currie to retrieve the gifts. At the time, she said it was in the afternoon. I think it corroborates her because she has never had an opportunity to look at the cell phone record—neither has Betty Currie—to refresh her recollection and trigger it and see what that produces.

Now, that is on the gift issue.

I think they say, well, what would it add to call witnesses? How are you going to determine the truthfulness of this issue? Juries across the country do it by calling witnesses.

Now in this particular case, it should be noted that all other testimony of Betty Currie—I think her last one was about July 27 before the grand jury—all of it preceded the testimony of William Jefferson Clinton which was in August before the grand jury. The point is, because of the rush, the push, the independent counsel didn't call anybody back to the grand jury to requestion them after the information received from William Jefferson Clinton.

So there are a lot of unanswered questions, perhaps, that were generated by his testimony. The 1-minute call was raised: How in the world could this be expressed in 1 minute—the conversation that Betty Currie called to

retrieve the gifts? If you look at Monica Lewinsky's description of that call—excuse me, let me read from her grand jury transcript. She was asked about the call, and her answer was,

What I was reminded a little bit, jumping back to the July 14th incident where I was supposed to call back Betty the next day, but not getting into the details with her that this was along the same lines.

Question to Monica Lewinsky:

Did you feel any need to explain to her what was going to happen?

Her answer:

No.

In other words, this was a cell phone call. It was a cryptic call. It was about retrieving gifts that were under subpoena. It was a short conversation. It doesn't take a minute to say, ''The President indicated you had something for me''—Monica knows what she is talking about—''Come over,'' and that is the end of the conversation—certainly would not take 1 minute.

So all of the evidence is consistent with Monica's testimony.

But let's look at the big picture on the gifts. The evidence was concealed under the bed. It was evidence that was concealed in a civil rights case; secondly, it was under subpoena; thirdly, the President knew it was under subpoena; and fourthly, Monica Lewinsky's testimony indicates that it was, the call from Betty Currie, at the direction of the President—and I am arguing there, a little; please understand that—which initiated the retrieval of the evidence that was under subpoena.

That is the big picture on this. I believe we have made our case on that, and I believe it is strong, and I think it also justified the hearing of the testimony to resolve the remaining conflict.

The CHIEF JUSTICE. This is to the President's counsel from Senators LEAHY, SCHUMER, and WYDEN:

Notwithstanding the previous response by the House manager, does not the evidence show:

(a) Ms. Lewinsky's testimony; it was her idea to give the gifts to Betty Currie?

(b) the President's testimony; that he never told Betty Currie to retrieve the gifts from Ms. Lewinsky?

(c) Betty Currie's testimony; that it was Ms. Lewinsky, not the President, who asked her to pick up the gifts? And,

(d) the fact that the President gave Ms. Lewinsky additional gifts on the very morning that he is alleged to have asked for them back?

Mr. Counsel RUFF. Mr. Chief Justice, I am not sure I managed to capture all four subpoints of that question but I will do my best.

It is interesting that the managers now suggest that the great discovery of the 3:32 phone call that was so much the heart and soul of Mr. Schippers' presentation and ultimately of theirs is really just a slight glitch in the timetable.

Yes, it is perfectly possible, I suppose, that Ms. Lewinsky could have just missed by an hour and a half, but she did say, three times, once under oath, and twice to the FBI, which is almost the same, that it was 2 o'clock, not 3:30.

So if you are going to ask, consistency, good memory, as Ms. Lewinsky is supposed to have on this matter, she was consistent, but you have to ask, if it really happened at 2 o'clock as she recalled, what is the meaning of the 3:32 call?

Putting aside that dispute, the question itself reflects the essence of our position on this. First of all, there are only two people present at the moment in which, theoretically, the managers would have that the President urged Betty Currie to go off and pick up the gifts. The President of the United States and Betty Currie, they both testified, flatly, that such a conversation did not occur. Do the managers really anticipate if Ms. Currie were brought into the well of the Senate and looked straight in the eye by one of the prosecutors on this team, she would say, ''You got me, I had it wrong. The President really did tell me to do something but I have testified straightforwardly and honestly''?

He didn't say, as my colleague Mr. Kendall indicated—that is wish and hope, and it has no basis in the allegation.

And of course the managers have thought up a good excuse for why it is that the President is giving Ms. Lewinsky more gifts on the very day when he is conspiring with her to hide them: That somehow it is a gesture, a message being sent, that because of these gifts she is still—she is someone who is being roped into a conspiracy of silence.

Aside from the fact that there is not one single, not one single, iota of evidence to support that wishful thinking, is it really likely, even given the managers' perception of this matter, that by giving Ms. Lewinsky the bear that my brief but important colleague Senator Bumpers referred to yesterday, and a pin of the New York skyline, and a couple of other things, including a Radio City Music Hall scarf—I may have missed some—that some great message was being sent to Ms. Lewinsky, that this collection of ''valuable'' items was a message to keep the faith, stay inside a conspiracy? I don't think so.

Thank you, Mr. Chief Justice.

Mr. LOTT. Mr. Chief Justice, may I inquire about the time that has been used on each side?

The CHIEF JUSTICE. I will ask the Parliamentarian.

The counsel for the White House has consumed 57 minutes. The counsel for the managers have consumed 54 minutes.

Mr. LOTT. I believe we have a question at the desk.

The CHIEF JUSTICE. This question is directed to the House managers, proposed by Senators SNOWE, ASHCROFT, ENZI, BURNS, SMITH of New Hampshire, and CRAIG:

At the end of the Jones deposition, Judge Wright admonished the parties that, ''This case is subject to a protective order regarding all discovery, and all parties present, including the witness, are not to say anything whatsoever about the questions they were asked, the substance of the deposition . . . any details, and this is extremely important to this court.'' Within hours of Judge Wright's admonition to all parties not to discuss details of the deposition, didn't the President telephone Betty Currie to ask her to make a rare Sunday visit to the Oval Office?

Before answering, the Chair wishes to make a correction in response to the inquiry from the majority leader. The time used by the House managers is 64 minutes, rather than 54 minutes.

Mr. Manager ROGAN. I trust that doesn't mean I have to sit down, Mr. Chief Justice.

The CHIEF JUSTICE. It is not retroactive.

Mr. Manager ROGAN. Maybe I should quit while I am ahead.

I thank the Senators for their question. That is absolutely true, and we know that because Betty Currie testified to that. She said it was very rare to receive a phone call from the President to ask her to come down to the White House on Sunday. A day after the President testified in a deposition, when he was specifically admonished by the judge that he was not to discuss the deposition, he was not to detail it with anybody, he was not to go into any of those factors, the President called Betty Currie down to the White House and he made some specific statements to her. He said to her:

I was never really alone with Monica, right?

You were always there when Monica was there, right?

Monica came on to me and I never touched her, right?

She wanted to have sex with me, and I cannot do that.

When the President was asked 8 months later:

Why did you call Betty Currie down to the White House and pose not questions, but statements to her?

When he was asked why he called Betty Currie down to the White House and said that to her, this is how the President responded:

I was trying to figure out what the facts were. I was trying to remember.

That is patently false because in August when the President testified, embarrassment was no longer on the table. The President was admitting that he had, as he called it, an improper relationship with Ms. Lewinsky. So why did he call Betty Currie down there? He called her down there that day after the deposition, in violation of the judge's order, because throughout his deposition he kept referring to Betty Currie as the fountain of information. If you read the deposition testimony, you see the President reiterating over and over, ''Monica came to see Betty,'' and, ''You would have to ask Betty.'' He made innumerable references to Betty Currie.

That was his invitation to the Jones lawyers to depose Betty Currie, and we know from Mr. Manager HUTCHINSON's presentation earlier that that is what happened. Betty Currie ended up with a subpoena from the Jones lawyers, and the President could not waste any time; he had to make sure, with discovery closing, that he got to Betty Currie right away, to make sure that the story was straight.

How can one possibly say that he was posing the statements to Betty Currie to remember, when the President knew that in fact he was alone with Monica, that Betty wasn't always there with him when Monica was in the Oval Office with him? She would not be able to tell him that Monica came on to him and not the other way around. This is patently ludicrous. There is no reasonable explanation.

Mr. Chief Justice, if I have a minute left, I would like to yield to Mr. Manager HUTCHINSON.

The CHIEF JUSTICE. Yes.

Mr. Manager HUTCHINSON. Thank you. Just a quick point on that, because there was a question raised that the testimony of Betty Currie in that circumstance was that she, I believe, did not feel pressured. The President's counsel makes a big issue of that, as if this is a fatal defect. It is not a fatal defect.

In fact, it is really irrelevant because the issue is witness tampering, obstruction of justice. The question is the President's intent, not how Betty Currie felt under that circumstance. She can characterize what she wishes. To me, it is an example like, if you as a lawmaker are presented a bribe of $100,000 to cast your vote in a particular way, you might not be tempted in the slightest. You might say, ''Go your own way.'' But it is still attempted bribery, attempted obstruction of justice. So that is a critical question. This is one element of obstruction of justice where each element has been met. The proof is clear, without any question of a doubt, as well as the rest of it.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. This is a question to White House counsel from Senator KENNEDY:

> Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. Let me start by actually responding briefly to the question that was asked, which is whether in fact the President violated the gag order. I think it is important that we be very direct and candid on this so the record is clear.

There is no question that a gag order was issued, that it had been in existence for some 3 months, and it applied to the parties and lawyers. It is important, I think, to understand the purpose for which it was entered.

During the months of litigation in the Jones case, we have seen a veritable flood of leakage out of the deposition, all of which was adverse to the President. The judge made very clear that her concerns were revelations to the press.

I think it is fair to say that even if one might argue that the President talking to his secretary on the day after a deposition was somehow talking to a person that he should not after his deposition, I suggest that any person covered by—certainly a party covered by a gag order, particularly the President of the United States, is free to speak with those from whom he needs assistance in the preparation of his defense. That, of course, is at least in part what the President has said here.

But let me be very clear that, to the extent President overstepped his bounds in terms of this gag order, that is a matter of concern that the judge could take up, or the parties could take up. And as far as I know—probably because their sense of shame would not permit it—the parties on the other side of the Jones case have never suggested that this was a problem. Indeed, it was not a problem until we heard about it recently in this Chamber.

More specifically, with respect to the substance of Mr. Manager ROGAN's response, and Manager HUTCHINSON's response, my colleague, Ms. Mills, told you what the essential human dynamic was that was going on with the President, who had just gone through a deposition in which his worst fears were being realized—his life, in terms of his relations with his family, was beginning to unravel. He could see it coming. He could see the press coming at him. They were already on the Internet. There was no question in his mind that his worst fears of public disclosure were about to be realized.

Put yourselves in a comparably traumatic human situation and ask whether you wouldn't reach out to have this kind of conversation with the one person you knew who was the most familiar with the facts that Monica Lewinsky had, indeed, been in and out of the White House, exchanged gifts, and done all the other things that Betty knew about, even though she didn't know about the primary extent of their relationship. But ask yourself also whether, in fact, under any circumstances, either on the 18th of January when the first conversation occurred, or on the 20th of January when we believe the second conversation occurred, if there is really any reason to believe that the President had somehow invited Jones lawyers to make Betty Currie a witness, because, as my colleague, Ms. Mills, put it most sharply and most clearly, the last thing in the world the President of the United States wanted to do was to invite anybody to depose or have testify the one woman who knew that, indeed, there had been gifts exchanged, and visits, and letters. It simply doesn't make sense.

Lastly, let me, I suppose, just ask as the question has been put to you on a couple of occasions, what is it that would come from calling witnesses in the case? Ms. Currie has testified not just once, but a multiple of occasions about the events, no new facts had come out, and the only thing that you would hear would be a repetition of the bottom-line assessment. I could have said wrong when he said right and I was under no pressure whatsoever.

Thank you.

The CHIEF JUSTICE. This is from Senators GRAMM of Texas and SMITH of New Hampshire to White House counsel:

> If you said that our oath to impartial justice required us to allow the President to have a handful of witnesses to defend himself, don't you believe that all 100 Senators would say ''yes''? How can we do impartial justice by turning around and denying the House that same right?

Mr. Counsel RUFF. Thank you, Mr. Chief Justice.

Senators, the answer to that question, I think, is really very straightforward and easy and the fog of some of the discussion which has been had on the subject over the last days and weeks ought not to get in the way of this.

The House of Representatives, at least as they are described by the managers they sent to you—I don't know how to put this gently—violated their constitutional responsibility in the handling of this matter. They characterized themselves as nothing more than a grand jury, nothing more than a screening device between the allegations transported to them by the independent counsel, and the ultimate vote a month and 3 days ago. They felt, as they have reiterated constantly during that process, that they knew everything they needed to know not to make the judgment; that it was, you know, worth sending on to the Senate for them to think about. But they knew everything they needed to know, as you heard them say so eloquently and so forcefully here, to remove the President of the United States from office. Now they are saying to you, ''Well, maybe not. There really isn't enough here to make that important critical judgment.''

So having abandoned—not to put it too sharply—what I view and I think most would view as their obligation to do the right constitutional thing a month ago, they turn to us and say, ''Well, protect our managers rights to just add a little bit and see if we can make it, and then we will turn to you and see if you want to call witnesses in response.''

Senators, I really think they should have done it right the first time. And they have told you—not back then, but they have told you now—that they have done it right, because otherwise they wouldn't, as a matter of their responsibility, be able to stand in the Well of this Senate and urge you to remove the President of the United States. How could they make that recommendation if they had any uncertainty? If they didn't believe what was

in those five volumes was sufficient under the day, they couldn't. They couldn't.

Our rights are these for the President of the United States: He is entitled to ask you whether when the House of Representatives voted to impeach him they had enough evidence to make one of the most serious constitutional judgments that is entrusted to them. And it can't be that because they didn't do it right then, that you and we are now asked to extend this process just so that maybe if they go to the right person and ask the right question, or find the right document something will emerge that translates those five volumes into something that really is a constitutional basis for the removal of the President.

The CHIEF JUSTICE. This is from Senator FEINGOLD to the House managers.

In light of the allegations in the articles of impeachment that the President is guilty of providing ''perjurious'' statements to a grand jury and has ''obstructed . . . the administration of justice,'' is the appropriate burden of proof for these particular articles ''beyond the reasonable doubt,'' as it would be in an ordinary criminal proceeding? Should a Senator vote to convict the President based on his allegedly committing these Federal statutory crimes if each of the elements of the crimes have not been proven beyond a reasonable doubt?

Mr. Manager BUYER. Thank you, Mr. Chief Justice. And I would say to Mr. Ruff I violated no oath nor the Constitution, and I think the House managers, in fact, followed the Constitution when we served the articles of impeachment. And I also note, for historical note as well, Mr. Ruff, you know that in the impeachment trial of Andrew Johnson, the House didn't even hold a single hearing.

So I just want to be very up front and fair here.

With regard to the question that was asked by the gentleman, the Constitution does not discuss the standard of proof for impeachment trials. It simply states that the Senate shall have the power to try all impeachments. Because the Constitution is silent on the matter, it is appropriate to look at past practice of the Senate.

Historically, the Senate has never set a standard of proof for impeachment trials. In the final analysis to the question, one which historically has been answered by individual Senators guided by your individual conscience. Now, you will note that earlier one of the White House counsel stood up—and they like to talk to you about criminal statutes and cite that it requires the proof beyond a reasonable doubt. That is not so. This argument has been rejected by the Senate historically.

For instance, in the impeachment trial of Judge Harry Claiborne, at that time the counsel for Judge Claiborne moved to designate beyond a reasonable doubt as the standard of proof for conviction. The Senate overwhelmingly rejected the motion by a vote of 17 to 75. You rejected that as a standard of proof.

In the floor debate on the motion, the House managers emphasized that the Senate has historically allowed each Member to exercise his personal judgment in these cases. And during the impeachment of Judge HASTINGS, Senator Rudman, in response to a question about the historical practice regarding this standard of proof that there has been no specific standard, ''You are not going to find it. It is what is in the mind of every Senator, and I think it is what everybody decides for themselves.''

The criminal standard of proof again is inappropriate for impeachment trials. The result of conviction in an impeachment trial is removal from office, not punishment. As the House argued in the trial of Judge Claiborne, the reasonable doubt standard was designed to protect criminal defendants who risked forfeitures of life, liberty, and property. This standard is inappropriate here because the Constitution limits the consequences of a Senate impeachment trial to removal from office and disqualification from holding office in the future, explicitly preserving in the Constitution the option for a subsequent trial in the courts.

In addition, the House argued in the Claiborne trial the criminal standard is inappropriate because impeachment is, by its nature, a proceeding where the public interest weighs more heavily than the interest of the individual. Again, the criminal standard of proof, i.e., beyond a reasonable doubt, is inappropriate in an impeachment trial and, Senators, you are to be guided by your own conscience in your decision.

The CHIEF JUSTICE. The President's counsel are asked by Senators THOMPSON, SNOWE, ENZI, FRIST, CRAIG, DEWINE, and HATCH:

Four days after the President's Paula Jones testimony, wherein he testified under oath about Ms. Lewinsky, why would Dick Morris conduct a poll on whether the American people would forgive the President for committing perjury and obstruction of justice?

Mr. Counsel RUFF. I couldn't find any volunteers. (Laughter.)

You know, I think the honest answer has two pieces to it. I don't have a clue, and it ultimately—although I know it rings all sorts of bells and the use of that name conjures up all sorts of images, and that is why I am sure it finds its way into this process from the managers' side. But if you look at the record, other than the value that may come to the managers of making reference to that conversation—and I have no idea whether the conversation ever occurred or not—it seems to me of absolutely no relevance whatsoever because, as far as I am able to represent to you, and if the conversation occurred, there is nothing in this record that suggests that it had any impact on the conduct of the President or any other person. We know that he did wrong. We know that he misled the American people when he said that he had not had relations with Ms. Lewinsky.

I am not sure what a conversation with Mr. Morris, if it occurred, or a poll, if it was asked for, or what the motivation behind that poll means once you come to grips with the fact that the President of the United States was deceiving his family, his child, his wife, his colleagues, and the American people in that period in January.

Beyond that puzzlement about relevance, other than the surmise that there must be some dark linkage between the poll and some legal issue before you—and I haven't seen it—I am really otherwise unable to answer your question.

The CHIEF JUSTICE. Senator LIEBERMAN asks the House managers:

The House managers argue that the President should be removed from office because of the inconsistency between his actions and the President's duty to faithfully execute the laws. Given that any criminal act would arguably be at odds with the President's duty to execute the law, is it your position that the President may be impeached and removed for committing any criminal act, regardless of the type of crime it is? If the President were convicted of driving while intoxicated, would that be grounds for removal? What if he were convicted of assault?

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. Excellent question.

The answer is no, I would not want my President removed for any criminal wrongdoing. I would want my President removed only when there was a clear case that points to the right decision for the future of the country. Just remember this. Our past is America's future in terms of the law. I would not want my President removed for trivial offenses, and that is the heart of the matter here.

I think I know why he took a poll. I think I know very well what he was up to: That his political and legal interests were so paramount in his mind, the law be damned and anybody who got in his way be damned.

Those are strong statements, but I think they are borne out by the facts in this case, and that is what I would look for. I would look for a violation of the law that is the dark side of politics. I would look for something like Richard Nixon did. Richard Nixon lost faith with the American electoral process. He believed his enemies justified being cheated; that when his people broke into the other side's office, when confronted with that wrongdoing, he legitimized it. He didn't trust the American people to get it right, and he went out in shame.

My belief is that this President did not trust the American legal system to vindicate his interest without cheating. My belief is that when he went back to his secretary, it is not reasonable that he was trying to refresh his memory and get his thoughts together. My belief is that he tried to set up a scenario that was going to make a young lady pay a price if she ever decided to cooperate with the other side. I believe he did not need to refresh his memory whether or not Monica Lewinsky wanted to have sex with him

and he couldn't. I don't believe he was refreshing his memory when he asked his secretary: I never touched her, did I?

I believe that you should only remove a President who, in a calculated fashion, puts the legal and political interests of himself over the good of the Nation in a selfish way, that you only should remove a President who, after being begged by everybody in the country, don't go into a grand jury and lie, and he in fact lied. Nothing trivial should remove my President. We need to try this case, ladies and gentlemen, because you need to know who your President is.

Thank you.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. I would like to note that in the response to the previous question, question probably No. 28, that it was not filed by the managers; it was filed by a group of Senators.

RECESS

Mr. LOTT. With that, I would ask unanimous consent that we take another brief recess of 15 minutes.

There being no objection, at 4:18 p.m., the Senate recessed until 4:40 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice. Mr. Chief Justice, I had indicated that we would probably go 5 hours today, which would take us to approximately 6 o'clock. But I think we would certainly go for at least another hour or so, perhaps not quite all the way to 6 o'clock, but we will talk to each other and look for a signal from the Chief Justice about exactly when we would end the day's proceedings.

At this point, Mr. Chief Justice, I believe we are ready for the next question. I believe the previous question came from Senator LIEBERMAN; therefore, I send the next question to the desk.

The CHIEF JUSTICE. This question is from Senators THOMPSON and SNOWE, to the House managers:

Do the managers wish to respond to the answer given by the President's counsel with regard to the poll taken by Dick Morris?

Mr. Manager BRYANT. Thank you, Mr. Chief Justice.

Just before we recessed, there was a question directed to the President's defense attorneys regarding the Dick Morris poll. One of the responses to it was that it was basically irrelevant. I think it is one of the more important things that has occurred in this case, because—and I think it is very important—because we get a look inside that window that is blocked for the most part throughout these proceedings. We really get an eye into the minds that are working here. Not only does it say volumes about a person who has to take a poll and decide whether or not to tell the truth, it also provides a great deal of information toward the actual state of mind, the actual willfulness, the actual intent of the actor in this case who has had the poll taken.

Let me just read briefly from the referral regarding this incident. It talks about how Mr. Morris tells the President that this country has a great capacity for forgiveness and we should consider tapping into it. The President responds, ''Well, what about that legal thing, you know, the legal thing, you know, Starr and the perjury and all?'' And they go on and have a discussion and decide to take a poll that night. Now this is January 21.

And in all fairness to the President, it is not clear from the record that I have that he had had a conversation with Sidney Blumenthal and John Podesta that day, before this effort—the poll was taken, and the results reported that same day, late that evening—or whether the conversation with Mr. Podesta and Mr. Blumenthal occurred afterwards. Those are the ones, in essence, where he questioned what went on, and also with Mr. Blumenthal fairly well attempted to discredit Ms. Lewinsky, too. And you will see how that may or may not tie in, again, depending on the chronology. But certainly all those events happened the same day.

Mr. Morris takes the poll and reports later that day, later that evening, the same evening, the 21st, the results of that, and basically says the voters are willing to forgive the President for adultery but not for the perjury or the obstruction of justice. And then according to Mr. Morris, the President answers, ''Well, we['ll] just have to win, then.'' And later the next day the President has a followup conversation with Mr. Morris, in the evening, and says that he is considering holding a press conference to blast Monica Lewinsky out of the water. But Mr. Morris urges caution. He says, ''Be careful.'' According to Mr. Morris, he warned the President not to be too hard on Ms. Lewinsky because ''there's some slight chance that she may not be cooperating with Starr, and we don't want to alienate her by anything we're going to put out.''

That is chilling. It truly is chilling that our chief law enforcement officer, the person who sends our soldiers off as Commander in Chief, to possibly die, the person who appoints the Federal judges, nominates Supreme Court Justices, appoints U.S. attorneys around the country who try 50,000 cases a year, has that mentality. And it goes to the state of mind here. And the willfulness and the intentions, from that point forward, certainly are reflected in the perjury and the efforts to continue the obstruction, the pattern, the overall pattern—not just one little incident.

And I urge you, Senators, as you consider this, to consider it carefully. And as I said in my opening remarks, do not isolate little facts here and there and take the spins. But in every—every—alleged act, ask yourselves the two questions—whether it is the hiding of the gifts, the filing of the false affidavit, letting Bob Bennett use that false affidavit while sitting still, talking to Sidney Blumenthal and John Podesta about what did not really happen, the job search—ask them, every one of those, What was the result, what was the result of those actions?

I think in every case you will see that something occurs to block the Paula Jones case, the discovery of evidence, the receipt of truthful testimony. And ask yourselves the second question: Who benefits from that? And I will guarantee you every time, in every one of those instances, it is the President who benefits, who derives the effect of that. And he is either the luckiest man in the world because of this and having people willing to commit crimes for him or he is somewhere in the background orchestrating this.

The CHIEF JUSTICE. This is from Senators LEAHY, HARKIN, DORGAN, and REID of Nevada, to the President's counsel:

In his opening remarks to the Senate, Manager MCCOLLUM stated, ''I don't know what the witnesses will say, but I assume if they are consistent, they'll say the same thing that's in here,'' referring to the 60,000 page record currently before the Senate. I see no reason to call witnesses to provide redundant testimony.

Could you comment on Mr. MCCOLLUM's statement and clarify also the timetable which might have to be considered for discovery if witnesses are called?

Mr. Counsel KENDALL. Mr. Chief Justice, I think, as I said in an earlier question, that the answers the witnesses would provide are already contained in the five volumes of testimony. As I am sure you are aware, when I say five volumes, that is not really five volumes, because on many of the pages the grand jury transcript is shrunk, called a miniscript, so you get 6 pages of testimony per page. Your eyesight may fail you before you get through. The witness testimony is there. I don't think calling the witnesses again will add anything to that.

In terms of a discovery schedule, it is hard to say, because we have had no opportunity to shape the record. We don't know what we will need. We would need documents. We would need testimony. One deposition could lead to another. I think we are talking a matter of a few months to finally get through it.

But I think the real question is, What questions are there that have not been asked? I think if you ask that question, What questions are there that have not been asked, you will find there are no questions. In fact, there are questions that have been asked a number of times.

Now, Mr. Manager HUTCHINSON told you that, Well, the independent counsel didn't have a chance to ask questions after the President's testimony. Indeed he did. You will see that Ms. Lewinsky was examined after the President testified, both in the grand jury and in FBI interviews. I don't

think that witness interviews or further evidentiary proceedings will add in any measurable way to the record before you.

The CHIEF JUSTICE. This question is directed to the House managers by Senators HATCH, THOMPSON, DEWINE, and WARNER:

The unanimous consent agreement pending before the Senate permits the filing of a motion to dismiss next week. What legal standard should the Senate apply, and applying that standard to this case, what specific acts of Presidential misconduct would a Senator deem unworthy of impeachment by voting for a motion to dismiss?

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, the President wants all of the protections of the criminal trial beyond a reasonable doubt, standard of proof, strict pleadings, but yet deny us the right to call any witnesses.

You know, in the House we did not call witnesses and there is a reason. There are several reasons for that. First of all, we were operating under time constraints which were self-imposed but I promised my colleagues to finish it before the end of the year. I didn't want it to drag out. We had an election intervene, we had Christmas, but we did—because we had 60,000 pages of sworn testimony, transcripts, depositions, grand jury testimony, and we had a lower threshold.

The threshold in the House was for impeachment, which is to seek a trial in the Senate. We could not try the case in the House. The Constitution gives the Senate the exclusive right to try the case. All we could do was present evidence sufficient to convince our colleagues that there ought to be a trial over here in the Senate. And we did that.

But now that we are over here—by the way, we were roundly criticized for not producing any witnesses. And I might add, Mr. Kendall has said repeatedly they did not have a fair discovery process; they didn't have any witnesses and weren't permitted to cross-examine.

I want to tell you, repeatedly—repeatedly—I invited the President's lawyers, the staff of the Democrats on the House Judiciary Committee: Any witnesses you want, call them; give me their name and we will bring them in and you can cross-examine them to your heart's content.

No, they never did. Finally, they brought in some professors and Mr. Ruff testified, Mr. Craig testified. But they didn't want, in fact, any witnesses. That is the last thing they wanted. They had full opportunity to call them, and I really, really, bristle when they say, ''You were unfair.'' We wanted to be fair. We tried to be fair because we understand you need a two-thirds vote to remove the President. We needed Democratic support. So far we had none. That is OK. Let the process play itself out. But we were fair.

And when Mr. Kendall says they had no opportunity, he means they didn't avail themselves of an abundant opportunity to call witnesses.

Now, a motion in lieu of a trial should provide that all inferences, all fact, questions, be resolved in favor of the respondent, the House managers. I don't think that is going to happen. I think by dismissing the articles of impeachment before you have a complete trial, you are sending a terrible message to the people of the country. You are saying, I guess, perjury is OK, if it is about sex; obstruction is OK, even though it is an effort to deny a citizen her right to a fair trial. You are going to say that even when judges have been impeached for perjury—and, by the way, the different standards between judges and the President: This country can survive with a few bad judges, a few corrupt judges; we can make it; but a corrupt President, survival is a little tougher there. So there is a difference, and the standard ought to be better and more sensitive for the President because the President is such an important person.

Look, the consequences of cavalier treatment of our articles of impeachment, your articles of impeachment: You throw out the window the fact that the President's lies and stonewalling have cost millions of dollars that could have been obviated. The damage to sexual harassment laws—you think they are not going to be damaged? They are, seriously, making it more difficult to prosecute people in the military or elsewhere for perjury who lie under oath. Those are serious consequences.

I know, oh, do I know, what an annoyance we are in the bosom of this great body, but we are a constitutional annoyance, and I remind you of that fact.

Thank you.

The CHIEF JUSTICE. This question is from Senator DURBIN to counsel for the President:

Can you comment on Manager HYDE's contention that the President was free to call witnesses before the House, but that the House did not have the time to do so, or to call any witnesses?

Mr. Counsel RUFF. Mr. Chief Justice, I think it is important to understand the reality of what is going on in the House. Most of you know something of it by simply the virtue of press coverage. But let me tell you what it was like from the perspective of the President.

From the very first moment when we began to speak with representatives of the Judiciary Committee—whether senior staff or the chairman, who is always gracious—the one thing we said was, ''Please tell us what we are charged with, please.'' And we went from Mr. Schippers' extensive opening discussion of 15 possible violations of law to an ever-shifting body.

It wasn't until I was within literally a few minutes of completing my testimony on December 9 that we were ever honored with anything that looked like a description of the violations that the President was charged with, and those came in the form of hard draft articles of impeachment.

I think, indeed, if you will all remember back—if any of you were watching that day—I was actually given a draft copy of those articles just as I was completing my testimony, and then they were snatched back because it was premature for the President's counsel at 4:30 in the afternoon on December 9 to know what the President was charged with.

Now, one thing you generally like to know as a litigator in any forum, before you start thinking about producing exculpatory evidence, as we were asked to do, or thinking about calling witnesses, is to sort of know what you have to defend against. In any forum, whether it is criminal or civil or legislative, the accused generally has that right.

Beyond that, as you all know—indeed, as Mr. Manager HYDE has indicated—we were operating on a very fast track. We asked, for example, when the issue arose as to whether or not the staff of the committee would take depositions, whether we would be entitled to be present, because we knew that none of them was on the calendar to be called in any open hearing, and we were denied that opportunity, theoretically because under the policies of the committee it was not appropriate for the President's counsel to be present at the only opportunity that certain witnesses would ever have to testify under oath.

It seems odd to me, when you come right down to it, that we should be accused of failing in our duty, with the burden on the House Judiciary Committee to make its case and our right to respond, that the House, having determined never to call a witness who knew anything firsthand, we should somehow be charged with having to fit into this discovery process. Discovery is very different, as all of you understand, from calling a witness—whoever it may be—in public, before the full Judiciary Committee, and having the opportunity to examine. We were excluded from whatever true discovery process might have been involved, and left only with this notion that, in the absence of any specific charges, we were to call witnesses to defend ourselves. I suggest to you that in any setting that we are used to, whether those of you who are litigators or those of you who are simple observers of the justice system, that is a very long process, indeed.

The CHIEF JUSTICE. This question is from Senator NICKLES to the House managers:

Which of the President's statements not already discussed today do you believe to be of particular importance to the perjury charge?

Mr. Manager ROGAN. Thank you, Mr. Chief Justice. I thank the Senator for the question. I will keep one eye on the clock and stay within the 5-minute rule, so obviously I won't be able to

give a comprehensive list of that which we submit to the Senate is perjurious. Let me try to get through at least one or two.

One example that I invite the Senate's attention to is the answers the President gave in the grand jury about his attorney using Monica Lewinsky's false affidavit. Bear in mind, again, the predicate facts for this. Judge Susan Webber Wright, in the deposition, had ordered the President to answer questions relating to whether he ever had sexual relationships with subordinate female employees in the workplace as Governor or as President, because that is fair game in any sexual harassment suit. Victims of harassment in the workplace are entitled to discover that information.

The President was able to get Monica Lewinsky to file a false affidavit in the Jones deposition. And when that affidavit was in hand and filed, as soon as the attorney for Paula Jones asked the first question about Monica Lewinsky, the President's attorney, Mr. Bennett, put forth that affidavit and objected to the attorneys even asking the question. He said, ''There is no good-faith belief that this question should be asked because of the affidavit.'' And the President did absolutely nothing to correct the record.

When this came up in the grand jury, the President was asked about the affidavit and the statement that Mr. Bennett made to Judge Wright that ''there was no sex of any kind, in any manner, shape or form.'' And the attorney, Mr. Bittman, at the grand jury, referred to that and said to the President, ''That statement is a completely false statement,'' and asked the President to explain. This was the President's answer:

> It depends on what the meaning of the word ''is'' is. If the—if he—if ''is'' means is and never has been, that is not—that is one thing. If it means there is none, that was a completely true statement.

Then the President went on to say:

> I was not paying a great deal of attention to this exchange. I was focusing on my own testimony.

Now, rather than simply give a truthful and complete answer to the grand jury in their criminal investigation, the President gave a bifurcated answer that essentially invited the grand jury to accept one of two explanations.

Explanation No. 1: I wasn't paying attention to my attorney when he said that. I was busy thinking of other things.

Or, if you don't like that explanation: I was paying such specific attention to what my attorney was saying that I focused on the tense of what the word ''is'' meant—as if to suggest when Mr. Bennett said that there is no sex of any kind, he meant there was no sex that day because he was there being deposed before Judge Wright. Under either scenario, the President absolutely failed in his obligation to provide the grand jury conducting a criminal investigation into possible obstruction in the Paula Jones case—he failed in his obligation to tell the truth, the whole truth, and nothing but the truth.

You have seen the evidence just from the initial presentation. No. 1, when the President said he wasn't paying attention, that was negated by watching the videotape. The President was paying very close attention. Why was he paying such close attention? Because the fate of his Presidency hung on the answer to that question. This is the most important question in the President's political life. Is he going to have to disclose information that he thought would help destroy his Presidency?

You don't even have to accept the representation from the videotape to know the President testified falsely, because Mr. Bennett did us the favor of not asking us simply to rely on watching the President pay attention to the testimony. Mr. Bennett then read the President the portion of Ms. Lewinsky's affidavit in which she denied having a sexual relationship with the President, and he asked the President if Ms. Lewinsky's statement was true and accurate. The President said, ''That is absolutely true.''

Now, on August 6, Monica Lewinsky, incidentally, testified before the grand jury, and she didn't play these games with the grand jury, like ''it all depends what 'is' means,'' or ''I wasn't paying attention.'' She was asked a straightforward question:

> Paragraph 8 of the affidavit says, ''I have never had a sexual relationship with the President.'' Is that true?

Answer by Monica Lewinsky:

> No.

Mr. Chief Justice, I see my time has expired. I will be happy to invite additional questions relating to additional specific examples.

The CHIEF JUSTICE. This is to the President's counsel from Senator SCHUMER and Senator KERREY of Nebraska:

> Isn't it true that the alleged perjurious statements have changed in number and substance since the OIC first delivered its referral to the House, and that the referral, Mr. Schippers' presentation before the House, the majority report, the trial brief, and the managers' statements before this body contain different allegations of what constitutes the alleged perjurious statements?

Mr. Counsel CRAIG. Thank you, Mr. Chief Justice. The answer to that question is, yes. They were changing right up until the time we met, the very first day of this trial when Mr. Manager Rogan made his presentation. What he said when he described perjurious statements alleged against the President was different from what was appearing in the trial brief before. And that was the end of a long period of time where every time we heard what the allegations were, at least when it came to the issue of perjury, they changed.

There were allegations added; there were allegations subtracted. Two of the allegations that Mr. Schippers presented when he made his statement to the Judiciary Committee were withdrawn. So it was a process where we never had a chance to sit down, as you should in a very serious and fair and evenhanded exercise, and focus on what precisely it was that the President said in the grand jury that was perjurious.

Now, as to the specifics of the allegation that we have been discussing just now, when I first opened this discussion, I said it is very important to look at the record. Do not allow anyone to misrepresent the record because you are setting up the President's statement and saying that is perjurious, when the President's statement may well be something very different in the record.

Now, when Mr. ROGAN first made his argument on this issue, he misrepresented the record as to what the President said in this case. I tried to correct him about what the President actually said. He never claimed, at the moment these questions were being asked back and forth, that he thought about the current tense. Even as I was speaking, Mr. ROGAN was out talking to the television cameras, saying precisely the same thing. Now we have this same misrepresentation the third time.

I will say it one more time. He answered the question. He wasn't focusing on it. He answered that four times the same way. It was not a bifurcated answer; it was one answer. He was not paying attention at that particular moment. It moved very quickly; the moment was passed and they were into the judge talking and debating with the lawyers. That was his answer. There was no other answer.

Then, at the grand jury some 7 months later, he was read that statement by the special prosecutor. The question was, ''And this statement was false, isn't that true?'' The answer the President gave was that, well, in fact, it depends on the meaning of the word ''is.''

He didn't claim that that was what he was thinking at the time in the Jones deposition. He said very clearly, ''I never even focused on that issue until I read it in this transcript in preparation for this testimony.'' It is on page 512, Mr. ROGAN. ''I never focused on that issue until I read it in this transcript in preparation for this testimony.'' There was not a bifurcated answer. He answered directly. He wasn't focusing on it.

That is a problem we have had throughout this case when it comes to perjury the allegation. It was a problem we had with the earlier one. If you don't have the specific statement quoted, it is impossible to defend it. It is unfair.

Thank you, very much.

The CHIEF JUSTICE. This question from Senator LOTT to the House managers:

> Do you wish to respond to the answers just given by the President's counsel?

Mr. Counsel ROGAN. Mr. Chief Justice, I am not sure if I wish to respond or I feel the need to respond. But in either event I will take advantage of the

opportunity. I thank the Senator for posing the question.

Try as they might, the facts are clear. The President, in his August deposition, attempted to justify away, attempted to explain away his perjurious conduct on January 17 when he was deposed. And I am not going to stand and quibble with Mr. Craig over this beyond what was already noted.

What I prefer to respond to is the bigger question that the White House attorneys have raised on a number of occasions—the idea that the President has been treated unfairly because he hasn't had sufficient notice as to what the allegations are against him.

Contemplate that for just one moment. Because, were that to be true, the President of the United States would have to be not a human. He would be an ostrich with his neck so far down in the sand—that which every schoolchild now in America knows, that which every person in America with a television or a radio or Internet access knows, and is obvious to everybody which they claim is not obvious to the President.

When the President of the United States testified at the deposition and before the grand jury—that brought us into late August of 1998, about a month after that—the Office of Independent Counsel filed a report. The binder was about 445 pages. The written document was a little more than 200 pages. But within the four corners of that report are all of the allegations, are all of the facts, and all of the circumstances that were forwarded to the House of Representatives for review. The House Judiciary Committee, specifically at the request of the White House and at the request of our Democrat caucus, did not go beyond the four corners of Judge Starr's report. Not only did the President have the benefit of Judge Starr's report, he also has the benefit of the written report from the House Judiciary Committee—same facts, same circumstances, nothing changed.

And, by the time we came here to the Senate to try this case, the President had the benefit of the resolution passed by this body that said at the initial presentations ''we will not go beyond the record already established''—the record that was established in the Office of Independent Counsel report, in the committee's report, and in our hearings. And for a party to be aggrieved, as the White House counsel suggests, to have been given no notice, it is amazing to me how within minutes of Judge Starr's report being filed they had already filed a response. And I believe there were two supplemental responses within 48 or 72 hours. They have always beaten us to the punch on the response. They have an army of lawyers here able to stand up on a moment's notice and respond. And I just do not understand how they can make the case fairly that this is all now a product of a surprise; that they have not been given a proper opportunity to review the facts. They have seen these facts since Judge Starr submitted his report to Congress some 5 months ago. The facts haven't changed. The circumstances haven't changed. The quotations haven't changed. The transcripts haven't changed. Nothing has changed except their attempt to wiggle out from under the truth.

The CHIEF JUSTICE. This question is from Senators BOXER, SCHUMER and KOHL to the President's counsel:

To the best of your knowledge, has the United States Department of Justice ever brought a perjury prosecution where the alleged perjury was inferred from the direction in which the defendant was looking?

Mr. Counsel RUFF. Mr. Chief Justice, the answer is, not to my knowledge. I will not go farther than that because somebody in the army of people on the other side might dodge one up, but I doubt it very much.

I think, if I may impose on the kindness of the authors of that last question, I will take just a moment to comment briefly on Mr. Manager ROGAN's rejoinder to our response to whatever—particularly because Mr. Manager ROGAN has been a judge, prosecutor, and others have as well, it does seem mildly odd to me that the answer to the question your charges aren't known or are vague is, look at that pile. You will find them right in there. You fellows, you guys did a good job responding to what you could. So you must be perfectly well prepared to defend against whatever charges we bring. I don't think there is a judge anywhere in the United States, from the highest court or the lowest court, who would accept either explanation from a prosecutor.

The CHIEF JUSTICE. This question is directed to the House managers by Senators HATCH and BURNS:

The President's lawyers cite in their brief Professor Michael Gerhardt for the proposition that for an act to be impeachable there must be a nexus between the misconduct of an impeachable official and the latter's official duties. But isn't it true that Professor Gerhardt also stated that impeachment may lie for conduct unrelated to official duties if such conduct is outrageous and harms the reputation of the office?

And this citation is to the testimony of Mr. Gerhardt.

Would the House managers care to respond to this?

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, I do appreciate the opportunity to respond to this point. I think this is a very important point.

I have a great deal of respect for Professor Gerhardt. He has said a number of different things on this subject. But the point in the question is directly on point.

I would also like to quote something else that Professor Gerhardt has said that I made reference to without specifically naming him as the source in this statement which I gave to the Senate on Saturday.

He said in a Law Review article, which he wrote a few years back:

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

I believe that what Professor Gerhardt makes reference to there is exactly what we have before the Senate in this case. What we have before the Senate in this case is a case where the President of the United States has engaged in a course of conduct involving violations of the criminal law. By doing so, he has evidenced a lack of respect for the law, that demonstrates a lack of the minimal level of integrity that we are entitled to expect of the Chief Executive of the United States, of the person who, under our system, is given the preeminent responsibility to take care that the laws will be faithfully executed.

The CHIEF JUSTICE. This question is from Senator DODD to the counsel for the President:

Given the election of a President of the United States is the most important and solemn political act in which we as citizens engage, how much weight should the Senate give to the fact that conviction and removal by the Senate of the President would undo that decision?

Mr. Counsel RUFF. That question, of course, goes right to the heart of what the framers were thinking, and the standards that I suggest every sensible analyst of this problem has arrived at, whether they might be called supporters or opponents of the President. There is one critical issue that everyone has to address, which is that removal and undoing the will of the people.

Mr. Manager GRAHAM acknowledged that that's what we were all about here, whether we should undo an election. But if you go back to the very basic debates of the framers in 1787, and you recall both Mr. Manager CANADY and I talked about the moment in time in which it was suggested by Mr. Mason that perhaps the scope of the standard for impeachment could be broadened, and the response made then and clearly the principle underlying everything that the framers spoke about in 1787 was: We cure almost all our problems with an elected official through the electoral process.

And even if you look at what President Ford had to say 29 years ago on the subject, which I also cited to you as he spoke about the difference between judges and Presidents, he said for the Senate to remove—the House to impeach and the Senate to remove the President or Vice President as opposed to a judge in midterm would require proof of the most serious offenses, and we know that those most serious offenses, the only ones the framers contemplated as a basis for overturning the will of the people, were those that, as the minority said in 1974 in its report on the subject, were a danger to the state—a danger to the state. That is all that can justify overturning the voice of the people.

The CHIEF JUSTICE. This question is from Senator LOTT. It is addressed to the House managers:

Didn't the framers of the Constitution understand in 1787 that the conviction and removal from office of a President would, under the system they devised, reverse the result of a national election by elevating, not a President's Vice Presidential running mate, as we would do today, but the person who had received the second highest number of electoral votes?

Mr. Manager HYDE. Mr. Chief Justice, the statement has been made with some fervor that if the President were removed upon a finding of conviction of the articles or an article of impeachment, it would reverse a national election. I just respectfully say that is not true. The election is provided for in the Constitution and so is impeachment. They are processes of equal constitutional validity. And should the Senate remove the President, Bob Dole will not become President, Jack Kemp will not become Vice President, but Mr. GORE will move up to be President, and the same party, the same programs, I dare say, will continue. It will not reverse an election; it will fulfill a constitutional process that our Founding Fathers were wise enough to provide for.

The CHIEF JUSTICE. Senator EDWARDS asks the House managers:

Are there any statements contained in the exhibits used during the managers' presentations or omissions from those exhibits that you believe, in the interest of fairness or justice, should be corrected at this time? If so, please do so now.

Mr. Manager BUYER. Mr. Chief Justice, with regard to our own exhibits?

The CHIEF JUSTICE. Perhaps I should ask Senator EDWARDS.

Mr. EDWARDS. Yes, Mr. Chief Justice, with regard to their exhibits.

Mr. Manager HUTCHINSON. Mr. Chief Justice, I would be happy to take advantage of the 5 minutes, but I have talked to the other managers and we are not aware of any corrections that need to be made on any of our exhibits we have offered to the Senate.

Mr. KERRY addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Massachusetts.

Mr. KERRY. I would simply ask whether or not that answer was in fact fully responsive to the question. I believe the question also asked whether or not there were any omissions.

The CHIEF JUSTICE. The Parliamentarian advises me this is a nondebatable period and the inquiry is out of order, and I so rule.

This is from Senator ROBERTS. It is directed to the House managers.

Given the fact that the White House characterizes the assistance that Monica Lewinsky received as ''routine,'' does the record reflect that any other White House interns other than Monica Lewinsky received the same level of job assistance from Vernon Jordan, John Podesta, Betty Currie, and then-Ambassador Richardson?

Mr. Manager MCCOLLUM. Mr. Chief Justice, if I might, as far as we know as House managers, in the record the only comments about assisting anybody else other than Monica Lewinsky, of any nature, were made in testimony by Vernon Jordan. He did assist other people. But I don't believe there is anything, to the best of our knowledge and recollection—of course, we have a lot of paperwork here—that he referred to assisting another intern or anyone in a like position. And certainly there was no indication that the kind of intensity of that assistance occurred in the kind of manner in which the proceedings did with developing her job opportunities, that is, somebody in this direct involvement with the President, or certainly nobody with a close relationship and interest on the part of the President. There certainly was nothing in the record to show that, and that is, of course, central to this entire case as far as the job search part of this obstruction of justice is concerned.

Thank you.

Mr. ROBERTS addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Kansas.

Mr. ROBERTS. I had directed that question, sir, to the White House counsel. It was my intent to direct it to White House counsel. I do not know what the proper procedure would be at this time.

The CHIEF JUSTICE. Is there any objection to the White House counsel answering the question at this time?

Without objection, the White House counsel may answer.

Mr. Counsel RUFF. Thank you, Mr. Chief Justice. This may be a moment worth noting in the proceedings because in essence I think we are in agreement with Mr. Manager MCCOLLUM.

I would perhaps only do this, and that is, to note with some greater emphasis Mr. Jordan's testimony, which we will be glad to highlight if we have another opportunity here, that indeed he has regularly and frequently assisted young people, and not-so-young people, in finding jobs.

Again, I couldn't tell you whether any of them had been an intern at any time. I would only note that, of course, Ms. Lewinsky was not an intern at the time Mr. Jordan was helping her, but rather was an employee of the Pentagon.

But beyond that, and perhaps with somewhat greater emphasis on Mr. Jordan's emphasis on behalf of young people in the city, I am in essential agreement with Manager MCCOLLUM.

The CHIEF JUSTICE. This is a question from Senators DODD and LEVIN to the House managers:

On page 11 of House committee report accompanying H. Res. 611, the report states that Judge Susan Webber Wright issued her order ''on the morning of December 11th.'' Will the managers now acknowledge that the report was factually incorrect? Yes or no?

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice. If I look back at the facts of this—of course, I have explained earlier today that the action on the 11th was initiated or triggered by the witness list that came in on December 5, that the President knew about it at the latest on December 6.

On the 11th, Judge Wright entered an order in that case which allowed the Jones lawyers an opportunity to ask questions about the prior relationships with other Federal employees or State employees.

Mr. DODD addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Connecticut.

Mr. DODD. Mr. Chief Justice, as one of the authors of the question, a yes or no answer was requested and I object to the answer.

The CHIEF JUSTICE. The Chair has not tried to police the responsiveness of the answers to the questions so I am going to overrule that objection.

Mr. Manager HUTCHINSON. I am not trying to be evasive at all to the Senator, but I did want to lay the groundwork for this and also to get my thoughts so that I would be as accurate as possible.

The order that Judge Wright entered was on December 11. I do not know the precise time. I believe it was in the afternoon that it was entered, and it was followed by the telephone call with the participants. So I believe that it was entered in the afternoon of the 11th, and not in the morning of the 11th.

And, of course, that was not in my presentation. My presentation referred to the order being entered on December 11, and that the action on the 11th, of course, was triggered by the witness list on December 5.

I think that completely answers that question. If there is some other—I would be happy to respond to anything more specific on that issue.

The CHIEF JUSTICE. This question is directed to the House managers from Senators DOMENICI, FRIST, MCCAIN and WARNER.

What is the historical significance and legal import of taking an oath for performance in public office? What is the historical significance and legal import of taking an oath to tell the truth in a legal proceeding? Please discuss whether oath-taking in such circumstances is a public matter.

Mr. Manager HYDE. Mr. Chief Justice, Members of the Senate, the taking of an oath is a formalization, a solemnization of truth. You call upon God to witness to the truth of what you are saying. In the long march of civilization, the oath has taken the place of trial by fire, trial by combat, trial by ordeal. It says, in the most sober way: You can trust me. You can believe in me. It is verbal honesty. Our legal system depends on it and our justice system depends on it. The oath underscores our humanity. The oath is an aspect of our sacred honor.

The CHIEF JUSTICE. This is from Senator KERRY of Massachusetts to the counsel for the President:

Is it fair to say that the articles and manager presentations stress the Jones perjury allegations rejected by the House, because they cannot credibly, on the law, satisfy the

elements and argue perjury in the grand jury investigation?

Mr. Manager RUFF. Mr. Chief Justice, I am a little bit troubled at answering that question, not because I don't feel strongly about what the answer is but I do not want to suggest in any way that the motivation of the managers is less than professional and appropriate. But I do think that, indeed, they know, as they think through the proof that they have or that they even might ever contemplate, that the President of the United States, when he began his grand jury testimony by making the most painful admission a human being could ever make, and thereafter did his best—albeit in the face of tough and probing and repetitive questioning for 4 hours—did his best to tell the truth.

That they had a very difficult, indeed virtually impossible, task to persuade any dispassionate trier of fact and law that he had intentionally given false testimony, and you can see that evidenced, I think most clearly, if you look at some of the first allegations made as to what constitutes perjury—things like the use of the words ''on certain occasions'' or ''occasionally'' to describe a battle over whether 11 or 20 or 17 fit within that description. It does seem fair to say that they would not be fighting those battles in this Chamber if they had any real confidence in their cause on article I, and thus they do seek, for whatever tactical or other purpose, to try to bring in those things which so many of their colleagues rejected out of hand in the House of Representatives.

The CHIEF JUSTICE. This question is directed to the House managers from Senators HATCH, THOMPSON and DEWINE:

In her presentation to the Senate, Ms. Mills emphasized that Ms. Lewinsky testified on ten different times about the subject of gifts. Did she ever testify that the President told her that she must turn over the gifts because that is what the law requires?

Mr. Manager MCCOLLUM. Mr. Chief Justice, in response to that question the answer is no, she did not. As a matter of fact, that was and is the central point on the part of the gift question. At no time, she says, did the President instruct her to turn those gifts over. I think that is a telling point. In fact, it is a telling point throughout the entire process of the scheme and all the things that happened and why you have to follow, in my judgment, Senators, the issue of this whole process through the scheme that was devised at the beginning, all the way to the end.

The President was going to ultimately lie to conceal from that case, that court in the Jones case, the truth of his relationship with Monica Lewinsky and, therefore, he had to set it up for the affidavit, the gifts, et cetera. At no point in time, she says in her testimony, did he ever ask her to come clean. Until the time the affidavit was discussed, on the night of December 17, he never suggested she tell the truth there. If you remember we put that up here several times to you. Even though he may not have directly told her to lie, he certainly gave her every indication, she said, from the standpoint of the background that they had had before and what he said that night about the cover stories.

And with regard to the gifts, the same thing is true. She gave him an opportunity on the day of December 28. Whether there are 10 statements or however many there might be—and they say there are 10; I trust the judgment of the White House counsel—there were 10 different statements, the most significant of which, of course, is the grand jury testimony she gave on the subject of what happened that day when she discussed the gifts with the President because that is when her recollection had been best refreshed. She had been over it a lot of times. She had had much preparation for that, and I submit to you that barring bringing her in, which we of course would suggest you do, and let us ask her to confirm all of this again, you must assume the logical thing to do is to assume the grand jury testimony, the most perfected testimony you have, is the most accurate and most reliable, and on that occasion particularly she emphasizes the fact that with regard to the gifts there certainly was no request by the President that she reveal those gifts.

Now, of course he says he did. He says he did later. But that is absolutely contradicted by her testimony.

The CHIEF JUSTICE. Senator REID of Nevada sends this question for White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Ms. Counsel MILLS. There is, obviously, a conflict in the testimony between the President, who said he directed Ms. Lewinsky to turn over whatever she had, and Ms. Lewinsky's statements. I would just like to read to you, given the House managers' reference that we must credit her grand jury testimony, the version of her grand jury testimony, which you all will no doubt remember it as one of the ones I read to you that was never presented by the House managers, and that is on August 20, 1998, after the President had testified:

It was December 28th. I was there to get my Christmas gifts from him, and we spent about 5 minutes or so, not very long, talking about the case. And I said, ''Well, do you think''—and at one point I said, ''Well, do you think I should?'' And I don't think I said, ''Get rid of, but do you think I should put away, give to Betty or someone the gifts''—and he—I don't remember his response. I think it was something like ''I don't know'' or hmm or there was really no response.

On that same day when she was asked that same question, if it is her grand jury testimony that is to be addressed, she also said:

A JUROR. Now, did you bring up Betty's name or did the President bring up Betty's name?

The WITNESS. I think I brought it up. The President wouldn't have brought up Betty's name because he didn't—he didn't really discuss it.

All of those are in her grand jury testimony. So her grand jury testimony is the testimony that states he might not have given any response. So, to the extent the House managers' theory is that ''Let me think about it'' leads to obstruction of justice, her grand jury testimony does not state that.

The CHIEF JUSTICE. Senators SPECTER, HELMS, ABRAHAM, ASHCROFT, and STEVENS direct this question to the President's counsel:

President Clinton testified before the grand jury that he was merely trying to ''refresh'' his memory when he made these statements to Betty Currie. How can someone ''refresh'' their recollection by making statements they know are false?

Ms. Counsel MILLS. I think one of the things I tried to address in addressing what the President's testimony was with respect to his conversation with Ms. Currie was obviously he was understandably concerned about the media attention that he knew was impending. And in particular, as he walked through the questions, he was thinking about his own thoughts and seeking, as I think I talked about, concurrence or input or some type of reaction from Ms. Currie.

I think in making those statements, he was asking questions to see what her understanding was based on some of the questions that had been posed to him by the Jones lawyers, because some of them were so off base. And so he was asking from Ms. Currie essentially what her perception was, what her thoughts were.

I think as you walk through each one of those questions, he was expressing what his own thoughts and feelings were with regard to this and was seeking some concurrence or affirmation from her. I think he was agitated. I think he was concerned. He knew what was going to happen, and I think that is why he posed the question in the way that he did.

The CHIEF JUSTICE. A question from Senator BAYH to counsel for the President:

Can you comment on the importance of ''proportionality'' to the rule of law?

Mr. Counsel RUFF. How much time do we have? Thank you, Senator.

I think proportionality, in all its many guises, is an issue that has given us some pause, going well back into the investigative phase of this matter, and I think many who have watched and who have made their lives and careers as professional prosecutors, indeed many who have been criminal defense lawyers or just plain sensible citizens watching, have asked whether the resources and the energy and the time devoted to this matter and the manner in which it has been treated at every stage before it ever got to the House of Representatives does, in fact, reflect an appropriate assessment of the conduct being investigated and the seriousness

of the conduct, which is not ever to suggest that we condone perjury or obstruction of justice.

We all recognize, if those offenses have been committed, they are worth pursuing. But one only need look at the testimony and the professional prosecutors who testified before the Judiciary Committee to get a sense of what the world of professional prosecutors would do faced with these kinds of allegations in this kind of setting, and that really is the key: How many prosecutors would ever reach into the middle of an ongoing civil litigation and bring these kinds of charges?

The proportionality, obviously, has other implications and certainly goes right to the heart of the role played by this body. That is, what is the proportional response to whatever you think of the President as a man, whatever you think of his conduct. Even if you should conclude—although we do not believe you should—that he violated the law in some respect, what is the constitutionally proportional response to your judgment. And there you go right back to the essence of what the framers were talking about, which is responding with the ultimate sanction only when the ultimate problem is posed to you.

I suggest, as I have on too many occasions, I fear, that if that is the proportionality question you are asking—and all must at some point ask that question—the answer has to be clear, that no one ever thought in 1787 and, I suggest to you, in the intervening 212 years that it would be a proportional response to the conduct alleged here to remove a President.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I believe we have reached a point where we can take a break. I think we have had responses to approximately 50 questions today. Now we will have a chance to assess, on all sides, what additional questions might be needed to be asked tomorrow. I remind my colleagues that we are scheduled to resume at 10 a.m. on Saturday.

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATOR HUTCHISON, SENATOR SPECTER, SENATOR LIEBERMAN, SENATOR HAGEL, SENATOR COLLINS, AND SENATOR SNOWE

In accordance with Rule V of the Standing Rules of the Senate, I (for myself and for Mr. SPECTER, Mr. LIEBERMAN, Mr. HAGEL, Ms. COLLINS, and Ms. SNOWE) hereby give notice in writing that it is my intention to move to suspend the following portions of the *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials* for the final deliberation on the articles of impeachment of the trial of President William Jefferson Clinton:

(1) The following portion of Rule XX: ‘‘, unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the Record’’; and

(2) In Rule XXIV, the phrases ‘‘without debate’’, ‘‘except when the doors shall be closed for deliberation, and in that case’’ and ‘‘, to be had without debate’’.

ADJOURNMENT

Mr. LOTT. If there is nothing further, I move we adjourn, Mr. Chief Justice.

The motion was agreed to; and at 5:49 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Saturday, January 23, 1999, at 10 a.m.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the majority leader.

MEASURES PLACED ON THE CALENDAR—S. 254, S. 269, S. 270, AND S. 271

Mr. LOTT. Mr. President, there are four bills at the desk that are due for their second reading. Therefore, I ask unanimous consent that the bills be considered read a second time and placed on the Calendar, and that the reading be shown separately in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bills placed on the Calendar are as follows:

S. 254, a bill to reduce violent juvenile crime, promote accountability by and rehabilitation of juvenile criminals, punish and deter violent gang crime, and for other purposes.

S. 269, a bill to state the policy of the United States regarding the deployment of a missile defense system capable of defending the territory of the United States against limited ballistic missile attack.

S. 270, a bill to improve pay and retirement equity for members of the Armed Forces, and for other purposes.

S. 271, a bill to provide for education flexibility partnerships.

UNANIMOUS-CONSENT AGREEMENT—NOMINATIONS OF INSPECTORS GENERAL

Mr. LOTT. Mr. President, I ask unanimous consent that the nominations to the Office of Inspector General, excepting the Office of Inspector of the Central Intelligence Agency, be referred in each case to the committee having substantive jurisdiction over the Department, Agency, or entity, and if and when reported in each case, then to the Committee on Governmental Affairs for not to exceed 20 days. I finally ask unanimous consent that if not reported after that 20-day period, the nomination be automatically discharged and placed on the Executive Calendar.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURES PLACED ON THE CALENDAR

The following bills were read the second time and placed on the calendar:

S. 254. A bill to reduce violent juvenile crime, promote accountability by rehabilitation of juvenile criminals, punish and deter violent gang crime, and for other purposes.

S. 269. A bill to state the policy of the United States regarding the deployment of a missile defense system capable of defending the territory of the United States against limited ballistic missile attack.

S. 270. A bill to improve pay and retirement equity for members of the Armed Forces, and for other purposes.

S. 271. A bill to provide for education flexibility partnerships.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–857. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ‘‘Increase In Cash-Out Limit Under Sections 411(a)(7), 411(a)(11), and 417(e)(1) for Qualified Retirement Plans’’ (RIN1545–AW58) received on December 18, 1998; to the Committee on Finance.

EC–858. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ‘‘Exemption of Returns and Claims for Refund, Credit or Abatement; Determination of Correct Tax Liability’’ (Rev. Proc. 98–62) received on December 18, 1998; to the Committee on Finance.

EC–859. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ‘‘Examination of Returns and Claims for Refund, Credit or Abatement; Determination of Correct Tax Liability’’ (Rev. Proc. 98–64) received on December 18, 1998; to the Committee on Finance.

EC–860. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ‘‘Rulings and Determination Letters’’ (Rev. Proc. 99–3) received on December 21, 1998; to the Committee on Finance.

EC–861. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ‘‘Modification of Rev. Proc. 65–17, 1965–1 C.B. 833’’ (Announcement 99–1) received on December 21, 1998; to the Committee on Finance.

EC–862. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ‘‘Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property’’ (Rev. Rul. 99–2) received on December 21, 1998; to the Committee on Finance.

EC–863. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled ‘‘Optional Standard Mileage Rates for Employees, Self-employed Individuals, and Other Taxpayers Used in Computing Deductible Costs’’ (Announcement 99–7) received on December 29, 1998; to the Committee on Finance.

EC–864. A communication from the Chief of the Regulations Unit, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule