

RECESS

Mr. COVERDELL. Mr. President, if there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in recess under the previous order.

There being no objection, at 12:55 p.m., the Senate, in legislative session, recessed until 1:05 p.m.; whereupon, the Senate, sitting as a Court of Impeachment, reassembled when called to order by the Chief Justice.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Senators may be seated, and the Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Loretta Symms, made proclamation as follows:

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

The CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, it is my understanding that the White House counsel presentation today will last until sometime between 5 and 6 o'clock.

I have been informed that Mr. Greg Craig and Ms. Cheryl Mills will be making today's presentations. As we have done over the past week, we will take a couple of short breaks during the proceedings. I am not exactly sure how we will do that. We will keep an eye on everybody, the Chief Justice, and counsel. I assume that after about an hour, hour and 15 minutes, we will take a break; then we will take another one in the afternoon at some point so we will have an opportunity to stretch.

I remind all Senators, again, to remain standing at your desks each time the Chief Justice enters and departs the Chamber.

As a further reminder, on a different subject, the leader lecture series continues tonight, to be held at 6 p.m. in the Old Senate Chamber. Former President George Bush will be our guest speaker.

I yield the floor, and I understand that Counsel Greg Craig is going to be the first presenter.

THE JOURNAL

The CHIEF JUSTICE. The Journal of the proceedings of the trial are approved to date.

Pursuant to the provisions of Senate Resolution 16, counsel for the President have 21 hours 45 minutes remaining to make the presentation of their case. The Senate will now hear you.

The Chair recognizes Mr. Counsel Craig.

Mr. Counsel CRAIG. Mr. Chief Justice, ladies and gentlemen of the Sen-

ate, distinguished managers from the House, good afternoon. My name is Greg Craig and I am special counsel to the President. I am here today on behalf of President Clinton. I am here to argue that he is not guilty of the allegations of grand jury perjury set forth in article I.

I welcome this opportunity to speak for President Clinton. He has a strong and compelling case, one that is based on the facts in the record, on the law, and on the Constitution. But first and foremost, the President's defense is based on the grand jury transcript itself. I urge you to read that transcript and watch the videotape. You will see this President make painful, difficult admissions, beginning with his acknowledgment of an improper and wrongful relationship with Monica Lewinsky.

You will see that the President was truthful. And after reading, seeing, hearing, and studying the evidence for yourselves, not relying on what someone else says it is, not relying on someone else's description, characterization, or paraphrase of the President's testimony, we believe that you will conclude that what the President did and said in the grand jury was not unlawful, and that you must not remove him from office.

I plan to divide my presentation into three parts:

First, to tell you how really bad this article is, legally, structurally, and constitutionally, and to argue that it falls well below the most basic, minimal standards and should not be used to impeach and remove this President or any President from office; second, to address the various allegations directly; and third, to give you a few larger thoughts in response to some of the arguments from last week.

At the conclusion you will have had much more than 100 percent of your minimum daily requirements for lawyering, for which I apologize.

Article I accuses the President of having given perjurious, false, and misleading testimony to the grand jury concerning one or more of four different subject areas:

First, when he testified about the nature and details of the relationship with Ms. Lewinsky;

Second, when he testified about his testimony in the Jones deposition;

Third, when he testified about what happened during the Jones deposition when the President's lawyer, Robert Bennett, made certain representations about Monica Lewinsky's affidavit;

And, fourth, when he testified about alleged efforts to influence the testimony of witnesses and impede the discovery of evidence.

It is noteworthy that the second and third subject areas are attempts to revisit the President's deposition testimony in the Jones case. There was an article that was proposed alleging that the President also committed perjury in the Jones case in the Jones deposition. That article was rejected by the

House of Representatives, and there were very many good reasons for the House to take that action. Those allegations have been dismissed, and you must not allow the managers to revive them. Last week they tried to do that. The managers mixed up and merged two sets of issues—allegations of perjury in the grand jury and allegations of perjury in the Jones case. These are very different matters. And I think the result was confusing and also unfair to the President.

You will notice that the third and the fourth subject areas correspond to, coincide, and overlap with many of the allegations of obstruction of justice in article II. This represents a kind of double charging that you might be familiar with if you have either been a prosecutor or a defense lawyer. One is, the defendant is charged with the core offense; second, the defendant is charged with denying the core offense under oath. This gives the managers two bites at the apple, and it is a dubious prosecutorial practice that is frowned upon by most courts.

The upshot, though, of this with respect to subparts 3 and 4 of this first article is that if you conclude, as I trust you will, that the evidence that the President engaged in obstruction of justice is insufficient to support that charge, it would follow logically that the President's denial that he engaged in any such activity would be respected, and he would be acquitted on the perjury charge. Simply put, if the President didn't obstruct justice, he didn't commit perjury when he denied it.

But the most striking thing about article I is what it does not say. It alleges the perjury generally. But it does not allege a single perjurious statement specifically. The majority drafted the article in this way despite pleas from other members of the committee and from counsel for the President that the article take care to be precise when it makes its allegations. Such specificity, as many of you know, is the standard practice of Federal prosecutors all across America. And that is the practice recommended by the Department of Justice in the manual distributed to the U.S. attorneys who enforce the criminal code in Federal courts throughout the Nation.

Take a look at the standard form. It is exhibit 5 in the exhibits that we handed to you. This is given to Federal prosecutors. This is the model that they are told to use to allege perjury in a criminal indictment in Federal court. There is a very simple reason why prosecutors identify the specific quotation that is alleged to be perjury, and why it is included in a perjury indictment. If they don't quote the specific statement that is alleged to be perjurious, courts will dismiss the indictment, concluding that the charge of perjury is too vague and that the defendant is not able to determine what precisely he is being charged with.

The requirement that a defendant be given adequate notice of what he is