

criminal trial, there is a strong presumption against taking a case out of the hands of the jury, and a very high degree of certainty on the facts of the case is demanded before a judge will take that step. Indeed, a judge must decide that a reasonable juror viewing the evidence in the light most favorable to the prosecution could not vote to convict the defendant, before he will direct a judgment of acquittal.

My view, as of this moment, is that to dismiss this case would in appearance and in fact improperly "short circuit" this trial. I simply cannot say that the House Managers cannot prevail regardless of what witnesses might plausibly testify and regardless of what persuasive arguments might be offered either by the Managers or by Senators who support conviction. And when the history of this trial is written, I want it to be viewed as fair and comprehensive, not as having been shortened merely because the result seemed preordained.

As Senator COLLINS and I indicated in a letter to Senator BYRD on Saturday and in a unanimous consent request we offered on Monday, my preference would have been to divide the motion to dismiss and allow separate votes on the two articles of impeachment to more closely approximate the separate final votes on the two articles contemplated by the impeachment rules. It would have allowed the Senate to consider the strength of the evidence presented on the two separate articles and the possibility that one of the articles comes closer to the core meaning of high crimes and misdemeanors than the other.

I believe that many of my colleagues on the Republican side view the perjury article as less convincing than the obstruction article and might have voted to dismiss it had the opportunity to do that been made available. But we will never know. When a final vote is taken on the articles, and I now believe such votes will almost certainly occur, I hope that my colleagues who did not vote to dismiss the case today will carefully consider the two articles separately.

I want to be clear that my vote not to dismiss this case does not mean that I would vote to convict the President and remove him from office or that I am leaning in that direction. I have not reached a decision on that question. It is my inclination, however, to demand a very high standard of proof on this question. Because the House Managers have relied so heavily on the argument that the President has committed the federal crimes of perjury and obstruction of justice as the reason that his conduct rises to the level of high crimes and misdemeanors, they probably should be required to prove each element of those crimes beyond a reasonable doubt. That is the standard that juries in criminal proceedings must apply. In this case, where the "impeachability" question rests so much on a conclusion that the Presi-

dent's conduct was not only reprehensible but also criminal, I currently believe that standard is the most appropriate for a Senator to apply.

It is my view at this point that the House Managers' case has some serious problems, and I am not certain that it can be helped by further testimony from witnesses. But I believe it is possible that it can, and the Managers deserve the opportunity to take the depositions they have requested.

In voting against the motion to dismiss and to allow witnesses to be subpoenaed, I have not reached the important question of whether, even if the House Managers manage to prove their case beyond a reasonable doubt, the offenses charged would be "impeachable" and require the President to be removed from office. That is an important question that I decided should be addressed in the context of a final vote on the articles after the evidentiary record is complete. Therefore, I want to be clear that my vote against the motion does not mean I am leaning in favor of a final vote to convict the President. I am not.

But I have determined, after much thought, that we must continue to move forward and not truncate the proceeding at this point. I believe that it is appropriate for the House Managers, and if they so choose, the President's Counsel, to be able to depose and possibly to present the live testimony of at least a small number of witnesses. And I want to hear final arguments and deliberate with my colleagues before rendering a final verdict on the articles.

I reached my decision on witnesses for a number of reasons. First, although I recognize that this is not a typical, ordinary criminal trial, it is significant and in my mind persuasive that in almost all criminal trials witnesses are called by the prosecution in trying to prove its case. Because I have decided that the House Managers probably must be held to the highest standard of proof—beyond a reasonable doubt—I believe that they should have every reasonable opportunity to meet that standard and prove their case.

Furthermore, witnesses have been called every time in our history that the Senate has held an impeachment trial. (In two cases, the impeachment of Sen. Blount in 1797 and the impeachment of Judge English in 1926, articles of impeachment passed by the House were dismissed without a trial.) Now I recognize that an unusually exhaustive factual record has been assembled by the Independent Counsel, including numerous interviews with, and grand jury testimony from, key witnesses. That distinguishes this case from a number of past impeachments. But in at least the three judicial impeachments in the 1980s, the record of a full criminal trial (two resulting in conviction and one in acquittal) was available to the Senate and still witnesses testified.

In this case, the House Managers strenuously argued that witnesses

should be called. It would call the fairness of the process into question were we to deny the House Managers the opportunity to depose at least those witnesses that might shed light on the facts in a few key areas of disagreement in this case. I regard this as a close case in some respects, and the best course to follow is to allow both sides a fair opportunity to make the case they wish to make.

This does not mean that I support an unlimited number of witnesses or an unnecessarily extended trial. Furthermore, at this point, I am reserving judgment on the question of whether live testimony on the Senate floor should be permitted. I believe the Senate has the power, and should exercise the power, to assure that any witnesses called to deliver live testimony have evidence that is truly relevant to present.

In this regard, I think we should allow somewhat greater latitude to the President's counsel since he is the defendant in this proceeding. I am inclined to give a great deal of deference to requests by the President's counsel to conduct discovery and even call additional witnesses if they feel that is necessary. But at least with respect to the House Manager's case, while we must be fair in allowing them to depose the witnesses they say they need to prove their case, we need not allow them to broaden their case beyond the acts alleged in the articles or inordinately extend the trial with witnesses who cannot reasonably be expected to provide evidence relevant to our decision on those articles.

Finally, let me reiterate. My vote against the motion to dismiss should not be interpreted as a signal that I intend to vote to convict the President. Nor does it mean that I would not support a motion to adjourn or a motion to dismiss offered at some later stage of this trial, although I strongly prefer that this trial conclude with a final vote on the articles. It only means that I do not believe that dismissing the case at this moment is the appropriate course for the Senate to follow. ●

MOTION OF THE HOUSE MANAGERS FOR THE APPEARANCE OF WITNESSES AT DEPOSITIONS AND TO ADMIT EVIDENCE

● Mr. LEAHY. Mr. President, the House Managers want to conduct depositions of at least four people and their requests to admit affidavits could very well lead to the depositions of at least three others and, indeed, many more witnesses. The three people they expressly ask be subpoenaed are Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. All three have previously testified before the Starr grand jury and Ms. Lewinsky has been interviewed or testified at least 23 times on these matters over the last year.

The fourth deponent requested by the House Managers is none other than the President of the United States. Although they characterize their request

as a "petition" that the President be requested to appear, in their Memorandum, the House Republican Managers are less coy about their request. They note that "obtaining testimony from the witness named in the motion, and additionally from the President himself" is what they seek.

The House Manager's request is unprecedented in impeachments. The Senate has never formally requested or demanded that a respondent testify in his own impeachment trial. Should the President decide that he wants to speak to the Senate, that would be his choice. But I cannot support an effort that would have the Senate reject over 200 years of our jurisprudence and begin requiring an accused to prove his innocence.

The presumption of innocence is a core concept in our rule of law and should not be so cavalierly abandoned. The petition of the House Managers is a clever but destructive effort to stand this trial on its head. As a former prosecutor and trial attorney, I appreciate the temptation to turn the tables on an accused person to make up for a weak case, but the Senate should not condone it. The burden of proof is on the House to establish why the Senate should convict and remove from office the person the American people elected to serve as their President.

I commend President Clinton for focussing on his duties as President and on moving the country forward. That the Congress remains immersed in this impeachment trial is distraction enough from the functions of our federal government. We have heard hours of argument from the House Republican Managers and the response of the President's lawyers. Senator BYRD has, pursuant to our Unanimous Consent Resolution governing these proceedings, offered a motion to dismiss to bring this entire matter to conclusion. If, on the other hand, the majority in the Senate wishes to continue these proceedings, that is the majority's prerogative.

The House Managers apparently want to excuse the weaknesses in their case by blaming the Senate for not calling the President to the stand or the President for not volunteering to run the gauntlet of House Managers. Having had the House reject their proposed article of impeachment based on the President's deposition in the Jones case, the House Managers are left to pursue their shifting allegations of perjury before the grand jury. Their allegations of perjury have devolved to semantical differences and the choice of such words as "occasional" and "on certain occasions." Their view of perjury allows them to take a part of a statement out of context and say that it is actionable for not explicating all relevant facts and circumstances. They view perjury by a standard that would condemn most presentations, even some of their own presentations before the Senate.

In addition to their request that the President be deposed, the House Repub-

lican Managers also propose to include in this record affidavits and other materials apparently not part of the record provided by Mr. Starr or considered by the House. Ironically, in so doing, they have chosen to proceed by affidavit. They must know that by proffering the declaration of an attorney for Paula Jones about that case and the link between that now settled matter and the Starr investigation, they are necessarily opening this area to possible extensive discovery that could result in the depositions of additional witnesses, as well.

Does anyone think that the Senate record can fairly be limited to the proffered declaration of Mr. Holmes without giving the President an opportunity to depose him and other relevant witnesses after fair discovery? The links between the Jones case and the Starr investigation will be fair game for examination in the fullness of time if the Holmes declaration proffered by the House Managers is accepted.

The Holmes declaration is at variance with the House Managers' proffer. The declaration suggests that the Jones lawyers made a collective decision, whereas the House Managers suggest that the decision to subpoena Ms. Currie was Mr. Holmes' decision. Mr. Holmes declares that no Washington Post article played any part in his decisionmaking to subpoena Ms. Currie and that the "does not recall" any attorney in his firm saying anything about such an article "in the discussions in which we decided to subpoena Ms. Currie." This could lead to discovery from a number of Jones lawyers.

The Holmes declaration says that the Jones lawyers "had received what [they] considered to be reliable information that Ms. Currie was instrumental in facilitating Monica Lewinsky's meetings with Mr. Clinton and that Ms. Currie was central to the 'cover story' Mr. Clinton and Ms. Lewinsky had developed to use in the event their affair was discovered." That assertion was strongly omitted from the House Republican Managers' proffer. That assertion raises questions about what the Jones lawyers knew, when they knew it and whether there was any link to the Starr investigation. If the purpose of the declaration is to rebut the notion that Ms. Currie was subpoenaed because the Jones lawyers were following the activities of the Starr investigation, this declaration falls far short of the mark. It raises more questions that it resolves.

I am surprised to see a judicial clerk submit an affidavit in this case. The one thing that is clear from Mr. Ward's affidavit is that it does not support the conclusions drawn in the House Managers' proffer. Mr. Ward says only that President Clinton was looking directly at Mr. Bennett at one moment during the argument by the lawyers during the deposition. He does not aver, as the House Managers suggest he would competently testify, that "he saw Presi-

dent Clinton listening attentively to Mr. Bennett's remarks."

While the affidavit of Barry Ward cannot convert the President's silence into statements, it does provide one perspective on the President's deposition in the Jones case. Accepting that proffered evidence may, however, prompt the President's lawyers to want to examine other perspectives to give the Senate a more complete picture and a fairer opportunity to consider what was happening during the discussions among Judge Wright and the lawyers. For that purpose, is the Senate next going to authorize the deposition of Judge Wright and the other lawyers who attended the deposition? The circumstances under which Mr. Ward came to take such an affidavit and what he knows about the variety of issues mentioned in the House Managers' proffer on this item will undoubtedly be fair subjects of discovery by the President's lawyers if this is admitted.

The House Managers characterized documents as certain telephone records and the participants in various telephone calls whose identities are not revealed by the records. Indeed, those proffered documents are without authentication. The House Republican Managers' brief goes even farther, suggesting that the telephone records will prove what happened at the White House gate on December 6, and asserting the identity of those who participated in telephone calls and the content of those telephone calls and concluding that they prove meetings and conversations that were not even by telephone. The documents appear to be a series of numbers. Giving them content and context will require more than mere authentication and any such testimonial explanation can be expected to engender further discovery, as well.

Now let me turn to the witnesses that the House Managers have identified by name and for which they are expressly seeking subpoenas at the outset of this discovery period. I understand that under Senate Resolution 16 Senator must vote for or against the entire package of witnesses and discovery requested by the House.

The House Republican Managers have already interviewed Monica Lewinsky after Mr. Starr arranged for that interview and had her ordered to comply. In light of the circumstances under which she has already been forced to cooperate with the House Republican Managers, any doubt as to the coercion being exercised through her immunity agreement could not be more starkly seen. I seriously question Ms. Lewinsky's freedom to express herself in the present circumstances and suggest that her immunity situation will inevitably affect the credibility of anything that she might "add" to the House's case. Mr. Starr has the equivalent of a loaded gun to her head, along with her mother's and her father's.

Consider also the report in The Washington Post on Tuesday that Mr. Starr

tore up her immunity agreement once before when she tried to clarify her February 1998 proffer to note that she and the President had talked about using a "cover story" before she was ever subpoenaed as a witness in the Jones case, not after. That is now a key point of the House Managers' proffer but it points now in the other direction by suggesting that she is now willing to testify that the President "instructed" her to invoke cover stories if questioned in connection with the Jones case. Would not such a shift in testimony necessarily lead to discovery into the impact of the immunity agreement on her testimony and the many twists and turns in the 7-month negotiation between Mr. Starr and Ms. Lewinsky's attorneys and the pressures exerted upon her over the last six months?

Moreover, press accounts of the celebrated interview of Ms. Lewinsky by the House Managers last weekend suggest that she may also have said things during that interview that were favorable to the President. The President's counsel are now in the untenable position of having to oppose the House Managers' motion without specific knowledge of any exculpatory information that Ms. Lewinsky may have provided that would weigh against the need to call her as a witness. That is unfair and contrary to basic precepts of our law. The House Managers created this circumstance and should not benefit from it.

The House Managers also insist that they must open discovery to take the deposition of Vernon Jordan. Mr. Jordan has been interviewed or testified under oath before Starr's grand jury at least five times already. The House Managers' proffer is merely that they expect that his live testimony will lead to reasonable and logical inferences that might help their case and somehow link the job search to discouraging her testimony in the Jones case. That is not a proffer of anything new but an attempt to take another shot at eliciting testimony that Mr. Starr could not.

The House Managers also insist that the Senate must depose Sidney Blumenthal. Mr. Blumenthal also testified before the Starr grand jury. The House Managers' proffer notes nothing new that he would be expected to provide.

If the President has been willing to forego the opportunity to cross examine the witnesses whose grand jury testimony has been relied upon by the House Managers, that removes the most pressing need for further discovery in this matter. After all, Ms. Lewinsky and Mr. Jordan, and to a lesser extent, Mr. Blumenthal, were interviewed for days and weeks by the FBI, trained investigators, Mr. Starr's lawyers and then testified, some repeatedly, before the Starr grand jury. That is about as one-sided as discovery gets—no cross examination, no opportunity to compare early statements

with the way things are reconfigured and re-expressed after numerous preparation sessions with Mr. Starr's office.

These witnesses testified under threat of prosecution by Mr. Starr. Ms. Lewinsky remains under a very clear threat of prosecution, even though she has a limited grant of immunity from Starr. This special prosecutor has shown every willingness to threaten and prosecute.

If the President has not initiated efforts to obtain more discovery and witnesses and is willing to have the matter decided on the voluminous record submitted to the House, the House Managers carry a heavy burden to justify extending these proceedings further and requiring the reexamination of people who have already testified.

I heard over and over from the House Managers that there is no doubt, that the record established before the House and introduced into this Senate proceeding convinced the House to vote for articles of impeachment to require the removal of the President from office last month. The House Managers have told us that they have done a magnificent job and established their case.

Based on the House Managers' Motion and their proffer in justification, I do not believe that they have justified extending these proceedings into the future through additional depositions and additional evidence. Can anyone confidently predict how many witnesses will be needed to sort through the evidentiary supplement that the House proffers and the issues that it raises? Can anyone confidently predict how long that discovery will take and how long this trial will be extended? And for what? What is the significant and ultimate materiality to the fundamental issues being contested at this trial of the materials the House is moving now to include in the record? Although the House Managers can say that they only sought to depose three witnesses, does anyone think that in fairness the President's lawyers and the House Managers together will not end up deposing at least 10 people if the Senate were to grant the House motion?

The Senate should not extend these proceedings by a single day. The Senate runs a grave risk of being drawn down into the mire that stained the House impeachment proceedings. Republicans and Democrats have all told me that they do not believe that there is any possibility that this trial will end in the conviction of the President and his removal. In that light, the Senate should have proceeded to conclude this matter rather than extend it. ●

MOTION TO DISMISS THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON

● Mr. LEAHY. Mr. President, this Senate is the last of the 20th century. We begin this first session of the 106th

Congress facing a challenge that no other Senate in over 100 years has been called upon to meet; namely, whether to remove from office the person the American people elected to serve as the President of the United States.

What we do in this impeachment of the President, in terms of the standards we apply and the judgments we make, will either follow the Constitution or alter the intent of the Framers for all time. I have heard more than one Senator acknowledge that in that sense it is not just the President but also the Senate that is on trial in this matter.

The Senate now has an opportunity, as provided in S. Res. 16, to vote on a motion to conclude these proceedings by adopting Senator BYRD'S motion to dismiss. I commend Senator BYRD and agree with him that such action is both appropriate and in the best interests of the nation. I do not believe that the House Managers have proven a case for conviction and removal of the President on the Articles of Impeachment sent by the House last year. I further suggest that those articles are improperly vague and duplicitous.

THE PRESIDENT'S CONDUCT

We can all agree that the President's conduct with a young woman in the White House was inexcusable. It was deeply disappointing, especially to those who know the President and who support the many good things he has done for this country. His conduct in trying to keep his illicit relationship secret from his wife and family, his friends and associates, and from the glare of a politically-charged lawsuit and from the American public, though understandable on a human level, has had terrible consequences for him personally and for the legacy of his presidency.

Last week Senator Bumpers reminded us of the human costs that have been paid by this President and his family. The underlying lawsuit has now been settled and a financial settlement of \$850,000 has been paid on a case that the District Court judge had dismissed for failing to state a claim. The President has admitted terribly embarrassing personal conduct before a Federal grand jury, has seen a videotape of that grand jury testimony broadcast to the entire nation and had excerpts replayed over and over, again. Articles of Impeachment were reported by the House of Representatives against a President for only the second time in our history.

The question before the Senate is not whether William Jefferson Clinton has suffered, for surely he has as a result of his conduct. The question is not even whether William Jefferson Clinton should be punished and sent to jail on a criminal charge, for the Constitution does not confer that authority on this court of impeachment. The question, as framed by the House, is whether his conduct violated federal criminal laws and, if he did, whether those crimes constitute "other high crimes and misdemeanors" warranting his removal