

both sides, one from Senator DURBIN and the other from Senator LEAHY.

The clerk will report.

The legislative clerk read as follows:

Senator Durbin's question to both sides: What is the standard of proof for the movant or petitioner in impeachment proceedings such as the extant case?

The PRESIDENT pro tempore. Do you wish to respond, Mr. Turley?

Mr. TURLEY. Senator DURBIN, the standard which we will be addressing when we get to the merits of the case has been subject to considerable historical debate. I will give what I believe is the weight of that historical record.

It is true that the Constitution does not enunciate a specific standard in terms of a burden of proof. We do not agree with the House that they refer to high crimes and misdemeanors as a standard. That is not a standard of proof; that is the definition of a removable offense. There is a difference.

So what we would suggest is that the Senate can look at a known standard, such as beyond a reasonable doubt. Beyond a reasonable doubt, of course, is the standard for a criminal case. The Constitution is written in criminal terms of high crimes and misdemeanors. That is one of the reasons why historically you have had these articles crafted closely to the Criminal Code. In fact, many impeachments actually took directly from a prior indictment and made the indictable counts the Articles of Impeachment.

The House has argued that standard is not necessary and too high. Well, we would submit to you—and we will certainly argue this when we get to the merits—that in the House recently, when they held a Member up for censure, they had a clear and convincing standard, that you must at least be satisfied with clear and convincing evidence. In my view, as an academic, it must be somewhere between clear and convincing and beyond a reasonable doubt.

What is more clear, Senator, is what it is not; that is, if you read the impeachment clauses, the clear message is that you can't just take facts that are in equipoise—allegations supported by one witness and denied by another—and just choose between them; that the facts have to, in your mind, go beyond a simple disagreement and be established, in our view, at a minimum by clear and convincing evidence.

The PRESIDENT pro tempore. Representative SCHIFF.

Mr. Manager SCHIFF. Mr. President, Senators, the Senate has considered and rejected the adoption of any particular standard, such as beyond a reasonable doubt. What the Senate has determined in the past in these cases is that, essentially, each Senator must decide for themselves, are they sufficiently satisfied that the House has met its burden of proof, are they convinced of the truthfulness of the allegations and that they rise to a level of high crimes and misdemeanors.

It is a decision where—and we can get into precise language the Senate

has used in the past, but the Presiding Officer has instructed each Senator to look to their own conscience, to look to their own conviction, to be assured they believe that the judge in this case has committed the acts the House has alleged. So it is an individual determination, and the Senate has always rejected adopting a specific Criminal Code-based standard, such as beyond a reasonable doubt or a civil standard of convincing or clear and convincing proof because it is an individual Senator's decision.

It also reflects the fact that, as the Framers articulated, this is a political process—not political in the partisan sense but political in that it is not a criminal process. It is not going to deprive someone of their liberty. What it is designed to do is to protect the institution.

So I think the question for each Senator is, Has the House sufficiently proved the case that, in the view of each Senator, to protect the institution, there must be a removal from office? So it is an individual determination.

The PRESIDENT pro tempore. Thank you very much.

And now will the clerk read the question from Senator LEAHY.

The assistant legislative clerk read as follows:

Senator Leahy's question to both sides: The Senate Judiciary Committee requires a sworn statement as part of a detailed questionnaire by a nominee. Until this questionnaire is filed, neither the Judiciary Committee nor the Senate votes to advise and consent to the nomination. Would not perjury on that questionnaire during the confirmation process be an impeachable offense?

The PRESIDENT pro tempore. Professor Turley.

Mr. TURLEY. Thank you, Mr. President. Thank you, Senator LEAHY.

In my view, yes, that is if you commit perjury in the course of confirmation, that would be basis for removal. In fact, I believe Mr. SCHIFF made reference to perjurious statements by Judge Porteous. We will be addressing that because that is not charged.

What would have to be done is the House would have to accuse someone of perjury as in the Hastings case and have perjurious statements, and then I could stand here and tell you why there is no intent to commit perjury or why the statements were, in fact, true.

While Mr. SCHIFF referred to perjury, once again, perjury is not one of the Articles of Impeachment. And what I would caution—even though it can be, I would again caution this should not be an ad hoc process by which you can graft on actual criminal claims by implying them in language issued by the House.

The PRESIDENT pro tempore. Congressman SCHIFF.

Mr. Manager SCHIFF. Thank you, Mr. President, Senators. This essentially is what article IV is about which charges Judge Porteous with making false statements to the FBI and to the Senate during his confirmation proc-

ess, and the answer is yes, absolutely. But I think what is very telling here is that counsel has conceded that, yes, if someone perjures themselves in the confirmation process they can and should be impeached but by definition that is conduct which has occurred prior to their assumption of Federal office. If someone can never be impeached on the basis of prior conduct, his answer should have been no, but plainly counsel recognizes there are circumstances where impeachment is not only appropriate but inevitable and essential. And where someone lies to get the very office that they are confirmed to, to deprive him of that office, to deprive him of the ill-gotten gain of that deception I think is not only constitutional but essential to uphold the office as well as to uphold the confirmation process itself.

The PRESIDENT pro tempore. Thank you very much. That concludes the argument on the motions.

#### MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to legislative session for a period of morning business with the Senator from Florida, Mr. LEMIEUX, recognized to speak therein for up to 15 minutes.

Senator LEMIEUX.

The PRESIDING OFFICER (Mrs. HAGAN). The Senator from Tennessee.

Mr. CORKER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LEMIEUX. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### FAREWELL TO THE SENATE

Mr. LEMIEUX. Madam President, I rise to pay tribute to the body with which I have had the privilege of serving for the past 15 months. Being a U.S. Senator, representing 18½ million Floridians, has been the privilege of my lifetime, and now that privilege is coming to an end. As I stand on the floor of the Senate to address my colleagues this one last time, I am both humbled and grateful, humbled by this tremendous institution, by its work, and by the statesmen I have had the opportunity to serve with, who I knew only from afar but now am grateful that I can call those same men and women my colleagues.

No endeavor worth doing is done alone. And my time here is no exception. In the past 16 months, I have asked the folks who worked with me to try to get 6 years of service out of that time, and they have worked tirelessly to achieve that goal.