The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

MEASURE READ FOR THE FIRST TIME—S. 42

Mrs. HUTCHISON. Mr. President, I understand that S. 42 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The bill clerk read as follows:

A bill (S. 42) to amend title X of the Public Health Service Act to permit family planning projects to offer adoption services.

Mrs. HUTCHISON. Mr. President, I now ask for its second reading, and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

MEASURE READ FOR THE FIRST TIME—S. 43

Mrs. HUTCHISON. Mr. President, I understand that S. 43 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The bill clerk read as follows:

A bill (S. 43) to prohibit the provision of Federal funds to any State or local educational agency that denies or prevents participation in constitutional prayer in schools.

Mrs. HUTCHISON. Mr. President, I now ask for its second reading, and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

MEASURE READ FOR THE FIRST TIME—S. 44

Mrs. HUTCHISON. Mr. President, I understand that S. 44 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The bill clerk read as follows:

A bill (S. 44) to amend the Gun-Free Schools Act of 1994 to require a local educational agency that receives funds under the Elementary and Secondary Education Act of 1965 to expel a student determined to be in possession of an illegal drug, or illegal drug paraphernalia, on school property, in addition to expelling a student determined to be in possession of a gun, and for other purposes.

Mrs. HUTCHISON. Mr. President, I now ask for its second reading, and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

MEASURE READ FOR THE FIRST TIME—S. 45

Mrs. HUTCHISON. Mr. President, I understand that S. 45 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The bill clerk read as follows:

A bill (S. 45) to prohibit the executive branch of the Federal Government from establishing an additional class of individuals that is protected against discrimination in Federal employment, and for other purposes.

Mrs. HUTCHISON. Mr. President, I now ask for its second reading, and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

MEASURE READ FOR THE FIRST TIME—S. 46

Mrs. HUTCHISON. Mr. President, I understand that S. 46 is at the desk, and I ask for its first reading.

The PRESIDING OFFICER. The clerk will read the bill for the first time.

The bill clerk read as follows:

A bill (S. 46) to amend the Civil Rights Act of 1964 to make preferential treatment an unlawful employment practice, and for other purposes.

Mrs. HUTCHISON. Mr. President, I now ask for its second reading, and I object to my own request.

The PRESIDING OFFICER. The objection is heard.

The bill will be read the second time on the next legislative day.

ORDERS FOR WEDNESDAY, JANUARY 20, 1999

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that when the Senate complete its business today it stand in adjournment until the hour of 11 a.m. on Wednesday, January 20. I further ask that immediately following the prayer, the Journal of proceedings be approved to date, the morning hour be deemed to have expired, the time for the two leaders be reserved, and there then be a period of morning business until the hour of 1 p.m. I further ask consent that at 1 p.m. the Senate resume consideration of the articles of impeachment. I now ask unanimous consent that the time during morning business be divided as follows: The first hour under the control of Senator DASCHLE or designee; the second hour under the control of Senator COVERDELL or designee.

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

ORDERS FOR THURSDAY, JANUARY 21, AND FRIDAY, JANUARY 22, 1999

Mrs. HUTCHISON. I further ask consent that following the conclusion of the presentation on Wednesday, the Senate adjourn until the hour of 1 o'clock on Thursday to resume consideration of the articles of impeachment. I also ask consent that following the presentation on Thursday, the Senate then adjourn until the hour of 1 p.m. on Friday and again immediately resume consideration of the articles of impeachment.

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

RECESS UNTIL 1 P.M. TODAY

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

There being no objection, at 11:46 a.m., the Senate, in legislative session, recessed to reconvene sitting as a Court of Impeachment, at 1 p.m.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Sergeant at Arms will make the 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 CHIEF JUSTICE. The majority leader is recognized.

Mr. LOTT. Mr. Chief Justice, it is my understanding that the White House presentation today will last approximately 2½ hours—maybe a little more, maybe a little less. I therefore suggest that a short recess be taken in approximately an hour, around 2 o'clock, to allow the Chief Justice and all Members to have a brief break.

I remind all Senators to remain standing at their desk each time the Chief Justice enters or departs the Chamber. If there is a need for another break, I will keep an eye on the White House counsel to see if they need a break, and we will act accordingly.

Of course, I remind Senators again, tonight please be in the Chamber at 8:35 so we can proceed to the joint session.

I thank my colleagues and yield the floor. I believe we are ready to begin.

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 counsel for the President have 24 hours to make the presentation of their case. The Senate will now hear you. The Chair recognizes Mr. Counsel Ruff to begin the presentation of the case for the President.

Mr. Counsel RUFF. Mr. Chief Justice, Members of the Senate, distinguished managers, William Jefferson Clinton is not guilty of the charges that have been preferred against him. He did not commit perjury; he did not obstruct justice; he must not be removed from office.

Now, merely to say those words brings into sharp relief that I and my colleagues are here today in this great Chamber defending the President of the United States. For only the second time in our Nation's history, the Senate has convened to try the President of the United States on articles of impeachment.

There is no one who does not feel the weight of this moment. Nonetheless, our role as lawyers is as much as it would be in any other forum. We will not be able to match the eloquence of the 13 managers who spoke to you last week. We will try, however, to respond to the charges leveled against the President as directly and candidly as possible, and to present his defense as clearly and as cogently as we are able. We seek on his behalf no more than we know you will give us—a fair opportunity to be heard, a fair assessment of the facts and the law, and a fair judgment. We will defend the President on the facts and on the law and on the constitutional principles that must guide your deliberations. Some have suggested that we fear to do so. We do not.

I begin with a recitation of some of the events that have brought us here today. Although many of them may be familiar, they merit some discussion because they form the backdrop against which you must assess the evidence.

I will then move to a discussion of the constitutional principles that, we submit, should guide your consideration of these matters and, finally, to an overview of the allegations contained in the articles, with a view toward focusing your attention on what we believe to be the principal legal and factual flaws in the case presented by the managers.

My colleagues will follow tomorrow and the following day with a more detailed analysis of the facts underlying the articles. At the end of our presentation, we will have demonstrated beyond any doubt that there is no basis on which the Senate can or should convict the President of any of the charges brought against him.

Let me begin with a brief recital of the essential events in the Paula Jones litigation which underlie so much of what we have been discussing for the last week.

On May 6, 1994, Paula Jones sued President Clinton in the U.S. District Court for the Eastern District of Arkansas. She claimed that then-Governor Clinton had made, in 1991, some unwelcomed overture to her in an Arkansas hotel room and that she suffered adverse employment consequences and was subsequently defamed.

After the Supreme Court decided in May 1997 that civil litigation against the President could go forward while he was in office, the case was remanded to the district court, and over the fall and winter of 1997, the Jones lawyers deposed numerous witnesses. And inevitably, despite the strict protective order entered by Judge Wright, and continuing exhortation to counsel not to discuss any aspect of the case with the press, information flowed from those depositions into the public forum clearly with only one purpose—to embarrass the President.

The principal focus of the discovery being conducted by the Jones lawyers during this period was not on the merits of their client's case. They devoted most of their time and their energy to attempt to pry into the personal life of the President. Mr. Bennett, the President's counsel, objected to those efforts on the grounds they had no relevance to Ms. Jones' claims and intended to do nothing other than to advance the agenda of those who were supporting the Jones lawsuit. The Jones lawyers, however, pursued their efforts to inquire into the President's relations with other women, and on December 11, 1997, Judge Wright issued an order allowing questioning regarding only ''any individuals with whom the President had sexual relations or proposed or sought to have sexual relations and who were during the relevant timeframe a State or Federal employee.''

Then on December 5, 1997, the Jones lawyers placed on their witness list the name of Monica Lewinsky. And on December 19, she was served with a subpoena for her deposition to be scheduled in January.

Consistent with rulings issued by Judge Wright in connection with the Jones lawyers' efforts to secure the testimony of a number of other women, some have sought to avoid testifying by submitting affidavits to the effect that they had no knowledge relevant to Ms. Jones' lawsuit, or that they otherwise do not meet the test that Judge Wright had established before permitting this invasive discovery to go forward.

On January 7, 1998, Ms. Lewinsky did execute such an affidavit, and her lawyer provided copies to the lawyers for Ms. Jones and for the President on January 15.

The Jones lawyers deposed the President on January 17, 1998. They began the deposition by proffering to him a multiparagraph definition of the term ''sexual relations'' that they intended to use in questioning him. There followed an extended debate among counsel and the court concerning the propriety and the clarity of that definition. Mr. Bennett objected to its use, arguing that it was unclear, that it would encompass conduct wholly irrelevant to the case, and that it was unfair to require the President to apply a definition that he had never seen before to each question he was asked. Indeed, Mr. Bennett urged the lawyers for Ms. Jones to ask the President specific questions about the conduct, but they declined to do so.

Judge Wright acknowledged the overbreadth of the definition, but she ultimately determined that the Jones lawyers could use the heavily edited version of the definition that left in place only the two lines of paragraph 1, of which you are already familiar. Immediately after the extended legal skirmishing, the Jones lawyers began asking him about Monica Lewinsky.

Mr. Bennett objected, questioning whether counsel had a legitimate basis for their inquiry in light of Ms. Lewinsky's affidavit denying a relationship with the President. Judge Wright overruled that objection and permitted the Jones lawyers to pursue their inquiry. Four days later, the independent counsel's investigation became a public matter.

On January 29, responding to a request by independent counsel to bar further inquiry related to Ms. Lewinsky, Judge Wright ruled that evidence relating to her relationship with the President would be excluded from the trial. She reaffirmed this ruling on March 9 stating that the evidence was not ''essential to the core issues in this case of whether the plaintiff herself was the victim of sexual harassment, hostile work environment, or intentional infliction of emotional distress.'' On April 1, 1998, Judge Wright—

I apologize for the logistical problem. Why don't I just hold it.

On April 1, 1998, Judge Wright granted summary judgment in favor of President Clinton dismissing the Jones suit in its entirety. She ruled that no evidence that Ms. Jones had offered or that her lawyers had discovered made out any viable claim of sexual harassment or intentional infliction of emotional distress. Importantly, Judge Wright ruled that evidence of any pattern or practice of comparable conduct by the President was not important to the case.

I want to take just a moment to read the relevant portions of Judge Wright's opinion, not to demean in any sense plaintiff's claims of sexual harassment or to suggest that it must be other than vigilant to protect the rights of all citizens, but simply to bring into slightly sharper focus the role that the President's deposition played in the real Jones litigation. Judge Wright wrote:

Whatever relevance such evidence may have to prove other elements of plaintiff's case, it does not have anything to do with the issue presented by the President's and Ferguson's motions for summary judgment—i.e. whether plaintiff herself was the victim of alleged quid pro quo or a hostile work environment or sexual harassment; whether the President and Ferguson conspired to deprive her of her civil rights or whether she suffered emotional distress so severe in nature that no reasonable person could be expected to endure it. Whether other women may have been subjected to workplace harassment and whether such evidence has allegedly been suppressed does not change the fact that plaintiff has failed to demonstrate

that she has a case worthy of submitting to a jury.

Ms. Jones appealed Judge Wright's decision to the Eighth Circuit. She heard arguments on October 20, 1998, and on November 13, 1998, before the decision was rendered, Ms. Jones and the President settled the case.

Briefly then, to what was happening on the front of the independent counsel's office, in mid-January 1998, Linda Tripp had brought to the independent counsel information that she had been gathering surreptitiously for months about Ms. Lewinsky's relationship with the President and her involvement in the Jones case. And thus, began the penultimate chapter.

As you will see, Ms. Tripp's relationship with Ms. Lewinsky and her role in these matters was more than merely a backdrop to the succeeding events. Independent counsel met with Ms. Tripp and formally granted her immunity from Federal prosecution and promised to assist her in securing immunity from State prosecution where she had been illegally taping the telephone calls with Ms. Lewinsky. On January 13, Ms. Tripp agreed to tape a conversation with Ms. Lewinsky under FBI auspices. And on January 15, armed with that tape, the independent counsel's office first contacted the Department of Justice to seek permission from the Attorney General to expand its jurisdiction to cover the investigation that had already begun. On January 16, that permission was granted by the special division of the court of appeals.

Now, the President's deposition was scheduled to take place the very next day—Saturday, January 17. On the 16th, Ms. Tripp invited Ms. Lewinsky to have lunch with her at the Pentagon City Mall. There she was greeted by four FBI agents and independent counsel lawyers and taken to a hotel room where she spent the next several hours. Ms. Tripp was in the room next door for much of that time. When she left that evening, she went home to meet with the Jones lawyers with whom we know she had been in contact for many months in order to brief them about her knowledge of the relationship between Ms. Lewinsky and the President so that they, in turn, could question the President the next morning.

As the independent counsel himself has acknowledged, Ms. Tripp was able to play this oddly multifaceted role. Because it was part of her immunity agreement, the OIC could have prevented her from talking about Ms. Lewinsky. They inexplicably chose not to.

The existence of the OIC investigation was made public on January 21 in an edition of the Washington Post with the all-consuming focus of media coverage for the ensuing 8 months.

On August 17, the President's deposition was taken by the independent counsel for use by the grand jury, and on September 9, there was delivered to the House of Representatives a referral of Independent Counsel Starr containing what purported to be the information concerning acts ''that may constitute grounds for impeachment.'' The referral was accompanied by some 19 boxes of documents, grand jury transcripts, and a videotape of the grand jury testimony.

The referral was made public by the House on September 11. On September 21, additional materials were released, along with the President's grand jury videotape that was then played virtually nonstop on every television station in the country during that day.

The committee held a total of 4 days of hearings, one for preliminary presentations by the majority and minority counsel, one for testimony by Independent Counsel Starr, and two in which the President was permitted to call witnesses and present his defense.

In addition, the constitutional subcommittee held the one hearing on the standards for impeachment, and the committee convened in its oversight capacity to hear witnesses on the meaning of perjury. The committee called no fact witnesses.

Despite numerous efforts to extract from the committee some description of the specific charges against which the President would have to defend himself, it was not until approximately 4:30 on December 9, as I was completing my testimony before the committee, that any such notice was provided, and then it came in the form of four draft articles of impeachment.

Three days later, the committee reported out those articles, and on December 9 the House completed its action, referring to the Senate article I, the charge of perjury in the grand jury; defeated article II, which alleged perjury in the Jones deposition; exhibited article III, which charged obstruction of justice; and defeating article IV, which alleged false statements to the House of Representatives.

And so we are here. But before moving on, let me pause on an important procedural point. Although the Senate has asked that the parties address the issue of witnesses only after these presentations are being completed, the managers spent much of their time last week explaining to you why, if only witnesses could be called, you would be able to resolve all of the supposed conflicts in the evidence. Tell me, then, how is it that the managers can be so certain of the strength of their case? They didn't hear any of these witnesses. The only witness they called, the independent counsel himself, acknowledged that he had not even met any of the witnesses who testified before the grand jury. Yet, they appeared before you to tell you that they are convinced of the President's guilt and that they are prepared to demand his removal from office.

Well, the managers would have you believe that the Judiciary Committee of the House were really nothing more than grand jurors, serving as some routine screening device to sort out impeachment chaff from impeachment wheat. Thus, as they would have it, there was no need for anything more than a review of the cold record prepared by the independent counsel; no need for them to make judgments about credibility or conflicts. Indeed, they offered you a short lesson in grand jury practice, telling you that U.S. attorneys do this thing all the time, that calling real, live witnesses before a grand jury is the exception to the rule. Well, it has been a few years since I served as U.S. attorney for the District of Columbia, so there may have been a change in the way prosecutors go about their business, but I don't think so.

And so what lesson can be learned from the process followed by the House? I suggest that what you have before you is not the product of the Judiciary Committee's well-considered, judicious assessment of their constitutional role. No, what you have before you is the product of nothing more than a rush to judgment.

And so how should you respond to the managers' belated plea that more is needed to do justice? You should reject it. You have before you all that you need to reach this conclusion: There was no basis for the House to impeach, and there is no, and never will be any, basis for the Senate to convict.

Now, the managers have not shown, and could not on this record or any record prove, that the President committed any of the offenses committed in any of the articles. But even if they could, these offenses would not warrant your deciding to remove the President from office.

In this regard, an impeachment trial is unlike any other. You are the judges of the law and the facts and the appropriate sanctions. Before casting a vote of guilty or not guilty, you must decide not only whether the President committed the acts with which he is charged but whether those acts so seriously undermined the integrity of our governmental structure that he must be removed from office.

I want to deal here for just a moment with an argument that was advanced in the press by one of the managers, and that is that the question whether the offenses described in the articles are impeachable is not really before you, that it has already been decided by the House. As the manager put it in a press interview, ''Are these impeachable offenses, which I think has already been resolved by the House? I think constitutionally that's our job to do.''

Now, I trust, in light of last week's extended discussion, that the managers no longer press that notion, for it was remarkable in at least three respects. First, it is entirely inconsistent with the ''don't worry about it; this is just a routine procedural process; leave the difficult decisions to the Senate'' argument so frequently heard during the proceedings in the House. Second, it is an argument that rings hollow coming from those who did not even debate the

constitutional standards or seek any consensus on what those standards should be. And third, and most importantly, it arrogates to the House the critical constitutional judgment which is yours alone.

Far be it for me, or indeed anyone else, to instruct this body on its constitutional role, but I do think it would help us all to be reminded of the words of Alexander Hamilton in Federalist No. 65, because impeachment necessarily deals with injuries done immediately to society. Alexander Hamilton wrote:

> The prosecution of them for this reason will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused. In many cases it will connect itself with the preexisting factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other; and in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt.
>
> The delicacy and magnitude of a trust which so deeply concerns the political reputation and existence of every man engaged in the administration of public affairs speak for themselves. The difficulty of placing it rightfully in a government resting entirely on the basis of periodical elections will as readily be perceived, when it is considered that the most conspicuous characters in it will, from that circumstance, be too often the leaders or the tools of the most cunning or the most numerous faction, and on this account can hardly be expected to possess the requisite neutrality towards those whose conduct may be the subject of scrutiny.

And then:

> The convention, it appears, thought the Senate the most fit depositary of this important trust.

Now, the President may be removed from office only upon impeachment for and conviction of treason, bribery or other high crimes and misdemeanors. The offenses charged here, even if supported by the evidence, do not meet that lofty standard, a standard that the framers intentionally set at this extraordinarily high level to ensure that only the most serious offenses and in particular those that subverted our system of government would justify overturning a popular election. Impeachment is not a remedy for private wrongs. It is a method of moving someone whose continued presence in office would cause grave danger to the Nation. Listen to the words of 10 Republican Members of the 1974 Judiciary Committee, one of whom now sits in this body.

After President Nixon's resignation, in an effort to articulate a measured and a careful assessment of the issues they had confronted, they reviewed the historical origins of the impeachment clause and wrote:

> It is our judgment, based upon this constitutional history, that the framers of the United States Constitution intended that the President should be removable by the legislative branch only for serious misconduct, dangerous to the system of government established by the Constitution. Absent the element of danger to the State, we believe the delegates to the Federal convention of 1787, in providing that the President should serve for a fixed elective term rather than during good behavior or popularity, struck the balance in favor of stability in the executive branch.

Where did this lesson in constitutional history come from? It came directly from the words of the framers in 1787. Impeachment was no strange, arcane concept to them. It was familiar to them as part of English constitutional practice and was part of many State constitutions. It is therefore not surprising that whether to make provision for impeachment of the President became the focus of contention, especially in the context of concern whether in our new republican form of government the legislature ought to be entrusted with such a power. On this latter point, perhaps foretelling the notion that impeachment ought to be a matter of constitutional last resort, Benjamin Franklin noted that it at least had the merit of being a peaceful alternative to revolution.

Governor Morris, one of the principal moving forces behind the language that ultimately emerged from the convention, believed that provision for impeachment should be made but that the offenses must be limited and carefully defined. His concern was very clearly for the corrupt President who may be bribed by a greater interest to betray his trust, as he wrote, and ''no one ought to say that we ought to expose ourselves to the danger of seeing the first magistrate in foreign pay without being able to guard against it by displacing him.''

Drafts as they emerged from the convention moved through one that authorized impeachment for treason or bribery or corruption, and then the more limited treason or bribery, until the critical debate of December 8, 1787, when, pointing to their then-current example of the impeachment of Warren Hastings, George Mason moved to add the word ''maladministration'' to that definition. It was in the face of objections from James Madison and Morris, however, that this term was too vague and would be the equivalent to tenure during the pleasure of the Senate, that Mason withdraw his proposal and the convention then adopted the language ''other high crimes and misdemeanors against the State.'' As Morris put it, ''an election every 4 years will prevent maladministration.''

There is no question that the framers viewed this language as responsive to Morris' concerns that the impeachment be limited and well defined. To argue, then, as the managers do, that the phrase ''other crimes and misdemeanors'' was really meant to encompass a wide range of offenses that one might find in a compendium of English criminal law simply flies in the face of the clear intent of the framers who carefully chose their language, knew exactly what those words meant, and knew exactly what risks they intended to protect against.

Looking back on this drafting history, the 1974 minority report described the purpose of the framers in these words:

> They were concerned with preserving the Government from being overthrown by the treachery or corruption of one man.

Now, the managers have made fun of the notion that hundreds of distinguished scholars and historians expressed their opinion that the offenses with which the President has been charged are not high crimes or misdemeanors. Indeed they suggested—not too subtly—that they must have signed those letters because they were political supporters of the President. To quote them, ''You go out and obtain from your political allies and friends in the academic world—to sign a letter saying the offenses alleged in the articles of impeachment do not rise to the level of impeachable offenses.''

Well, as I understand the managers' position, it is that Garry Wills sold his intellectual soul because he is a political supporter of the President; Stephen Ambrose sold his political soul—his intellectual soul because he is a political supporter of the President; C. Vann Woodward sold his intellectual soul because he is a political supporter of the President.

Is it possible, instead, that distinguished scholars of all political persuasions thought it important to offer their professional opinion on a matter of the greatest historical and legal import, because they cared about our country? Because they cared that the constitutional process not be debased?

Perhaps, if the majority members of the full Judiciary Committee had paused for even a moment to consider these issues, if they had taken even a few hours to debate the question of what constitutional standards apply, one might now give greater credence to the belated constitutional exposition that they have offered here. Instead, perhaps the majority was convinced by their own rhetoric, by the oft-repeated mantra that impeachment is merely a preliminary step in the process and that the House need not be concerned with its weighty constitutional duty and saw little reason to explore the constitutional underpinning of that duty. Or perhaps they understood that a full and candid explanation would reveal that the proposed articles had no constitutional underpinning at all.

Now, the central premise of the managers' argument appears to be this: Perjury is an impeachable offense no matter the forum or the circumstances in which it is committed. Second, judges have recently been convicted and removed on the basis of articles charging that they committed perjury. The President committed perjury, therefore the President must be removed as well.

That premise is simple but wrong. The first leg on which it rests was removed by the House itself when it voted to defeat article II, alleging perjury in a civil deposition, and the

House thus rejected the committee's core argument that perjury in a civil deposition warrants impeachment as much as perjury in any other setting. As to the committee's view that the constitutional standard for impeachment requires that all perjury be treated alike; thus, the House concluded no, and properly so.

And as to the committee's view that it makes no difference whether perjury occurs in one forum or another, in a private or an official proceeding, again the House said no, and properly so.

What, then, of the managers' argument that the Senate's recent conviction of three judges requires a conviction on the articles before you today? Again, they simply have it wrong, both as a matter of Senate precedent and as a matter of constitutional analysis. They argue that because a judge is obliged to faithfully carry out the law just as the President is, each must be removed if he commits perjury or obstructs justice. Judges and Presidents, and one would presume, all other civil officers if you follow their argument to its logical conclusion, including Assistant Secretaries and others, must in their view be removed from office if the Senate finds that they committed either offense—removed without a second thought. But judges are different. Indeed, every civil officer other than the President of the United States is different. They are different because before deciding whether to impose the ultimate sanction of removal the Senate must weigh in the balance dramatically different considerations.

First, the answer to the ultimate impeachment question—that is, whether the conduct charged so undermines the official's capacity to perform his constitutional duties that removal is required despite the institutional trauma it may cause—must be very different for one of 900 or 1,000 judges with lifetime tenure who can only be removed by impeachment than it is for one person elected every 4 years by the people to serve as the head of the executive branch. Surely the managers recognize that the Senate here faces a far different question, a far different constitutional issue than it did, for example, when it asked whether Judge Nixon, convicted and imprisoned for perjury, should be permitted to retain his office; or whether Judge Hastings, who lied about taking a bribe to fix a case before him, should remain on the bench.

Indeed, a telling rejoinder to the House managers' argument comes from President Ford. On many occasions, we have all seen cited his statement in 1970, in connection with the proposal to impeach Associate Justice William O. Douglas, that impeachment is, in essence, whatever the majority of the House of Representatives considers it to be. But no one really notes the more important part of President Ford's statement 29 years ago. I am going to read it to you:

> I think it is fair to come to one conclusion, however, from our history of impeachments. A higher standard is expected of Federal judges than of any other civil officers of the United States. The President and the Vice President and all persons holding office at the pleasure can be thrown out of office by the voters at least every 4 years. To remove them in midterm—it has been tried only twice and never done—would, indeed, require crimes of the magnitude of treason and bribery.

The Senate must ask here whether the conduct charged against President Clinton would, in its nature, be inconsistent with a decision to allow him to continue to perform the duties of his office, just as you would ask, if you had a judge before you or another civil officer before you, whether the charges are similarly inconsistent with the notion that he or she should be allowed to continue to perform those duties.

As former House Judiciary Committee Chairman Peter Rodino, who surely understood the difference between impeaching a President and impeaching a judge, explained during the Claiborne proceedings before this body:

> The judges of our Federal courts occupy a unique position of trust and responsibility in our government. They are the only members of any branch that hold their office for life. They are purposely insulated from the immediate pressures and shifting currents of the body politic. But [he said] with the special prerogative of judicial independence comes a most exacting standard of public and private conduct.

A similar theme can be found running through the debate in very recent years over a proposal to establish a process other than impeachment for the removal of judges who fail to live up to the good behavior standard. Both the proponents of the proposal and the legal opinion offered in support of it emphasize that the standard to which judges must adhere is stricter than the impeachment standard, noting that ''the terms treason, bribery and other high crimes and misdemeanors are narrower than the malfeasance in office and failure to perform the duties of the office which may be grounds for forfeiture of office held during good behavior.''

Thus, whether weighing the constitutional or governmental implications of removal or asking whether the accused can be expected to perform his duties, the Senate has always recognized that the test will be different depending on the office that the accused holds.

This analysis is wholly consistent with the framers' intent in drafting the impeachment clause that removal of a President by the legislature must be an act of last resort when the political process can no longer protect the Nation. Nothing in the cases brought before the Senate in the last 210 years suggests a different result.

The managers also attribute to the President the argument that impeachment can never reach personal conduct. That is not our position. As I told the Judiciary Committee on December 9 when I testified before them, not all serious misconduct flowing from one of the President's official roles is impeachable; neither is all serious misconduct flowing from his personal conduct immune from impeachment. Judgments must be made and they must be based on the core principles that inform the framers' decision.

But the managers would, in effect, ask you to eschew making these judgments. They speak of perjury and obstruction of justice in general terms and they argue that they are offenses inimical to the system of justice.

No one here would dispute that simplistic proposition. But the managers will not walk with you down the difficult path. They will not speak of facts, of differing circumstances and differing societal interests. They will not because they do not appear to recognize that those questions must be asked.

Perhaps the one exception to this was in the very last moment of Chairman Hyde's closing when he suggested, with what might to many seem almost an inverted logic, that a lie to spare embarrassment about misconduct on a private occasion is more deserving of removal than a lie about, as he described it, important matters of state.

Although I submit that that conclusion might have struck the framers as somewhat odd, one can certainly conceive of acts arising out of personal conduct that would warrant conviction and removal, but you cannot ignore the circumstances in which the conduct occurs or abandon the core principle that impeachment should be reserved for those cases in which the President's very capacity to govern is called into question.

Perjury about some official act may indeed be a constitutionally acceptable basis for impeachment. Perjury about a purely private matter should, at the very least, lead this body to question whether, no matter how seriously we take the person's violation, for example, of the witness' oath, the drastic remedy of removal from office is the proper response. Indeed, in a sense, that is the message sent by the House when it defeated article II.

The principle that guides your deliberations, I suggest, must not only be faithful to the intent of the framers, it must be consistent with the governmental structure that they gave us and the delicate relationship between the legislative branch and the executive branch that is the hallmark of that structure. It must, above all, reflect the recognition that removal from office is an act of extraordinary proportions, to be taken only when no other response is adequate to preserve the integrity and viability of our democracy.

On this point—and here I will fend off the wrath or maybe the scorn of the managers by quoting not a scholar or a professor but, rather, a witness called by the majority members of the Judiciary Committee to testify as an expert on the issue of perjury, a witness who had served on the Judiciary Committee in 1974. Judge Charles Wiggins told the members of the committee this:

> When you are called upon, as I think you will be called upon, to vote as a Member of

the House of Representatives, your standard should be the public interest. And I confess to you [said Judge Wiggins] that I would recommend that you not vote to impeach the President.

Beyond the impression of what constitutes an impeachable offense, each Senator must also confront the question of what standard the evidence must meet to justify a vote of guilty.

We recognize that the Senate has chosen in the Claiborne proceedings, and elsewhere, not to impose on itself any single standard of proof, but rather to leave that judgment to the conscience of the individual Senator. Many of you were present for debate on that issue and chose a standard for yourselves. Many of you come to the issue afresh. And none of you, thankfully, has had to face the issue in the setting of a Presidential impeachment.

Now, we argued before the Judiciary Committee that it must treat a vote to impeach as a vote to remove and that that judgment ought not be based on anything less than a clear and convincing standard, a standard, indeed, adopted by the Watergate committee 25 years ago. And surely no lesser standard should be applied here. Indeed, we submit to you that given the gravity of the decision you must reach, each of you should go further and ask whether the House has established guilt beyond a reasonable doubt. And this submission is made even more compelling by the managers' own position in which they made clear to you last week that proof of criminal conduct, in their view, was required to justify conviction.

Now, lawyers and laymen too often, I think, treat the standard of proof as meaningless legal jargon, with no real application to the world of difficult decisions. But I suggest to you that it is much more than that. It is the guidepost that shows you the way through the labyrinth of conflicting evidence. It tells you to look within yourself and ask, Would I make the most important decisions of my life based on the level of certainty I have about these facts, and in the unique legal political setting of an impeachment setting that protects against partisan overreaching and it assures the public that a grave decision is being made with due care? It is the disciplining force I think that you will carry with you into your deliberations.

And let me say that even if the clear and convincing standard that you apply for judicial impeachments—it does not follow that it should be applied where the Presidency itself is at stake. With judges, the Senate must weigh and balance its concern for the independence of the judiciary against the recognition that, because a judge is appointed for life, impeachment is the only available method for removing from office those who are corrupt.

On the other hand, when a President is on trial, the balance is very different. Here you are asking, in effect, to overturn the will of the electorate, to overturn the results of an election held 2 years ago in which the American people selected the head of one of the three coordinate branches of Government.

Moreover, you have been asked to take this action in circumstances where, even taking the darkest view of the managers' position, there is no suggestion of corruption or misuse of office or any other conduct that places our system of Government at risk in the 2 remaining years of this President's term, when once again the people will get the chance to decide who should lead them. In this setting, we submit, you should test the evidence by the strictest standard you know.

I want to talk for a few minutes about what we see as the constitutional deficiency of the articles you have before you. When the framers took from English practice the parliamentary weapon of impeachment, they recognized that the form of the Government that they had created, with its finely tuned balance among the branches, was inconsistent with the parliamentary dominance inherent in the English model. They chose, therefore, to build a quasi-judicial impeachment process, one that had, admittedly, political overtones but that carried with it the basic principles of due process embodied in the Constitution they had written.

Among those principles is the sixth amendment's guarantee that the accused shall have the right to be informed of the nature and cause of the accusation against him. That right has been recognized to have special force in perjury cases, where it is the rule uniformly enforced by the courts that an indictment must inform the defendant specifically what false statement he is alleged to have made.

This is not some mere technicality; it is the law. It is the law because our courts have recognized that if a criminal charge is to be based on the words uttered by a fallible human being, he must be allowed to defend the truthfulness of the specific words he used and not be convicted on the basis merely of some prosecutor's summary or interpretation. This is not some legal nicety that the House of Representatives can ignore, as it has many other elements of due process. This is not an argument we raise with this body merely in passing as a lawyer's gambit. This is an important principle of our jurisprudence. And I suggest that it is one that this body must honor. There is not a court anywhere—from highest to lowest—that would hesitate, if they were confronted with an indictment written like these articles, to throw it out.

Indeed, if you want some evidence of how others have perceived this issue, look to the Hastings and Nixon cases, in both of which, the articles charging impeachment specifically stated the false statements that they were accused of having made.

Why, if the House understood the importance of specificity in those cases, did it not understand the, if anything, greater importance of telling the President of the United States what he was charged with? If you compare the closing argument of majority counsel and the majority report filed by the committee and the trial brief filed by the House and the presentation of the managers last week, you will begin to understand what has happened here.

I challenge any Member of the Senate—indeed, any manager —to identify the charges that the House authorized them to bring. Just to take one example, we do not know to a certainty that the House decided—or we do know with certainty that the House decided not to charge perjury in the civil deposition. Yet, to listen to the managers' presentation last week, one would be hard put to conclude that they understood that. They have, in essence, treated these articles as empty vessels, to be filled with some witch's brew of charges considered, charges considered and abandoned, and charges never considered at all.

Both article I and article II are constitutionally deficient for other reasons as well. In particular, each charge's multiple offenses is therefore void, in the criminal justice vernacular, for duplicity because in a criminal case, and here as well, lumping multiple offenses together in one charging document creates a risk that a verdict may be based not on a unanimous finding of guilt as to any particular charge but, instead, may be composed of multiple individual judgments. And that risk is in direct violation of the requirement of the Constitution that this body agree by a two-thirds majority before the President may be removed.

Now, the House responds to the President's concerns in this regard by arguing that, well, the amendment of Senate rule 23, which prohibits division of the articles, somehow addresses this concern and that our argument would undermine the Senate's own rules. But that is not so. Rule 23 was approved to permit the most judicious and effective handling of the questions presented to the Senate. It cannot be that the Senate, in passing that rule—and you know surely better than I—decided to purchase efficiency in impeachment proceedings at the price of violating the Constitution, the mandate to ensure a two-thirds vote for removal.

Now, 3 years after the revision of rule 23, in the trial of Judge Nixon, this very issue was presented. And Senator KOHL captured that problem. Although the first and second articles of impeachment alleged that Judge Nixon had committed specific violations of the perjury statute, the third article was a catchall, alleging that he made ''one or more'' of 14 different false statements. And I would note for you that that language, ''one or more,'' was identical to the language specifically inserted into article I at the request of Congressman ROGAN during the Judiciary Committee proceedings.

In addressing the propriety of such a charging device, Senator KOHL said,

''The managers should not be allowed to use a shotgun or blunderbuss. We should send a message to the House. Please do not bunch up your allegations. Charge each act of wrongdoing in a separate count. Such a change would clarify things and allow for a cleaner vote on guilt or innocence.''

Senator Dole, who surely knew something about Senate rules and precedent, certainly didn't think that rule 23 bound the result in that Nixon case. He first voted to dismiss article III and then later voted to acquit Judge Nixon because it was redundant, complex, and confusing. Thirty-three Senators joined Senator Dole in voting to dismiss the article, and a total of 40 voted to acquit when it came to a judgment of guilt or innocence.

Senators KOHL, BIDEN, and MURKOWSKI each spoke about the danger posed by this formulation. And I will look once more to Senator KOHL. This wording presents a variety of problems. First of all, it means that Judge Nixon can be convicted even if two-thirds of the Senate does not agree in which his political statements were false. The House is telling us that it is OK to convict Judge Nixon on article III even if we have different visions of what he did wrong. But that is not fair to Judge Nixon, to the Senate, or to the American people.

Those Senators were not acting in derogation of Senate Rules or precedents. They were acting in the spirit of fairness to the accused and in the very best tradition of American due process.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I believe that counsel has indicated he is ready to take a break, so I ask unanimous consent that we take a brief 15-minute recess.

There being no objection, at 2:02 p.m., the Senate recessed until 2:21 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 will continue now with a further statement from Counsel Ruff.

The CHIEF JUSTICE. The chair recognizes Mr. Counsel Ruff to continue his presentation.

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

My first question is: Is it working?

Thank you, very much. I apologize for the mechanical difficulties earlier. I could quickly go back over the first hour. [Laughter.]

I want now to move to an overview of the articles of impeachment themselves. As I said, as I came to the end of the first hour, these articles are constitutionally defective. They are also unsupported by the evidence. As we have noted, both articles are framed in the broadest generalities and pose multiple different defenses. Nothing contained in the Judiciary Committee's majority report, or in the trial brief, or in the presentation of the managers cure the constitutional infirmity that infects these articles. Nonetheless, in framing our defense, they provide the only way through this uncharted landscape.

We have divided our substantive response to the articles into three parts.

Tomorrow, Mr. Craig will address the charges in article I—that the President committed perjury before the grand jury.

Second, Ms. Mills will address those parts of article II that charge the President with obstructing justice by causing concealment of gifts he had given to Ms. Lewinsky, and that he engaged in witness tampering in his conversations with Ms. Currie.

Third, Mr. Kendall will address the remaining allegations of obstruction on Thursday, and then we will close by hearing from Senator Bumpers.

Before I move to an overview of the articles and the response that you will hear over the next couple of days, I want to suggest to you an approach to one of the most difficult questions that you face: How does one sitting in judgment on a case like this test the liability of what he or she hears in the proceedings? Let me offer one test.

Those of you who have practiced on one side or the other in the criminal justice system know that the system places a special responsibility on a prosecutor—a burden to be open, candid, and forthcoming in their arguments, and most importantly, in representing the facts so that when a prosecutor recites the facts he is not expected to ignore the unfavorable ones. He is expected to be open with judge and jury. Of course, he can make an argument as to why a particular fact is really not so important that he can neither conceal it nor misrepresent it. When you hear a prosecutor, or a team of prosecutors, misstate a fact or not tell you the whole story, you should wonder why. You should ask yourself whether the misstatement is an error, or whether it signals some underlying flaw in the prosecution's case, or some problem that they are trying to conceal. And you ought to be particularly skeptical when the fact that is concealed or isn't fully revealed is claimed by the prosecutors themselves to be crucial to their case.

We all sometimes speak with less than complete care, and we are justly criticized when we make mistakes. If I tell you something inadvertently that proves to be wrong, I expect to be held to account for that. And similarly, we must hold the managers accountable for their mistakes.

Last week, for example, you will recall that Mr. Manager SENSENBRENNER told you that during my coming before the Judiciary Committee, in his words,

> Charles Ruff was asked directly: Did the President lie during his sworn grand jury testimony? And Mr. Ruff could have answered that question directly. He did not, and his failure to do so speaks 1,000 words.

Just to be certain that the Record is straight, let me read to you from the transcript of that judiciary hearing.

> Representative SENSENBRENNER: The oath that witnesses take require them to tell the truth, the whole truth, and nothing but the truth. I seem to recall that there were a lot of people, myself included, when asked by the press what advice would we give to the President when he went to the grand jury, was to just tell the truth, the whole truth, and nothing but the truth.
>
> Mr. RUFF: He surely did.
>
> Representative SENSENBRENNER: Did he tell the truth, the whole truth, and nothing but the truth when he was in the grand jury?
>
> Mr. Ruff. He surely did.

I am certain that Mr. SENSENBRENNER would not intentionally mislead the Senate. But his error was one of inadvertence. But, in any event, now the Record is clear.

Of considerably more importance than this momentary lapse are the many substantive flaws that we will point out to you in the coming days—sometimes pure errors of fact, sometimes errors of interpretation, sometimes unfound speculation. My colleagues will deal with many of these flaws at greater length as they discuss the specific charges against the President. But I will give you some examples as I read appropriate points in my overview today, because I want you to have in mind throughout our presentation, and indeed throughout the rest of the proceedings, this one principle. Beware of it. Beware of the prosecutor who feels it necessary to deceive the court.

Let me begin with article I.

Our system of justice recognizes the difficulties inherent in testifying under oath, and it affords important protections for the witness who may be charged with perjury, and thus the Judiciary Committee's dissatisfaction with the President's answers because they thought they were narrow, or even hairsplitting, or in some sense reflect the dissatisfaction with the rules that have been applied for centuries in prosecuting this offense.

Further, it requires proof that a defendant knowingly made a false statement about a material fact. The defendant must have had a subjective intent to lie. The testimony that is provided as a result of confusion, mistake, faulty memory, or carelessness, or misunderstanding is not perjury. The mere fact that the recollection of two witnesses may differ does not mean that one is committing perjury. Common sense and the stringent requirements of the law dictate what law is required. As the Supreme Court has noted,

> Equally honest witnesses may well have different recollections of the same event, and thus, a conviction for perjury ought not to rest entirely upon an oath against an oath.

This is the rationale for the common practice of prosecutors to require significant corroborating evidence before they bring a perjury case. Indeed, the Department of Justice urges that its

prosecutors seek independent corroboration, either through witnesses or corroborating evidence of a quality to assure that a guilty verdict is really well founded.

This isn't merely the argument we make as we are acting for the President. The bipartisan and former Federal prosecutors from whom you will hear will testify that neither they nor any reasonable prosecutor could charge perjury based upon the facts in this case.

Tom Sullivan, former U.S. Attorney for the Northern District of Illinois, told the committee that the evidence set out would not be prosecuted as a criminal case by a responsible Federal prosecutor.

Richard Davis, a former colleague of mine on the Watergate special prosecution force, testified that no prosecutor would bring this case of perjury because the President acknowledged to the grand jury the existence of an improper relationship and argued with prosecutors questioning him that his acknowledged conduct was not a sexual relationship as he understood the definition of that term used in the Jones deposition. And that is where you need to begin your focus as you look at the charge that the President perjured himself in the grand jury in August of last year.

Any assessment of that testimony must begin with one immutable fact. He admitted that he had, in his words, inappropriate, intimate contact with Monica Lewinsky. No one who was present for that testimony, has read the transcript, or watched the videotape could come away believing anything other than that the President and Ms. Lewinsky engaged in sexual conduct. Indeed, even the prosecutors, who surely cannot be accused of being reluctant to find Presidential misconduct, contended not that the President had lied about the nature of his relationship but only about the details. Yet, the managers, in their eagerness to find misconduct where none had found it before, have searched every nook and cranny of the grand jury transcript and sent forward to you a shopping list of alleged misstatements, obviously in the hope that among them you will find one with which you disagree. But they hope in vain. The record simply will not support a finding that the President perjured himself before the grand jury.

Now, much of the questioning by the prosecutors and much of the grand jury testimony about which the House now complains so vociferously dealt with the President's efforts to explain why his answers in the Jones deposition, certainly not pretty, were, in his mind, truthful, albeit narrowly and artfully constructed.

We are not here to talk to you today about the President's testimony in the Jones deposition. We do seek to convince you that before the grand jury the President was open, candid, truthful.

Now, the managers begin by asking you to look at the prepared statement that the President offered at the very beginning of his grand jury appearance. Before the President actually began his testimony, his lawyer, Mr. Kendall, spoke to Mr. Starr and told him that at the first moment at which there was an inquiry concerning the detailed nature of the relationship with Ms. Lewinsky, he wished to make a prepared statement, and he was permitted to do so. That statement acknowledged the existence of an intimate relationship, but it did not discuss the specific physical details in what I think we will all understand to have been an effort to preserve the dignity of the office.

Now, the House has charged that this statement was somehow a ''premeditated effort to thwart the OIC's investigation.'' That is errant nonsense. Even independent counsel saw no such dark motive in this statement.

Now, first, the managers advance the baseless charge that the President intentionally placed the beginning of his relationship with Ms. Lewinsky in 1996 rather than 1995 as she testified. Interestingly, they don't even purport to offer any support for this charge other than Ms. Lewinsky's testimony, and they offer not even the somewhat odd explanation originally offered by the independent counsel to explain why the President, having admitted the very worst things a father and husband can conceivably admit, would have shifted the time by 3 months.

Next, the managers assert that the President's admission that he engaged in wrongful conduct ''on certain occasions'' was false because the President actually engaged in such conduct some 11 times, and they assert as well that when the President admitted he had occasional telephone conversations that included inappropriate discussions, that was false because they had actually had 17 such phone conversations.

Now, the President gave his best recollection of the frequency of those contacts. Ms. Lewinsky gave hers. Assuming that the majority is correct in its assumption that there were 11 or 17, can anyone imagine a trial in this court or in any other court in which the issue of whether ''certain occasions'' by definition could not mean 17 and ''occasionally'' could not refer to 11 would be the issue being litigated?

Even the independent counsel, again, who could, of course, have pressed the President for specific numbers had they thought it important, did not take issue with this testimony.

So, thus, the perjury charge in article I again comes down to the same allegations contained in the independent counsel's referral, that the President lied to the grand jury about two things—his subjective, his personal subjective understanding of the definition used in the Jones deposition and, second, he lied when he denied that he engaged in certain details of inappropriate conduct.

Now, to conclude that the President lied to the grand jury about his relationship with Ms. Lewinsky, you must determine—forgive me—that he touched certain parts of her body, but for proof you have only her oath against his oath.

Those among you who have been prosecutors or criminal defense lawyers know that perjury prosecutions, as rare as they are, would never be pursued under evidence available here. And those among you who could not bring that special experience at least bring your common sense and are equally able to assess the weakness of the case that would rest on such a foundation.

Common sense also is enough to tell you that there cannot be any basis for charging a witness with perjury on the ground that you disbelieve his testimony about his own subjective belief in a definition of a term used in a civil deposition. Not only is there no evidence to support such a charge here; it is difficult to contemplate what evidence the managers might hope to rely on to meet that burden.

Now, it is worth noting that Mr. Bennett, at the time of the deposition, pressed the Jones lawyers to ask the President specific questions about his conduct rather than rely on this confusing definition that they proffered. In fact, when the President was asked in the grand jury whether he would have answered those questions, he said, of course, if the judge had ruled them appropriate, he would have answered truthfully. But the Jones lawyers persisted in their somewhat strange cause, strange unless one asked whether, armed with Ms. Tripp's intelligence, they purposely sought in some fashion to present the independent counsel a record that would permit just the sort of dark interpretation both he and the managers have proffered.

I point you to one thing. If you seek evidence that the President took the definition he was given seriously, and he responded carefully to the questions put to him, even if they required the most embarrassing answers, one need only look to the painful admission that he did have relations with another woman and he testified to the grand jury the definition required that he make that admission. Here is what he said to the grand jurors:

> I read this carefully, and I thought about it. And I thought about what ''contact'' meant, and I thought about [other phrases] and I had to admit under this definition that I had actually had relations with Jennifer Flowers.

Now, undeterred in its search for some ground on which to base the charge that the President lied to the grand jury, article I abandons even the modest level of specificity found in the independent counsel's referral and advances the claim:

> The President gave perjurious, false and misleading testimony regarding prior statements of the same nature he made in his deposition.

There can be no stronger evidence of the constitutional deficiency of this article than this strangely amorphous charge as a deficiency that becomes even more obvious when you finally stumble across the theory on which the managers rely. To the extent one can determine what the Judiciary Committee had in mind when it drafted this clause, it appears that they intended to charge the President with perjury before the grand jury because he testified that he believed—believed—that he had, in his words, ''worked through the minefield of the Jones deposition without violating the law.'' And that they hoped to support that charge by reference to various allegedly false statements in his deposition as charged in article II. Unhappily for the managers, however, the House rejected article II and it is not before you in any form. Moreover, there is not a single suggestion in the committee debate—or, more importantly, in the House debate—that those voting to impeach the President believed that this one line that I have quoted to you from the President's grand jury testimony, somehow absorbed into article I his entire deposition testimony.

If there is to be any regard for constitutional process, the managers cannot be allowed to rely on what the Judiciary Committee thought were false statements encompassed in a rejected article II to flesh out the unconstitutionally nonspecific charges of article I. The House's vote on article II foreclosed that option for all time.

Now, article I next alleges that the President lied to the grand jury about the events surrounding certain statements made by Mr. Bennett during the Jones deposition. Specifically, the managers charge that the President was silent when Mr. Bennett characterized the Lewinsky affidavit as meaning there was no sex of any kind in any manner, shape, or form with President Clinton, and that the President then gave a false explanation to the grand jury when he testified that he wasn't really paying attention when his lawyer said that.

Now, as we noted earlier, Mr. Bennett argued to Judge Wright that, in light of Ms. Lewinsky's affidavit denying a relationship, the Jones lawyers had no good-faith basis for questioning the President about her. The President was not involved in the lengthy back and forth among the judge, the Jones lawyers, and Mr. Bennett. He said nothing. When he was asked in the grand jury about Mr. Bennett's statement, he said, ''I'm not even sure I paid much attention to what Mr. Bennett was saying.''

Now, the managers assert that this is false because the videotape shows that the President was in fact paying attention. But a fairer view of the videotape, I suggest to you, shows the President looking, indeed, in Mr. Bennett's direction, and in the direction of the judge, but giving no sign that he was following the discussion. He didn't nod his head. He didn't make facial expressions. There was nothing to reflect an awareness of the substance of what was happening, much less what was said in Mr. Bennett's statement.

Now, I don't know how large a group this would be, but any of you who has ever represented a witness or been a witness in a deposition will readily understand the President's mindset, that the lawyers and the judge debated these issues, and you will understand, too, that to charge him with perjury for having testified falsely about his own state of mind with nothing more to rely on than a picture would strain credulity in any prosecutor's office and flies past the bounds of constitutional reason in this Chamber.

I move, now, to the allegations in article II charging the President with obstruction of justice in the Jones lawsuit and in the grand jury investigation. I want to talk first about what has become known as the concealment of gifts theory. The allegation that the President participated in some scheme to conceal certain gifts he had given to Ms. Lewinsky centers on two events allegedly occurring on December 28, 1997: First, conversation between the President and Ms. Lewinsky in the White House in which the two discussed the gifts, at least briefly, that he had given to Ms. Lewinsky; and, B, Ms. Currie's picking up a box of gifts from Ms. Lewinsky and storing them under her bed.

The managers, as was true of the majority report—and the independent counsel role before that—build their theory in this case not on any pillars of obstruction but on shifting sand castles of speculation. Monica Lewinsky met with the President on December 28, 1997, sometime shortly before 8 a.m. to exchange Christmas presents. According to Ms. Lewinsky, they briefly discussed the subject of gifts she had received from the President in connection with her receipt some days earlier of the subpoena in the Jones case, and this was the first and the only time, she says, in which the subject was ever discussed.

Now, the managers quote one conversation of Ms. Lewinsky's description of that December 28 version as follows:

> At some point I said to him, well, you know, should I —maybe I should put the gifts away outside my house somewhere or give them to someone, maybe Betty. And he sort of said—I think he responded ''I don't know,'' or ''let me think about that,'' and left that topic.

But the Senate should know that in fact Ms. Lewinsky has discussed this very exchange on at least 10 different occasions and that the very most she alleges in any of them is that the President said, ''I don't know,'' or ''Let me think about it,'' when she raised the issue of the gifts. Indeed, in many of her versions she said, among other things, there really was no response, that the President did not respond, that she didn't have a clear image in her mind what to do next. She also testified that Ms. Currie's name did not come up because the President really didn't say anything. And, most importantly, in not a single one of her multiple versions of this event did she say that the President ever initiated any discussion about the gifts, nor did he ever suggest to her that she conceal them.

Now, there being no evidence of obstruction in that conversation, the managers would have you believe that after Ms. Lewinsky left the White House that day, the President must have told Betty Currie to retrieve the gifts from Ms. Lewinsky. But there is absolutely no evidence that that discussion ever occurred. The only two parties who would have knowledge of it, the President and Ms. Currie, both denied it ever took place.

Now, in the absence of any such evidence, the managers have relied on Ms. Lewinsky's testimony that Ms. Currie placed a call to her and told her—depending on Ms. Lewinsky's version—either that the President had said to Betty Ms. Lewinsky had something for her or merely that she, Ms. Currie, understood that Ms. Lewinsky had something for her.

In this regard, it is important to remember that Ms. Lewinsky herself testified that she was the one who first raised with the President the notion that Ms. Currie could hold the gifts. And it is important to recognize that, contrary to the managers' suggestion to you that Ms. Lewinsky's memory of this event has always been consistent and—- ''unequivocal,'' I think was their word—she herself acknowledged at her last grand jury appearance that her memory of the crucial conversation is less than crystal clear. To wit:

> A JUROR: Do you remember Betty Currie saying that the President had told her to call?
>
> Ms. LEWINSKY: Right now, I don't remember.

And now we come to the first example I promised you of prosecutorial—what shall we call it?—fudge. Starting from the premise that Betty Currie called Monica Lewinsky and told her that she understood she had something for her and then went to pick up a sealed box containing some of the gifts she had received, Ms. Lewinsky had received from the President, first the independent counsel concluded, and then the majority report concluded, and now the managers have concluded, that the President must have instructed Ms. Currie to go pick up these gifts—to call Ms. Lewinsky and make the arrangements. So that they determined that when Ms. Currie said it was Ms. Lewinsky who called her, Ms. Currie was mistaken or, if you listen carefully, maybe worse. And when the President testified that he didn't tell Ms. Currie to call Ms. Lewinsky, he was—well, just worse. And this surmise is made absolutely certain, in the view of the managers, because a newly discovered, unknown even to independent

counsel, cell phone record shows that Ms. Currie called Ms. Lewinsky at 3:32 p.m. on December 28 and that must be the call that Ms. Lewinsky remembered.

Let's look now at how the majority counsel for the committee put it in his closing argument to the Judiciary Committee. I have put his words up on the chart, and you all should have it in front of you as well:

> There is key evidence [said majority counsel] that Ms. Currie's fuzzy recollection is wrong. Monica said that she thought Betty called from her cell phone. Well, look at this record. [Show it to you later.] This is Betty's cell phone record. It corroborates Monica Lewinsky and proves conclusively that Ms. Currie called Monica from her cell phone several hours after she had left the White House. Why did Betty Currie pick up the gifts from Ms. Lewinsky? The facts strongly suggest the President directed her to do so.

There is a slight problem with the majority counsel's epiphany, as it has been passed down to the managers and then to you. For you see—and here is the cell phone record—it reflects that at 3:32 p.m. on December 28, from Arlington, VA, to Washington, DC—that is Ms. Lewinsky's number—there was a call of a minute, it says here. And then we have to ask, Does this timing fit with the rest of the testimony?

Well, the answer is, no, it doesn't, because on three separate occasions, Ms. Lewinsky testified that Ms. Currie came over to pick up the gifts at 2 o'clock in the afternoon, an hour and a half before the phone call. It is not as though we have been hiding the ball on this, Senators. We discussed this issue at length in our trial brief, and the managers do seem to have recognized at least some of the problem, because they have told you, albeit without the slightest evidentiary support, that maybe Ms. Lewinsky just miscalculated a little bit. Well, maybe she just miscalculated a little bit three times. Look at the record:

FBI interview, July 27: Lewinsky met Currie on 28th Street outside Lewinsky's apartment at about 2 p.m. and gave Currie the box of gifts.

FBI interview, August 1: Lewinsky gave the box to Betty Currie when Currie came by the Watergate about 2 p.m.

Grand jury testimony, 3 weeks later: ''I think it was around 2 p.m. or so, around 2:00 in the afternoon.''

The managers speculate that if only the independent counsel had had this phone record when they were interviewing Ms. Lewinsky, they could have refreshed her recollection. Having been one, I can tell you, that's prosecutor's speak for ''if we'd only known about that darn record, we could have gotten her to change her testimony.''

But the managers have one other problem that they didn't address. The phone record—if we can go back to that for a moment—the phone record shows a call lasting 1 minute. All of us who have cell phones know that really means it lasted well short of a minute, because the phone company rounds things up to the nearest minute, just to help us all with our bookkeeping. [Laughter.]

So now it will be necessary not only for Ms. Lewinsky's memory to be refreshed about the hour of the pickup, but to explain how the arrangements for it could have been made between Ms. Lewinsky and Ms. Currie in somewhere between 1 and 60 seconds.

Putting these factual difficulties aside, this charge must fail for another reason. As you all know from presentations earlier, the President gave Ms. Lewinsky several gifts on the very day that they met, December 28. Faced with having to explain why on the day that the President and Monica Lewinsky were conspiring to conceal gifts from the Jones' lawyers the President gave her additional ones, the managers surmised that the real purpose was because it was part of a subtle effort to keep Ms. Lewinsky on the team, but in truth the only reasonable explanation for these events is the one the President gave to the grand jury. He was simply not concerned about gifts. He gave a lot, he got a lot, and he saw no need to engage in any effort to conceal them.

The President did not urge Ms. Lewinsky to conceal the gifts he had given her and, of course, he did not lie to the grand jury about that subject.

The next point I want to discuss with you is the statements the President made to Betty Currie on the day after the Jones deposition, January 18 of last year. There is no disputing the record, no conflict in testimony that the President did meet with his secretary, Betty Currie, on the day after the Jones deposition and they discussed Monica Lewinsky.

The managers cast this conversation, this recitation, this series of statements and questions put by the President to Ms. Currie in the most sinister light possible and allege that the President attempted to influence the testimony of a ''witness'' by pressuring Ms. Currie to agree with an inaccurate version of the facts surrounding his relationship with Ms. Lewinsky.

President Clinton has adamantly denied that he had any such intention, and that denial is fortified by the undisputable factual record establishing that Betty Currie neither was an actual or a contemplated witness in the Jones litigation, nor did she perceive that she was being pressured in any respect by the President to agree with what he was saying.

First, Ms. Currie's status as a witness, and the only proceeding the President knew about at that moment, the Jones case, Ms. Currie was neither an actual nor a prospective witness. As to the only proceeding in which she ultimately became a witness, no one would suggest, managers, no one else would suggest the President knew that the independent counsel was conducting an investigation into his activities.

In the entire history of the Jones case, Ms. Currie's name had not appeared on any of the witness lists, nor was there any reason to suspect Ms. Currie would play a role in the Jones case. Discovery was down to its final days. The managers speculate that the President's own references to Ms. Currie during his deposition meant she was sure to be called by the Jones lawyers. Yet, in the days, weeks following the deposition, the Jones lawyers never listed her, never contacted her, never added her to any witness list. They never deposed her; they never noticed the deposition.

Indeed, when the independent counsel interviewed the Jones lawyers, they apparently neglected to ask whether they had ever intended to call Betty Currie as a witness. One can be sure that if such an intent existed, they would have asked and it would have been included in the referral.

Moreover, it is a sure bet that the Jones lawyers already knew about Betty Currie and her relationship with Monica Lewinsky. Why? Because we know from her own recorded telephone conversations that Ms. Tripp had been in contact with the Jones lawyers for months, and we know that she spent the evening before the President's deposition telling them everything she knew.

It didn't take a few references to his secretary by the President to trigger a subpoena for Betty Currie if they had ever wanted to do that, and they never did. Nor did the President ever pressure Ms. Currie to alter her recollection. Despite the prosecutor's best efforts to coax Ms. Currie into saying she was pressured to agree with the President, Ms. Currie adamantly denied it.

Let me quote just briefly a few lines of her grand jury testimony:

> Question: Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?
>
> Answer: None whatsoever.
>
> Question: That was your impression, that he wanted you to say—because he would end each of the statements with ''Right?'', with a question.
>
> Answer: I do not remember that he wanted me to say ''Right.'' He would say ''Right'' and I could have said, ''Wrong.''
>
> Question: But he would end each of those questions with a ''Right?'' and you could either say whether it was true or not true?
>
> Answer: Correct.
>
> Question: Did you feel any pressure to agree with your boss?
>
> Answer: None [whatsoever].

Now, to understand on a human level why the President reached out to Betty Currie on the day after his deposition, you need only to understand that he had just faced unexpected detailed questions about his worst nightmare. As he candidly admitted to the grand jury, he had long feared that his relationship with Ms. Lewinsky would ultimately become public. Now, with questioning about her in the Jones case, publication of the first Internet article, the day of recon had arrived. The President knew that a media storm was about to erupt. And it did.

Now, if you are looking for evidence on which to base an inference about the President's intentions with respect to Ms. Currie's testimony, look what he said to her when he knew that she was going before the grand jury.

And then I remember when I knew she was going to have to testify to the grand jury, and I, I felt terrible because she had been through this loss of her sister, this horrible accident Christmas that killed her brother, and her mother was in the hospital. I was trying to do—to make her understand that I didn't want her to, to be untruthful to the grand jury. And if her memory was different than mine, it was fine, just go in there and tell them what she thought. So, that's all I remember.

The President of the United States did not tamper with a witness.

Now next, the managers argue that Mr. Clinton corruptly encouraged Ms. Lewinsky to submit a false affidavit to the Jones lawyers and to lie if she were ever deposed. But the uncontroverted evidence refutes that charge. Indeed, Ms. Lewinsky herself has repeatedly and forcefully denied that anyone ever asked her to lie. There is no way to get around that flat denial, even with the independent counsel's addition of the word ''explicitly.'' There was no explicit, implicit, or any other direction to Ms. Lewinsky to lie. Indeed, the only person to whom Ms. Lewinsky said anything inconsistent with her denial was the ubiquitous Ms. Tripp. And, as Ms. Lewinsky later told the grand jury:

I think I told her that, you know, at various times the President and Mr. Jordan had told me I have to lie. That wasn't true.

Left with this record, the managers resort to arguing that Ms. Lewinsky understood that the President wanted her to lie, that he could not have wanted her to file an affidavit detailing their relationship. But the only factual support for this theory recited by the majority is the testimony of Ms. Lewinsky that, while the President never encouraged her to lie, he remained silent about what she should have to say or do, and by such silence she said, ''I knew what he meant.''

The very idea that the President of the United States should face removal from office, not because he told Monica Lewinsky to lie or anything of this sort, but because he was silent and Ms. Lewinsky ''knew what he meant,'' is, I suggest, more than troubling.

So to bolster their flawed ''I knew what he meant'' theory, the managers assert that the President knew the affidavit would have to be false in order for Ms. Lewinsky to avoid testifying. But the evidence here, too, is that the President repeatedly testified that Ms. Lewinsky could and would file a truthful affidavit. And, of course, Ms. Lewinsky herself has made it clear that her definition of the critical term that might be used in such an affidavit was consistent with the President's.

Further testimony from Ms. Lewinsky herself repudiates any suggestion that she was ever encouraged by anyone to lie if she were deposed in the Jones case. In a colloquy with a grand juror, she explicitly and unequivocally rejected the notion that President Clinton encouraged her to deny the relationship after she learned she was a witness. Referring to discussions about the so-called cover stories that the managers allege were to be used in her testimony, a grand juror asked her:

It is possible that you had these discussions after you learned that you were a witness in the Paula Jones case?

Answer: I don't believe so, no.

Question: Can you exclude that possibility?

Answer: I pretty much can.

The managers would have you conclude the contrary from a brief snippet of the conversation on December 17 in which Ms. Lewinsky said that at some point, ''I don't know if it was before or after the subject of the affidavit came up, the President sort of said, 'Well, you know, you can always say you were coming to see Betty or that you were bringing me letters.' ''

But Ms. Lewinsky told the FBI when she was interviewed, ''To the best''—this is the FBI talking—''To the best of Miss Lewinsky's memory, she does not believe they discussed''—in this December 17 conversation—''the content of any deposition that Miss Lewinsky might be involved in at a later date.'' And she told the grand jury the same thing. Describing the very same December 17 conversation, she testified that she and the President did not discuss the idea of her denying their relationship.

Ms. LEWINSKY: I really don't remember it. I mean, it would be very surprising for me to be confronted with something that would show me different, but it was 2:30, and, I mean, the conversation I'm thinking of mainly would have been December 17, which was—

A juror interjects: The telephone call?

Ms. LEWINSKY: Right. And it was, you know, 2, 2:30 in the morning. And I remember the gist of it, and I really don't think so.

And it is on that basis that the managers suggest that the President obstructed justice.

Fourth, article II alleges that the President obstructed justice by denying to his closest aides he had a sexual relationship with Monica Lewinsky, the very same denial he made to his family and his friends and to the American people. These allegedly impeachable denials took place in the immediate aftermath of the public revelation of the Lewinsky matter, at the very time that the President was denying that relationship to the entire country on national television. Having made the announcement to the whole country, it is simply absurd, I suggest to you, to believe that he was somehow attempting corruptly to influence his senior staff when he told them virtually the same thing at the same time.

Now, the managers do not allege—as they could not—that the President attempted to influence the aides' testimony about what they themselves knew concerning his relationship with Ms. Lewinsky—had they seen her in a particular place; had they talked to her; had they talked to the President about it before all of this broke.

Indeed, the only evidence these aides had was the very same denial that the entire American people had. Indeed, every member of the grand jury had probably seen this denial by the President on their own television sets. Under the theory proffered by the managers, in essence, every person who heard the President's denial could have been called to the grand jury and ordered to create still an additional charge of obstruction of justice.

The point here was not that the President believed that his staff would be witnesses and somehow wanted to influence their testimony. As he explained to the grand jury, what he was trying to do was avoid being a witness. But, of course, he had to say something to them. He had to say, in the aftermath of January 21, something to reassure them. And he told them exactly what he told every one of you, everyone in the gallery, and everyone who watched television in those days following January 21.

And let me just make this one point. There is absolutely no conflict in the evidence here, despite the managers' somewhat puzzling suggestion that the Senate's deliberations would somehow be aided if two of the senior staff members could be called as witnesses. Not only is there no conflict in the evidence, there is absolutely no basis for the charge that the President was in any way seeking to influence the testimony of his staff before the grand jury.

Now we come to the last of the obstruction charges. The managers ask you to find that the President of the United States employed his friend, Vernon Jordan, to get Monica Lewinsky a job in New York, to influence her testimony, or perhaps in a somewhat forlorn effort to escape the reach of the Federal Rules of Civil Procedure, to hide from the Jones lawyers and the 8 million people who live in that city.

There is, of course, absolutely no evidence to support this conclusion, and so the managers have constructed out of sealing wax and string and spiders' webs a theory that would lend to a series of otherwise innocuous and, indeed, exculpatory events, a dark and sinister past.

The undisputed record establishes the following: One, that Lewinsky's job search began on her own initiative; two, the search began long before her involvement in the Jones case; three, the search had no connection to the Jones case; four, Vernon Jordan agreed to help her, not at the direction of the President but at the request of Ms. Currie, Mr. Jordan's long-time friend; five, the idea to solicit Mr. Jordan's assistance again came not from the President but from Ms. Tripp.

As I thought about this aspect of it, I have to say I was reminded of Iago and Desdemona's handkerchief. But we will pass on that.

Both Ms. Lewinsky and Mr. Jordan have repeatedly testified that there was never an agreement, a suggestion, an implication, that Ms. Lewinsky would be rewarded with a job for her silence or her false testimony. As Mr. Jordan succinctly put it, ''Unequivocally, indubitable, no.''

It was only to appease Ms. Tripp that Ms. Lewinsky ultimately told her that she had told Mr. Jordan she wouldn't sign the affidavit until she had a job. But as she told the grand jury, ''That was definitely a line based on something that Linda had made me promise on January 9.''

Now while the managers dismiss as irrelevant Ms. Lewinsky's job search before December, the fact is, Ms. Lewinsky contemplated looking for a job in New York as early as July 1997, and her interest was strengthened in early October when Ms. Tripp told her it was unlikely she would ever get another job in the White House. It was then Ms. Tripp and Ms. Lewinsky discussed the prospect of having Vernon Jordan help her get a job in New York and Ms. Lewinsky mentioned that idea to the President.

Later in October, as part of this ongoing search, Ambassador Richardson agreed to interview Ms. Lewinsky at the suggestion of then-Deputy Chief of Staff Podesta who had been asked to help by Ms. Currie. And Ambassador Richardson offered her a job and she had that job in hand throughout the supposedly critical December timeframe, didn't actually turn it down until early January. And, further, in late October or early November, she actually went to her boss at the Pentagon and asked for his help to find a job.

Meanwhile, now we come to what, for the managers, is the very heart of the case. On November 5, Ms. Lewinsky had a preliminary meeting with Mr. Jordan and they discussed a list of potential employers. And although the managers then contend that nothing happened from November 5, that first meeting, until December 11, signifying, as they see it, that it must have been Ms. Lewinsky's appearance on the witness list that galvanized Mr. Jordan into action, that is simply false.

Ms. Lewinsky had a followup telephone conversation with Mr. Jordan around Thanksgiving in which he told her he was working on the job search and he asked her to call him in the first week of December. The President learned Ms. Lewinsky was on the Jones witness list sometime on December 6. He met with Mr. Jordan the very next day, December 7. But oddly, if one adopts the managers' view, there was no discussion of Ms. Lewinsky or the Jones case, much less job searches. Then on December 8, Ms. Lewinsky called Mr. Jordan's office and made her appointment to meet with him on December 11.

Now the President absolutely had nothing to do with that call or that appointment and Mr. Jordan denies that there was any intensified effort to find Ms. Lewinsky a job. He said, ''Oh, no, I do not recall any heightened sense of urgency in December, but what I do recall is that I dealt with it when I had time to do it.''

Now for my second example of prosecutorial fudging. The managers have devoted much attention to the magic date of December 11, arguing vigorously that it was on that day that getting the job for Ms. Lewinsky suddenly became a matter of high priority for the President and hence to Mr. Jordan. Why is that so? Well, again, I will let the majority counsel for the Judiciary Committee tell you in his own words during his closing argument.

Again, you should have this before you if you can't see the chart.

But why the sudden interest, why the total change in focus and effort? Nobody but Bettie Currie really cared about helping Ms. Lewinsky throughout November, even after the President learned that her name was on the prospective witness list. Did something happen to move the job search from a low to a high priority on that day? Oh, yes, something happened. On the morning of December 11, 1997, Judge Susan Webber Wright ordered that Paula Jones was entitled to information regarding any State or Federal employee with whom the President had sexual relations or proposed or sought to have sexual relations. To keep Monica on the team was now of critical importance. Remember, they already knew that she was on the witness list, although nobody bothered to tell her.

That same theme was picked up last week by Mr. Manager HUTCHINSON, both in his recitation of events of that day and in the exhibits he showed you. If I am lucky, we will place on the easel to my right the exhibit that Manager HUTCHINSON used.

You will see the order that this exhibit places on the critical events of November and December. November 5 meeting, the no-job-search action; the President receives a witness list. And then of special interest, December 11, first event, ''Judge Wright order permitting questions about Lewinsky.'' Too, on December 11, the ''President and Jordan talk about job for Monica.''

Now, let me ask you to focus on what Mr. HUTCHINSON told you about the events of December 11. Sounding somewhat like majority counsel, he asks:

And so, what triggered—let's look at the chain of events. 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. That chain reaction here is what moved the job search along . . . remember what else happened on that day [December 11] again. That was the same day that Judge Wright ruled that the questions about other relationships could be asked by the Jones attorneys.

Now, it appears to me that the manager was suggesting—again, with not a great deal of subtlety—that Vernon Jordan, one of this country's great lawyers and great citizens, was prepared to perjure himself to save the President.

So let's just imagine the managers' examination of Mr. Jordan in this Chamber that would let you make your own judgment about his truthfulness.

Question: Mr. Jordan, isn't it a fact that you met with Ms. Lewinsky on December 11 to help get her a job?

Answer: Yes.

Question: And isn't it a fact that before and after you met with her, you made calls to potential employers in New York?

Answer: Yes.

Question: Isn't it true that the reason for all of this activity on December 11 was that Judge Wright had on that very day issued an order authorizing the Jones lawyers to depose certain women like Miss Lewinsky?

Answer: No.

Question: What do you mean ''no''? Isn't it true that the judge had issued an order before you met with Ms. Lewinsky and before you made the calls?

Answer: I had no knowledge of any such order. The fact that Ms. Lewinsky was a potential witness had nothing to do with my helping. I made an appointment to see her 3 days earlier.

Question: Well, isn't it a fact that Judge Wright filed her order on December 11 before you met with Ms. Lewinsky?

Answer: Well, actually no.

Let me show you the official report of the judge's discussion with the lawyers in the Jones case on that date. You have this before you as well. There's a conference call between the judge and the lawyers, which is memorialized in a formal document prepared by a clerk and on file in the case in Arkansas. It notes that the conference call began at 5:33 p.m. central standard time. If I have my calculations right, that is 6:33 p.m. in Washington.

I want to stop here for a second so that you know where Mr. Jordan was when that happened. Let me see the next chart.

By the way, this is Mr. Jordan testifying:

I was actually on a plane for Amsterdam by the time the judge issued her order.

So he testified in the grand jury.

I left on United flight 946 at 5:55 from Dulles Airport and landed in Amsterdam the next morning.

So the conference call begins at 6:33 eastern standard time. The court takes up another variety of matters, and the judge didn't even tell the lawyers that she was going to issue an order on the motion to compel these various depositions until the very end of the call, around 7:45 eastern standard time, and the clerk would actually FAX them a copy at that point.

So we return to Mr. Jordan's mythical testimony. To summarize, let me show you something that tells you what the real sequence of events was on December 11. Vernon Jordan makes a possible job call at 9:45, and another at 12:49, and another at 1:07; he meets with Ms. Lewinsky from 1:15 to 1:45; he gets on his plane at 5:55 in the afternoon, and an hour or so later the lawyers are informed that the judge had issued her order.

In fact—just as a little filler—the President is out of town and returns to

Washington at 1:10 a.m. And actually, Judge Wright's order is filed not on the 11th, but on the 12th.

Question: Oh, I see. Well, never mind.

Now, do any of you think that you need to look Mr. Jordan in the eye and hear his tone of voice to understand that the prosecutors have it wrong and have had, at least since the majority counsels' closing argument?

You will also learn from us—but not from the managers—that Mr. Jordan placed no pressure on any company to give Ms. Lewinsky a job. Indeed, two other companies he called didn't even offer her a job.

Just as the managers dramatically mistake the record relating to Mr. Jordan's efforts to help Ms. Lewinsky find a job, so, too, do they invent a nonexistent link between a call Mr. Jordan made ultimately to Mr. Perelman, the CEO of MacAndrews and Forbes, Revlon's parent, and the offer Ms. Lewinsky finally received from Revlon with her signing of the affidavit in the Jones case. We will demonstrate beyond any question, once again, that conclusions the managers have drawn are simply false.

Again, I'll begin with the fact that both Mr. Jordan and Ms. Lewinsky testified that there was no such link between the job and the affidavit, and the only person to ever suggest such a link was, once again, Ms. Tripp. Now, I presume that it is not the managers' intention to suggest that we bring Ms. Tripp before you to explore her motivation for making that suggestion.

Next, take Ms. Lewinsky's interview with MacAndrews official, which she described as ''having gone poorly''—a characterization adopted by the managers for obvious reasons—because it suggests that there was a desire on their part to heighten the supposed relevance of the call Mr. Jordan made to Mr. Perelman. In other words, under their theory, Ms. Lewinsky's job prospects at MacAndrews and Forbes, or Revlon, were caput until Vernon Jordan made the call and resurrected her chances.

Unfortunately, like so much of the obstruction case, the facts do not bear out this convenient theory. In fact, the man who interviewed Ms. Lewinsky at MacAndrews was impressed with her, and because there was nothing available in his area, he sent her resume to Revlon where she was hired by someone who did not know about Mr. Jordan's call to Mr. Perelman.

So much for obstruction by job search.

That, then, is an overview of the charges contained in these articles. You will hear about them in greater detail than I could offer you today when my colleagues speak in the next two days. I want to bring my presentation to a close.

We are not here to defend William Clinton, the man. He, like all of us, will find his judges elsewhere. We are here to defend William Clinton, the President of the United States, for whom you are the only judges. You are free to criticize him, to find his personal conduct distasteful; but ask whether this is the moment when, for the first time in our history, the actions of a President have so put at risk the Government the framers created that there is only one solution. You must find not merely that removal is an acceptable option, that we will be OK the day after you vote; you must find that it's the only solution, that our democracy should not be made to sustain two more years of this President's service. You must put that question because the one thing that our form of Government cannot abide is the notion that impeachment is merely one more weapon a Congress can use in the process between the legislative and executive branches.

Let me be very clear. We do not believe that President Clinton committed any of the offenses charged by the managers. And for the reasons we will set out at length over the next two days, we believe the managers have misstated the record, have constructed their case out of tenuous extrapolations, without foundation, and have at every turn assumed the worst without the evidence to support this speculation.

You put these lawyers in a courtroom and they win 10 times out of 10.

But suppose we are wrong. Suppose that you find that the President committed one or more of the offenses charged. Then there remains only one issue before you. Whatever your feelings may be about William Clinton, the man, or William Clinton, the political ally or opponent, or William Clinton, the father and husband, ask only this: Should William Clinton, the President, be removed from office? Are we at that horrific moment in our history when our Union could be preserved only by taking the step that the framers saw as the last resort? I am never certain how to respond when an advocate on the other side of a case calls up images of patriots over the centuries sacrificing themselves to preserve our democracy. I have no personal experience with war. I have only visited Normandy as a tourist. I do know this: My father was on the beach 55 years ago, and I know how he would feel if he were here. He didn't fight, no one fought, for one side of this case or the other. He fought, as all those did, for our country and our Constitution. As long as each of us—the managers, the President's counsel, the Senators—does his or her constitutional duty, those who fought for the country will be proud.

We, the people of the United States, have formed a more perfect Union. We formed it. We nurtured it. We have seen it grow. We have not been perfect. And it is perhaps the most extraordinary thing about our Constitution—that it thrives despite our human imperfections.

When the American people hear the President talk to Congress tonight, they will know the answer to the question, ''How stands the Union?'' It stands strong, vibrant, and free.

I close as I opened 2 hours ago, or 2 and a half hours ago. William Jefferson Clinton is not guilty of the charges that have been brought against him of committing perjury. He didn't obstruct justice. He must not be removed from office.

Thank you.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, in a moment the Senate will recess until 8:35 this evening, at which time the Senate will proceed as a body over to the House of Representatives as a joint session to receive a message from the President. Following the joint session, the Senate will adjourn until 11 o'clock tomorrow morning.

The Senators' lecture series is scheduled for tomorrow evening at 6 o'clock in the old Senate Chamber with former President George Bush as guest speaker.

I now ask that the Senate stand in recess under the previous order.

There being no objection, the Senate, at 3:33 p.m., recessed until 8:35 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. CRAPO).

LEGISLATIVE SESSION

JOINT SESSION OF THE TWO HOUSES—ADDRESS BY THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 1).

The PRESIDING OFFICER. The Senate will proceed to the House of Representatives.

(The address delivered by the President of the United States to the joint session of the two Houses of Congress is printed in the proceedings of the House of Representatives in today's RECORD.)

ADJOURNMENT UNTIL 11 A.M. TOMORROW

At the conclusion of the joint session of the two Houses, and in accordance with the order previously entered, at 10:31 p.m. the Senate adjourned until Wednesday, January 20, 1999 at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate January 19, 1999:

DEPARTMENT OF COMMERCE

CHERYL SHAVERS, OF CALIFORNIA, TO BE UNDER SECRETARY OF COMMERCE FOR TECHNOLOGY, VICE MARY LOWE GOOD.

FOREIGN SERVICE

THE FOLLOWING-NAMED CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF CAREER MINISTER, FOR THE PERSONAL RANK OF CAREER AMBASSADOR IN RECOGNITION OF ESPECIALLY DISTINGUISHED SERVICE OVER A SUSTAINED PERIOD:

MARY A. RYAN, OF TEXAS