RECESS

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

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

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

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

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

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

The CHIEF JUSTICE. The majority leader is recognized.

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

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

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

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

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

THE JOURNAL

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

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

The Chair recognizes Mr. Counsel Craig.

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

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

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

I plan to divide my presentation into three parts:

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

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

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

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

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

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

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

It is noteworthy that the second and third subject areas are attempts to revisit the President's deposition testimony in the Jones case. There was an article that was proposed alleging that the President also committed perjury in the Jones case in the Jones deposition. That article was rejected by the House of Representatives, and there were very many good reasons for the House to take that action. Those allegations have been dismissed, and you must not allow the managers to revive them. Last week they tried to do that. The managers mixed up and merged two sets of issues—allegations of perjury in the grand jury and allegations of perjury in the Jones case. These are very different matters. And I think the result was confusing and also unfair to the President.

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

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

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

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

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

charged with carries constitutional dimensions, and the failure to provide that notice violates due process of law. This is something that applies to all criminal defendant offenses when they are charged. And you can understand why that kind of notice is required. Imagine a robbery indictment that failed to indicate who or what was robbed and what property was stolen. How could you possibly defend against the charge that you just stole something but you don't know what it is and it is nothing specific? Imagine a murder indictment without identifying a victim.

But this requirement is even more stringent for perjury prosecution. Description, paraphrase, or summary of testimony that is alleged to be perjurious are not acceptable. The quotation must be there, or the definition should be so close that there can be no doubt as to what is intended. In the past, when the House returned articles of impeachment alleging perjury with respect to Federal judges, you will see that the House has followed this practice. And if you go back to American history and review the articles that allege perjury and that have been proved by the House and the Senate, you will find that the statements that are alleged to be perjurious are specifically identified in the article.

Let me read from article I from the resolution of impeachment against Judge Walter Nixon. ''The false or misleading statement was in substance that the Forest County District Attorney never discussed this case with Judge Nixon.'' There is no doubt about that. That is very clear. From the Alcee Hastings articles of impeachment, the false statement was, in substance, that Judge Hastings and William Borders never made any agreement to solicit a bribe from defendants in United States v. Romano, a case tried before Judge Hastings.

Why is it that in this case—surely the most serious perjury trial in American history—the House decided that specific allegations just aren't necessary? The failure of the House to be specific in its charge of perjury in fact violated the President's right to due process and fundamental fairness. And, as you will see as I go through the procedural history of these allegations, it puts us and the President at a significant disadvantage when we try to respond to the allegations that are now set forth in this article.

But there is yet another reason why this vagueness and lack of specificity is so very dangerous, and it raises a constitutional question that only this body can resolve.

Article I, section 2, clause 5, of the Constitution states, ''The House of Representatives shall have the sole power of impeachment''—''the sole power of impeachment.''

By failing to be specific in this article as to what it is precisely that the President said that should cause him to be removed from office, the House has effectively and unconstitutionally ceded its authority under this provision of the Constitution to the managers, who are not authorized to exercise that authority. By bringing general charges in this article, the House Judiciary Committee, and then the House of Representatives generally, gave enormous discretion, power, and authority to the floor managers and their lawyers to decide what precisely the President was going to be charged with. They didn't have that authority under the Constitution. Only the House of Representatives has that authority. They have been allowed to pick and to choose what allegations will be leveled against the President of the United States.

It would be extremely dangerous to the integrity of the process if the House leveled such general charges against the President, creating ''empty vessels,'' to use Mr. Ruff's term, to be filled by lawyers and floor managers. And this article, I think, will take on more importance as we take a closer look at the charges themselves and we see what kind of ''witches' brew''—to use Mr. Ruff again—what kind of content was poured into these vessels, and find out where they came from and why and when.

I would like to talk about how these charges have been a moving target for us throughout this entire process. On September 9, when Kenneth Starr submitted his referral to the House of Representatives, he claimed that there was substantial and credible information to suggest that the President committed perjury in the grand jury on three separate occasions. To his credit, the Starr referral was moderately specific. We could understand what they were talking about in those allegations.

On October 5, when House majority counsel David Schippers first made his representation to the House Judiciary Committee, he discarded two of Mr. Starr's theories and invented a new one of his own. And he included only two counts in his presentation alleging perjury in the grand jury. Those two counts were unbelievably broad and included no specifics whatsoever.

On November 19, Mr. Starr appeared before the House Judiciary Committee and gave a 2-hour opening statement. In that statement he delivered one or two sentences on the subject of grand jury perjury.

Then, on December 9, when the committee majority released its four proposed articles of impeachment, the article that alleged perjury in the grand jury, which is the one we have before us today, failed to tell us or the American people what words the President actually used that should cause the Congress to remove him from office.

As you know, these proposed articles were released just as Mr. Ruff and the President's defense were being completed. In fact, it may have been 2 or 3 minutes before he completed his final argument before the committee. So we had no advance notice and no chance to discuss these articles, to respond to them, or in any way to react. In truth, I must say that because of the vagueness of the articles that were ultimately returned, had we been given such advance notice, it would not have made much difference because, simply put, there is a stunning lack of specificity in article I.

So where do we look for guidance? How do we know what to defend against in this case? After the Judiciary Committee had completed its deliberations, after the Members had voted to send four articles of impeachment to the full House, the majority issued its report on December 16th, only 3 days before the House took its final vote. It was never debated by, let alone approved by, the House of Representatives, and thus this report has no formal standing in these proceedings. But until the managers filed their trial brief and made their presentations just last week, the majority report, written by Mr. Schippers and his staff, was our only place to go to look for guidance as to what those four subparts of this first article really meant.

Now, when it comes to perjury before the grand jury, the majority report argued that the President had not made two, not three, but a whole host of perjurious statements before the grand jury, some statements that were not contained in the Starr referral and had never been identified, charged, discussed, or debated by the Members during the impeachment inquiry.

For example, the majority report alleged that the prepared statement that the President made and delivered to the grand jury at the start of his testimony admitting his relationship with Ms. Lewinsky was ''perjurious, false, and misleading,'' an astonishing allegation that went far beyond anything that Kenneth Starr had claimed, and a claim that no member of the Judiciary Committee had ever made in the course of the committee's deliberations.

Obviously, we had no opportunity whatsoever to respond to this allegation before the committee or before the House; the allegation was never debated or discussed by members of the committee, nor was it discussed during the debate in the Chamber of the House.

The majority report also alleged that the President committed perjury in the grand jury when he testified that his ''goal in the [Jones] deposition was to be truthful,'' and when he said that he believed he had managed to complete his testimony in that deposition ''without violating the law.''

Again, this allegation was brand new to us, never before made by Starr, not included in the Schippers closing argument, never mentioned by Chairman Hyde or by anyone else in the committee, never addressed by the President's counsel, never debated by members of the committee, never discussed on the floor.

The majority report made many other new allegations of the same kind

and pedigree—all new, undiscussed, untested. They had not come, ladies and gentlemen of the Senate, these allegations did not come from Starr's referral, nor did they come from any evidence that had been gathered in the course of the impeachment inquiry, nor had they ever been unveiled during the impeachment inquiry to allow the President's counsel to respond, or the members of the Judiciary Committee to debate them. To our knowledge, many of these allegations were never discussed or debated by the members of the committee. And if you read the closing arguments of the members of the House Judiciary Committee, you will search in vain for any specific reference to any of these new allegations, the terms of which are the subject of article I.

Then we found ourselves in the Senate, our only guide being the articles themselves, which, as you know, are general, and the majority report, which has no formal standing but which was filled with allegations and theories, had never been discussed much less adopted.

As the trial in the Senate began—just 3 days before the managers were scheduled to open their case, on January 11th—the House managers filed their trial brief. We discovered that the allegations of grand jury perjury against the President were still changing, still expanding, still increasing in number.

The trial brief made eight proffers, incredibly presented ''merely as examples'' that still in general terms describe instances where the President allegedly provided ''perjurious, false, and misleading testimony'' to the grand jury.

But, we were warned, these proffers were only ''salient examples'' of grand jury perjury. The House managers said, ''The [examples set forth in the trial brief] are merely highlights of the grand jury perjury. There are numerous additional examples.'' And when we heard Mr. Manager ROGAN'S presentation, we realized that the trial brief was absolutely right; Mr. ROGAN unveiled allegations that had not been included even in the trial brief.

The uncertainty, fluidity, the vagueness of the charges in this case and the unwillingness of the prosecutors ever to specify and be bound by the statements that are at issue has been an aspect of this process that, I submit, has been profoundly unfair to this President. It is also unconstitutional, from the arguments I gave you.

The articles had come to include specific allegations of grand jury perjury that did not come from the Starr referral and that never would have been approved by the House had the House been required to review them.

There is one other element of unfairness that Mr. Ruff referred to. Even as the House managers have consistently tried to stretch the scope of article I to cover allegations never considered by the House, they have tried to twist the scope of article I to cover allegations specifically rejected by the House.

Now, let me be clear here. I am not charging the managers with going beyond the record of the case. These new allegations come from the record in the case. They are not beyond the record. They are in the record. But the Starr referral did not find it suitable to make these allegations, and they were not made in a timely way before the House Judiciary Committee and, I would submit, in a timely way before the House of Representatives.

I go back to this second element of unfairness that has to do with the Jones article. When that Jones article was rejected, we would argue that rejection should have been recognized for what it was, a clear instruction from the House of Representatives not to argue that the President should be impeached and removed because of his testimony in the Jones deposition. But the managers have sought to merge the Jones testimony with the grand jury testimony, to confuse these two events, to blend and blur them together.

The Senate must understand that these two events were different in every way. In the President's testimony in the Jones case, the President was evasive, misleading, incomplete in his answers, and, as I said to the House Judiciary Committee, maddening. But in the Federal grand jury, President Clinton was forthright and forthcoming. He told the truth, the whole truth and nothing but the truth for 4 long hours, and the American people saw that testimony and they know that President Clinton, when he appeared before the grand jury, did not deny a sexual relationship with Ms. Lewinsky—he admitted to one.

They know that he did not deny that he was alone with Ms. Lewinsky; he repeatedly acknowledged that he had been alone with her on many occasions.

The managers argued that the Jones testimony is relevant because, they say, the President perjured himself when he told the grand jury that his testimony in the Jones case was truthful, and it wasn't, say the managers. That characterization of the President's testimony, they say, is simply not accurate. What he said was, ''My goal in this deposition was to be truthful but not particularly helpful . . . I was determined to walk through the minefield of this deposition without violating the law, and I believe I did.'' These are opinions. He is characterizing his state of mind.

The House managers, on the basis of this testimony, must not be allowed to do what the House of Representatives told them they could not do, which is to argue about the President's testimony in the Jones case. Even if you believe that the President crossed the line in his Jones deposition, you cannot conclude that he should be removed for it.

He was not impeached for it. This case is about the grand jury and the grand jury alone.

Now, in fact, the vagueness and uncertainty as to the specific allegations of perjury, whether in the grand jury or in the Paula Jones deposition, have created enormous confusion in the public about the President's conduct and about his testimony. This confusion, I think, has done enormous damage to the President, because out of this confusion has emerged a wholly inaccurate conventional wisdom about what President Clinton said when he testified in the grand jury. And that conventional wisdom is based on certain common mischaracterizations of the President's testimony.

Last December 8, I gave an opening statement in the President's defense before the committee. And when it came time for me to talk about the charges of perjury, I urged the members of the committee to open their minds, and because of widespread misinformation about the facts, to focus on the record. I make the same plea to you again today. Keep an open mind and look at the real record. Read the transcript. Watch the videotape. Do not rely upon anyone else's version.

We speak from some disappointing experience on this issue. Over and over again, inaccurate descriptions of the President's grand jury testimony have been launched into the public debate—sometimes innocently, sometimes negligently. But the result has been the same. The President's critics have created a conventional wisdom about the President's grand jury that is based on myth and not reality. There has been a merging of the President's testimony in the Jones deposition with that of his testimony in the grand jury, and this dynamic has been unfair to the President.

We are at No. 6 with the exhibits. Let me just cite a few examples. There are many more available, but they are from people and sources that are familiar with the case and close to the evidence, and some coming from the presentations of just last week.

At the conclusion of the impeachment inquiry conducted by the Judiciary Committee, the final arguments before the votes were taken in front of the committee, Congressman MCCOLLUM stated:

> The President gave sworn testimony in the Jones case in which he swore he could not recall being alone with Monica Lewinsky and that he had not had sexual relations with her.
>
> He repeated those assertions a few months later to the grand jury, and the evidence shows he lied about both.

That is not an accurate characterization of the President's testimony before the grand jury. In the majority report, written by the majority counsel, the author stated repeatedly that President Clinton testified before the grand jury that he did not have sexual relations with Ms. Lewinsky. Members of the Senate, those descriptions of the President's grand jury testimony are

absolutely false. When he appeared before the grand jury, the President admitted—he did not deny—an inappropriate, intimate, wrongful, personal relationship with Ms. Lewinsky. When he made this admission there was no doubt in anyone's mind what he meant. It meant, and the whole world knew that it meant that the President of the United States had engaged in some form of sexual activity or sexual contact with Ms. Lewinsky.

In his appearance on a national news program on CNN television, this is another example: Over the New Year's weekend Mr. Manager GRAHAM was asked for the most glaring example of the President's alleged perjury before the grand jury. And he said:

I think when the President said he wasn't alone with her, he lied.

That characterization of the President's grand jury testimony is not true. There can be absolutely no doubt that during his grand jury testimony, the President acknowledged—he did not deny, he repeatedly acknowledged—that he had been, on certain occasions, alone with Ms. Lewinsky. He acknowledged that fact in the opening sentence of his prepared statement to the grand jury. Let me read it. Let me read you the first words in the President's opening statement to the grand jury:

When I was alone with Ms. Lewinsky on certain occasions in early 1996, and once in early 1997, I engaged in conduct that was wrong.

''When I was alone with Ms. Lewinsky,'' that is what the President of the United States said. That is what the transcript says. And no amount of eloquence or lawyerly skill from the managers can change that fact. Facts are stubborn.

He also engaged in a lengthy colloquy with the prosecutors about how many times he thought he had been alone with Ms. Lewinsky. And there can be no doubt in anyone's mind that he answered that he had been alone with Ms. Lewinsky on frequent occasions. He was asked, and he answered, and he said yes, and he made clear what he meant. He went on to say:

I did what people do when they do the wrong thing. I tried to do it where nobody else was looking at it. I'd have to be an exhibitionist, not to have tried to exclude everyone else.

These are not the words of someone who is trying to hide the fact of his relationship with Ms. Lewinsky. And it is difficult to understand how reading these words, as well as the long and detailed testimony in front of the grand jury, how one can think or contend that the President repeated or ratified in his deposition before the grand jury about not ever being alone.

In the managers' trial brief issued just 3 days before they made their presentation to the statement, the brief makes the following statement. This is mischaracterization No. 4.

[The President] falsely testified that he answered questions truthfully at his deposition concerning, among other subjects, whether he had been alone with Ms. Lewinsky.

Members of the Senate, as I just outlined in connection with Manager GRAHAM's statement, this characterization of the President's grand jury testimony is misleading. The lawyers for the Office of the Independent Counsel asked many questions and engaged in extensive colloquy with the President about being alone with Ms. Lewinsky. But they never asked him to explain, affirm, defend, or justify his testimony about that same topic in the Jones deposition. And he did not do so.

Members of the Senate, if justice is to be done, these misstatements and mischaracterizations must not be allowed to stand and must not be allowed to influence your judgment as you look at the evidence. So, please look at the real record. It is the record of the President's testimony, not the Jones deposition—his testimony before the grand jury that should be the Senate's sole concern.

Now, it is timely, I think, to talk a little bit about legalisms and technicalities and hairsplitting because those who have engaged in this process over the past months in this enterprise of defending the President have also been the subject of much criticism. The majority counsel accused us of ''legal hairsplitting, prevarication and dissembling,'' and urged the Members of the Senate and the House to pay no attention to the ''obfuscations and legalistic pyrotechnics of the President's defenders.'' And during his presentation just last week on January 15, Congressman MCCOLLUM implored you ''not to get hung up on some of the absurd and contorted explanations of the President and his attorneys.''

To the extent that we have relied on overly legal or technical arguments to defend the President from his attackers, we apologize to him, to you, and to the American public. We do the President no earthly good if, in the course of defending him, we offend both the judges, the jurors, and the American public. And Mr. Ruff had it just right when he expressed his concern to the members of the Judiciary Committee that our irresistible urge to practice our profession should not get in the way of securing a just result in this very grave proceeding for this very specific client.

But, when an individual—any individual—is accused of committing a crime such as perjury, the prosecutors must be put to their full proof. Every element of the crime must be proven. And if a criminal standard is going to be used here it must be proven beyond a reasonable doubt.

Now, the managers have taken it upon themselves directly and aggressively to accuse this President of criminal activity. They say that this criminal activity is at the heart of the effort to remove him from office. As Congressman MCCOLLUM said to you last week:

The first thing you have to determine is whether or not the President committed crimes. If he didn't obstruct justice or witness tamper or commit perjury, no one believes [no one believes] he should be removed from office.

Allegations of legal crimes invite, indeed they call out for legal defenses. And you will not be surprised to learn that in defending the President of the United States, we intend and we will use all the legal defenses that are available to us, as they would be available to any other citizen of this country.

Teddy Roosevelt, quoted earlier in this proceeding, said it best: ''No man is above the law and no man is below the law either.'' In fact, the mere act of alleging perjury, as those of you in this body know who have tried perjury cases, the mere act of alleging perjury invites precisely the kind of hairsplitting everyone seems to deplore. If it is the will of the Congress to change the crime of perjury, to modify it, to eliminate certain judicially created defenses to that offense, so be it. But the crime of perjury has developed the way it has for some very good reasons, and it has a long and distinguished pedigree.

Its essential elements are well and clearly established, and Manager CHABOT'S presentation was clear on those points, although you will not be surprised to learn that I disagree with his conclusions. Courts have concluded that no one should be convicted of perjury without demonstrating that the testimony in question was, in fact, false; that the person testifying knew it to be false; and that the testimony involved an issue that is material to the case, one that could influence the outcome of the matter one way or another.

In addition, courts and prosecutors are in general agreement that prosecutions for perjury should not be brought on the basis of an oath against an oath. The Supreme Court has spoken on this issue, holding that a conviction for perjury ''ought not to rest entirely upon an oath against an oath.''

Ladies and gentlemen of the Senate, when we presented our case to the Judiciary Committee last December, we invited five experienced prosecutors to examine the record of this case and to give us their views as to whether they would bring charges of perjury and obstruction of justice against the President based on that record. These five attorneys are five of the best, the most experienced, the most tested prosecutors the country has ever seen. Three served as high officials in Republican Departments of Justice; two served during Democratic administrations. All were in agreement that no responsible prosecutor would bring this case against President Clinton.

I would like to run the tape recordings of testimony from two of the individuals who testified, Tom Sullivan, former U.S. attorney from the Northern District of Illinois, as he describes

the law of perjury, and Richard Davis, an experienced trial lawyer with prosecutorial experience in the Department of Justice and the Department of the Treasury.

(Text of videotape presentation:)

Mr. SULLIVAN. . . . The law of perjury can be particularly arcane, including the requirements that the government prove beyond a reasonable doubt that the defendant knew his testimony to be false at the time he or she testified, that the alleged false testimony was material, and that any ambiguity or uncertainty about what the question or answer meant must be construed in favor of the defendant.

Both perjury and obstruction of justice are what are known as specific intent crimes, putting a heavy burden on the prosecutor to establish the defendant's state of mind. Furthermore, because perjury and obstruction charges often arise from private dealings with few observers, the courts have required either two witnesses who testified directly to the facts establishing the crime, or, if only one witness testifies to the facts constituting the alleged perjury, that there be substantial corroborating proof to establish guilt. Responsible prosecutors do not bring these charges lightly.

The next testimony you will hear is from Richard Davis, who is Acting Deputy Attorney General—excuse me, he was assistant from the Southern District of New York, task force leader for a Watergate special prosecution force and Assistant Secretary of Treasury for Enforcement and Operations from 1977 to 1981.

(Text of videotape presentation:)

Mr. DAVIS. . . . In the context of perjury prosecutions, there are some specific considerations which are present when deciding whether such a case can be won. First, it is virtually unheard of to bring a perjury prosecution based solely on the conflicting testimony of two people. The inherent problems in bringing such a case are compounded to the extent that any credibility issues exist as to the government's sole witness.

Second, questions and answers are often imprecise. Questions sometimes are vague, or used too narrowly to define terms, and interrogators frequently ask compound or inarticulate questions, and fail to follow up imprecise answerers. Witnesses often meander through an answer, wandering around a question, but never really answering it. In a perjury case, where the precise language of a question and answer are so relevant, this makes perjury prosecutions difficult, because the prosecutor must establish that the witness understood the question, intended to give a false, not simply an evasive answer, and in fact did so. The problem of establishing such intentional falsity is compounded, in civil cases, by the reality that lawyers routinely counsel their clients to answer only the question asked, not to volunteer, and not to help out an inarticulate questioner.

Legalistic though some of these legal defenses may be, these are the respectable and respected, acceptable and expected defenses available to anyone charged with this kind of a crime. So to accuse us of using legalisms to defend the President when he is being accused of perjury is only to accuse us of defending the President. We plead guilty to that charge, and the truth is that an attorney who failed to raise these defenses might well be guilty of malpractice.

But putting the legal defenses aside, it is not a legalistic issue to point out that the President did not say much of what he is accused of having said. It is not legalistic to point out that a witness did not say what some rely on her testimony to establish. And it is not too legalistic to point out that a President of the United States should not be convicted of perjury and removed from office over an argument, a dispute about what is and what is not the commonly accepted meaning of words in his testimony.

I would like to make one additional point about the Office of the Independent Counsel and the Starr prosecutors. They, as you know, have had a long and difficult relationship with the White House. It has been intense, adverse, frequently hostile. They were the ones who conducted the interrogation of the President before the grand jury. These attorneys from the Office of Independent Counsel were identified by Mr. Starr as being experienced and seasoned and professional.

In the referral that they sent over to the House of Representatives, they make three allegations of grand jury perjury, and the managers, based on my analysis of Mr. ROGAN's speech, appear to have adopted two of those allegations.

What is most remarkable is the fact that the managers make many, many allegations of grand jury perjury that the Independent Counsel declined to make, that were not included in the referral.

Think about it for a moment. The lawyers working for the Office of the Independent Counsel, they were in charge of this investigation. They were the ones who called the President. They were the ones running the grand jury. It was their grand jury. They conducted the questioning of the President. They picked the topics. They asked the follow-up questions.

You should remember one additional fact. Their standard for making a referral is presumably much lower than the standard you would expect from the managers in making a case for the removal of the President in an article of impeachment. The Independent Counsel Act calls upon the Independent Counsel to make a referral when there is credible and substantial information of potential impeachable offenses.

They looked at the record, the same record that the managers had, and they did make a referral and they did send recommendations to the House of Representatives.

But these lawyers, Mr. Starr and his fellow prosecutors, did not see fit to allege most of the charges that we are discussing today. It is fair for us to assume that the Office of Independent Counsel considered and declined to make the very allegations of perjury that the House managers presented to you last week. Apparently, the managers believe that Ken Starr and his prosecutors have been simply too soft on the President.

This should cause the Members of the Senate some concern and some additional reason to give very careful scrutiny to these charges. When you do, you will find the following: The allegations are frequently trivial, almost always technical, often immaterial and always insubstantial. Certainly not a good or justifiable basis for removing any President from office.

Finally, as we go through the allegations and the evidence that I will be discussing, please ask yourself, What witness do I want to hear about this issue? Will live witnesses really make a difference in the way that I think about this? Are they necessary for this case and this article to be understood and resolved?

Subpart 1 has to do with testimony about the nature and details of the relationship with Monica Lewinsky. And, once again, because article I does not identify with any specificity what the President said in the grand jury that is allegedly perjurious, the House managers have been free to include whatever specific allegations they—not the House of Representatives—have seen fit to level against the President.

And we have been left to guess—so this is my guesswork—we have been left to guess what the specific allegations are. And we have done so. And we have tried to identify the precise testimony at issue based on the managers' trial brief and on Mr. Manager ROGAN's presentation.

Now, as you will see in these allegations of subpart 1, it is the managers who resort to legalisms, who use convoluted definitions and word games to attack the President. It is the managers who employ technicalities and legal mumbo jumbo, who distort the true meaning of words and phrases in an effort to convict the President. And we are the ones who must cry ''Foul.'' We are the ones who must point out what the managers are trying to do here. They seek to convict the President and remove him from office for perjury before a grand jury by transforming wholly innocent statements about immaterial issues into what are alleged to be ''perjurious, false and misleading'' testimony.

I begin with what is identified in the majority report as ''direct lies.'' First, the managers claim that the President perjured himself before the grand jury, that he told a direct lie and should be removed from office because in his prepared statement he acknowledged having inappropriate contact with Ms. Lewinsky on ''certain occasions.'' This was a ''direct lie,'' say the managers, because, according to Ms. Lewinsky, between November 15, 1995, and December 28, 1997, they were alone at least 20 times and had, she says, 11 sexual encounters. To use the words ''on certain occasions'' in this context is, according to the managers, ''perjurious, false and misleading.''

Now, this particular chart was not included in Mr. Starr's referral, and it was not debated by the members of the

Judiciary Committee in the House of Representatives.

The managers also say that the President lied to the grand jury and should be removed from office because the President acknowledged that ''on occasion'' he had telephone conversations that included sexual banter—this is also in the prepared statement—when the managers say the President and Ms. Lewinsky had 17 such telephone conversations over a 2-year period of time. To use the words ''on occasion'' in this context, it is, according to the managers, a ''direct lie'' to the grand jury for which the President should be removed from office. Now, this charge was not included in Mr. Starr's referral. It was not debated by the members of the House Judiciary Committee. And it was not debated on the floor of the House.

In responding to these two charges, it may make some sense to begin with the dictionary definition of ''occasional'' to satisfy ourselves that the President's statement is, in fact, a more than reasonable and actually an accurate use of that word under the circumstances.

Now, there are 774 days in the time span between November 1995 and December 1997. I submit that it is not a distortion, it is not dishonest to describe their activity, which Ms. Lewinsky claims occurred on 11 different days—from our examination of her testimony, we can only locate 10, but she says 11—as having occurred ''on certain occasions.'' Look at the calendar.

Now, that phrase, ''on certain occasions,'' carries no inference of frequency or numerosity. Sort of means it happened every now and then. And the same could be said for the use of the words ''on occasion'' when they were talking about telephone conversations to describe 17 telephone conversations that included explicit sexual language.

Now, as you consider the second allegation having to do with the phone calls, you might also read the grand jury testimony of Ms. Lewinsky herself on August 20, 1998, at page 1111. There a grand juror asks her, how much of the time, and how often—when she was on the phone with the President—did they engage in these kinds of graphic conversations. Ms. Lewinsky answered, ''Not always. On a few occasions.'' The managers are trying to remove the President from office when he used the words ''on occasions,'' when Ms. Lewinsky described that frequency or that event precisely the same way.

There is simply no way that the President's use of the words ''on certain occasions'' or ''on occasion'' can be used as an effort to mislead or deceive the members of the grand jury or to conceal anything. There is simply no way that a reasonable person can look at this testimony and conclude—or agree with the managers—that it is a ''direct lie.'' What message do the managers send to America and to the rest of the world when they include these kinds of allegations as reasons to remove this President from office?

It is hard to take the charges seriously when in each case they boil down to arguments of semantics. Does anyone here really believe that Members of the House of Representatives would have voted to approve these allegations as the basis for impeaching and removing this President if they had been given the chance with specific, identified perjurious testimony in a proposed article of impeachment? But here we are in the well of the Senate defending the President of the United States against allegations that the managers believe and have seriously argued should cause the President to be removed from office and even prosecuted and convicted in a criminal court.

The President is also accused of lying before the grand jury—and the managers have asked you to convict him and remove him from office—because, in the prepared statement that he read to the grand jury in August, he acknowledged that he engaged in inappropriate conduct with Ms. Lewinsky ''on certain occasions in early 1996 and once in 1997.'' The managers call this a ''direct lie'' because the President did not mention 1995. And in their Trial Memorandum they write: ''Notice [the President] did not mention 1995. There was a reason: On three 'occasions' in 1995, Ms. Lewinsky said she engaged in sexual contact with the President.''

Now, this was one allegation that the Office of the Independent Counsel did include in its referral to the House. And this charge was, in fact, discussed and debated by the members of the Judiciary Committee when they conducted their impeachment inquiry. Let me show you what two members of that committee—now managers for the House in this trial—thought about this particular charge of perjury when Congressman BARNEY FRANK ridiculed it during the debate.

The chairman of the Judiciary Committee, Mr. HYDE—we are missing an exhibit here; I think it is No. 10—said, ''It doesn't strike me as a—as a terribly serious count.'' Congressman CANADY, in his closing argument in the final stage of that proceeding, said, ''I freely acknowledge that reasonable people can disagree about the weight of the evidence on certain of the charges. For example, I think there is doubt about the allegations that the President willfully lied concerning the date his relationship with Ms. Lewinsky began.''

This allegation involves an utterly meaningless disparity in testimony about dates that are of absolutely no consequence whatsoever. The most likely explanation here is that there was an honest difference in recollection. There is no dispute about the critical facts that Ms. Lewinsky was young, very young, too young, when she got involved with President Clinton. But her age didn't change between November 1995 and January 1996. Her birthday is in July. She was 22 years old in November and 22 years old in January, despite the fact that every manager persists in stating, erroneously—not perjuriously, erroneously—that she was 21 years old when she first became involved with the President. Nothing of any importance in the case took place between December 1995 and January 1996. She was an intern in the early stage of that period, and she became a Government employee. So it did not change the relationship that she had with the President. It modified her title. Any dispute over this immaterial issue is silly.

It is unreasonable to argue, as we heard from the House managers last week, that if you believe Ms. Lewinsky and disbelieve the President on this issue as to which date was the date that they began the relationship and had the inappropriate contact, that you must convict the President and remove him from office.

I confess, I find myself in agreement with Congressman HYDE when he says this allegation is not serious, not ''terribly serious.'' And I agree with Congressman CANADY when he suggests ''there is'' room for ''doubt'' as to whether the President had any real reason or motive to lie about these things.

I truly wonder if the House of Representatives, had it been identified as a specific statement for them to consider, would have made and included this allegation in the articles of impeachment aimed at removing President Clinton from office.

Is this conflict in testimony really such a serious issue that, if you find the President is mistaken, he should be removed from office? And is it important enough to require the testimony of live witnesses? Is it material of anything of interest to the grand jury at the time this testimony was given? I don't think so.

Now, between the time of the vote in the House and the time that the managers filed their trial brief, the managers came up with another allegation of perjury and put it into the mix. They argue that this element of the President's grand jury testimony should also cause him to be removed from office. This allegation involves the President's statement that there was some period of friendship with Ms. Lewinsky that led to inappropriate contact. But it is immaterial, unimportant, and fundamentally frivolous as an allegation. And it was not, needless to say, included in the Starr referral. I am sure the attorneys in the Office of Independent Counsel knew about this statement and chose not to include it. It was never discussed by the members of the Judiciary Committee during the impeachment inquiry. We never heard about it, never saw it, never had a chance to deal with it. It was never mentioned on the floor of the House of Representatives.

According to my examination—which may be flawed—my thinking is that it made its first appearance in the matter

only after the House of Representatives voted on the articles of impeachment when the managers filed their trial brief. Does anyone really believe that the House of Representatives would have voted to approve this allegation as a basis for convicting and removing this President from office?

Then the managers turn to what, in the majority report, they call ''the heart of the perjury''; that is, the President's grand jury testimony that his encounters with Ms. Lewinsky did not constitute ''sexual relations'' as defined by the Jones lawyers in the Jones deposition.

Before dealing with this allegation, however, it is important to understand that in the course of his testimony the President was required to deploy two different definitions of ''sexual relations.'' One was his own and the other was the definition supplied to him by the Jones lawyers and modified by Judge Susan Webber Wright during his deposition.

First, if you turn to exhibit No. 11, you will find the President's definition, his own personal definition, as reported to the grand jury.

Next, let me direct your attention to the transcript of the telephone conversation between Monica Lewinsky—I am talking here about exhibit 12—Monica Lewinsky and Linda Tripp, where Ms. Lewinsky explained her definition of ''sexual relations.'' This conversation occurred, incidentally, many weeks before Ms. Lewinsky executed her affidavit for the Jones case.

Finally, look at the dictionaries and read their definitions. You can see that in exhibit 13.

By the way, exhibit 12, which includes Ms. Lewinsky's definition, is confirmed by other parts of the record where she talks to other individuals, FBI agents. She refers to this understanding and this definition in her proffer. So it is not just the one telephone conversation to establish what Monica Lewinsky says she thought at that time the definition was.

Although some might think that the President's definition is unduly limited and that both of them are splitting hairs, there is some reasonable basis and there is reputable authority to support their view. It seems clear that Ms. Lewinsky could think, and probably did think and reassure herself at the time she wrote and executed her affidavit, that the affidavit she submitted in the Jones case was, in fact, accurate. And thus, knowing Ms. Lewinsky's view of that situation and sharing her definition, the President could reasonably say, ''Absolutely, yes,'' when Mr. Bennett asked the President if Ms. Lewinsky's affidavit stating she had never had sexual relations with the President was true.

How can you accept the argument of the House managers that the President should be removed from office because his definition, which is the dictionary definition, does not comport with theirs?

We are going to play the videotape. We are going to talk about the definition that was the second definition that was given to the President in the Jones deposition, which is also the subject of grand jury testimony, and we are going to play 14 minutes of that videotape at the beginning of the President's appearance, or at the time he was first handed the definition and sits at the table.

This may be a good time to take a break because it will be a 14-minute span of time.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we take a 10-minute recess at this time. I urge the Senators to relax a moment but come right back to the Chamber so we can proceed.

There being no objection, at 2:06 p.m., the Senate recessed until 2:24 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Senate will come to order.

The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we will be proceeding with Mr. Counsel Craig's video perhaps, or do you have something before that?

Mr. Counsel CRAIG. I have a little bit of production.

The CHIEF JUSTICE. The Chair recognizes Mr. Counsel Craig.

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

Exhibit No. 14 in your collection of exhibits is the definition that the President was handed when he went into his deposition testimony—to give his deposition testimony. There are two or three things I would like to say about this exhibit before we go to the videotape.

The first is this: Many of the President's critics have accused the President of himself coming up with this tortured and convoluted definition so that he could get away with denying having sex with Ms. Lewinsky; that he was the one that came up with a bizarre and surreal definition that would give him some plausible deniability and allow him to conceal his relationship with Ms. Lewinsky from the Jones lawyers. But in truth this definition was not his idea, not his work product, not his own definition. And it is unfair and inaccurate to saddle him with inventing such a silly and truncated definition, and the event that flows from that.

My second point is this: The mere fact that the lawyers in Jones felt the need to use a definition for sexual relations is, by itself, standing alone, evidence to support the notion that at least they recognized that the precise meaning of the term can and does differ from person to person. It is precisely then, when there is some uncertainty or ambiguity about the meaning and common usage of words, that lawyers turn to create a definition in an effort to have clarity, uniformity and common understanding. And the very fact that the lawyers in Jones seem to think that a definition was needed means that without such a definition there is no commonly accepted, no universally agreed upon meaning of this phrase. And what is or is not included within the ambit of that definition becomes an argument and nothing more—certainly not perjury.

The third point to remember before we watch the President as he first sees this piece of paper is this:

To understand what is going on in the President's mind at the time he testified about this definition during the Jones deposition, you must look at what was deleted as well as looking at that part of the definition that was left behind.

You will see that in the third paragraph of the definition there is the description which, in fact, more closely approximates what went on between Ms. Lewinsky and the President within the first paragraph. And this part of the definition was deleted by the judge.

There is an additional point. On the tape you will hear the President's lawyer, Mr. Bennett—and Mr. Ruff referred to this yesterday—urging the Jones lawyers to abandon this definition, to leave it behind, and ask direct questions of the President as to what he did. The record would certainly have been clearer for all of us if he had followed Mr. Bennett's advice. And there is another voice that you will hear in addition to Mr. Bennett—Mr. Fisher, who was the Jones lawyer, the judge, Judge Wright, and the voice of the lawyer of the President's codefendant in the case of Danny Ferguson.

Let me just briefly tell you what to look for. The President first saw this definition when he entered the room and sat down to testify—not before. You will see him as he sits there and he is handed a piece of paper with the definition typed on it. Neither he nor his lawyer had ever seen that definition before. He was then required to sit down to study it, and to understand it.

And if you look at the next exhibit, this is what he says about what he thought and did later in the grand jury. I think this is the definition, exhibit No. 15. You will watch him as he says this.

I might also note that when I was given this and began to ask questions about it, I actually circled number one. This is my circle here. I remember doing that so I could focus only on those two lines, which is what I did.

This was the actual deposition exhibit with his circle around No. 1.

Let us remember finally what his testimony is about his intentions in this deposition. ''My goal is to be truthful, but I didn't want to help them.''

Let's watch what happened.

[Text of videotape presentation:]

A. Good morning.

Q. My name is Jim Fisher, sir, and I'm an attorney from Dallas, Texas, and I represent

the Plaintiff, Paula Jones, in this case. Do you understand who I am and who I'm representing today?

A. Yes.

Q. And do you understand, sir, that your answers to my questions today are testimony that is being given under oath?

A. Yes.

Q. And your testimony is subject to the penalty of perjury; do you understand that, sir?

A. I do.

Q. Sir, I'd like to hand you what has been marked Deposition Exhibit 1. So that the record is clear today, and that we know that we are communicating, this is a definition of a term that will be used in the course of my questioning, and the term is ''sexual relations.'' I will inform the Cour that the wording of this definition is patterned after Federal Rule of Evidence 413. Would you please take whatever time you need to read this definition because when I use the term ''sexual relations,'' this is what I mean today.

Mr. BENNETT. Is there a copy for the Court?

Mr. FISHER. Would you pass that, please?

Mr. BENNETT. Your Honor, as an introductory matter, I think this could really lead to confusion, and I think it's important that the record be clear. For example, it says, the last line, ''contact means intentional touching, directly or through clothing,'' I mean just for example, one could have a completely innocent shake of the hand, and I don't want this record to reflect—I think we're here today for Counsel for the Plaintiff to ask the President what he knows about various things, what he did, what he didn't do, but I, I have a real problem with this definition which means all things to all people in this particular context, Your Honor.

Mr. BRISTOW. Your Honor, I think the wording of that is extremely erroneous. What this, what the deposing attorney should be looking at is exactly what occurred, and he can ask the witness to describe as exactly as possible what occurred, but to use this as an antecedent to his questions, it would put him in a position, if the President admitted shaking hands with someone, then under this truncate deposition—or definition, he could say or somehow construe that to mean that that involves some sort of sexual relations, and I think it's very unfair. Frankly I think it's a political trick, and I've told you before how I feel about the political character of what this lawsuit is about.

Mr. FISHER. Your Honor, may I respond?

Judge WRIGHT. You may.

Mr. FISHER. The purpose of this is to avoid everything that they have expressed concern about. It is to allow us to be discreet and to make the record crystal clear. There is absolutely no way that this could ever be construed to include a shaking of the hand.

Mr. BENNETT. Well, Mr. Fisher, let me refer you to paragraph two. It says ''contact between any part of the person's body or an object and the genitals or anus of another person.''

What if the President patted me and said I had to lose ten pounds off my bottom? I—you could be arguing that I had sexual relations with him. Your Honor, this is going to lead to confusion. Why don't they ask the President what he did, what he didn't do, and then we can argue in Court later about what it means.

Judge WRIGHT. All right, let me make a ruling on this. It appears that this really is not the definition of contact under Rule 413 because Rule 413 deals with nonconsensual contact. This definition would encompass contact that is consensual, and of course the Court has ruled that some consensual contact is relevant in this case, and so let the record reflect that the Court disagrees with counsel that this is not, about it being the definition under Rule 413. It's not. It is more in keeping with, however, the Court's previous rules, but I certainly agree with the President's Counsel that this, the definition number two is too encompassing, it's too broad, and so is definition number three. Definition number one encompasses intent, and so that would be, but numbers two and three is just, are just too broad.

Mr. FISHER. All right, Your Honor.

Judge WRIGHT. And number one is not too broad, however, so I'll let you use that definition as long as we understand that that's not Rule 413, it's just the rule that would apply in this case to intentional sexual contact.

Mr. FISHER. Yes, Your Honor, and had I been allowed to develop this further, everyone would have seen that Deposition Exhibit 2 is actually the definition of sexual assault or offensive sexual assault, which is the term in Rule 413.

Mr. BENNETT. Your Honor, I object to this record being filled with these kinds of things. This is going to leak. Why don't they ask—they have got the President of the United States in this room for several hours. Why don't they ask him questions about what happened or didn't happen?

Judge WRIGHT. I will permit him to refer to definition number one, which encompasses knowing and intentional sexual contact for the purpose of arousing or gratifying sexual desire. I'll permit that. Go ahead.

Q. All right, Mr. President, in light of the Court's ruling, you may consider subparts two and three of Deposition Exhibit 1 to be stricken, and so when in my questions I use the term ''sexual relations,'' sir, I'm talking only about part one in the definition of the body. Do you understand that, sir?

A. I do.

Q. I'm now handing you what has been marked Deposition Exhibit 2. Please take whatever time you need to read Deposition Exhibit 2.

Mr. BENNETT. Your Honor, again, what I am very worried about, Your Honor, is first of all, this, this, this appears to be a—I mean what I don't want to do is have him being asked questions and then we don't, we're all ships passing in the night. They're thinking of one thing, he's thinking of another. Are we talking criminal assault? I mean this is not what a deposition is for, Your Honor. He can ask the President, what did you do? He can ask him specifically in certain instances what he did, and isn't that what this deposition is for? It's not to sort of lay a trap for him, and I'm going to object, to the President answering and having to remember what's on this whole sheet of paper, and I just don't think it's fair. It's going to lend to confusion.

Judge WRIGHT. All right, do you agree with Mr. Bennett?

Mr. BRISTOW. I had one other point to add Your Honor.

Judge WRIGHT. All right.

Mr. BRISTOW. This is almost like in a typical automobile accident where the plaintiff's counsel wants to ask the defendant were you negligent. That's not factual.

Judge WRIGHT. Mr. Fisher, do you have a——

Mr. FISHER. Yes, Your Honor. What I'm trying to do is avoid having to ask the President a number of very salacious questions and to make this as discreet as possible. This definition, I think the Court will find, is taken directly from Rule 413 which I believe President Clinton signed into law, with the exception that I have narrowed subpart one to a particular section, which would be covered by Rule 413, and I have that section here to give the President so that there is no question what is intended. This will eliminate confusion, not cause it.

Mr. BENNETT. Your honor, I have no objection where the appropriate predicates are made for them to ask the President , did you know X, yes or no, what happened, what did you do, what didn't you do. We are—acknowledge that some embarrassing questions will be asked, but then we will know what we're talking about, but I do not want my client answering questions not understanding exactly what these folks are talking about.

Now, Your Honor, I told you that the President has a meeting at four o'clock, and we've already wasted twenty minutes, and Mr. Fisher has yet to ask his first factual question.

Judge WRIGHT. Well, I'm prepared to rule, and I will not permit this definition to be understood. Quite frankly there's several reasons. One is that the Court heretofore has not proceeded using these definitions. We have used, we've made numerous rulings or the Court has made numerous rulings in this case without specific reference to these definitions, and so if you want to know the truth, I don't know them very well. I would find it difficult to make rulings, and Mr. Bennett has made clear that he acknowledges that embarrassing questions will be asked, and if this is in fact an effort on, on the part of Plaintiff's Counsel to avoid using sexual terms and avoid going into great detail about what might or might not have occurred, then there's no need to worry about that, you may go into the detail.

Mr. BENNETT. If the predicates are met, have no objection to the detail.

Mr. FISHER. Thank you, Your Honor.

Judge WRIGHT. It's just going to make it very difficult for me to rule, if you want to know the truth, and I'm not sure Mr. Clinton knows all these definitions, anyway.

Did you hear that last statement from the judge? ''I'm not sure Mr. Clinton knows all these definitions, anyway.''

Now, before the grand jury the President discussed at some length and in great detail his interpretation of the definition that he was asked to apply during that deposition—the definition that he was asked to apply. And he gave lengthy and sustained answers. And when you read the grand jury testimony, as I urge you to do, you will see that they are consistent and they are logical and there is reason behind his conclusion that his activities with Ms. Lewinsky simply did not fall within that definition.

There is no mystery, no deception, no lying, no effort to conceal his view. His view is there for all to see. It is also reported from these limited excerpts from the grand jury testimony. It is a plain statement of his understanding. And to argue that the President, when he conveyed his understanding of that definition, doesn't really believe his argument, and to contend that he is committing perjury when he told the grand jury that he genuinely believed his interpretation of the definition—that is just speculation about what is in his mind and it is not the stuff or fuel of a perjury prosecution.

Now, I would like to return very briefly to the group of experienced prosecutors who gave their opinion about the President's testimony before the grand jury on this issue. They said that the President's interpretation was a reasonable one under the circumstances, but the managers claim

that the President's explanation of the Jones definition, his interpretation, his understanding, and his argument with the lawyers from the Office of Independent Counsel, are the heart of the perjury.

Let's hear what the prosecutors said about this and read the transcript of their testimony when they testified before the House Judiciary Committee. And first we will listen to Tom Sullivan.

(Text of videotape presentation:)

Mr. SULLIVAN. Thank you very much, Mr. Hyde. It's clear to me that the president's interpretation is a reasonable one, especially because the words which seem to describe oral sex—the words which seem to describe directly oral sex were stricken from the definition by the judge. In a perjury prosecution, the government must prove beyond a reasonable doubt, that the defendant knew when he gave the testimony, he was telling a falsehood. The lying must be knowing and deliberate. It is not perjury for a witness to evade or obfuscate or answer nonresponsively. The evidence simply does not support the conclusion that the president knowingly committed perjury, and the case is so doubtful and weak that a responsible prosecutor would not present it to the grand jury.

We have one more excerpt from his testimony.

(Text of videotape presentation:)

Mr. SULLIVAN. . . . In perjury cases, you must prove that the person who made the statement made a knowingly false statement. Now, where I think the defect in this prosecution is, among others—and I don't think it would be brought, because it's ancillary to a civil deposition—is to establish that the president knew what he said was false. When he testified in his grand jury testimony, he explained what his mental process was in the Jones deposition, and he said the two definitions that would describe oral sex had been deleted by the trial judge from the definition of sexual relations and I understood the definition to mean sleeping with somebody. I don't want to get to particular here.

Rep. LOFGREN. Thank you.

Mr. SULLIVAN. But that is where this case, in my opinion, wouldn't go forward even if you found an errant prosecutor who would want to prosecute somebody for being a peripheral witness in a civil case that had been settled. That's my answer to that.

The managers place great emphasis and weight on the conflict in the testimony between President Clinton and Ms. Lewinsky over some specific intimate details related to their activity. There is a variance between the President's testimony and Ms. Lewinsky's testimony about the details of what they did. What do they disagree about? Not about whether the President and Ms. Lewinsky had a wrongful relationship—the President admitted that before the grand jury. Not about whether the President and Ms. Lewinsky were alone together—the President admitted that before the grand jury. Not about whether, when they were alone together, their relationship included inappropriate, intimate contact—the President admitted that before the grand jury. Not about whether they engaged in telephone conversations that included sexual banter—the President admitted that before the grand jury. Not about whether the President and Ms. Lewinsky wanted to keep their wrongful relationship a secret—the President admitted that before the grand jury.

The difference in their testimony about their relationship is limited to some very specific, very intimate details. And this is the heart of the entire matter, this disparity in their testimony. The true nub of the managers' allegation that the President committed perjury is that he described some of the contact one way and she describes it another.

Not surprisingly, the managers choose to believe Ms. Lewinsky's description of these events. And so, even in the absence of any evidence to the contrary, other than Ms. Lewinsky's own recollection of these events, the managers have concluded that the President lied under oath about the details of his sexual activity, that he somehow shortchanged the grand jury, and should be removed from office.

The possibility that the question of whether the President of the United States should be removed from his office—the fact that that might hinge on whether you believe him or her on this issue is a staggering thought. Ordinarily when dealing with disparity in testimony such as this, prosecutors will have nothing to do with it. Only two people were there. And, in truth, the real importance of the disparity in their testimony is questionable. Not all disparities or discrepancies in testimony are necessarily appropriate subjects for perjury prosecutions.

According to those experienced prosecutors who testified before the Judiciary Committee, there are two more points to be made about this. First, this is a classic oath on oath—he says, she says—swearing match, that, under ordinary custom and practice at the Department of Justice, never would be prosecuted without substantial corroborative proof. Such proof, say these experienced prosecutors, does not consist of testimony of friends and associates of Ms. Lewinsky who tell the FBI that Ms. Lewinsky contemporaneously told them about the activity, if it was going on. But the managers claim that these contemporaneous statements corroborate Ms. Lewinsky's testimony.

That claim is specious. Statements that Ms. Lewinsky makes to other people are not viewed as independent corroborative evidence. They come from the same source. They come from Ms. Lewinsky, as the source that gave that testimony to the grand jury. And no court and no prosecutor would accept the notion that such statements, standing alone, satisfy the requirement of substantial corroborative proof when there is a swearing match.

Now, let's see what the experienced prosecutors have to say about this issue and that claim.

(Text of videotape presentation:)

Rep. WEXLER. . . . What is the false statement?

Mr. SULLIVAN. Well, if you—it could be one of two. It could be when he denied having sexual relations and I've already addressed that, because he said, ''I was defining the term as the judge told me to define it and as I understood it,'' which I think is a reasonable explanation. The other is whether or not he touched her—touched her breast or some other part of her body, not through her clothing, but directly. And he says, ''I didn't,'' and she said, ''I (sic) did,'' so it's who-shot-John. It's, it's, you know, it's a one on one. The corroborative evidence that the prosecutor would have to have there, which is required in a perjury case—you can't do it one on one, and no good prosecutor would bring a case with, you know, I say black, you say white—would be the fact that they were together alone and she performed oral sex on him. I think that is not sufficient under the circumstances of this case to demonstrate that there was any other touching by the president and therefore he committed this—you know, he violated this—and committed perjury.

Now the testimony from Richard Davis on this same point, and then we will move to subpart 2.

(The text of videotape presentation:)

Mr. DAVIS. * * * I will now turn to the issue of whether, from the perspective of a prosecutor, there exists a prosecutable case for perjury in front of the grand jury. The answer to me is clearly no. The president acknowledged to the grand jury the existence of an improper intimate relationship with Monica Lewinsky, but argued with the prosecutors questioning him, that his acknowledged conduct was not a sexual relationship as he understood the definition of that term being used in the Jones deposition. Engaging in such a debate, whether wise or unwise politically, simply does not form the basis for a perjury prosecution. Indeed, in the end, the entire basis for a grand jury perjury prosecution comes down to Monica Lewinsky's assertion that there was a reciprocal nature to their relationship, and that the president touched her private parts with the intent to arouse or gratify her, and the president's denial that he did so. Putting aside whether this is the type of difference of testimony which should justify an impeachment of a president, I do not believe that a case involving this kind of conflict between two witnesses would be brought by a prosecutor, since it would not be won at trial.

A prosecutor would understand the problem created by the fact that both individuals had an incentive to lie—the president to avoid acknowledging a false statement at his civil deposition, and Miss Lewinsky to avoid the demeaning nature of providing wholly unreciprocated sex. Indeed, this incentive existed when Miss Lewinsky described the relationship to the confidantes described in the independent counsel's referral. Equally as important, however, Mr. Starr has himself questioned the veracity of one witness, Miss Lewinsky, by questioning her testimony that his office suggested she tape record Ms. Currie, Mr. Jordan, and potentially the president. And in any trial, the independent counsel would also be arguing that other key points in Miss Lewinsky's testimony are false, including where she explicitly rejects the notion that she was asked to lie and that assistance in her job search was an inducement for her to do so.

The conclusion is clear: To make this case in any courtroom would be very difficult for a prosecutor. They point out that it is difficult, if not impossible, to put on a successful prosecution if the chief witness is deemed by the prosecutors to be unreliable on some issues, but presented as totally truthful on others.

Now let's move to subpart 2, and it is exhibit No. 18. The allegations of perjury here have to do with testimony that he gave at the grand jury about his deposition in the Jones case. And I begin by repeating a point that I made a little earlier, that the House of Representatives did not vote to approve the article that alleged that President Clinton committed perjury during his deposition in the Jones case. As I said before, there was good reason for that.

What are the reasons? There are many reasons. The President's testimony in the Jones deposition involved his relationship with a witness who was ancillary to the core issues of the Jones case. She was a witness in the case. She wasn't the plaintiff in the case, and she was ancillary to the core issues in the case, someone whose testimony was thereafter held to be unnecessary and perhaps inadmissible by Judge Susan Webber Wright, someone whose truthful testimony would have been, in any event, of marginal relevance since her relationship with the President was entirely consensual. And, as you know, this was a case that ultimately was found to have no legal or factual merit. It was dismissed by the judge, and it is now being settled by the parties.

Moreover, the President was caught by surprise in that deposition and asked questions about matters that the Jones lawyers already knew the answers to. As you heard yesterday, the Jones lawyers had been briefed the night before by Linda Tripp. So they were asking questions of President Clinton in the course of this deposition about the relationship to which they already had the answers. That kind of ambush is profoundly unfair, and it is one reason that Congressman GRAHAM said that he voted against this article in committee—the surprise. He was the only Republican to do so. He was the only Republican to vote against any article, and the decision of the House to follow Congressman GRAHAM's leadership and to reject this article showed great wisdom and judgment.

But apparently that is not to be the end of the matter when it comes to allegations of perjury in the Jones deposition. In subpart 2 of article I, the managers seek to reintroduce the issue of the President's testimony in the case by alleging that when the President testified before the grand jury, he testified falsely when he said that he tried to testify truthfully in the Jones deposition. Congressman ROGAN, Mr. Manager ROGAN has claimed that the President's answers ratified and reaffirmed and put into issue all of his answers in the Jones deposition when he testified that he believed he did not violate the law in the Jones deposition.

''This is perjurious testimony,'' said Manager ROGAN, ''because the record is clear''—I am quoting—that he did not testify truthfully in the deposition, and by that bootstrapping mechanism, we are now in a litigation about whether every single statement that the President made in the Jones deposition was or was not truthful to determine whether or not the President's testimony that he was truthful is or is not truthful.

But, in fact, President Clinton did not ratify, he did not reaffirm his Jones testimony when he testified before the grand jury, and you will see that when you read the transcript of his testimony. Quite the contrary is true. If you look at that transcript carefully, you will find that without admitting wrongdoing, the President elaborated, he modified, he amended and he clarified his testimony in Jones. And when Mr. Schippers made his closing argument to the House Judiciary Committee, I think he used the truthfulness, on one occasion, of the President's testimony before the grand jury to support his argument that the President lied in Jones.

But actually the specific wording of subpart 2 gives us no specific information and is not illuminating, and we turn to the managers' trial brief to ascertain precisely what the argument is. There the managers allege that the President falsely testified that he answered questions truthfully at his deposition concerning, among other things, whether he had been alone with Ms. Lewinsky. I begin by saying, again, this allegation was not included in the Starr referral. Why? Because it is based on a total misconception of the President's grand jury testimony.

As I referred to earlier, this is exhibit No. 7, I believe, and it shows you some evidence—this is not the complete evidence of his testimony about being alone. The prosecutors asked the President many questions about being alone with Ms. Lewinsky, but they never asked him about the Jones testimony. They asked him about whether he was alone; he never was asked about the Jones testimony:

''When I was alone with Ms. Lewinsky on certain occasions,'' it says right there—''When I was alone. . .''

Let me ask you, Mr. President, you indicate in your statement that you were alone with Ms. Lewinsky. Is that right?

Yes, sir.

How many times were you alone with Ms. Lewinsky?

Let me begin with the correct answer. I don't know for sure. But if you would like me to give an educated guess, I will do that. . . .

And then you will see over two or three pages of testimony he tries to recall times and incidents when he was alone with Ms. Lewinsky.

And so the prosecutor says, ''So if I could summarize your testimony, approximately 5 times you saw her before she left the White House, approximately 9 times after she left the employment?'' ''I know there were several times in '97,'' the President said. ''I would think that would sound about right.''

This is not a man denying that he was alone with Ms. Lewinsky, but he was not asked about his testimony on that topic when he testified in the Jones case.

Now, the managers further allege that the President's testimony before the grand jury that he testified truthfully at his deposition was a lie. In fact, his testimony there that they quote as being false was this: ''My goal in this deposition was to be truthful but not particularly helpful.'' ''My goal in this deposition to be truthful,'' they say, is false. ''I was determined to walk through the minefield of this deposition without violating the law, and I believe I did.'' His statement that ''I believe I did,'' they say, means that everything that he said in the Jones deposition was true. The President's statement that he set a goal and believes—believes—he has met it is, according to the managers, perjurious for which he should be removed from office.

And it is through this device that the managers seek to achieve, by indirection, what they were specifically forbidden to do by the direct vote of the House of Representatives, by claiming that the President's assertions in the grand jury were false when he described his state of mind—''I believed,'' ''I tried,'' ''I was determined,'' ''my goal was''—that he believed the managers seek to put out all of the President's evasive and misleading testimony in the Jones deposition in issue. That effort, I submit, should be rejected.

Let me cite one rather painful example in support of the President's testimony that he, in fact, tried to answer accurately when he testified in the grand jury. He was asked whether or not he ever had sexual relations with Gennifer Flowers, and he answered, ''Yes,'' that he had, under the definition of sexual relations being used in the Jones case. He later said that he would rather have taken a whipping in public than to acknowledge that relation because he knew it would be leaked to the public, which it was.

Now, if he didn't care about telling the truth in that deposition, if he went into that deposition with the intention of denying anything and everything that was embarrassing, if he really had decided in his own mind that whatever the Jones lawyers asked him, he was not going to be truthful about it, he never would have testified the way he did about Gennifer Flowers.

Now, ladies and gentlemen of the Senate, the President does not claim—and he never was asked in front of the grand jury, and he never asserts in front of the grand jury—that all his testimony in the Jones deposition was truthful. His statement was that he tried to be accurate, that his goal was to be truthful, but that statement is not a broad reaffirmation of the accuracy of all his testimony, despite the House managers' desire to characterize it as such. Those were accurate descriptions of the President's state of mind at the time he testified.

The real issue here is not the truth of the underlying statements made by the

President in the Jones deposition but the President's explanation of those statements, whether his description of his efforts to walk this fine line that he gave to the grand jury was accurate. Whether you agree or disagree with the President's view that he was or was not successful in his undertaking not to break the law and to be lawful, that argument is an argument. And it is not a secret argument. He has that out there open for everybody to see. That argument is hardly a proper subject for a perjury claim. And his simple restatement of his legal position to the members of the grand jury is hardly the stuff of a perjury prosecution.

Actually, if you look at the President's grand jury testimony, you will see that he provided much more complete, much more accurate, much more reliable testimony about many of the topics covered in Jones. And the notion that he reaffirmed, confirmed, or ratified his Jones testimony is just unsupported by the evidence.

It would be astonishing to think that the Senate would conclude that the President should be removed from office because in the grand jury he gave voice to a legal opinion and stated his own personal belief that his testimony in the Jones deposition did not break the law.

I submit to you that if that was the case, the Office of the Independent Counsel would have included that in the referral, and they did not. In fact, let me just say right now none of the rest of the allegations that we are going to be discussing in the article that we are talking about today are included in the Starr referral. The rest are entirely the product of the managers.

Subpart 3, which is the exhibit No. 19. This has to do with the President's testimony about statements he allowed his attorney to make to a Federal judge in the Jones case. And you saw the tape of that testimony last week.

According to the trial memorandum, the President remained silent during the Jones deposition at a time when his counsel, Mr. Bennett, made false and misleading representations to the court about Ms. Lewinsky's affidavit. Pointing to the Lewinsky affidavit, Bennett stated that Ms. Lewinsky had filed an affidavit ''saying that there is absolutely no sex of any kind in any manner, shape or form with President Clinton.'' And when asked by the Independent Counsel about this moments before the grand jury, the President testified that he hadn't paid much attention, that he was thinking about his testimony. And he says this four or five times. This is not just once; he says this four or five times. He is emphatic that he didn't pay attention and the words went by him.

Now, in support of their claim that the President lied when he said he was not paying attention, the House managers point to the videotape record of the President's testimony which shows, they argue, that the President was ''looking directly at Mr. Bennett, [and] paying close attention to his argument to Judge Wright.''

This allegation, not included in the Starr Report, is even more curious than the previous one because it is based on a novel legal theory which jeopardizes all lawyers in this building, which is that a client has an enforceable obligation to correct his attorney's alleged misstatements. And if he doesn't make those corrections, he—the client—will be held liable to charges of perjury and obstruction of justice.

The charge is that the President misled the grand jury when he said that he was not paying attention. While the videotape shows that the President was looking in Bennett's direction, there is nothing that can be read in his face or in his body language to show that he is listening to, understanding, or affirming Mr. Bennett's statement—no nod of the head, no movement at all, no comment, nothing.

What happens is this: Mr. Bennett makes his comment and is interrupted by the judge. She says, ''No, just a minute, let me make my ruling,'' before Mr. Bennett has a chance to complete his argument. And after interrupting Mr. Bennett, the judge makes a lengthy observation, followed by an intensive exchange between all counsel and the judge. The moment is fleeting. It goes by very, very quickly.

The moment occurs not at the beginning of the deposition, but well into it, after President Clinton has in fact been subjected to questions about Monica Lewinsky. Mr. Clinton, as you know, has been surprised by the direction the case has taken and the fact that the exclusive focus of these questions is on Lewinsky. He did not know this was coming. He did not expect it. As he put it in his grand jury testimony, ''I had no way of knowing that they would ask me all these detailed questions. I did the best I could to answer them.''

At that moment, because the questions had focused on Ms. Lewinsky—to the exclusion of everything and everybody else, including the Jones case—questions about the Jones case didn't occur until much, much later and near the end of the deposition. The President must have realized that the Jones attorneys probably knew about his relationship with Monica Lewinsky. He obviously had not taken any steps to prepare to answer questions about that relationship and he was clearly caught off guard.

It is not farfetched to think at that moment his mind was flooded with thoughts about how to get through the deposition. It is not implausible to think at that moment the President was preoccupied, watching his lawyer do his job, and not listening carefully and not tracking word by word the substance of the exchange.

Those of you who have practiced law and have represented individuals under stress at depositions know that this can happen. Is it really reasonable to think that you can tell beyond a reasonable doubt what is going on in the President's mind by looking at the videotape? And if you can and you are convinced he has heard, does he have any obligation to say anything? If he doesn't, then this case, this allegation, amounts to nothing.

It is hard to believe that the House managers—if it did, I think the Starr people would have brought it—it is hard to believe that the House managers believe that the Senate should conclude that the President committed perjury and should be removed from his office on the basis of his silence, his failure to speak.

Now, there is a second allegation associated with this incident, one that Congressman ROGAN asserted in his presentation, but is not discussed in the trial memorandum. This has to do with the President's now famous testimony about Mr. Bennett's statement about Ms. Lewinsky's affidavit. It depends upon what the meaning of ''is'' is. Let's talk about that just a minute.

While raising questions about the good faith of the Jones attorney in asking questions about Ms. Lewinsky—this is in the Jones deposition—while raising questions about the good faith of the Jones attorneys and asking questions about Ms. Lewinsky and not knowing if these same lawyers actually know the answers to the questions, Mr. Bennett said, referring to the Jones lawyers, ''Counsel is fully aware that [Ms. Lewinsky] has filed an affidavit . . . saying that there is absolutely no sex.'' ''There is absolutely no sex of any kind in any manner, shape or form with President Clinton.''

Now, during his grand jury testimony, the independent counsel reads that statement to the President. He gets President Clinton to agree that the statement was made by the President's attorney in front of Judge Wright. And here is what the independent counsel says to President Clinton in the grand jury after reading Mr. Bennett's words:

> That statement is a completely false statement. Whether or not Mr. Bennett knew of your relationship with Ms. Lewinsky, the statement that there is ''no sex of any kind, manner shape or form with President Clinton'' was an utterly false statement.

And he asks the President, ''Is that correct?'' At that point, pausing just a moment for reflection, President Clinton gives his opinion and explains that opinion.

To understand the President's argument, you must know first that there has been no inappropriate contact with Ms. Lewinsky at the time of that deposition for, according to his recollection, almost a year; according to hers, 10 months. So it is not in dispute at that moment in time and for previous months there has been. And there is no sexual relationship currently, even though there had been one in 1995, 1996, and in the early part of 1997, some months back.

Now, the President makes a political mistake here and gives in to his instinct to play his own lawyer, to be his

own advocate. You may find it frustrating, you may find it irritating, when you watch him do this, but he is not committing perjury; he is committing the offense of nit-picking and arguing with the prosecutors. He is arguing a point, and so he says that whether Mr. Bennett's statement is false depends on what the meaning of ''is'' is. Mr. Bennett's statement is true if ''is'' means an ongoing relationship, but Mr. Bennett's statement is false if ''is'' means at any time ever in time.

Now the President's answer to Mr. Bennett's question and the statements that follow it amount to an annoying argument over the interpretation of what Mr. Bennett said, focused on the tense of the verb. And the President is being his own lawyer. The grounds he has argued are fully stated, fully explained. There is no mystery. He is not concealing anything. Making this argument is not perjury.

There is one final point to make about this incident because, again, I think there was a mischaracterization of what the President actually said in the grand jury. He didn't say that at the time Mr. Bennett made that statement in the Jones deposition, he caught the word ''is'' and recognized, ''Ah-ha, I've got an exit. That makes it accurate.'' Quite to the contrary. He is clear in front of the grand jury when he says that he didn't even notice this issue until he was reviewing the transcript in preparation for his grand jury testimony. He is clear in pointing out the argument that he is making is one that he just discovered.

Let me quote from that portion of his testimony which appears on pages 512 and 513 which make it clear that he wasn't ever claiming that he spotted that verb tense at the time in the Jones deposition and his silence or his answer was based on spotting the verb tense then. This is something he discovered, noticed, and, as a lawyer, argued in the grand jury. ''I never even focused on that''—meaning that issue of a verb tense—''until I read it in this transcript in preparation for this testimony * * *'' ''I wasn't trying to give you a cute answer that I obviously wasn't involved in anything improper in the deposition. I was trying to tell you generally speaking in the present tense if someone said that, that would be true. But I don't know what Mr. Bennett had in mind. I don't know.''

Now, the President was open and honest and obvious in what he was arguing, and that is precisely what he was doing on this occasion. He was arguing a point that, as a technical matter, Bennett's statement could be read as being accurate.

I point out again that this particular allegation was not included in Mr. Starr's referral. An argument that is identified as an argument, the grounds of which are clear to all, is not the basis for a perjury prosecution.

Subpart 4 of this article has to do with false and misleading testimony about the President's efforts, allegedly, to influence witnesses and to impede discovery in Jones. Now, as I have said before, at the beginning of my presentation, the fourth category of allegedly perjurious, false, and misleading grand jury testimony overlaps with article II of allegations of obstruction of justice.

I will say right now that Cheryl Mills will be appearing here when I have completed and David Kendall tomorrow to present the arguments on article II, why the President should not be found guilty and is not guilty of the allegations of obstruction of justice in article II.

According to the managers' trial brief, making this argument that he also perjured himself about these matters, they claim these lies are the most troubling as the President used them in an attempt to conceal his criminal actions. One begins with a self-evident proposition—at least, to us—that the President did not obstruct justice, and we hope you agree with us by the end of the day tomorrow when we explain the evidence. But his explanation, if that is so, of what he did or didn't do to the grand jury were always truthful. Put another way, if the President didn't obstruct justice, he also didn't commit perjury when he denied it.

According to the managers, the general language of this provision of subpart 4 is supposed to include a wide range of allegations, so we have some subparts of the subpart. But none of these allegations, let me say, ladies and gentlemen of the Senate, none of these was included or thought sufficiently credible to be included in the OIC referral, nor were these allegations included in Mr. Schippers' initial presentation to the Judiciary Committee. They are nothing more than an effort to inflate the number of perjury allegations by converting every answer that the President gave to the grand jury about the subject matter of article II into a new count of perjury, the double billing, if you will. All of these allegations are more properly part of our defense on the obstruction of justice allegation. But I will try to respond briefly to the allegation of perjury, his testimony about Monica Lewinsky's false affidavit. This grows out of the President's conversation with Ms. Lewinsky, allegedly, on December 17, in which he is said to have corruptly encouraged Ms. Lewinsky to execute a sworn affidavit that he knew to be perjurious, false, and misleading.

In that famous late-night telephone conversation, Ms. Lewinsky asked the President what she could do if she were subpoenaed in the Jones case. According to Ms. Lewinsky, the President responded, ''Well, maybe you can sign an affidavit.'' That is what Ms. Lewinsky's recollection is.

Now, in the grand jury, the President was repeatedly questioned about this conversation and he repeatedly answered emphatically. This is another example where it is not once or twice, it is three or four times. He truly thought he said that she could have sworn out an honest affidavit. The managers claim that when he said that—that he thought that she could swear out an honest affidavit—the President perjured himself.

Now, the President's testimony in the grand jury on this point is not in any way cautious or qualified. He makes similar statements on four different occasions during that testimony, concluding with this tape:

> I have already told you that I felt strongly that she could issue—that she could execute an affidavit that would be factually truthful, that might get her out of having to testify. And did I hope she would be able to get out of testifying on the affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.

Now, the heart of the managers' argument is that there was no way that an honest affidavit can achieve what the President and Ms. Lewinsky both wanted to have achieved, which was to avoid her having to testify. And so the managers claim the President's statement that he thought she could make out an honest affidavit and avoid testifying in the Jones case about her relationship with the President is perjury.

Once again, the managers claim that the President is guilty of perjury because he is testifying falsely about his state of mind. It wasn't true, they argued, that he really thought she could make out and sign and execute an honest affidavit; he could not have thought that; he wanted and expected her to lie in that affidavit, and that is why he suggested, ''Well, you can always file an affidavit.''

Now, Ms. Lewinsky's inappropriate contact with the President was consensual. An affidavit being sought in a case involving allegations of sexual harassment that says there was no harassment, no effort to impose unwanted sexual overtures, would have been an affidavit that Ms. Lewinsky could honestly execute—an affidavit stating that she had never been on the receiving end of any unwanted sexual overtures from the President and that she had never been harassed.

Second, both Ms. Lewinsky and the President had a definition of ''sexual relations'' that would have allowed Ms. Lewinsky, in her own mind, honestly and accurately, in their view, to swear an affidavit that she had never had sexual relations—meaning what she meant in the exhibits we distributed—with the President. She would have thought that was a factual and accurate affidavit, and so would the President at that time.

Third, it is clear that Ms. Lewinsky understood that it was not necessary to volunteer information in an affidavit, but, on the contrary, she would try to give only that small but true portion of the whole story. She talks about this at some length in her telephone conversation with Linda Tripp. In her words, the goal of an affidavit is to be as benign as possible, to avoid being deposed. She is her own operator; she knows what she is doing.

Please recognize what the managers are trying to do here. In article II, they accuse the President of obstructing justice by suggesting that Ms. Lewinsky should file an affidavit, knowing full well that the affidavit would have to be false. And when the President, under oath in the grand jury, denies that he believed that the affidavit would have to be false, they accuse him of perjury.

The two allegations are inextricably intermingled, and if you conclude, as you should, that there is no evidence to support the underlying allegation, that the underlying offense is based on nothing but pure conjecture, you will conclude that the perjury charge is nothing more than an attempt to get two bites at the same apple.

The second element is the President's testimony about the gifts. The managers' trial brief says that the President committed perjury when he testified that he told Ms. Lewinsky that if the Jones lawyers requested the gifts that he had given to her, she should provide them. Atypically, the brief quotes the President's precise language which is at issue in this particular allegation:

> And I told her that if they asked her for gifts, she would have to give them whatever she had. That's what the law was.

This testimony, the managers claim, is false. They say he never said that, and that when he said it in the grand jury, he is guilty of perjury.

Now, the only evidence offered to support the allegation that the President testified falsely before the grand jury on this topic is, A, that Ms. Lewinsky raised a question with the President as to what she should do with the gifts. You have heard a lot of testimony about that, which only establishes one thing—that the topic came up. That is totally consistent with the President's testimony and has no bearing whatsoever on whether the President did or did not say what he claims to have said.

The second piece of evidence is that Ms. Currie ended up picking up the gifts and taking them home with her, which, no matter how you might try to spin that, simply cannot be construed as evidence showing that the President perjured himself when he told the grand jury that he had given this advice to Ms. Lewinsky. ''Tinkers to Evers to Chance.''

This allegation is all conjecture and there is no evidence. It is really astonishing that the managers would seriously include it in their case. Kenneth Starr did not, and it was not discussed or debated by the House Judiciary Committee.

The majority's report makes another entirely different allegation about this matter. There, the House Republicans cite the President's denial—this is a denial, not an affirmation. The first has to do with testimony in front of the grand jury that he said something to Monica Lewinsky. The second has to do with a denial that he ever instructed Ms. Currie to pick up the gifts. From the transcript of the President's grand jury testimony, I quote:

> Question: After you gave Monica Lewinsky the gifts on December 28, did you speak with your secretary, Ms. Currie, and ask her to pick up a box of gifts that were some compilation of gifts that Ms. Lewinsky would have——
>
> Answer: No, sir, I didn't do that.
>
> Question: —to give to Ms. Currie?
>
> Answer: I did not do that.

According to the majority's report, this testimony was perjurious, false, and misleading. The problem is, this allegation is similar to the problem with the previous one, only greater. In the first allegation, there is no one who testified that the President did not say what he testified under oath he said, and in this allegation there is no one who testified that the President said what he testified under oath he did not say.

In other words, the House managers offer you this argument: Nobody says the President made this statement; we just think he did; so we are charging him with perjury for denying it, and you should remove him from office, despite the absence of evidence.

Again, this was not included in the Starr referral, and we wonder how this kind of an allegation can seriously be brought against the President of the United States.

The President's testimony about his January 18 conversation with Ms. Currie. The President's meeting and conversation with Betty Currie on Sunday, January 18, is an essential element in the allegation of obstruction as set forth in article II, and you will learn more about that from Cheryl Mills today. Because the Office of Independent Counsel spent so much time on this matter during President Clinton's grand jury testimony, they examined the President on this topic on four separate occasions during that 4-hour session—it was inevitable that the Managers would find some way, some how to include his testimony about this matter in Article I. Just parenthetically, this too is an allegation that the Office of Independent Counsel did not see fit to make in its Referral to the House.

And so, once again, we begin with a question: What is it precisely that the President said that is at the heart of this allegation of perjury. In his presentation last Thursday, Congressman ROGAN quoted lengthy passages from a number of President Clinton's answers on the subject but failed to identify anything specific. Finally Congressman ROGAN said this:

> When [the President] testified he was only making statements to Ms. Currie to ascertain what the facts were, trying to ascertain what Betty's perception was, this statement was false, and it was perjurious. We know it was perjury because the president called Ms. Currie into the White House the day after his deposition to tell her—not to ask her, to tell her—that he was never alone with Monica Lewinsky. To tell her that Ms. Currie could always hear or see them, and to tell her that he never touched Monica Lewinsky. These were false statements, and he knew that the statements were false at the time he made them to Betty Currie.

But that is not true; the President clearly asked her questions as well as made declarative statements.

I confess to some confusion about what perjury Congressman ROGAN is really alleging here.

It seems to me that he has moved from the world of perjury in article I to the world of obstruction, which is Cheryl and David's article two.

The trial brief is more specific. They claim that the testimony was false when the President went in and said that he was ''trying to refresh [his] memory about what the facts were;'' when he said that he wanted to ''know what Betty's memory was about what she heard;'' and when he said he was ''trying to get as much information as he could.'' The purpose of the meeting and the conversation, according to the Trial Brief, was to influence Betty Currie's testimony, not to gather information.

In truth, the President gave a number of different reasons to the grand jury for seeking out Betty Currie and talking to her about Monica Lewinsky, and it is totally plausible to conclude that the last thing on the President's mind at that particular moment was Betty Currie's potential role as a witness in a federal court.

More simply, the facts are that in making this particular allegation, the managers have come up with two, three, or four different statements by the President that they claim are perjurious which makes it a total distortion of the President's answer. There were many questions, and many answers, and then the reasons he gave for seeking out Betty Currie. Kenneth Starr made no such claim in his referral.

Finally, the President's testimony about allegations that he influenced his aides; to influence; that he lied to his aide—let me get it right. The allegation is that when the President testified in front of the grand jury and denied that he misled his aides or told them false things, that it was ''perjurious, false and misleading testimony'' because he was really trying to use them to obstruct justice and influence the grand jury. The President testified in much greater detail on this topic about the details about his conversation with his aides than the managers suggest. And he never said that he only told them ''true things.''

In fact, if you look at that testimony—and I urge you to do so; it is another topic that will take up some time—the President acknowledged that he misled an aide and he apologized for it. And he testified that actually he couldn't remember much of what he told his aide. He never challenged or denied what John Podesta said that he told him. He told the grand jury. He told them. And he never challenged Sidney Blumenthal's version of what he said to Mr. Blumenthal. There is absolutely no evidence to suggest that

the President intended to deceive the grand jury on this matter because he never denied saying what they said he told them about his relationship. And that is what he told them. It was not just true things. He told them inaccurate things. He did not give the testimony that Congressman ROGAN claims that he gave. He did not say that he did not mislead his aides. He said that he had, in fact, misled his aide. He does say that he tried to tell true things, but he does not conceal the nature of the true things he is talking about.

So you can make up your own mind whether you agree with his characterization that there are true things. He described them for all to see and understand. For example, he says that he told his aides, ''I never had sex with her,'' as it was defined in his mind. You may disagree with his characterization of what he told them as being a true thing, but he certainly doesn't conceal the basis of his belief that it is true. He also said that he was not involved with Ms. Lewinsky in any sexual way. And he explains by use of the present tense he thought that was a true thing.

But the materiality of this alleged perjury is really a mystery. That the President misled his aide is not an issue. That his aides became witnesses before the grand jury and that the President knew they would probably be called, it is simply not in dispute. Nor does the President dispute the testimony of Podesta and Blumenthal. The only issue here is whether the President, when he discussed Monica Lewinsky with these aides, was seeking to influence the grand jury's proceedings by giving his aides false information. This is not a perjury challenge. This is a subject to be dealt with in the context of article II and obstruction of justice.

What does it all add up to? Mr. Ruff had it right. Beneath the surface of this article, this first article, there is really a witches' brew of allegations pulled from all corners of Bill Clinton's grand jury testimony. He has alleged to have lied to the grand jury when he used innocent words to tell about his improper contacts with Ms. Lewinsky. Truly, these are frivolous allegations. He has alleged to have lied about the date his improper activity with Ms. Lewinsky began, and whether it was preceded by any period of friendship. These, too, are frivolous allegations. The President didn't claim he said, but even if he did, the allegations are of no import. He has alleged to have lied when he explained his understanding of the Jones definition and testified that his genuine belief was that the definition did not include the activity that he and Ms. Lewinsky had engaged in.

Experienced prosecutors say that his interpretation was reasonable. He has alleged to have lied about the intimate details of his activity with Ms. Lewinsky. She says one thing; he says another. This is precisely the kind of oath against oath swearing match that is never prosecuted in the real world. Given the President's overall testimony before the grand jury, of what real significance is this disagreement? He is accused of ratifying his every sentence in the Jones deposition. And by saying that his goal was to be truthful, he is said to have lied. But no one should be charged with perjury for asserting innocence or proclaiming that he was trying to be truthful, particularly when all the evidence supports his claim.

And finally, he is accused of lying about a variety of actions aimed at concealing his improper and embarrassing relationship with Ms. Lewinsky when each one of those actions was motivated by nothing more than his desire to protect himself and his family from embarrassment, if not destruction.

Think just for a moment and ask yourself whether these allegations about this testimony is really an effort to vindicate the rule of law, or is it something else? Ask yourself what coming generations will think about these charges. If you convict and remove President Clinton on the basis of these allegations, no President of the United States will ever be safe from impeachment again—and it will happen—and people will look back at us, and they will say we should have stopped it then before it was too late. Don't let this happen to our country.

Before I conclude, I would like to respond to one specific argument that we heard last week. One of the arguments most frequently employed to urge the President's removal is that in the United States of America no one is above the law; that if the Senate does not take action against the President and convict him and remove him from office, we will not be keeping faith with that principle.

Members of the Senate, I could not disagree more with that formulation of this issue. The principle that ''No one is above the law'' is sacred. The idea that the wealthy or the powerful or the famous should receive preferential treatment under the law—treatment that is different from that accorded to the poor and the weak—is anathema to everything that is great and good and special about the United States. It is anathema to our values and to our national ideals.

I agree with Mr. HYDE. Our fathers and grandfathers—going back to the American Revolution—fought and died to defend the principle of ''equal justice under law.'' This principle is not only at the core of Anglo-Saxon jurisprudence, it is part of the very foundation of our civic society.

But the framers, in their genius, did not design or intend the awesome power of impeachment and removal for the purpose of vindicating the rule of law. They believed that the power of impeachment and removal should be used for a different purpose—to protect the body politic, to protect the Government itself from a President whose conduct was so abusive as to constitute an assault on, a threat to the entire system.

We are all rereading the Constitution. We are all looking at the Federalist Papers again. And when we do that, we realize that the framers of the Constitution considered the question of what to do when the highest officials of Government, the President or the Vice President, are charged with misconduct. And back then they made an important distinction that we should recognize and respect today between conduct in official capacity and conduct in private capacity. They created two different ways of dealing with these two very different kinds of conduct. Impeachment was to protect the country from abuse of official power by an out-of-control President or by someone who was so abusive and assaultive on the system of Government that he had to be removed to protect the Government.

The criminal justice system was to vindicate the rule of law, and the clearest indication that one is not meant to be a substitute for the other can be found in article I, section 3, clause 7 of the Constitution:

> Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment, and punishment, according to Law.

If the President's conduct in his official capacity is so grave as to be a serious assault upon the system of Government, so serious as to subvert our constitutional order, so serious as to require the Nation to be protected from the damage that he would do if he were to continue in office, the remedy is impeachment and removal by a political process.

If, however, the President's conduct does not implicate the office or the powers of the Presidency, the remedy is a legal process involving prosecution, conviction, and punishment in the courts. In this fashion the principle is vindicated that ''no man is above the law,'' for in the criminal justice system the President will be treated like any other citizen and accountable to the rule of law.

The great scholar and justice, James Wilson, said it best when he wrote:

> Far from being above the laws, [the President] is amenable to them in his private character as a citizen, and in his public character by impeachment.

And more recently, just last November, Senator SPECTER made the same point with equal eloquence when he proposed:

> . . . abandoning Impeachment and, after the President leaves office, holding him accountable in the same way any other person would be; through indictment and prosecution for any Federal crimes established by the evidence.

President Clinton should not be above the law, he is not above the law, and he will not be above the law. As Senator SPECTER rightly stated, the

criminal justice system stands ready to perform that function and to hold the President accountable at some later date. And like any other citizen, William Jefferson Clinton can be prosecuted for any crimes he is alleged to have committed throughout his term of office.

It would be a profound mistake with lasting consequences for the Members of this body, in the throes of a highly charged impeachment trial, to conclude that only the Senate rather than the criminal justice system should be the chosen instrument of the Constitution to fulfill that principle. It is not up to the Senate to remove the President from office for private conduct that does not involve abuse of Presidential power and does not seriously disrupt the President's capacity to function as Chief Executive of the United States. And it would be folly to think that to vindicate the rule of law in the United States the Senate is obliged to reverse a national election and remove a President from office before the completion of his term. If there is sufficient evidence to warrant a criminal prosecution, this President, when he returns to private life, can be indicted, prosecuted, and tried and, if convicted, punished like any other citizen.

I end by making a point that should never be far from our thoughts as we continue through this trial. There is no moment in our national public life more sacred than the ritual of casting one's vote in a Presidential election. It is amazing, almost miraculous, that so powerful and transforming an event can occur so quietly in a great and populous nation. The act is invisible to outside eyes. On one designated day, millions of Americans go to their local polling places—to schools, firehouses, police stations, and municipal buildings throughout the Nation—to cast their vote for President. It is a moment of high purpose, the only political act that we perform together as a nation.

And so it is that we believe, short of a declaration of war, there is nothing more serious for our elected representatives to contemplate than, through the process of impeachment, to undo the results of a national election and to remove the man chosen by the American people to be their President.

Over the past week, we have heard many speeches about the Constitution and the rule of law and the many sacrifices that the American people have made throughout their history to defend their rights and their freedoms. Surely, among the most important of those rights and freedoms is the right—freely, fairly, and openly—to cast one's vote in a Presidential election and have the results of that election respected and obeyed.

Can anyone imagine anything more damaging to the Constitution of the United States than for a Presidential election to be reversed for conduct that the vast majority of the American people does not believe warrants the President's removal from office?

In the entire history of the United States, we have never been at this juncture before. We have never come so close to the final act of removing an elected President than we are at this moment in time.

William Jefferson Clinton was elected freely, fairly, and openly by the American people to be President. We dare not reverse that decision without good and just cause. And we dare not take that step unless the people who spoke agree that such drastic action is justified. The damage to our political discourse for years, decades, would be terrible to contemplate.

In the course of this impeachment process, we have also devoted a good deal of time and attention to a discussion of precedents that involve the impeachment and removal of Federal judges. For the President, we have argued that when it comes to applying constitutional standards for impeachment, judges are different. We think that the Constitution implicitly recognizes that distinction.

I would like to change the focus for a moment and look at the way we think the legislative branch of our Government also recognizes that distinction. History shows, I think, that it has been easier for Congress to impeach and remove a Federal judge from office than to discharge a Member of the House or Senate, and maybe that is as it should be. When confronted with misconduct by one of its Members, Congress has rarely been willing to negate the popular will as expressed in congressional elections. In truth, the Congress has, for the most part, simply declined to take that step.

Perhaps rightly so, because of the greater deference paid to elected, as opposed to appointed, officials or judges. Perhaps because Presidents and Senators and Representatives are periodically elected to defined terms, as opposed to life terms, the Congress has chosen to rely upon the public to work its will through the electoral system. That deference is warranted, I submit, and it should be a factor in your deliberations.

In 210 years of history and throughout 105 Congresses, only 4 Members of the House have ever been expelled by that body. As for the Senate, 15 Senators—the first in 1797, the remaining 14 during the Civil War.

My point is a simple one. Because of the sanctity of elections and the regularity of elections, and because of the heavy burden that must be carried before reversing the will of the people, decisions to remove elected officeholders have been and should be, at least in some degree, based on factors that are different than the ones used for judges appointed for life and who serve for good behavior. By its own conduct throughout its own history, Congress seems to agree with this point.

I come from the State of Vermont, and if you have been to Vermont, you know that wherever you go across that State, from the smallest squares in the smallest towns to the larger parks, and what we like to think of as our cities, you come across monuments celebrating the American Union. One of the things that Vermont children learn first is that we were and are the 14th State of the Union and that our forebears fought to create this Nation and to preserve it.

So we in our history have shown that there are two things that we care about: We care about our American Union and we care about equal rights for all citizens under the law. And one of the rights that is most precious to every American is the right to choose our leaders in free elections. That right, the equal right to vote with confidence that the outcome will be respected, is fundamental to our values, to our national unity and identity.

Ladies and gentlemen of the Senate, you must do your duty as you see it, as you see the law and facts and the evidence. But, truly, these articles do not justify the nullification of the American people's free choice in a national election. I appeal to you, do not turn your back on those millions of Americans who cast their votes in the belief that they, and they alone, decide who will lead this country as President. Do not throw our politics into the darkness of endless recrimination. Do not inject a poison of bitter partisanship into the body politic which, like a virus, can move through our national bloodstream for years to come with results none can know or calculate.

Do not let this case and these charges, as flawed and as unfair as they are, destroy a fundamental underpinning of American democracy, the right of the people, and no one else, to select the President of the United States.

William Jefferson Clinton is not guilty of obstruction of justice. He is not guilty of perjury. He must not be removed.

Thank you very much.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we recess the proceedings now. We will begin promptly at 5 minutes after 4.

There being no objection, the Senate, at 3:53 p.m., recessed until 4:07 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice. I believe we are ready to resume with the presentation of Counsel Cheryl Mills.

The CHIEF JUSTICE. The Chair recognizes Ms. Counsel Mills.

Ms. Counsel MILLS. Mr. Chief Justice, managers from the House of Representatives, Members of the Senate, good afternoon. My name is Cheryl Mills, and I am deputy counsel to the President. I am honored to be here today on behalf of the President to address you.

Today, incidentally, marks my 6-year anniversary in the White House. I am very proud to have had the opportunity to serve our country and this President.

It is a particular honor for me to stand on the Senate floor today. I am an Army brat. My father served in the Army for 27 years. I grew up in the military world, where opportunity was a reality and not just a slogan. The very fact that the daughter of an Army officer from Richmond, VA, the very fact that I can represent the President of the United States on the floor of the Senate of the United States, is powerful proof that the American dream lives.

I am going to take some time to address two of the allegations of obstruction of justice against President Clinton in article II: First, the allegation related to the box of gifts that Ms. Lewinsky asked Ms. Currie to hold for her; second, the allegation related to the President's conversation with Ms. Currie after his deposition in the Jones case. Tomorrow my colleague, Mr. Kendall, will address the remaining allegations of obstruction of justice.

Over the course of the House managers' presentation last week, I confess I was struck by how often they referred to the significance of the rule of law. House Manager SENSENBRENNER, for example, quoted President Theodore Roosevelt stating, ''No man is above the law and no man is below it . . . .'' As a lawyer, as an American, and as an African American, it is a principle in which I believe to the very core of my being. It is what many have struggled and died for, the right to be equal before the law without regard to race or gender or ethnicity, disability, privilege, or station in life. The rule of law applies to the weak and the strong, the rich and the poor, the powerful and the powerless.

If you love the rule of law, you must love it in all of its applications. You cannot only love it when it provides the verdict you seek. You must love it when the verdict goes against you as well. We cannot uphold the rule of law only when it is consistent with our beliefs. We must uphold it even when it protects behavior that we don't like or is unattractive or is not admirable or that might even be hurtful. And we cannot say we love the rule of law but dismiss arguments that appeal to the rule of law as legalisms or legal hairsplitting.

I say all of this because not only the facts but the law of obstruction of justice protects the President. It does not condemn him. And the managers cannot deny the President the protection that is provided by the law and still insist that they are acting to uphold the law. His conduct, while clearly not attractive, or admirable, is not criminal. That is the rule of law in this case.

So as my colleagues and I discuss obstruction of justice against the President, we ask only that the rule of law be applied equally, neutrally, fairly, not emotionally or personally or politically. If it is applied equally, the rule of law exonerates Bill Clinton.

That said, I want to begin where Manager HUTCHINSON left off this weekend during a television program. The evidence does not support conviction of the President on any of the allegations of obstruction of justice. On the record now before the Senate, and that which was before the House, Manager HUTCHINSON said, ''I don't think you could obtain a conviction or that I could fairly ask for a conviction.'' We agree. We agree. There are good reasons for Manager HUTCHINSON's judgment. And the most important, the evidence in the record and the law on the books, does not support the conclusion that the President obstructed justice.

Now, I know that Manager MCCOLLUM begged you in his presentation to not pay attention to details when the President's case was put forward. He went so far as to implore you not to get hung up on some of the details when the President and his attorneys try to explain this stuff—''The big picture is what you need to keep in mind, not the compartmentalization.'' Manager MCCOLLUM was telling you, in effect, not to pay attention to the evidence that exonerates the President—''Don't pay attention to the details that take this case out of the realm of activities that are prohibited by the law.''

But the rule of law depends upon the details because it depends upon the facts and it depends upon the fairness of the persons called to judge the facts. I want to walk through the big picture and I want to walk through the facts.

I first want to discuss the real story, and then I want to focus on all those inconvenient details, or what Manager BUYER called those stubborn facts that didn't fit the big picture that the House managers want you to see.

Manager BARR suggested the fit between the facts and the law against the President in this case is as precise as the finely tuned mechanism of a Swiss watch. But when you put the facts together, they don't quite make out a Swiss watch; in fact, they might not even make good sausage.

So what is the big picture? The big picture is this: The President had a relationship with a young woman. His conduct was inappropriate. But it was not obstruction of justice. During the course of their relationship, the President and the young woman pledged not to talk about it with others. That is not obstruction of justice. The President ended their relationship before anyone knew about it. He ended it not because he thought it would place him in legal jeopardy; he ended it because he knew it was wrong. That is not obstruction of justice.

The President hoped that no one would find out about his indiscretion, about his lapse in judgment. That is not obstruction of justice, either. One day, however, long after he had ended the relationship, he was asked about it in an unrelated lawsuit, a lawsuit whose intent, at least as proclaimed by those who were pursuing it, was to politically damage him. That was their publicly announced goal. So he knew, the President knew that his secret would soon be exposed. And he was right.

It was revealed for public consumption, written large all over the world against his best efforts to have ended the relationship and to have put right what he had done wrong. That is the real big picture. That is the truth. And that is not obstruction of justice.

So let's talk about the allegation of obstruction of justice, about the box of gifts that Ms. Currie received from Ms. Lewinsky. I want to begin by telling you another true story, the real story of the now famous gifts.

It takes place on December 28, 1997. On that day the President gave Ms. Lewinsky holiday gifts. During her visit with the President, Ms. Lewinsky has said that she raised the subpoena that she had received from the Jones lawyers on the 19th and asked him, what should she do about the gifts. The President has said he told her, whenever it was that they discussed it, that she would have to give over whatever she had. He was not concerned about the gifts because he gives so many gifts to so many people. Unbeknownst to the President, however, Ms. Lewinsky had been worrying about what to do with the gifts ever since she got the subpoena. She was concerned that the Jones lawyers might even search her apartment so she wanted to get the gifts out of her home.

After Ms. Lewinsky's visit with the President, Ms. Currie walked her from the building. Then or later, either in person or on the phone, Ms. Lewinsky told Ms. Currie that she had a box of gifts that the President had given her that she wanted Ms. Currie to hold because people were asking questions. In the course of that conversation, they discussed other things as well. Ms. Currie agreed to hold the box of gifts. After their discussion, Ms. Lewinsky packed up some but not all of the gifts that the President had given her over time. She kept out presents of particular sentimental value as well as virtually all of the gifts he had given her that very day on the 28th.

Ms. Currie went by Ms. Lewinsky's home after leaving work, picked up the box that had a note on it that said, ''Do not throw away,'' and she took it home. Ms. Currie did not raise Ms. Lewinsky's request with the President because she saw herself as doing a favor for a friend. Ms. Currie had no idea the gifts were under subpoena.

So Ms. Lewinsky's request hardly struck her as criminal.

This story that I just told you is obviously very different from the story presented by the House managers. How can I tell such a story that is so at odds with that which has been presented by the House managers? The answer lies in the selective reading of the record

by the House managers. But theirs is not the only version of the facts that needs to be told. So what details did they downplay or discard or disregard in their presentation to create allegations of obstruction of justice?

To be fair, the House managers acknowledged up front that their case is largely circumstantial. They are right. Let's walk through the House managers' presentation of the key events which they gave to you last week. Let's look at exhibit 1 which is in the packet that has been handed out to you.

First key fact: On December 19, Monica Lewinsky was served with a subpoena in the Paula Jones case. The subpoena required that she testify at that deposition in January 1998 and also to produce each and every gift given to her by President Clinton.

Second event: On December 28, Ms. Lewinsky and the President met in the Oval Office to exchange Christmas gifts, at which time they discussed the fact that the lawyers in the Jones case had subpoenaed all of the President's gifts.

Third key fact: During the conversation on the 28th, Ms. Lewinsky asked the question whether she should put away outside her home or give to someone—maybe Betty—the gifts. At that time, according to Ms. Lewinsky, the President responded, ''Let me think about it.''

Fourth fact they presented to you. That answer led to action. Later that day, Ms. Lewinsky got a call at 3:32 p.m. from Ms. Currie who said, ''I understand you have something to give me or that the President has said you have something for me.'' It was the President who initiated the retrieval of the gifts and the concealment of the evidence.

Fifth event they presented: Without asking any questions, Ms. Currie picked up the box of gifts from Ms. Lewinsky, drove to her home, and placed the box under her bed.

That is what the House managers told you last week. Now, let's go through their story piece by piece. On December 19, Monica Lewinsky was served with a subpoena in the Jones case. The subpoena required her to testify at a deposition in January 1998, and also to produce each and every gift given to her by the President. This statement is factually accurate. It does not, however, convey the entire state of affairs. Ms. Lewinsky told the FBI that when she got the subpoena she wanted the gifts out of her apartment. Why? Because she suspected that lawyers for Jones would break into her apartment looking for gifts. She was also concerned that the Jones people might tap her phone. Therefore, she wanted to put the gifts out of reach of the Jones lawyers, out of harms way. The managers entirely disregarded Ms. Lewinsky's own independent motivations for wanting to move the gifts.

Let's continue. On December 28, 1997, Ms. Lewinsky and the President met in the Oval Office to exchange Christmas gifts, at which time they discussed the fact that the lawyers in the Jones case had subpoenaed all of the gifts from the President to Ms. Lewinsky. During conversation on December 28, Ms. Lewinsky asked the President whether she should put away the gifts out of her house some place, or give them to someone, maybe Betty. At that time, according to Ms. Lewinsky, the President said, ''Let me think about it.''

The House managers have consistently described the December 28 meeting exactly this way, as did the majority counsel for the House Judiciary, as did the Office of Independent Counsel. It has been said so often that it has become conventional wisdom. But it is not the whole truth. It is not the full record. Ms. Lewinsky actually gave 10 renditions of her conversation with the President. All of them have been outlined in our chart. Invariably, the one most cited is the one least favorable to the President. But even in that version, the one that is least favorable to the President, no one claims he ordered, suggested, or even hinted that anyone obstruct justice. At most, the President says, ''Let me think about it.'' That is not obstruction of justice.

But what about the nine other versions? Some of the other versions which I have never heard offered by the House managers, versions that maybe you, too, have never heard, are the ones that put the lie to the obstruction of justice elevation.

Let's look at exhibit 2 which is in your material. You may have never heard, for example, this version of their conversation. This is Ms. Lewinsky speaking.

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

You also may not have heard this version. This is a juror speaking, a grand juror speaking to Ms. Lewinsky.

The JUROR: Now, did you bring up Betty's name or did the President bring up Betty's name?

And this is at the meeting on the 28th.

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

And you probably have not heard this version.

Lewinsky advised that Clinton was sitting in a rocking chair in the study. Lewinsky asked Clinton what she should do with the gifts Clinton had given her and he either did not respond or responded ''I don't know''. Lewinsky is not sure exactly what was said, but she is certain that whatever Clinton said, she had no clear image in her mind of what to do next.

Why haven't we heard these versions? Because they weaken an already fragile circumstantial case. If Ms. Lewinsky says that the President doesn't respond at all, then there is absolutely no evidence for the House managers' obstruction of justice theory, even under their version of events. So these versions get disregarded to ensure that the House managers' big picture doesn't get cluttered by all those details. It is those facts, those stubborn facts, that just don't fit.

But the most significant detail the managers disregard because it doesn't fit is the President's testimony. The President testified that he told Ms. Lewinsky that she had to give the Jones lawyers whatever gifts she had. Why? As the House managers predicted we would ask, because it is a question that begs to be asked, why would the President give Ms. Lewinsky gifts if he wanted her to give them right back? The only real explanation is he truly was, as he testified, unconcerned about the gifts. The House managers want you to believe that this gift giving was a show of confidence; that he knew Ms. Lewinsky would conceal them. But then why, under their theory, ask Ms. Currie to go pick them up? Why not know that Ms. Lewinsky is just going to conceal them? Better still, why not just show her the gifts and tell her to come by after the subpoena date has passed?

It simply doesn't make sense. The President's actions entirely undermine the House managers' theory of obstruction of justice.

But let's continue with their version of events. That answer, the ''Let-me-think-about-it'' answer, that answer led to action. Later that day, Ms. Lewinsky got a call at 3:32 p.m. from Ms. Currie who said, ''I understand you have something to give me or the President said you have something to give me.'' It was the President who initiated the retrieval of the gifts and the concealment of the evidence.

Here is where the House managers have dramatically shortchanged the truth because the whole truth demands that Ms. Currie's testimony be presented fairly.

In telling their story, the managers do concede that there is a conflict in the testimony between Ms. Lewinsky and Ms. Currie, but they strive mightily to get you to disregard Ms. Currie's testimony by telling you that her memory on the issue of how she came to pick up the gifts was ''fuzzy''—fuzzy. In particular, Manager HUTCHINSON told you:

I will concede there is a conflict in the testimony on this point with Ms. Currie. Ms. Currie, in her grand jury testimony, had a fuzzy memory, a little different recollection. She testified that, the best she can remember, Ms. Lewinsky called her, but when she was asked further, she said that maybe Ms. Lewinsky's memory is better than hers on that issue. That is what the House managers want to you believe about Ms. Currie. That is not playing fair by Ms. Currie. It is not playing fair by the facts. Why? Because Ms. Currie was asked about who initiated the gift pick-up five times. Her answer each time

was unequivocal—5 times. From the first FBI interview just days after the story broke in the media, to her last grand jury appearance, Ms. Currie repeatedly and unwaveringly testified that it was Ms. Lewinsky who contacted her about the gifts.

Her memory on this issue is clear. What does she say? Let's look at exhibit 3, the first time she is asked:

Lewinsky called Currie and advised she had returned all gifts Clinton had given to Lewinsky, as there was talk going around about the gifts.

The second time:

Monica said she was getting concerned and she wanted to give me the stuff the President had given her, or give me a box of stuff. It was a box stuff.

Third time, and this was a prosecutor asking Ms. Currie the question:

Just tell us for a moment how this issue first arose, and what you did about it, and what Ms. Lewinsky told you.

Ms. CURRIE: The best I remember, it first arose with conversation. I don't know if it was over the phone or in person; I don't know. She asked me if I would pick up a box. She said Isikoff had been inquiring about the gifts.

The fourth time:

The best I remember, she said she wanted me to hold these gifts—hold this—I'm sure she said gifts, a box of gifts—I don't remember—because people were asking questions, and I said fine.

The fifth time:

The best I remember is, Monica called me and asked me if she can give me some gifts, if I would pick up some gifts for her.

The last time, the fifth time, when a grand juror completely misstated Ms. Currie's testimony regarding how the gift exchange was initiated by suggesting that the President had directed her to pick up the gifts, Ms. Currie was quick to correct the juror:

Question. Ms. Currie, I want to come back for a second to the box of gifts and how they came to be in your possession. As I recall your earlier testimony the other day, you testified that the President asked you to telephone Ms. Lewinsky, is that correct?

Answer. Pardon? The President asked me to telephone Ms. Lewinsky?

JUROR. Is that correct?

Ms. CURRIE. About?

JUROR. About the box of gifts. I am trying to recall and understand exactly how the box of gifts came to be in your possession.

Ms. CURRIE. I don't recall the President asking me to call about a box of gifts.

JUROR. How did you come to be in possession of the box of gifts?

Ms. CURRIE. The best I remember, Ms. Lewinsky called me and asked me if she can give me the gifts—if I would pick up some gifts for her.

The record reflects that Ms. Currie's testimony on this issue was clear—five times—every time she was asked.

What, then, are the managers talking about when they say that Ms. Currie concedes that Ms. Lewinsky might have a better memory than herself on this issue? They are talking about something a little different; that was whether she, Ms. Currie, had told the President that she had picked up the box of gifts from Ms. Lewinsky. Let's put it in context. After being asked the same question for the fourth time and reiterating for the fourth time that Ms. Lewinsky contacted her about the gifts, the prosecutor asked Ms. Currie:

Well, what if Ms. Lewinsky said that Ms. Currie spoke to the President about receiving the gifts from Ms. Lewinsky?

Ms. Currie responds:

Then she may remember better than I. I don't remember.

Not once did Ms. Currie equivocate on the central fact Ms. Lewinsky asked her to retrieve the gifts. The President testified, consistent with Ms. Currie's testimony, that he never asked Ms. Currie to retrieve the gifts from Ms. Lewinsky. So why is Ms. Currie's testimony distorted and discounted by the House managers?

They are asking you to make one of the most awesome decisions the Constitution contemplates. They owe you, they owe the President, they owe the Constitution, and they owe Betty Currie an accurate presentation of the facts.

But what about that supposedly corroborating cell phone call from Betty Currie to Monica Lewinsky on December 28? The managers highlighted this call, which they claim is the call in which Ms. Currie told Ms. Lewinsky that she understood she had something for her, the gifts. This, they say, is the linchpin that closes the deal on their version of the facts.

What the managers downplay, as Mr. Ruff discussed yesterday, is the fact that this call to arrange the pickup of the gifts comes after the time Ms. Lewinsky repeatedly testified that the gifts were picked up by Ms. Currie. In citing the cell phone record as corroboration, they also disregard Ms. Currie's testimony that she picked up the gifts leaving from work on her way home; that would have been from Washington to Arlington. That is inconsistent with the call from Arlington.

Most significantly, the managers purposely avoided telling you about the length of the call. As Mr. Ruff pointed out yesterday, the call is for 1 minute, or less. According to Ms. Lewinsky's own testimony, when she spoke to Ms. Currie to arrange the gift pickup, they talked about other matters, as well as the box. They had a conversation. That is a lot of talk: I have a box. When can you come pick it up? Where do you want me to meet you? And other chitchat. That is a lot of talk for a call that lasts 1 minute, or less. It is all but inconceivable that all this took place in the call. Since Ms. Currie placed a call to Ms. Lewinsky, though, the House managers want you to believe that.

What next? The House managers told you, without asking any questions, Ms. Currie picked up the box of gifts from Ms. Lewinsky, drove to her home, which, incidentally, is inconsistent with their theory because she is going in the wrong direction. She is supposed to be going to the hospital—if she picked up the gifts, on their theory—and she placed the box under her bed. Then they posit this question: Why would Ms. Currie pick up the gifts from Ms. Lewinsky? Why on earth would she do such a thing? Their answer: She must have been ordered to pick up the gifts by the President. They conclude, without any testimonial report, that there would be no reason for Betty Currie, out of the blue, to retrieve the gifts, unless instructed to do so by the President. Why else would she do it?

Well, the record before you offers the answer. As Ms. Currie told the FBI during her first interview in January of 1998, Ms. Lewinsky was a friend. She had been helpful and supportive when she was dealing with some very painful personal tragedies. Ms. Currie enjoyed what she saw as a motherly relationship with Ms. Lewinsky. They would often talk about each other's families, about their own activities, and other chitchat. Why does she agree to hold the box of gifts for Ms. Lewinsky? Because she is a friend. And that is not obstruction of justice.

Now, think about the story as I told it to you, and about the different story the managers presented. Ms. Lewinsky was concerned about the gifts after receiving a subpoena from the Jones lawyers. She was worried they might search her apartment and she wanted to get the gifts out of her home. She met with the President, and what does he do? He gives her more gifts—more gifts.

When she asked what to do about the gifts, at most she says, ''Let me think about it.'' Those are the words that Lewinsky has acknowledged on several occasions, that he may have said nothing.

Ms. Lewinsky is still concerned about the gifts. She decides to put them away, keeping the gifts that have sentimental value, and giving to her lawyer the gifts she thinks the Jones lawyers are looking for, and giving to Ms. Currie those items that she really would like back but that she can live without. She tells Ms. Currie that she has some gifts from the President that she wants her to hold because there is talk going around about the gifts. Ms. Currie picks them up after work on her way home.

This story is consistent with the President's lack of concern about the gifts. The managers have tried to deflect the inexplicable contradiction created by their own theory. They want you to believe the President would really give Ms. Lewinsky gifts only to take them back on the very same day. Of course he wouldn't. No one would.

The only explanation they can conjure is torture: The President gave her gifts which he intended to take back that same afternoon to show his confidence that she would conceal the relationship. The facts clearly do not support their version of events. To believe the managers' version of events, you must not only disbelieve the President, you must also disbelieve Ms. Currie.

Ms. Currie has said that the President did not ask her to pick up the

gifts. Ms. Currie has said that Ms. Lewinsky asked her to pick up the gifts. The managers have downplayed Ms. Currie's credibility in this incident. They have urged you to think of her as acting as ''a loyal secretary to the President.''

Of course she is loyal. But it is, may I say, an insult to Betty Currie and to millions of other loyal Americans to suggest that loyalty breeds despondency. If Ms. Currie was despondent, why would she have told the counsel about the conversation between the President and her that the managers have recounted as being so damaging? Why would she have said anything at all about that conversation? Why? Because she is honest. And loyalty and honesty are not mutually exclusive. Betty Currie is a loyal person, and Betty Currie is an honest person.

These are the facts. That is not obstruction of justice.

I believe I can best sum up by using the words of Manager BUYER who quoted President John Adams. ''Facts are stubborn things. Whatever may be our issues, or inclinations, or the dictates of our passions, they cannot alter the state of the facts and the evidence.''

Those stubborn facts. Manager BUYER went on to say, ''I believe John Adams was right.'' Facts and evidence. Facts are stubborn things. You can color the facts, like calling Ms. Currie's memory fuzzy. You can shade the facts by not telling you the length of that supposed corroborating phone call. You can misrepresent the facts by giving only 1 of 10 versions of Ms. Lewinsky's testimony about the President's response to her question about the gifts. You can hide the facts, like not telling you of Ms. Lewinsky's personal motivation for wanting the gifts. But the truthful facts are stubborn; they won't go away. Like the telltale heart, they keep pounding. And they keep coming. They won't go away. Those stubborn, stubborn facts. They show that this was not obstruction of justice.

I now will talk about the President's conversation with Ms. Currie on January 18. It is not difficult to understand these events if you have lived a life in which you are the subject of extraordinary media attention and extraordinary media scrutiny. Most American lives are not like that. Our jobs and our personal lives are not usually the subject for daily media consumption. As Senators, you obviously know well what that life is like.

On January 18, the President talked to Ms. Currie about the Jones deposition and in particular about his surprise at some of the questions the Jones lawyers had asked about Ms. Lewinsky. In the course of their conversation, the President asked Ms. Currie a series of questions and made some statements about his relationship with Ms. Lewinsky, all of which seemed to seek her concurrence, or reaction, or her input.

The managers' theory is that the President, by his comments, corruptly tried to influence Ms. Currie's potential testimony in the Jones case in violation of the obstruction of justice law. They acknowledge that the President knew nothing about the independent counsel's investigation. So they have focused on the Jones case as the place to lodge their obstruction of justice allegation. Ms. Currie was not scheduled to be a witness in that case. And, as you will see, the President had other things on his mind.

Before I go into the facts surrounding these conversations, I want to first focus briefly on the law, as the managers did in their presentation. There are two relevant obstruction of justice statutes: 18 U.S.C., 1503, which is the general obstruction of justice statute; and 18 U.S.C. 1512, the more specific statute which prohibits witness tampering.

There are differences between these two statutes, but for our purpose their essential elements are similar. Both require the Government to prove that the person being accused, one, acted knowingly; two, with specific intent; three, to corruptly affect and influence, in 1503, and corruptly persuade, in 1512, either the due administration of justice, under 1503, or the testimony of a person in an official proceeding, under 1512, to try to persuade the testimony of a person in an official proceeding. For conviction, each and every element must be proven beyond a reasonable doubt. If the prosecution fails to prove even one element, the jury is obliged to acquit. In this case, none of the elements is present.

First, a little more about the law. You have to do more than make false statements to someone who might or might not testify in a judicial proceeding to obstruct justice. In United States v. Aguilar, an opinion by Chief Justice Rehnquist and quoted by the House managers, the Supreme Court addressed the Government's requirement and showed that the defendant knew his actions were likely to affect a judicial proceeding. There, the U.S. district court judge was accused and convicted of lying to an FBI agent about a conversation with another judge and about what he said about his knowledge of some wiretapping. The Supreme Court reversed the conviction under 1502, the general obstruction of justice statute, holding that the facts were insufficient to make the case. They said in this material:

> We do not believe that uttering false statements to an investigative agent—and that seems to be all that was proved here—who might or might not testify before a grand jury is sufficient to make out a violation of the catch-all provision of 1503. . . . But what use will be made of false testimony given to an investigative agent who has not been subpoenaed or otherwise directed to appear before the grand jury is far more speculative. We think it cannot be said to have the ''natural and probable effect'' of interfering with the due administration of justice.

In responding to the defendant's criticism of the Court's holding, Mr. Chief Justice Rehnquist wrote, under the defense theory:

> A man could be found guilty of violating 1503 if he knew of a pending investigation and lied to his wife about his whereabouts at the time of the crime, thinking that an FBI agent might interview her and that she might in turn be influencing her statements to that agent about her husband's false accounts of where he was.

The intent to obstruct justice is indeed present, but the man's culpability is a good deal less clear from the statute than we would usually require in order to impose criminal liability.

So I want to begin by focusing on the ''corruptly persuade'' elements of witness tampering. What does it mean to corruptly persuade? The term is vague, and the legislative history on the specific point is not very clear. We do know it means more than harassing, which is described as badgering or pestering conduct, since 1512 makes intentional harassment a misdemeanor a lesser offense of ''corruptly persuade,'' which is a felony. The U.S. Attorneys' Manual gives some guidance. A prosecution under 1512 would require the Government to prove beyond a reasonable doubt, one, an effort to threaten, force or intimidate another person and; two, an intent to influence the person's testimony. Thus, ''corruptly persuade'' for career prosecutors requires some element of threat or intimidation or pressure.

Keeping that overview in mind, let's look at the facts. On January 17, 1998, the President called Ms. Currie after his deposition and asked her to meet with him the following day. On January 18, the President and Ms. Currie met, and the President told her about some of those surprising questions he had been asked in his deposition about Ms. Lewinsky. In the course of their conversation, according to Ms. Currie, the President posed a series of questions and made statements including: You were always there when she was there, right? We were never really alone. You could see and hear everything. Monica came on to me, and I never touched her, right? And she wanted to have sex with me, and I can't do that.

Our analysis of this issue could stop here. There is no case for obstruction of justice. Why? There is no evidence whatsoever of any kind of threat or intimidation. And as we discussed, the U.S. Attorneys' Manual indicates that without a threat or intimidation, there is no corrupt influence. Without corrupt influence, there is no obstruction of justice. But the evidence reveals much more. Not only does the record lack any evidence of threat or intimidation, the record specifically contains Ms. Currie's undisputed testimony which exonerates the President of this charge. This is Ms. Currie's testimony and is the fourth exhibit in the materials.

Question to Ms. Currie:

> Now, back again to the four statements that you testified the President made to you

that were presented as statements, did you feel you were pressured when he told you those statements?

None whatsoever.

Question: What did you think, or what was going through your mind about what he was doing?

Ms. Currie:

At the time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking.

Question: That was your impression, that he wanted you to say—because he would end each of the statements with ''Right?,'' with a question.

Ms. Currie:

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 these questions with a ''Right?'' and you could either say whether it was true or not true.

Correct.

Did you feel any pressure to agree with your boss?

None.

The evidence on this issue is clear. There was no effort to intimidate or pressure Ms. Currie, and she testified that she did not feel pressured. Betty Currie's testimony unequivocally establishes that the managers' case lacks any element of threat or intimidation. There is no evidence, direct or circumstantial, that refutes this testimony. This is not obstruction of justice.

But let's not stop there. Let's look at the intent element of the obstruction of justice laws—in other words, whether the President had the intent to influence Ms. Currie's supposed testimony, or potential testimony.

In an attempt to satisfy this element of the law, the managers overreached in their presentation to create the appearance that the President had the necessary specific intent. They argue that, based upon the way he answered the questions in the Jones deposition, he purposely referred to Ms. Currie in the hopes that the Jones lawyers would call her as a corroborating witness. Therefore, according to their theory, he had the specific intent.

The facts belie their overreaching. The House managers suggested to you that the President increased the likelihood that Ms. Currie would be called as a witness by challenging the plaintiff's attorney to question Ms. Currie. A review of the transcript, however, shows that the President's few references to Ms. Currie were neither forced nor needlessly interposed. They were natural, appropriate; they were responsive. Indeed, the only occasion when he suggested the Jones lawyers speak to Ms. Currie is when they asked if it was typical for Ms. Currie to be in the White House after midnight. He understandably said, ''You have to ask her.'' Hardly a challenge. It is a reasonable response to an inquiry about someone else's activities.

The managers' conjecture about the President's state of mind, however, fails on an even more basic level. If you believe the managers' theory, if you believe that the President went to great lengths to hide his relationship with Ms. Lewinsky, then why on Earth would he want Ms. Currie to be a witness in the Jones case? If there was one person who knew the extent of his contact with Ms. Lewinsky, it was Ms. Currie. While she did not know the nature of his relationship with Ms. Lewinsky, Ms. Currie did know and would have testified to Ms. Lewinsky's visits in 1997, the notes and messages that Ms. Lewinsky sent the President, the gifts that Ms. Lewinsky sent the President, and the President's support of the efforts to get Ms. Lewinsky a job. With just that information, it would have only been a matter of time before the Jones lawyers discovered the relationship—not that they needed Ms. Currie's testimony; they didn't need it for any of this. Ms. Tripp was already on the December 5, 1997, witness list, and she was already scheduled for a deposition.

So why would the President want her to testify? The answer is simple. He didn't. The President was not thinking about Ms. Currie becoming a witness in the Jones case. Indeed, she is the last person the President would have wanted the Jones lawyers to question. And even if the Jones lawyers had wanted to question Ms. Currie, it is highly unlikely they would have been allowed to do so, given the posture of the case at that time.

Judge Wright ordered the parties in August of 1997 to exchange names and addresses of all witnesses no later than December 5, 1997. Ms. Currie was not on their final witness list. Moreover, the cutoff date for all discovery was January 30. By the time the President's deposition was over, it was really too late to call Ms. Currie as a witness.

Finally, you need to remember that in the context of the Jones case Ms. Currie was, at best, a peripheral witness on a collateral matter that the court ultimately determined was not essential to the core issues in the case. She had only knowledge of a small aspect of a much larger case—all the more reason not to view her as a potential witness.

The President was not thinking about Ms. Currie becoming a witness in the Jones case. So what was the President thinking? The President explained to the grand jury why he spoke to Ms. Currie after the deposition. It had nothing to do with Ms. Currie being a potential witness. That was not his concern. The President was concerned that his secret was going to be exposed and the media would relentlessly inquire until the entire story and every shameful detail was public. The President's concern was heightened by an Internet report that morning that he spoke to Betty which alluded to Ms. Lewinsky and to Ms. Currie and to issues that the Jones lawyers had raised. The President was understandably concerned about media inquiries, a concern everyone who lives and serves in the public eye likely can understand.

In trying to prepare for what he saw as the inevitable media attention, he talked to Ms. Currie to see what her perceptions were and what she recalled. He talked to her to see what she knew.

Remember, some of the questions that the Jones lawyer asked the President were so off base. For example, they asked him about visits from Ms. Lewinsky between midnight and 6 a.m. where Ms. Currie supposedly cleared her in. The President wanted to know whether or not Ms. Currie agreed with this perception or whether she had a different view, whether she agreed that Ms. Lewinsky was cleared in when he was present or had there been other occasions that he didn't know about. He also wanted to assess Ms. Currie's perception of the relationship. He knew the first person who would be questioned about media accounts, particularly given that she was in the Internet report, was going to be Ms. Currie.

The House managers did the President a disservice in suggesting in the end that his five pages of testimony about why he spoke to Ms. Currie ultimately amounts to a four-word sound bite to refresh his recollection. He obviously said a lot more.

Why did they say that? Because they needed to establish intent, and the testimony and the facts do not show intent. That is the truth. That is all of the facts.

The President's intent was never to obstruct justice in the Jones case. It was to manage a looming media firestorm, which he correctly foresaw. As the President told the grand jury, ''I was trying to get the facts and trying to think of the best defense we could construct in the face of what I thought was going to be a media onslaught.''

He was thinking about the media. That is the big picture. That is not obstruction of justice.

In the end, of course, you must make your own judgments about whether the managers have made a case for convicting the President of obstructing justice on either of these allegations. We believe they have not, because the facts, those stubborn facts, don't support the allegations. Neither does the rule of law. We are not alone in that conclusion.

We want to share with you some of the remarks from a bipartisan panel of prosecutors who spoke to the House Judiciary panel, some of which you saw earlier with Mr. Craig. I have taken a very brief clip of their testimony that dealt with allegations of obstruction of justice against the President for, as you will see, then Representative and now Senator SCHUMER focused in on one of the two allegations that I address today.

(Text of videotape presentation:)

Mr. SULLIVAN. Mrs. Currie testified that she did not feel that the president came and asked her some questions in a leading fashion—''Was this right? Is this right? Is this right?''—after his deposition was taken in the Jones case. And she testified that she did not feel pressured to agree with him and that she believed his statements were correct——

Rep. SCHUMER. Correct, right.

Mr. SULLIVAN [continuing]. And agreed with him. He—the quote is, ''He would say, 'Right,' and I could have said, 'Wrong,''' Now that is not a case for obstruction of justice. It is very common for lawyers, before the witness gets on the stand, to say, ''Now you're going to say this, you're going to say this, you're going to say this.''

Rep. SCHUMER. Right.

Mr. SULLIVAN. Now it doesn't make a difference if you've got two participants to an event and you try to nail it down, so to say.

Rep. SCHUMER. Do all of you agree with that, with the Currie—the Currie——

Mr. WELD. Yeah.

Rep. SCHUMER. And on the other two, the Lewinsky parts of this, is there——

Mr. DAVIS. I think to some——

Rep. SCHUMER. I mean, I don't even understand how they could—how Starr could think that he would have a case, not with the president of the United States, but with anybody here, when it seems so natural and so obvious that there would be an overriding desire not to have this public and to have everybody—have the two of them coordinate their stories—that is, the president and Miss Lewinsky—if there were not the faintest scintilla of any legal proceeding coming about. It just strikes me as an overwhelming stretch. Am I wrong to characterize it that way? You gentlemen all have greater experience than I do.

Mr. DAVIS. I think you're right. And also, the problem a prosecutor would face would be that in these cases, there is relationship between these people unrelated to the existence of the Paula Jones case—the relationship. And that's the motivation——

Rep. SCHUMER. Correct.

And Mr. Weld, do you disagree with—do you agree with that?

Rep. SENSENBRENNER. The gentleman's time—the gentleman's time——

Rep. SCHUMER. Could I just ask Mr. Weld for a yes or no——

Rep. SENSENBRENNER. I'm sorry, Mr. Schumer. Mr. Schumer——

Rep. SCHUMER [continuing]. For a yes or no answer to that?

Can you answer that yes or no, Governor?

Mr. WELD. I think it's a little thin, Mr. Congressman.

Rep. SCHUMER. Thank you.

Mr. NOBLE. Again, it's a specific-intent crime, and the question is, what was the President thinking when he said this? We can look at his words and try and analyze his words. But Ms. Currie says that she didn't believe he was trying to influence her and that if she'd said something different from him, if she believed something different from him, she would have felt free to say it. So for that reason, I believe, you just don't have the specific intent necessary to prove obstruction of justice with regard to the comment that you just asked me.

Manager HUTCHINSON is keeping very good company. He, like the other prosecutors, does not believe the record before you establishes obstruction of justice. We agree.

Before I close, I do want to take a moment to address a theme that the House managers sounded throughout their presentation last week—civil rights. They suggested that by not removing the President from office, the entire house of civil rights might well fall. While acknowledging that the President is a good advocate for civil rights, they suggested that they had grave concerns because of the President's conduct in the Paula Jones case.

Some managers suggested that we all should be concerned should the Senate fail to convict the President, because it would send a message that our civil rights laws and our sexual harassment laws are unimportant.

I can't let their comments go unchallenged. I speak as but one woman, but I know I speak for others as well. I know I speak for the President.

Bill Clinton's grandfather owned a store. His store catered primarily to African Americans. Apparently, his grandfather was one of only four white people in town who would do business with African Americans. He taught his grandson that the African Americans who came into his store were good people and they worked hard and they deserved a better deal in life.

The President has taken his grandfather's teachings to heart, and he has worked every day to give all of us a better deal, an equal deal.

I am not worried about the future of civil rights. I am not worried because Ms. Jones had her day in court and Judge Wright determined that all of the matters we are discussing here today were not material to her case and ultimately decided that Ms. Jones, based on the facts and the law in that case, did not have a case against the President.

I am not worried, because we have had imperfect leaders in the past and will have imperfect leaders in the future, but their imperfections did not roll back, nor did they stop, the march for civil rights and equal opportunity for all of our citizens.

Thomas Jefferson, Frederick Douglass, Abraham Lincoln, John F. Kennedy, Martin Luther King, Jr.—we revere these men. We should. But they were not perfect men. They made human errors, but they struggled to do humanity good. I am not worried about civil rights because this President's record on civil rights, on women's rights, on all of our rights is unimpeachable.

Ladies and gentlemen of the Senate, you have an enormous decision to make. And in truth, there is little more I can do to lighten that burden. But I can do this: I can assure you that your decision to follow the facts and the law and the Constitution and acquit this President will not shake the foundation of the house of civil rights. The house of civil rights is strong because its foundation is strong.

And with all due respect, the foundation of the house of civil rights was never at the core of the Jones case. It was never at the heart of the Jones case. The foundation of the house of civil rights is in the voices of all the great civil rights leaders and the soul of every person who heard them. It is in the hands of every person who folded a leaflet for change. And it is in the courage of every person who changed. It is here in the Senate where men and women of courage and conviction stood for progress, where Senators—some of them still in this chamber; some of them who lost their careers—looked to the Constitution, listened to their conscience, and then did the right thing.

The foundation of the house of civil rights is in all of us who gathered up our will to raise it up and keep on building. I stand here before you today because others before me decided to take a stand, or as one of my law professors so eloquently says, ''because someone claimed my opportunities for me, by fighting for my right to have the education I have, by fighting for my right to seek the employment I choose, by fighting for my right to be a lawyer,'' by sitting in and carrying signs and walking on long marches, riding freedom rides and putting their bodies on the line for civil rights.

I stand here before you today because America decided that the way things were was not how they were going to be. We, the people, decided that we all deserved a better deal. I stand here before you today because President Bill Clinton believed I could stand here for him.

Your decision whether to remove President Clinton from office, based on the articles of impeachment, I know, will be based on the law and the facts and the Constitution. It would be wrong to convict him on this record. You should acquit him on this record. And you must not let imagined harms to the house of civil rights persuade you otherwise. The President did not obstruct justice. The President did not commit perjury. The President must not be removed from office.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

LEADER LECTURE SERIES

Mr. LOTT. Once again, I invite all Senators to attend the leader lecture series this evening at 6 p.m. in the Old Senate Chamber. I have already announced former President George Bush will be the speaker.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Senate now stand in adjournment under the previous order.

There being no objection, the Senate, at 5:14 p.m., sitting as a Court of Impeachment, adjourned until Thursday, January 21, 1999, at 1 p.m.