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House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, February 2, 1999, at 12:30 p.m.

Senate

THURSDAY, JANUARY 21, 1999

The Senate met at 1:01 p.m., and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment. The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Dear God, You know what we need before we ask You but, in the asking, our minds and hearts are prepared to receive Your answer. In this impeachment trial, we have learned again that really listening over a prolonged period of time is hard work. Often it is difficult to hear what is being said because of differing convictions. Dissonance causes discordant static. Sometimes our preconceptions about what we think will be said keep us from hearing what actually is said. Thank You for the commitment of the men and women of this Senate to serve You and our Nation by accepting the demanding responsibility of listening for and evaluating truth. Grant them renewed energy, sensitive audio nerves, and discerning minds. For Your glory and the good of America. Amen.

The CHIEF JUSTICE. The Sergeant at Arms will make a proclamation.

The Sergeant at Arms, James W. Ziglar, made proclamation as follows:

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

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Thank you, Mr. Chief Justice.

ORDER OF PROCEDURE

Mr. LOTT. Today, we will conclude the presentation of the White House counsel. I understand that the presentation will last approximately 4½ hours. As we have done previously, we will take periodic breaks throughout the proceedings, with the first one coming in approximately 1 hour and 15 minutes. I believe that will be approximately midway in the presentation of Mr. Counsel Kendall. Then we would probably take at least one more break so that the Senators and Chief Justice would have a chance to stretch and so we will have some logical break in the presentations. As a reminder, we will convene tomorrow at 1 p.m. to resume consideration of the articles.

At this point, I ask the indulgence of the Chief Justice and all Senators as we take up some routine matters before we resume consideration of articles. These have been precleared.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. I ask unanimous consent, notwithstanding the consideration of articles, that it be in order at this time to conduct several routine legislative matters.

The CHIEF JUSTICE. Without objection, it is so ordered.

MEASURES READ FOR THE FIRST TIME—S. 269, 270, AND 271

Mr. LOTT. Mr. Chief Justice, there are three bills at the desk. I ask the bills be considered read the first time. I further ask the bills be read a second time en bloc, and I object to my own request.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. LOTT. The bills will be read a second time on the next legislative date, as I understand it.

The CHIEF JUSTICE. The leader is correct.

The bills read the first time are as follows:

S. 269, a bill to state the policy of the United States regarding the deployment of a missile defense system capable of defending the territory of the United States against limited ballistic missile attack;

S. 270, a bill to improve pay and retirement equity for members of the Armed Forces; and for other purposes;

S. 271, a bill to provide for education flexibility partnerships.

AMENDING PARAGRAPH 1(m)(1) OF RULE XXV

Mr. LOTT. I ask unanimous consent that the Senate proceed to the immediate consideration of S. Res. 28 which would change the words "Handicapped individuals" to "Individuals with disabilities" in Rule XXV.

I further ask consent the resolution be agreed to and the motion to reconsider be laid upon the table.

The CHIEF JUSTICE. Is there objection?

Without objection, it is so ordered.

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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S831

The resolution (S. Res. 28) was agreed to as follows:

S. RES. 28

Resolved, That paragraph 1(m)(1) of Rule XXV is amended as follows:

Strike "Committee on Labor and Human Resources" and insert in lieu thereof "Committee on Health, Education, Labor, and Pensions".

Strike "Handicapped individuals" and insert in lieu thereof "Individuals with disabilities".

Mr. LOTT. That concludes our regular business.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

Mr. LOTT. I believe we are prepared for the concluding presentation by the White House counsel.

I yield the floor, Mr. Chief Justice.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial are approved to date. Under the provisions of Senate Resolution 16, the counsel for the President have 18 hours and 9 minutes remaining to make their presentation of their case.

The Presiding Officer now recognizes Mr. Counsel Kendall.

Mr. Counsel KENDALL. Mr. Chief Justice, Members of the Senate, managers from the House of Representatives, good afternoon. I am David Kendall of the law firm of Williams & Connolly. Since 1993 it has been my privilege to represent the President in the tortuous and meandering Whitewater investigation which, approximately a year ago, was transformed in a remarkable way into the Lewinsky investigation.

I want to address this afternoon certain allegations of obstruction of justice contained in article II of the articles of impeachment. Mr. Manager SENSENBRENNER remarked that no prior article allegation of obstruction of justice has ever reached this Chamber. So this is a case of first impression.

Deputy Counsel Cheryl Mills yesterday addressed the parts of article II pertaining to gifts and the President's conversations with Ms. Currie. I will cover, this afternoon, the remaining five subparts of article II. The evidence plainly shows that the President did not obstruct justice in any way and there is nothing in this article which would warrant his removal from office.

As I begin, I want to thank you for your open minds, for your attention, for your withholding judgment until you have heard all of our evidentiary presentation. There are a lot of myths about what the evidence is in this case. Some of them are misunderstandings based upon erroneous media reports, some spring from confusion in the evidence itself, and some are the result of concerted partisan distortion.

I want to talk to you this afternoon about what the record is and what the evidence actually shows. I apologize to

you in advance if the process is tedious. What I think I have to request from you is your common sense and some uncommon patience. But the evidence—those stubborn facts—is critically important to inform your ultimate vote on these articles. I will do my best to avoid repetition and lawyer talk—although I am a lawyer.

In our trial memorandum, we gave you the citations to the evidence I am going to be referencing, so you can check the facts there. I want to say that I welcome your scrutiny.

My presentation this morning consists of six parts. I would like, if I could, to give you those as milestones. I want to make some remarks generally about evidence, and then I want to consider the specific evidence which is relevant to each of the five subparts I am going to be talking about. I am going to do them out of numerical order but what I hope is in a logical order. I am going to cover article I first, then article II, then article V, article VII, and article IV. Ms. Mills, yesterday, has already covered III and VI.

First of all, a few words about evidence. We have heard a great deal about the rule of law in the various presentations of the House managers. But what is at issue here—and I think Mr. Manager GRAHAM made this point very well—it is a solemn obligation, which is constitutionally committed to this body. Your decision, whatever it is, is not going to have some kind of domino effect that ineluctably leads to that midnight knock at the door. The rule of law is more than rhetoric. It means that in proceedings like these, where important rights are being adjudicated, that evidence matters, fairness matters, rules of procedural regularity matter, the presumption of innocence matters, and proportionality matters. The rule of law is not the monopoly of the House managers, and it ought to be practiced in these proceedings, as well as talked about in speeches.

We have heard a lot of pejorative rhetoric about legal hairsplitting that the President and his legal team have engaged in. As a member of that legal team, I paid attention to that rhetoric. But as I sat there listening to the various presentations, they struck me as somewhat odd, because one of the hallmarks of the rule of law is careful procedures and explicit laws which try to define rights for every citizen.

It is not legal hairsplitting to raise available defenses, or to point out gaps in the evidence, or to make legal arguments based upon precedent, however technical and politically unpopular some of those arguments may be. And I think it is particularly important in a proceeding like this where the charge is an accusation of a crime. Mr. Manager MCCOLLUM was quite explicit in his argument that the first thing you have to determine here is whether the President committed any crimes.

I am going to try to focus on the facts and the evidence concerning obstruction of justice. I don't think there

is a need for me to go into the law; we have set forth the relevant legal principles in our trial memorandum. Mr. Ruff and Ms. Mills very ably covered some of the governing principles, and Ms. Mills played some videotape excerpts of experts, and the law on obstruction of justice is relatively settled. Indeed, our primary disagreement with the very able House managers concerns the evidence and what it shows.

Now, in December the Judiciary Committee of the House of Representatives reported four articles of impeachment to the floor. Two of those—one alleging perjury in the President's January 17, 1998, deposition in the Paula Jones case, and one alleging abuse of power—were specifically considered by the House and just as specifically rejected, although the House managers had very cleverly attempted to weave into their discussion of the two articles that were adopted some of the rejected allegations.

Now, on the chart, article II alleges that the President has, in some way, impeded or covered up the existence of evidence relevant to the Paula Jones case. That is the whole focus of this article. It focuses on the alleged impact on the Paula Jones case. It is important because when we get to subpart (7), we will see that there is no way the allegations there could be a part of this article or impact the Paula Jones case.

The President supposedly accomplished this obstruction of justice through—and here I quote—"one or more of the following acts . . ."

Here, I think I should observe that this "one or more" menu, as it were, is plainly defective in a constitutional sense because, as we have pointed out in our answer and in our trial memorandum, and as Mr. Ruff has made clear in his presentation, such a format makes it impossible to assure that the constitutionally required two-thirds of Senators voting concur on any particular ground that is alleged. Since the Senate rules provide that you can't split up this menu—you have to cover all seven allegations together—it would be possible for the President to be convicted without that requisite two-thirds majority, because you might get 9 or 10 votes in favor of the article based on each of the 7 different grounds.

The Constitution, of course, gives the House of Representatives the sole power of impeachment and has exercised that power to adopt article II. However, several of the allegations about what the President did to obstruct justice, supposedly in the House managers' presentation, are nowhere contained in these seven subparts; they are simply not there.

For example, you heard repeatedly about the President's use in his deposition of the term "alone"—was he ever alone with Ms. Lewinsky. The managers claim that that somehow obstructed justice. The allegation that this consisted of an impeachable offense, however, was rejected when the