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

House of Representatives voted down one of the four articles alleging deposition perjury.

You have also heard reference to the President's allegedly false and misleading answers to the 81 interrogatories sent to the President in November by the House Judiciary Committee. Again, an article based upon those interrogatory answers was voted down in the House of Representatives.

I would like you to bear in mind an image which Mr. Manager HUTCHINSON and Counsel Ruff share in some way. You will see that they didn't share it entirely. Mr. Manager HUTCHINSON referred to the ''seven pillars of obstruction.'' Mr. White House Counsel Ruff referred to the seven shifting ''sand castles of speculation.'' It won't surprise you that I agree with Mr. Ruff's characterization. But the important point is that there are 7 grounds in this article; there are not 8, there are not 19, there are 7 charges. That is what the House enacted and that is what we are going to address and rebut.

Before considering the five subparts of article II that I am going to be addressing, I would like to say a few words about the different kinds of evidence you are going to have to consider. There is, first, direct evidence. Now, this isn't the most probative kind of evidence, because it is the least ambiguous. It comes directly from the five senses of the witness. For example, when the witness testifies about something the witness did, that is direct evidence.

From the House managers' very skillful presentation, you would not be aware of the large amount of direct evidence which is in the record which refutes and contradicts the allegations of obstruction of justice. I am going to cover that in detail this afternoon.

The second kind of evidence is what the law calls circumstantial, and this describes any evidence which is probative only if a certain conclusion or inference is drawn from the evidence. Circumstantial evidence is admissible, but, by its definition, it is to some degree ambiguous because it is not direct. Its probative power—or its value—depends upon the strength of the inference you can logically draw from it.

Let me give you an example. You walk out of your house in the morning and you see the sidewalk is completely wet. You might conclude that it has rained the night before and you might be reasonably confident in that conclusion. However, were your sharp eyes to focus further and observe your neighbor's sprinkler sitting right by the sidewalk, dripping from the sprinkler head, you might want to revise your conclusion.

Circumstantial evidence is often subject to several different interpretations, and for this reason it has to be viewed very carefully. As one court has stated, ''Circumstantial evidence presents a danger that the trier of fact may leave logical gaps in the proof offered and draw unwarranted conclusions based on probabilities of low degree.''

If a criminal charge is to be based on conclusions drawn from circumstantial evidence rather than on direct evidence, those conclusions have got to be virtually unavoidable. Most of the obstruction case presented—and they have recognized this, and Mr. Manager HUTCHINSON recognized it on Saturday—is based on circumstantial evidence, and that evidence is, at best, profoundly ambiguous. They told you that they have painted a picture with circumstantial evidence. I think what they have in fact done is given you a Rorschach test.

I would like to now turn to the five subparts of article I which I intend to cover. And I want to describe, as to each, the relevant direct evidence in the record, the circumstantial evidence, and the portions of the managers' presentation which do not in fact constitute either kind of evidence but in fact represent speculation, theorizing, and hypothesis. What I believe you will find is that the direct evidence disproves the charges of obstruction and the managers have had to rely on contradictory and unpersuasive circumstantial evidence to try to make their case.

Subpart (1) of article II alleges that the President encouraged Ms. Lewinsky to execute an affidavit in the Paula Jones case ''that he knew to be perjurious, false and misleading.'' The House managers allege that during a December 17 telephone conversation Ms. Lewinsky asked the President what she could do if she were subpoenaed in the Jones case and the President responded, ''Well, maybe you could sign an affidavit.'' And that is a statement the President does not dispute making.

It is hard to believe, but this statement of the President to Ms. Lewinsky, advising her of the possibility of totally lawful conduct, is the House managers' entire factual basis for supporting the first allegation in subpart (1). The managers don't claim that the President advised her to file a false affidavit. That is not what subpart (1) alleges. And there is no evidence in the record anywhere to support such an allegation. Nor do the managers allege he even told her, advised her, urged her, or suggested to her what to put in her affidavit. The charge which the managers have spun out of this single statement by the President is refuted by the direct evidence.

First of all, Ms. Lewinsky has repeatedly and forcefully denied any and all suggestion that the President ever asked her to lie. In her proffer—and a proffer, of course, is an offer made to a prosecutor to try to get immunity—she made in her own handwriting on February 1, 1998, she stated explicitly that, ''Neither the President nor anyone on his behalf asked or encouraged Ms. Lewinsky to lie.''

In an FBI interview conducted on July 27, she made two similar statements. And you see them up here on the chart: ''Neither the President or Jordan ever told Lewinsky that she had to lie.''

''Neither the President nor anyone ever directed Lewinsky to say anything or to lie.''

And it was the FBI agent who transcribed those two comments.

I would like to focus upon the fact that she told the FBI the President never directed her ''to say anything or to lie.''

I think that is particularly telling as the direct evidence in the context of this allegation that the President supposedly urged her to file an affidavit that he knew would be false.

Finally, in Ms. Lewinsky's August 20 grand jury testimony, she stated—and she had to volunteer to do it—''No one ever asked me to lie and I was never promised a job for my silence.''

''No one ever asked me to lie and I was never promised a job for my silence.''

Is there something difficult to understand here?

It is interesting to see how the House managers try to establish that somehow the President asked Ms. Lewinsky to file a false affidavit. But their argument essentially begs the question. They argue that the President in fact somehow encouraged her to lie because both parties knew the affidavit would have to be false and misleading to accomplish the desired result.

But again there is no evidence to support this conjecture, and in fact the opposite is true. Both Ms. Lewinsky and the President have testified repeatedly that, given the particular claims being made in the Jones case, they both honestly believe that a truthful, albeit limited, affidavit might—''might''—establish that Ms. Lewinsky had nothing relevant to offer in the way of testimony in the Jones case.

The President explained in his grand jury testimony on at least five occasions in response to the prosecutor's question that he believed Ms. Lewinsky could execute a truthful but limited affidavit that would have established there was no basis for calling her as a witness to testify in the Jones case.

For example, the President told the grand jury, ''But I'm just telling you that it's certainly true what she says here, that we didn't have—there was no employment, no benefit in exchange, there was nothing having to do with sexual harassment. And if she defined sexual relationship in the way I think most Americans do . . . then she told the truth.''

Or again, the President told the grand jury:

> I've 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's be able to get out of testifying on an affidavit? Absolutely. Did I want her to execute a false affidavit? No, I did not.

It is important to bear in mind that the Paula Jones case was a sexual harassment case, although it turned out to

be legally groundless, and it involved allegations of nonconsensual sexual solicitations. Ms. Lewinsky's relationship to the President had been consensual. She knew nothing whatsoever about the allegations in the Jones case. There is no evidence in the record that she had ever been in Arkansas in her life. And in any event, the Jones case arose out of factual allegations dating from May of 1991 when the President was Governor of Arkansas, long before Ms. Lewinsky had even met the President.

Now, it is not simply the President who believed that in the circumstances here Ms. Lewinsky could have filed an affidavit which could have been truthful and which might have gotten her released from testifying in a Jones case deposition. Ms. Lewinsky also has testified that she might have been able to file a truthful affidavit which would have accomplished that purpose. For example, she told the FBI in an interview after she obtained immunity on July 29 that she had told Linda Tripp that the purpose of an affidavit was to avoid being deposed, and that she thought one could do this by giving only a portion of the whole story so the Jones lawyers would not think the person giving the affidavit added anything of relevance to their case.

Again, in the same interview with the FBI, Ms. Lewinsky stated that the goal of such an affidavit was to be as benign as possible so as to avoid being deposed.

Again, in her grand jury testimony on August 6, Ms. Lewinsky testified that:

> I thought that signing an affidavit could range from anywhere—the point of it would be to deter or to prevent me from being deposed and so that there could range from anywhere between maybe just somehow somehow mentioning, you know, innocuous things.

It is not disputed that the President showed no interest in viewing a draft of Ms. Lewinsky's affidavit, did not review it, and, according to Ms. Lewinsky, said he did not need to see it. This fact is obviously exculpatory. If the President were truly concerned about what was going into Ms. Lewinsky's affidavit, surely he would have wanted to review it prior to his summation.

Now, to counter this inference, the House managers offer speculation. Mr. Manager MCCOLLUM tried to downplay the significance of this fact by asking you to engage in sheer surmise. He said on Friday:

> I doubt seriously [the President] was talking about 15 other affidavits of somebody else and didn't like looking at affidavits anymore. I suspect and I would suggest to you that he was talking about 15 other drafts of this proposed affidavit since it had been around the Horn a lot of rounds.

Well, as the able House manager himself stated, this suggestion is mere suspicion, speculation; it flies in the face of Ms. Lewinsky's direct testimony. There is evidence of only a few drafts, and there is no evidence that the President ever saw any draft.

Now, Ms. Lewinsky was under no obligation to volunteer to the Paula Jones lawyers every last detail about her relationship with the President, and the fact that the President did not advise her or instruct her to do so is neither wrong nor an obstruction of justice. The fact is that the limited truthful affidavit might have established that Ms. Lewinsky's testimony was simply not relevant to the Jones case.

The President knew and had told Ms. Lewinsky that a great many other women he knew who had been subpoenaed by the Paula Jones lawyers had tried to avoid the burden, the expense, and the humiliation of a deposition by filing an affidavit in support of a motion to quash the deposition subpoena and by arguing in the affidavit that the subpoenaed woman had no relevant evidence for the Jones case. The Jones lawyers were casting a very wide net for evidence that they could use to embarrass the President. The discovery cutoff in the case was fast approaching—that is the point at which you can't take any more discovery—and there was some chance both Ms. Lewinsky and the President felt that she could escape deposition through an accurate but limited affidavit.

Moreover, there is significant evidence in the record that at the time she executed her affidavit, Ms. Lewinsky honestly could believe, honestly believed that she could deny a sexual relationship given what she believed to be the definition of that term. In an audiotape conversation which Linda Tripp, secretly recorded, Ms. Lewinsky declared:

> I never even came close to sleeping with the President. We didn't have sex.

Again, I would remind you of Mr. Craig's presentation yesterday concerning Ms. Lewinsky's understanding of the term ''sexual relations,'' which was the same as the President's.

There is another part of the chronology here—and a circumstantial evidence case often rests heavily on chronology—that the House managers simply ignore in their attempt to fit some of the facts into a sinister pattern. Ms. Lewinsky's name appeared on the Paula Jones witness list which, the managers tell us accurately, the President's lawyers reviewed with him on Saturday, December 6. She was one of a great many people named on the witness list.

Now, if the President's concern was so intense about the appearance of her name on the list, would he have waited until December 17 to talk to her? There is no explanation for this delay, which is consistent with intense concern on the President's part, except that her appearance with a lot of others was not particularly troubling to him. The main reason for his phone call on December 17 to Ms. Lewinsky, the unrebutted evidence shows, is that he wanted to tell Ms. Lewinsky that Betty Currie's brother had died. Indeed, 3 days after that telephone call, Ms. Lewinsky attended the funeral of Ms. Currie's brother on December 20.

Now, insofar as you want to draw inferences from the chronology of events in December, this long delay is circumstantial evidence that the President felt no particular urgency either to alert Ms. Lewinsky that her name was on the witness list or make any suggestions to her about an affidavit. Remember her repeated testimony which is direct evidence: No one ever asked her to lie.

Now, subpart (2) of article II alleges that the President obstructed justice by encouraging Ms. Lewinsky, in that same late night telephone call—two of these articles rest on that same telephone call—to give perjurious, false and misleading testimony if and when she was called to testify personally in the Jones litigation.

Now, it was interesting to me that a couple of days ago the House managers released a response to our presentation and they concede here that the President and Ms. Lewinsky did not discuss the deposition that evening of December 17 because Monica—they call her Monica—had not been subpoenaed.

Well, that is true. There was no deposition subpoena received by Ms. Lewinsky until 2 days later. Now, the lawyers in the room know something about what witness lists are and what they contain that the civilian part of the world may not know. As lawyers get ready to go to trial, and the judge requires them to put their witnesses on the witness list, you put every witness you can think of who might conceivably be relevant—from Mr. Aardvark to Ms. Zanzibar. All of them go on the witness list. And that is what had happened here. It wasn't until you get something like a subpoena for a deposition that you know a witness is really going to be a significant player in the trial.

Well, let's look at the allegations here. And remember, these allegations focus on December 17, 2 days before Ms. Lewinsky is going to receive her subpoena. I think you logically begin with the direct evidence, and the direct evidence is the testimony of the two people involved in the telephone conversation, Ms. Lewinsky and the President. Ms. Lewinsky has repeatedly stated that no one ever urged her to lie and that this plainly applies to this December 17 conversation. She said, in her handwritten proffer that I had on the chart earlier, that the President did not ask her or encourage her to lie. She made that statement when talking to the independent counsel, when her fate was in the hands of the independent counsel, when her immunity agreement could be broken and she could be prosecuted. She has, nevertheless, continued to maintain that nobody asked her ever to lie. She said in the July 27 FBI interview neither the President nor Mr. Jordan ever told her she had to lie, and she said that in her grand jury testimony.

It is interesting to hear all the ways that the House managers—and they are

very skillful—try to minimize the importance of this direct evidence. You would think Ms. Lewinsky's statements under oath were irrelevant to this case. She gave this testimony, for the most part, when she was subject to prosecution for perjury. It simply cannot be blandly dismissed because it was given under this threat. Indeed, Mr. Manager HUTCHINSON—and I would like to quote him—shares this same belief with me. He told you, standing right here, ''that Ms. Lewinsky's testimony is credible and she has the motive to tell the truth because of her immunity agreement with the independent counsel, where she gets in trouble only if she lies.''

Likewise, the President has consistently insisted he never asked Ms. Lewinsky to lie. In his grand jury testimony last August, he said that he and Ms. Lewinsky ''might have talked about what to do in a non-legal context at some point in the past,'' if anybody inquired about their relationship, although he had no specific memory of such a conversation. And he testified that they did not talk about this in connection with Ms. Lewinsky's testimony in the Jones case.

He was asked by one of the prosecutors:

In that conversation, [on December 17] or in any conversation in which you informed her she was on the witness list, did you tell her, you know, you can always say that you were coming to see Betty or bringing me letters? Did you tell her anything like that?

[The President:] I don't remember. She was coming to see Betty. I can tell you this. I absolutely never asked her to lie.

There is, thus, no direct testimony from anybody that on December 17 the President asked Ms. Lewinsky to lie if called to testify in the Jones case. Here the House managers don't really even rely on circumstantial evidence to refute the direct testimony of the two relevant witnesses. They rely, instead, on what they assert is logic. They claim that while the President maybe didn't specifically tell her to lie, he somehow suggested that she give a false account of their relationship. What you should infer, according to them, is based upon what they may have said about their relations at other times, previous times to this late night December 17 phone call, the President somehow suggested that she say the same thing at her deposition, something like, ''You know, you can always say you were coming to see Betty, or that you were bringing me letters.''

Their claim boils down, however, to the inferences to be drawn from the uncontested fact that in the past, before this time, before this December 17 phone call, the President and Ms. Lewinsky had discussions about what she should say if asked about the visits to the Oval Office.

Both have acknowledged that. Not surprisingly, at the time these conversations occurred they were both concerned to conceal their improper relationship from others while it was going on. Cover stories are an almost inevitable part of every improper relationship between two human beings. By its very nature the relationship is one that has to be concealed and, therefore, misleading cover stories inevitably accompanied that relationship.

Now, to say that is not to excuse it or to exonerate it or justify it; but, rather, to emphasize that the testimony about ''visiting Betty'' or ''bringing me letters'' is in the record, but it is not linked in any way to the December 17 phone call or to any testimony or affidavit with regard to the Jones case. Here again, I want to go to the direct evidence that is relevant on count 2, because it undercuts the managers' suggestion that this discussion of the cover stories actually occurred in the context of discussion about the Paula Jones case.

Now, here on a chart we have a blow-up of Ms. Lewinsky's—part of Ms. Lewinsky's handwritten proffer to the independent counsel on February 1, which makes it clear that she does recall having a discussion with the President in which he said that if anyone questioned her about visiting him, she should say she was either bringing him letters or visiting Betty Currie. But Ms. Lewinsky states, ''there is truth to both of these statements.'' It was a cover story but there was some truth in it.

She also went out of her way in this proffer to emphasize that, while she did not recall precisely when the discussions about cover stories occurred, they occurred ''prior to the subpoena in the Paula Jones case.'' That is what you see in her paragraph 11. Her paragraph 11 refers back to paragraph 2. And her point is that, while she and the President did have these discussions, it was not in the context of her testimony.

In paragraph 4 also, as you see from the chart or from your handout, as to the contents of any possible testimony, Ms. Lewinsky wrote that to the best of her recollection she did not believe she discussed the content of any deposition during the December 17 conversation with the President.

Now, in an FBI interview on July 31, after she had received immunity from the independent counsel, the FBI agent noted what Ms. Lewinsky had told him:

Lewinsky advised, though they did not discuss the issue in specific relation[ship] to the Jones matter, she and Clinton had discussed what to say when asked about Lewinsky's visits to the White House.

This is direct evidence. Nobody denies that there was discussion of cover stories early in the relation, but there is no evidence that it occurred in connection in any way with the Jones case.

Again, despite Ms. Lewinsky's direct and unrefuted testimony about the December 17 telephone call, the House managers asked you to conclude that the President must have asked her to testify falsely, because she had, by her own account, on prior occasions, assured the President that she would deny the relationship.

Think for a moment about that: They ask you to accept their speculation, in the face of contradictory evidence from both parties, and use that as a basis on which to remove the President. Again, Ms. Lewinsky never stated that she told the President anything about denying their relationship on December 17, or at any other time, after she had been identified as a witness. Indeed, she testified in the grand jury that that discussion did not take place after she learned she was a witness in the Jones case. And, again, we have her grand jury testimony displayed on the chart. A grand juror is asking a question.

Question:

Is it possible that you also had these discussions [about cover stories denying the relationship] after you learned that you were a witness in the Paula Jones case?

[Ms. Lewinsky]: I don't believe so.

A juror—and these jurors were very good at questioning witnesses throughout this proceeding:

Can you exclude that possibility?

[Ms. Lewinsky]: I pretty much can. I really don't remember it.

Direct testimony given when Ms. Lewinsky was covered by an immunity agreement that can only be divested by her perjuring herself.

There is another thing that I think is relevant here, and that is that Ms. Lewinsky has stated several times that while these were cover stories, they were not untrue. In her handwritten proffer, as you have seen, she stated that she asked the President what to say if anyone asked her about her visits. He said you could mention Betty Currie or bringing me letters. And she added there was truth to both of these statements and that ''[n]either of those statements [was] untrue.'' Indeed, she testified to the grand jury that she did, in fact, bring papers to the President and that on some occasions, she visited the Oval Office only to see Ms. Currie.

Question by a grand juror:

Did you actually bring the President papers at all?

Yes.

All right. Tell us a little bit about that.

It varied. Sometimes it was just actually copies of letters . . .

Again, in her August 6, 1998, grand jury appearance, Ms. Lewinsky testified:

I saw Betty every time that I was there . . . most of the time my purpose was to see the President, but there were some times when I did just go see Betty but the President wasn't in the office.

Ms. Lewinsky and Ms. Currie were friends, and they did have a separate social relationship.

The managers assert that these stories were misleading, and the House committee report on the articles of impeachment declared that these stories about Ms. Currie and delivering papers was a ''ruse that had no legitimate business purpose.'' In other words, while the so-called stories were literally true, the explanations might

have been misleading. But the literal truth here, while it may appear legalistic and hairsplitting, is, in fact, a defense to both the perjury and the obstruction of justice charges under the rule of law. While the President and Ms. Lewinsky had discussed cover stories while their improper relationship was in progress, there is simply no evidence that they discussed this at any time when Ms. Lewinsky was a witness in the Jones case.

The next subpart I want to consider is subpart (5). Subpart (5) alleges that at the deposition, the President allowed his attorney to make false and misleading statements to a Federal judge characterizing an affidavit in order to prevent questioning deemed relevant by the judge.

It alleges obstruction solely because the President did not say anything when his attorney, Mr. Bennett, cited Ms. Lewinsky's affidavit in an unsuccessful argument to Judge Wright that evidence concerning Ms. Lewinsky should not be admitted at that point because it was irrelevant to the Jones case. At one point, Mr. Bennett, the President's lawyer, states that, according to the affidavit, ''there is no sex of any kind in any manner, shape or form.''

This claim, which also is presented in the perjury section, as Mr. Craig pointed out, is deficient as an allegation of obstruction, both as a matter of fact and as a matter of law.

But I will say one thing. The direct evidence on this point is uniquely available because there is only one witness who can testify about what was in his thoughts at a given moment, and the President has testified at great length in his grand jury testimony about what he was thinking at this point.

The President told the grand jury that he was simply not focusing closely on the exchange between the lawyers, but was instead concentrating on his own testimony.

He said:

> I'm not even sure I paid much attention to what he [Mr. Bennett] was saying. I was thinking. I was ready to get on with my testimony here and they were having these constant discussions all through the deposition.

And again the President testifies:

> I didn't pay any attention to this colloquy that went on. I was waiting for my instructions as a witness to go forward. I was worried about my own testimony.

I think Mr. Craig provided you with a background yesterday that I won't repeat here, but I would refer you to, about what was on the President's mind at the time.

Mr. Manager MCCOLLUM made a very polished and articulate presentation to you, and he predicted that the President's lawyers were going to argue that the President sat in silence because he wasn't paying attention. We have, indeed, argued this, and it is the truth based upon what the President has testified he was thinking about. But Mr. MCCOLLUM went on to argue that there was circumstantial evidence available from the videotape of the President at this deposition.

He stated:

> We've already seen the video. And you know that he was looking so intently. Remember, he was intensely following the conversation with his eyes. I don't know how anybody can say this man wasn't paying attention. He certainly wasn't thinking about anything else. That was very obvious from looking at the video.

We all saw the video during the House managers' presentations, and we saw a lot of the President at the deposition yesterday when Mr. Craig played the first part of it. If you observe the President throughout the time you have seen him on the video in the deposition, you will conclude that the look on his face was no different from what it was during other discussions or arguments of counsel about evidentiary or procedural matters. The videotape does not, fairly considered, indicate that the President was, in fact, focusing on the lengthy colloquy among the lawyers or that he knowingly made a decision not to correct his own lawyer.

The President has received a great deal of criticism, because at one point in his grand jury testimony, when asked about Mr. Bennett's statement, the President responds to the prosecutor that whether Mr. Bennett's statement is true depends on what the meaning of the word ''is'' is. That is, ''there is no sex of any kind.''

That has gotten its share of laughs. But when you read the President's grand jury transcript in context, this was a serious matter, and it is apparent that the President was not in any way describing what was in his own mind at the time of the deposition, but he rather was discussing Mr. Bennett's statement from the vantage point of the President's later grand jury testimony. He is interpreting what his own lawyer was saying. Mr. Craig pointed this out yesterday.

That interpretation is not perjury in article I, and it is not obstruction of justice in article II. What the exchange was was that the President, in response to one of the prosecutors, explains why, on one reading Mr. Bennett's statement, it may not be false.

Now, it may be hairsplitting and it may be professorial and it may be technical, but the important thing is it is a retrospective assessment. The President is not talking about himself. He is talking about how to construe Mr. Bennett's statement. And what he says is, there is a way in which Mr. Bennett's statement at the deposition is accurate; that is, if Mr. Bennett was referring to the relationship between the President and Ms. Lewinsky on that date, it was an accurate statement because the improper relationship was over a long time earlier.

Now, the relevant point here is that the President's disquisition on the word ''is'' and its meaning was not an attempt to explain his own thinking at the time of the deposition, but was rather his later interpretation of what Mr. Bennett had said at the deposition.

In light of the President's direct unequivocal testimony, this speculation about what was in his mind is simply baseless, and there is, in fact, no evidence to support the charge leveled in subpart (5) of article II.

There is another reason to reject the charge; and that is, that the law imposes no obligation on the client to monitor his or her lawyer's every statement and representation, particularly in a civil deposition, in which the client is being questioned, clients are routinely advised to focus on the questions posed, think carefully about the answer, answer only the question asked and ignore distractions. And sometimes, sad to say, the statements of one's own lawyer can be a distraction. And those of you who are lawyers and have defended people in depositions know that that is the advice you give the client.

There was good reason for the President to be thinking about his own testimony and leave the legal fencing to the lawyers, because whatever else may be said about him, there can be no doubt that the Jones case itself was a vehicle for partisan attack on the President and that he was going to be facing a series of hostile and difficult questions at the deposition.

Now, Judge Wright ultimately ruled that, giving Ms. Jones every benefit of the doubt, she had failed both legally and factually to present allegations that merited going to trial. But while it was legally meritless, while it was going on, the case did impose a significant toll on the President both personally and politically.

And let's be clear about one other thing while we are looking at this deposition and while you review the significance of the President listening in silence to Mr. Bennett's conduct. As Mr. Craig described yesterday, Judge Wright, in fact, interrupted Mr. Bennett in mid sentence as he was describing Ms. Jones' affidavit. She didn't allow him to complete his objection in which he cited the Lewinsky affidavit. She quickly interjected—and this is sometimes what judges do to the most learned of lawyers—she quickly interjected and said, ''No, just a moment, let me make my ruling.'' And then she proceeded to allow the very line of questioning that Mr. Bennett was trying to prevent. So the President's silence, whatever motivated it, had absolutely no impact on the conduct of the Jones deposition.

And also let's be clear about one other thing: Nothing about this interchange between Mr. Bennett and Judge Wright blocked the ability of the Jones lawyers to obtain information about the President's relationship with Ms. Lewinsky because the Jones lawyers had been briefed the night before in great detail by Ms. Linda Tripp. Ms. Tripp had already gotten her own immunity agreement from the Office of Independent Counsel and had set up a

lunch with Ms. Lewinsky at the Ritz-Carlton Hotel the day before the deposition, Friday, January 16. And at that lunch, of course, Ms. Lewinsky was apprehended by the Office of Independent Counsel and held for the next 12 hours. In the meantime, however, Ms. Tripp goes back to her home where she meets with the Jones lawyers that Friday night before the deposition and loads them up with all the information she has obtained from her illegal, secret audiotaping of Ms. Lewinsky. That is why they were able to ask the questions they did with such specificity and conviction.

Indeed, there is one point in the examination of the President where he says to the Jones lawyer who is examining him, Mr. Fisher—he asked the question. And Fisher says, ''Sir, I think this will come''—he asked a question about ''Can you tell me why you are asking these specific questions?'' and Fisher replies, ''Sir, I think this will come to light shortly, and you'll understand.''

Well, how ironic that I am making a presentation today on January 21 because it did come to light—just as Mr. Fisher knew it would; just as Ms. Tripp knew it would—it came to light 1 year ago exactly when the story broke in the Washington Post. This fleeting exchange between Mr. Bennett and Judge Wright before she overruled his objection could not and didn't have any impact on the Jones lawyers' conduct.

Now, I want to look briefly at one other part of subpart (5) because it alleges—continues to make one other allegation: Such false and misleading statements at the deposition by Mr. Bennett allegedly were subsequently acknowledged by Mr. Bennett in a communication with the judge.

Now, if you look at Mr. Bennett's letter, however, that is not at all what the letter says. Mr. Bennett wrote to the judge on September 30 of last year. This is after the referral had come to Congress and after the House of Representatives had seen fit to release Ms. Lewinsky's grand jury testimony. Mr. Bennett does not, as the article alleges, acknowledge that he himself made false and misleading statements or that the President, either by his word or silence, made such statements. What Mr. Bennett does do in this letter, as you can see, is call the court's attention to the fact that Ms. Lewinsky herself had testified before a Federal grand jury in August. And—contrary to her earlier statements—she stated that portions of her affidavit were, according to her, false and misleading. Mr. Bennett's letter, bringing this to the judge's attention, was a matter of professional obligation and responsibility. It in no way is evidence supporting subpart (5).

Take a break?

The CHIEF JUSTICE. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, Mr. Kendall, indicating that he is about halfway through his presentation——

Mr. Counsel KENDALL. That is correct, sir.

Mr. LOTT. I would, then, ask unanimous consent we have a temporary recess for 15 minutes.

There being no objection, at 2:10 p.m., the Senate recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

Mr. CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe the Senate is ready to proceed now with the presentation by Counsel Kendall.

The CHIEF JUSTICE. The Chair recognizes Counsel Kendall.

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

Subpart (7)—we have two more subparts to go. I will take them out of order. Subpart (7) of article II alleges that the President obstructed justice when he relayed or told certain White House officials things about his relationship with Ms. Lewinsky that were false and misleading. This is another example of double billing in the two articles. This charge is leveled in article I, and it appears here in article II. Yesterday, Mr. Craig explained why these statements didn't constitute perjury, and I would like to take just a few minutes this afternoon to explain why they don't constitute an obstruction of justice, either.

First of all, and most obviously, there is no way—I said this in the beginning—there is no way that the statements of the aides could be in any way part of a scheme to deny Ms. Jones of evidence. I think on this ground alone subpart (7) fails, because if you look at what is alleged in article II, it is that the President obstructed justice in order to delay, impede, et cetera, existence of testimony related to Ms. Jones' lawsuit. There is no way here that whatever the President said to an aide could have done that.

The statements, which this subpart (7) addresses, were statements that the President made very shortly after the Lewinsky publicity had broken to Mr. Bowles, Mr. Podesta, Mr. Blumenthal and Mr. Ickes, none of whom were witnesses in the Paula Jones case. They were on none of the witness lists, and they had no evidence at all relevant to the Paula Jones case since they had been working for the President. They weren't working for the President when he was Governor of Arkansas in May of 1991, and they weren't individuals subject to discovery. So these four aides just had no evidence whatsoever that they could contribute to the Paula Jones case.

But there is another more fundamental reason why this article is flawed as a matter both of the evidence and the law. The President has admitted misleading his family, his staff, and the Nation about his conduct with Ms. Lewinsky. And he has expressed profound regret for that conduct. Subpart (7), however, alleges that he should be impeached and removed from office simply because he failed to be candid with these particular four White House aides and misled them about the nature of his relationship with Ms. Lewinsky.

These allegedly impeachable denials to the four aides occurred, as I said, right after the publicity broke. And one of them occurred on January 21, last year, and then also on the 23rd and the 26th. This was at the very time the President denied he had had sexual relations with Ms. Lewinsky in nearly identical terms on national television to whoever throughout the United States happened to be watching at that time.

Having made this denial to the entire country, it simply is absurd to regard it any differently when made to four aides in the White House directly and person-to-person rather than through the medium of television. The President talked to these individuals about the Lewinsky matter because of his personal relationship and his direct professional exposure to them on a daily basis. He spoke to them, however, misleadingly in an attempt to allay their concern once the allegations about Ms. Lewinsky become public.

No discovery here—never yet found a place in which discovery would benefit the case for either side—but no discovery here is going to illuminate the record in any way. These four witnesses have testified before the independent counsel's grand jury on several occasions.

I think it is important to observe also that there is no way this interchange between the President and his aides could have affected evidence because his statements to them were hearsay which they would have reported accurately to the grand jury when asked. And by ''hearsay,'' all they can testify to is what the President told them, and they could do that accurately. But their own testimony, based on whatever knowledge or observation or direct sensory evidence they might have, was not affected in any way by the President's statement. None of these aides had any independent knowledge of the relationship between the President and Ms. Lewinsky and, therefore, the only evidence they do offer would be a hearsay repetition of what the President had told them. And that was the same public denial that he had told everyone, including, presumably, any member of the grand jury who had his or her television set on on that Monday, January 26.

But under the strained theory—you really have to focus on this—under this theory, any citizen of the United States who heard that denial could form the basis for an allegation of impeachable conduct and removal of the President from office.

I think this subpart (7) of article II fails for a number of reasons not related to the Paula Jones case, and it violates common sense.

Let me turn to subpart (4). This subpart alleges that the President obstructed justice when he intensified and succeeded in an effort to secure job assistance for Ms. Lewinsky in order to corruptly prevent her truthful testimony. The claim here is of a quid pro quo, a ''this for that.'' His job assistance was allegedly in order to prevent her truthful testimony.

I want to note a couple of things here. First of all, this word ''intensified''—this word ''intensified'' is a pretty slippery word. It doesn't say ''originated'' or ''began.'' It says ''intensified.'' And that allegation implicitly recognizes—it tries to avoid the thrust of its own logic—it recognizes that the job search Ms. Lewinsky was conducting had begun long before there was any connection to the Paula Jones case, and the undisputed facts are going to reveal that Vernon Jordan and others were trying to help her long before she appeared on the list of witnesses Ms. Jones was considering calling.

The second thing I want to emphasize is the quid pro quo nature of the allegation. Quid pro quo is a good Latin term meaning ''this for that.'' In ''order to'' is the allegation of subpart (4). The job assistance was ''in order to'' prevent Ms. Lewinsky's truthful testimony.

Well, I want to review the evidence a bit because there is not only no evidence in the record; there is a lot of contradictory evidence, both direct and circumstantial. We have heard a great deal in the various presentations about Mr. Jordan's assistance to Ms. Lewinsky. But I was surprised to sit right over there through 11 hours 52 minutes, by my watch, of the House managers' very able presentation, and I heard almost nothing about what actually happened in New York City as a result of Mr. Jordan's efforts. But when we review the evidence—and it is all right here. Don't worry, I am not going to review every page of it. But it is all here. When we review this evidence which is available—all you have to do is read it—we get a very different picture from what we got from the able House managers. There is no secret about it, nor is there any conflict in the testimony of these witnesses. There is no need for further discovery here, as I will show, because the testimony is consistent.

Now, the proof that is in the record is that there was no corrupt linkage, no assistance whatsoever which was designed and focused to get Ms. Lewinsky to do anything—nothing which tied the job assistance to what was going on in the Jones case. Mr. Jordan did help open doors, and Ms. Lewinsky went through those doors, and she either succeeded or failed on her own merits. Two of the companies declined to offer her a job, and at the third she did get an entry-level job, which she received on her own merits.

There was no fix, no quid pro quo, no link to the Jones case. And also there was no urgency to Mr. Jordan's assistance to her. He started assisting her well before she showed up on the Jones witness list, and he helped her whenever he could, consistent with his own heavy travel schedule. There is the allegation of a quid pro quo, but there is nothing in the evidence to support the ''pro'' part of it.

What the House managers have tried to do—and they are skillful prosecutors, they are able, they are experienced, they are polished, and they know what they are doing—they have tried to juxtapose unrelated events and, by a selective chronology, tried to establish causation between two wholly unrelated sets of events. And there an old logical fallacy—you have had enough Latin today—that just because something comes after something, it was caused by the preceding event. It is like the rooster crowing and taking credit for the sun coming up. When you look at the House managers' case, there is a lot of that going on, because we will see there is no real existence of causal connection and we will also see that a lot of the chronology you have been given is erroneous.

As I said earlier, there is no evidence, either direct or circumstantial, to support this quid pro quo allegation.

Now, let's start with the direct evidence, the most logical place to begin. It could not be more unequivocal. Let's start with Ms. Lewinsky. First of all, her New York job search began on her own initiative long before any involvement in the Jones case. Moving to New York was her own idea, and it was one she raised in July of 1997. This geographical move did not affect in any way her exposure to a subpoena in the Paula Jones case.

Under the Federal Rules of Civil Procedure, of course, a witness can be subpoenaed in any Federal district, no matter where the case is pending. And, indeed, a great many of the depositions in the Paula Jones case took place outside the State of Arkansas. For this reason, Mr. Manager BARR's assertion that the President wanted Ms. Lewinsky to go to New York because it would ''make her much more difficult, if not impossible, to reach as a witness in the Jones case'' is entirely untenable; she was just as vulnerable to subpoena in New York as she was in Washington. And, indeed, she was already under subpoena in January when she was finalizing her move. This contention just does not withstand scrutiny.

Now, Ms. Lewinsky testified:

> I was never promised a job for my silence.

You can't get any plainer than that. She testified that her job search had no relation to anything that she might do in the Jones case. In her July 27 interview with the FBI, the FBI agent recorded her statement that there was no agreement with the President, with Mr. Jordan, or anyone else that she had to sign a Jones affidavit before getting a job in New York. She told the FBI agent explicitly that she had never demanded from Mr. Jordan a job in exchange for a favorable affidavit and neither the President nor Mr. Jordan nor anyone else had ever made this proposition to her.

Now, Mr. Jordan, who is an eloquent and exceedingly articulate man, took care of that claim in his own grand jury testimony. He was asked about any connection between the job search and the affidavit. He said there was absolutely none. He said on March 5 as far as he was concerned these were two entirely separate matters. And in his grand jury appearance on May 5 he was asked whether the two were connected, and Mr. Jordan said, ''Unequivocally, indubitably, no.''

The President has likewise testified that there was no connection between the Jones case and Ms. Lewinsky's job search. He told the grand jury:

> I was not trying to buy her silence or get Vernon Jordan to buy her silence. I thought she was a good person. She had not been involved with me for a long time in any improper way, several months, and I wanted to help her get on with her life. It is just as simple as that.

Quid pro quo? No. The uncontested facts bear out these categorical denials of the three most involved people. Ms. Lewinsky began looking for a job in July of 1997, and the event which hardened her resolve to move to New York was a report by her ostensible good friend, Ms. Linda Tripp, on or about October 6 that one of Ms. Tripp's friends at the National Security Council said that Ms. Lewinsky would never ever get a job in the White House again.

Now, it turns out that this disclosure, like so much else Ms. Tripp said, is false. Ms. Tripp's NSC friend said no such thing. But it did have a profound impact on Ms. Lewinsky, who described it as the straw that broke the camel's back. It was plain to her then that she was never going to be able to get another White House job.

Mr. Jordan's assistance of Ms. Lewinsky began about a month before Ms. Lewinsky learned—about 6 weeks before she learned she was a possible witness in the Jones case. Ms. Lewinsky testified that she had discussed with Linda Tripp sometime in late September or early October the idea of asking for Mr. Jordan's assistance, and Ms. Lewinsky indicated she could not recall if it were her idea or Linda Tripp's idea, but in any event Mr. Jordan became involved sometime later at the direction not of the President but of Ms. Currie, who was a longtime friend of Mr. Jordan and who had discussed with Ms. Lewinsky her job search. Now, Ms. Currie had previously assisted Ms. Lewinsky in making contact with Ambassador Bill Richardson at the U.N. Ms. Lewinsky's first meeting was with Mr. Jordan on November 5, and Ms. Lewinsky testified that the meeting lasted about 20 minutes and that they had discussed a list of possible employers she was interested in. She never told Mr. Jordan that there was any time constraint on his assistance, and both she and Mr. Jordan

traveled a great deal out of the country and in the country in that November-December period.

Now, Mr. Jordan testified unequivocally that he never, at any time, felt any particular pressure to get Ms. Lewinsky a job. This is plain and powerful and unrebutted testimony. He was asked in the grand jury if you recall any ''kind of a heightened sense of urgency by Ms. Currie or anyone at the White House'' about helping Ms. Lewinsky during the first half of December?

And he replied, ''Oh, no, I do not recall any heightened sense of urgency. What I do recall is that I dealt with it as I had time to do it.''

Now, let me just pause here and observe that if there had been any improper motive or any sinister effort to silence Ms. Lewinsky, it would have been extremely easy for the President to have arranged for her to be hired at the White House. If there were some corrupt intent to silence her, that was an obvious solution because she very much wanted to go back to work at the White House. It mattered to her a great deal. But, while she was interviewed a couple of times by White House officials in the summer of 1997, those interviews never resulted in a job offer. The fix was not in. There was no corrupt effort to bring Ms. Lewinsky back, give her a White House job or, indeed, transfer her in any way from her Pentagon job.

Now, she continued her job search efforts with the assistance of some of the White House people. In late October or early November, she told her boss at the Pentagon, Mr. Kenneth Bacon, that she wanted to leave and move to New York City. She enlisted his assistance in trying to help her get a private sector job, and he helped her because she had done good work for him. He had a positive impression and testified that he wanted to do whatever he could for her.

In November of 1997, her supervisor at the Pentagon indicated that Ms. Lewinsky gave notice of an intention to quit her Pentagon job at the year end.

Now, before we get to the private sector firms that Ms. Lewinsky went to, I want to pause and make the point that she had a United Nations delegation job in her back pocket. Back pocket is a male image—perhaps in her purse. She had it in her hand and available, all during this period.

In early October at the request of Ms. Currie, Mr. Podesta—John Podesta, who was then the White House Deputy Chief of Staff—had asked Ambassador Bill Richardson to consider Ms. Lewinsky for a position at the U.N. The Ambassador testified that he did not take this as a ''pressure call.'' He said ''there was no pressure anywhere by anybody'' to hire Ms. Lewinsky.

Ms. Currie testified to the grand jury, without contradiction, that she was acting on her own, as Ms. Lewinsky's friend, in trying to help her.

Now, Ms. Lewinsky interviewed for the U.N. position on October 31 with Ambassador Richardson. And he, through his staff, offered her a job on November 3. Ambassador Richardson testified to the grand jury that he never spoke to the President or Mr. Jordan about Ms. Lewinsky, that he was impressed by her, that he made the offer on the merits, and that no one had pressured him to hire her.

He testified specifically to the grand jury on April 30, ''This was my decision to hire her. I did not do it under any pressure or anything. I felt that she would be suitable for the job, and I didn't feel I had to report to anybody. It's not in my nature. I don't take pressure well on personnel matters. I'm a Cabinet member. I don't have to account for anything. This was mine, my choice, my decision. And I stand behind it.''

He also declared, ''What I did was routine.''

This fact was highly significant, because although this job was not precisely the job Ms. Lewinsky wanted, it was a job in New York, and she kept this open until January 5 when she finally turned it down. Now, it was Mr. Manager BRYANT who referred to this in passing—just kind of walked around it. He disparaged it in the way a good trial lawyer does—recognize it is there, but then move around and away from it. But it is an important fact and it tears a very large hole in their circumstantial evidence case. Because she had in her hand, I will say, this job offer all through this period of November and December and into January. It wasn't precisely what she wanted but it was a good job. It was in New York City. And there was no urgent necessity for her, connected with her private sector job search. Once again, quid pro quo? No.

Now, there is a lot of further direct evidence concerning her job search. And this is contained in a great many interviews in grand jury transcript from the people at the various New York firms Mr. Jordan contacted on Ms. Lewinsky's behalf. Again, there is simply no direct evidence whatsoever from any of these people of any kind of quid pro quo treatment. While Mr. Jordan made the contacts on her behalf, there was no urgency about them. There was no pressure, and they were wholly unrelated to the Jones case.

Let's recognize the obvious here. The President's relation, improper relation with Ms. Lewinsky, had been over for many months. He continued to see her from time to time. He did what he could to be of assistance to her as she sought employment in New York because, as he testified, she was a good person, and he was trying to help her get on with her life.

Mr. Jordan was able to open some doors, but once open, there was no inappropriate pressure. He really opened three doors for her: at American Express, at Young & Rubicam, and at Revlon. And she batted one for three. And actually in job searches, as in baseball, I, at least, will take that batting average any day of the week. But she succeeded on her own once she was through the door, and her getting through the door had no relation to the Paula Jones case.

Let's, first of all, take a look at what happened with American Express and see whether in direct or circumstantial evidence there is any evidence of a quid pro quo here. The independent counsel conducted a very large number of interviews and also summoned a great many witnesses from each of these three sets of companies. Mr. Jordan was a member of the American Express board of directors, and he telephoned a Ms. Ursula Fairbairn, the Executive Vice President of Human Resources at American Express on December 10 or 11. And he told Ms. Fairbairn that he wanted to send her the resume of a talented young woman in Washington, to see whether she matched up to any openings at American Express.

Ms. Fairbairn told the FBI that it was not at all unusual for American Express board members or other company officers to recommend young people for employment. Ms. Fairbairn said Mr. Jordan did not, in fact, mention any White House connection that the applicant had, and he exerted no pressure at all on her to hire the applicant. Ms. Fairbairn recalled that Mr. Jordan made another employment recommendation about 2 months earlier and indicated this was simply not an unusual request.

Now, the Office of Independent Counsel also—you see it on the chart—interviewed Thomas Schick at American Express. He is the Executive Vice President for Corporate Affairs and Communications.

Ms. Fairbairn had sent the name and resume to Mr. Schick because she thought that is where Ms. Lewinsky might fit in, and he interviewed Ms. Lewinsky on December 23 in Washington. He decided after this interview not to hire Ms. Lewinsky because she was—he felt she was lacking in experience and he also thought that American Express was probably not the right kind of company for her, given what she had told him she was interested in at the interview, and that she probably would be better off going to a public relations firm.

The decision not to hire, he told the FBI, was entirely his own. He felt no pressure to either hire or not hire Ms. Lewinsky and never talked to Mr. Jordan at any time during this process. Once again, quid pro quo? No.

The second company—actually two companies. It is Young & Rubicam and Burson-Marsteller. Mr. Jordan called Peter Georgescu, the chairman and CEO of Young & Rubicam, the large New York advertising agency. Mr. Jordan had no formal connection with the company, but he had been a friend of Mr. Georgescu's for over 20 years.

Mr. Georgescu was interviewed by investigators of the Office of Independent Counsel and said that sometime in December 1997, Mr. Jordan had telephoned

him and had asked him to take a look at a young person from the White House for possible work in the New York area.

Mr. Georgescu had responded, ''We'll take a look at her in the usual way.'' And he stated that that was a kind of a code between him and Mr. Jordan, and it meant that if there was an opening for which she was qualified, she would be interviewed and hired, but there would be no special treatment. He testified that Mr. Jordan understood that, and he also said that Mr. Jordan did not engage in any kind of sales pitch about Lewinsky.

Mr. Georgescu said that he then initiated an interview on behalf of Ms. Lewinsky, but his own involvement was arm's length, and that she succeeded or failed totally on her own merits.

He recalled that Mr. Jordan had made another similar request on a previous occasion, and he said that he and Mr. Jordan frequently exchanged opinions about people in the advertising business on an informal basis.

As a result of this telephone call, Ms. Lewinsky was interviewed by another person, a Ms. Celia Berk, who was the managing director of human resources at Burson-Marsteller, a public relations firm that was a division of Young & Rubicam. According to Ms. Berk, this interview was handled ''by the book,'' and while Ms. Lewinsky's interviews were a little bit accelerated, they went through the normal steps.

Ms. Berk testified that nobody put any pressure on her. She said that while both she and the director of corporate practice at Burson-Marsteller, Erin Mills, and another corporate practice associate, Ziad Toubassy, had all liked Ms. Lewinsky and felt she was well qualified, the chairman of the corporate practice group, Mr. Gus Weill had decided not to hire Lewinsky.

Ms. Mills testified that the procedure under which Ms. Lewinsky was considered involved nothing out of the ordinary. Not a single one of these witnesses testified there was any urgency connected with Mr. Jordan's request.

Ms. Mills also told the FBI that despite the fact that Ms. Lewinsky had been referred by the chairman of Young & Rubicam, their consideration of her was entirely objective. She thought that Ms. Lewinsky was poised and qualified for an entry-level position, but Mr. Weill decided to take a pass. Once again, quid pro quo? No.

Mr. Jordan was a member of the board of directors of Revlon, a company wholly owned by MacAndrews & Forbes Holding company, and Mr. Jordan's law firm had done legal work for both of these companies.

The corporate structure here is complicated, but I will be talking basically about two firms: Revlon—I think we all know what Revlon does—and its parent company, MacAndrews & Forbes Holding.

Mr. Jordan telephoned his old friend, Mr. Richard Halperin, at the holding company on December 11 and said that he had an interviewee or he had an applicant that he wanted to recommend, and he gave Mr. Halperin some information about her. Mr. Halperin testified to the grand jury that it wasn't unusual for Mr. Jordan to call him with an employment recommendation. He had done so at least three other times that Mr. Halperin could recall.

On this occasion, Mr. Jordan told Mr. Halperin on the telephone that Ms. Lewinsky was bright, energetic, enthusiastic, and he encouraged Mr. Halperin to meet with her. Mr. Halperin didn't think there was anything unusual about Mr. Jordan's request, and he testified that in the telephone call Mr. Jordan did not ask him to consider Ms. Lewinsky on any particular timetable, no acceleration of any kind. Indeed, far from there being some heightened sense of urgency, Mr. Halperin explicitly told the FBI that there was no implied time constraint or requirement for fast action.

Ms. Lewinsky came up to New York City and she interviewed with Mr. Halperin on December 18, 1997. Mr. Halperin described her as follows: As a ''typical young, capable, enthusiastic Washington, DC-type individual.'' I don't know if that is pejorative or not——

(Laughter.)

Who described her primary interest as being in public relations. He and Ms. Lewinsky talked about the various companies that MacAndrews & Forbes controlled, and Ms. Lewinsky identified Revlon as a company that she would like to be considered at, and Mr. Halperin decided to send her there for an interview.

Mr. Halperin sent her resume to another person at the holding company—not at Revlon, at the holding company—to a Mr. Jaymie Durnan who was a senior vice president there. He got the resume in mid-December, and he decided to interview her in early January.

You have at the holding company two sets of interviews of Ms. Lewinsky going on. When he returned in early January, Mr. Durnan also scheduled an interview. He met with Ms. Lewinsky on January 8. His decision was made entirely independently of Mr. Halperin's decision, and he wasn't even aware Mr. Halperin had seen Ms. Lewinsky when he met with her on January 8.

Mr. Durnan met with Ms. Lewinsky in the morning and he thought—now there is his view and you are going to get two views of this interview—Mr. Durnan thought she was an impressive applicant for entry-level work. He was impressed with her, particularly by her work experience at the Pentagon, he told the FBI. He felt she would fit in with the parent company, but there were not any openings there.

Based upon what she had said her interests were, he decided to send her resume over to Revlon, because he thought it matched up well with her interests. He sent the resume over, and he left a message—and now we are going to come to a Revlon person—he left a message with Ms. Allyn Seidman, who was the senior vice president of corporate communications at Revlon.

Now cut to Ms. Lewinsky. Ms. Lewinsky had had a very good interview with Mr. Halperin, both she and Mr. Halperin thought. However, for reasons the record doesn't make clear, Ms. Lewinsky's impression of the Durnan interview was dismal. She thought the interview had not gone well. She thought it had gone poorly. She described herself as being upset and distressed. She had no idea of his positive reaction to her. And this is not just a late analysis. He had already sent the resume. He sent the resume over to Revlon immediately after their interview. But in any event, Ms. Lewinsky was afraid it had gone poorly, that she had embarrassed Mr. Jordan. So she called up Mr. Jordan.

And on that same day—later—January 8, Mr. Jordan spoke, by telephone, to the CEO of MacAndrews & Forbes, his friend, Mr. Ronald Perelman. He mentioned to Mr. Perelman that Ms. Lewinsky had interviewed at MacAndrews & Forbes, but he made no specific request and he did not ask Mr. Perelman to specifically intervene in any way.

Now, later that day—and I know this is complicated—Mr. Durnan happened to speak—Mr. Durnan is the second interviewer that Ms. Lewinsky happened to speak to—happened to speak to Mr. Perelman, and Perelman mentioned he had a call from Mr. Jordan about a job candidate. Perelman then said to Durnan, ''Let's see what we can do.'' And Durnan indicated he already, on his own initiative, had been working on this, had talked to Ms. Lewinsky, had sent her resume over to Revlon.

Mr. Perelman, later that day, phoned Mr. Jordan back to say everything is all right, she appeared to be doing a good job, the resume was over at Revlon. Mr. Jordan expressed no urgency, no time constraints. Mr. Perelman didn't say anything out of the ordinary had happened, because it had not.

Now, later that same day, after speaking to Mr. Perelman, Mr. Durnan phoned Ms. Seidman at Revlon, and sent the resume over earlier in the day. He didn't say that Mr. Perelman had mentioned Ms. Lewinsky to him. He simply said to Ms. Seidman: Look, I sent you a resume. I have met with the young woman. If you think she is good, you should hire her.

According to Mr. Durnan, Mr. Perelman never said or implied that Ms. Lewinsky had to be hired. And indeed, Mr. Durnan had already interviewed her and formed a positive impression. According to Ms. Seidman, who is at Revlon, Mr. Durnan gave her a similar account that he gave to the grand jury. He said she ought to interview Ms. Lewinsky, make her own decision, hire her if she thought she was a good candidate only.

The record is crystal clear that Ms. Seidman over at Revlon had no knowledge that Mr. Perelman had ever spoken to anyone about Ms. Lewinsky. Ms. Seidman testified that she made an independent assessment of Ms. Lewinsky. She interviewed her the next day. She told the grand jury that she found Ms. Lewinsky to be ''a talented, enthusiastic, bright young woman who was very eager. I liked that in my department.''

At the conclusion of the interview, she intended to make an offer to Ms. Lewinsky, but it was contingent on the opinion of two other people—a Ms. Jenna Sheldon, who is the manager of human resources at Revlon, and Ms. Nancy Risdon, who is the manager of public relations for corporate affairs. Ms. Seidman testified that after they both interviewed Ms. Lewinsky, Ms. Risdon told her that she found her very impressive, and Ms. Sheldon had also been very impressed. Ms. Risdon told the FBI that she had been impressed with Ms. Lewinsky who, although she had no public relations experience, was ''bright and articulate.'' On the basis of all this, Ms. Seidman decided to offer Ms. Lewinsky an entry-level job as public relations administrator. The offer was made, and Ms. Lewinsky accepted. And, I repeat, the record evidence is uncontradicted that the fix was not on at all in this process.

This was the third company Ms. Lewinsky had interviewed with, and on this series of interviews she was successful. Nobody in any of these companies suggested there was any quid pro quo link. The only person—the only person—in this record who talked about trying to have Ms. Lewinsky use signing of the affidavit as leverage to get a job was none other than Linda Tripp, that paragon of fateful friendship.

On the audiotapes, it is Ms. Tripp who frequently urges Ms. Lewinsky not to sign an affidavit until she has a job in New York. It is not clear if Ms. Tripp knew about the UN job that Ms. Lewinsky had. She—on the audiotape, Ms. Lewinsky sometimes professes agreement with Ms. Tripp's advice, saying she will not sign an affidavit until she has a job. But, as Ms. Lewinsky testified to the grand jury—and, again, Ms. Lewinsky is testifying under the threat of perjury, which will blow away her immunity agreement—she was lying to Ms. Tripp when she said she would wait to sign the affidavit until she got a job.

As Ms. Lewinsky testified to the grand jury, her statement to Ms. Tripp about Mr. Jordan assisting her in a quid pro quo sense was not true. She said it only because Ms. Tripp was insisting that she promise her not to do this. But, in fact, the affidavit was already signed when Ms. Lewinsky made that promise. Once again, quid pro quo? No. That is some of the direct evidence.

Now, let's look at the circumstantial evidence, the alleged circumstantial evidence. The quid pro quo theory rests on assumptions about why things happened and, on the facts, about when things happened. The former requires logic, but the second is a matter of fact.

I mentioned previously that article II of the subpart (4) here uses the word ''intensified.'' It didn't say that the job search began as an effort to silence Ms. Lewinsky. It only says that it ''intensified'' as a result of that process.

The original charge made by the independent counsel—and it is there in the independent counsel's referral at page 181—was an allegation that the President helped Ms. Lewinsky obtain a job in New York at a time when she would have been a witness against him. However, the House committee looked at the evidence I think in the five volumes and, even though they have not referred to it here very much, decided that that theory would not get off the runway. So they revised their claim and gave us a kind of wimpified version, alleging not initiation but intensification.

Now, under the right circumstances, it is plain that helping somebody find a job is a perfectly acceptable thing to do. There is nothing wrong with it. Mr. Manager HUTCHINSON told you that—and I quote here—''There is nothing wrong with helping somebody get a job. But we all know there is one thing forbidden in public office: we must avoid quid pro quo, which is: This for that.''

Now, he went on to assert that the President's conduct ''crossed the line,'' as he put it, when the job search assistance became ''tied and interconnected''—those are his words—with the President's desire to get a false affidavit. And then he went on to say, ''You will see''—that is a prediction that Mr. Manager HUTCHINSON made to you—''You will see that they are totally interconnected, intertwined, interrelated; and that is where the line has crossed into obstruction.''

Now, Mr. Manager HUTCHINSON pointed to a critical event for their quid pro quo theory, and that is the entry on December 11, 1997, by Judge Wright, the judge in the Paula Jones case, of an order pertaining to discovery in the Paula Jones case. This is the critical event, according to the managers. But let's look closely at this so-called ''critical event'' because it's the only claim—only factual claim—the managers make of some causal relationship between the job search and the Jones case. And that claim is dead wrong; and it is demonstrably dead wrong.

The managers have argued that what brought Mr. Jordan into action to help Ms. Lewinsky find a job, what really jump-started the process, was Judge Wright's December 11 order. And that order concerned discovery of relationships the President had—allegedly had—during the search period of time with women who were State or Federal employees.

In the House, Chief Counsel Schippers powerfully made the point about how important this December 11 order was. ''. . . why the sudden interest,'' he asked, ''why the total change in focus and effort? Nobody but Betty Currie really cared about helping Ms. Lewinsky throughout November, even after the President learned that her name was on the prospective witness list. Did something happen [that moved] the job search from a low to a high priority on that day?

Oh, yes, something happened. On the morning of December 11, 1997, Judge Susan Webber Wright ordered that Paula Jones was entitled to information regarding'' these other women.

Now, Mr. Manager HUTCHINSON, again, emphasized the impact of this December 11 order was dramatic. He stood here and told you that the President's attitude suddenly changed, and what started out as a favor for Betty Currie in finding Ms. Lewinsky a job dramatically changed into something sinister after Ms. Lewinsky became a witness.

> And so what triggers [this is Manager HUTCHINSON]—let's look at the chain of events: The judge—the witness list came in, the judge's order came in, that triggered the President into action and the President triggered Vernon Jordan into action. That chain reaction here is what moved the job search along . . . remember what else happened on that [December 11] again. That was the same day that Judge Wright ruled that the questions about other relationships could be asked by the Jones attorneys.

Mr. Manager HUTCHINSON presented in his very polished and able presentation a chart. It was exhibit 1. I have taken the liberty of borrowing it for our own purposes. You see the key is outlined in detail what happened on December 11. The very first item is that ''Judge Susan Webber issues order allowing testimony on Lewinsky.'' The second meeting between Lewinsky and Jordan, ''leads provided/recommendation calls placed,'' and then, later, the ''President and Jordan talk about a job for Lewinsky.''

Well, that is what the chart says. But when you look at the uncontested facts, this isn't even smoke and mirrors. It is worse.

First of all, Ms. Lewinsky entered Mr. Jordan's building for their meeting at 12:57 on December 11. As we see here from the chart, the entry chart of Mr. Jordan's law firm, Ms. Lewinsky's name is misspelled, and she identified this as her entry into the law firm. But this did not spring from, magically, the entry of the judge's order. It was scheduled 3 days earlier, on December 8. And even that telephone call was pursuant to an agreement made between Ms. Lewinsky and Mr. Jordan two weekends before then. It had nothing, whatever, to do with the judge's order.

Indeed, after her first meeting with Mr. Jordan on November 5, Ms. Lewinsky testified that she had a follow-up conversation by telephone with Mr. Jordan around Thanksgiving, and he advised her he was working on the job search as he had time for it. He asked her to call him back in early December. Mr. Jordan testified he was

out of the country from the day after Thanksgiving until December 4. He also testified that on December 5—this is before the witness list—Ms. Currie called and reminded him that Ms. Lewinsky was expecting his call. He asked Ms. Currie to have Ms. Lewinsky call him. She does so on December 8 and they agreed to meet at Mr. Jordan's office on December 11.

So this meeting, this sinister meeting, was arranged by three people who had no knowledge whatever about the Paula Jones witness list at the time they acted. Now, Ms. Lewinsky herself was also out of Washington for most of the period from Thanksgiving to December 4, first in Los Angeles and then overseas.

Inexplicably, but I think significantly, because it says something about the strength of the case, the House managers ignore this key piece of testimony that when the meeting was set up it is uncontradicted. The point is that the contact between Mr. Jordan and Ms. Lewinsky resumed in December not because of something having to do with the order, but because they had agreed it would. The gap is attributable—the gap in timing—to Mr. Jordan's travel schedule.

Now, let's look at when this discovery order was entered. It was, in fact, entered late in the day of December 11 after the conclusion of a conference call among all the counsel in the Paula Jones case. We have here on the chart a blowup of the clerk's minutes.

Now, it is a great accommodation to lawyers when in a case a judge will have conference telephone calls because it means you don't have to travel to a different city. There were a number of these held in the Jones case. This was a conference call that began, as the clerk's minutes indicate, at 5:33 p.m. Little Rock time, in the afternoon. That would be 6:33 in Washington, DC. It ended at 6:50 p.m. in Little Rock, or 7:50 in Washington, DC.

Now, quite late in the conference call Judge Wright took up other matters and advised counsel that an order on the plaintiff's motion to compel testimony had been filed and Barry—Barry Ward, the judge's clerk—will fax a copy of the order on that motion to compel counsel. So, some time after 7:50 p.m. counsel get the witness list. Notice that this proceeding is so late in the day, I don't know if you can see it, but when the clerk's minutes are filed, they are filed not on December 11, but on December 12.

Finally, while we don't even have evidence of a telephone call between the President and Mr. Jordan—we are back now to Mr. Manager HUTCHINSON's chart No. 1—we don't have any evidence that the President, in fact, ever placed a call to Mr. Jordan on this date. The President was out of the city. But if the call occurred, it must have occurred by 5:55 p.m.

Now, let's, again, look at this chart. December 11 is so important that the managers have put it on the chart twice. It is the only date on the chart that appears twice. ''The President and Jordan talk about a job for Lewinsky.'' Clearly what they are telling you is that first you get the order. That energizes, that jump starts the process, and then the President talks to Vernon Jordan. As I said, if a call occurred on that day, the earliest you could have had any knowledge of the order would have been 7:50 p.m.

There is a problem, though, when you think that maybe the President and Vernon Jordan talked on this date, even if we don't have evidence of it. And the problem is that at 7:50 p.m., Mr. Vernon Jordan was high over the Atlantic Ocean in an airplane. He was on his way to Amsterdam. He testified that ''I left on United Flight 946 at 5:55 from Dulles Airport.'' That is where Mr. Jordan was on the evening of December 11. He had taken off even before the conference call.

This makes no sense. The managers' theory just makes no sense. His meeting with Ms. Lewinsky and his calls on her behalf had taken place earlier in the day. The President could not have spoken to him about the entry of Judge Wright's discovery order. The entry of that order had nothing whatever to do with Mr. Jordan's assistance to Ms. Lewinsky. This claim of a causal relation totally collapses when you look a the evidence.

Now, the charts purporting to show causation are also riddled with error. I only want to show a few of them. Again, we borrowed the chart from Mr. Manager HUTCHINSON, his chart No. 7. Now he showed you this chart and it purports to be an account of what happened on January 5, 1998. You see how the President and Ms. Lewinsky appear to be conferring about the affidavit that she is going to be filing in the Jones case. But when you look at the real facts, the chart becomes a fiction.

Mr. Manager HUTCHINSON told you:

> Let's go to January 5th. This is a sort of summary of what happened on that day.
>
> Ms. Lewinsky meets with her attorney, Mr. Carter, for an hour. Carter drafts the affidavit for Ms. Lewinsky just a few minutes later . . .

And Mr. Manager HUTCHINSON continued:

> Frank Carter drafts the affidavit. She is so concerned about it, she calls the President. The President returns Ms. Lewinsky's phone call.

Now, the suggestion here—and this is our old circumstantial evidence problem—the suggestion from this fact pattern is that Ms. Lewinsky obtained a draft affidavit from her lawyer, Mr. Carter, on January 5, and then in a call with the President later that day she offered it to him for his review.

Possible? Yes. True? No. The facts here simply do not bear out this chart. Why is that? Well, it is because Mr. Carter's grand jury testimony is very clear that he drafted the affidavit on the morning of January 6, and he even billed for it on that morning. He did not draft it, and Ms. Lewinsky did not have it, on January 5. There is no causation here, no linkage. The theory on this chart doesn't stand up, and if I may take something else from the House managers—not simply their chart, but to borrow Mr. Manager BRYANT's expression, ''that dog won't hunt.''

Ms. Lewinsky could not have offered to show the President a draft affidavit she herself could not have had on January 5. The idea that the telephone call on that day is about that affidavit is sheer, unsupported speculation and, even worse, it is speculation demolished by fact.

Let's kick the tires of another exhibit. Chart No. 8, which was shown to you by Mr. Manager HUTCHINSON, purports to describe the events of January 6. Again, it sets forth a chain of events which makes it look as though Mr. Jordan was himself intimately involved in drafting Ms. Lewinsky's affidavit. Mr. Manager HUTCHINSON told you when he showed you this chart—and I want to quote his exact words:

> The next exhibit is January 6. On this particular day, Ms. Lewinsky picks up the draft affidavit. At 2:08 to 2:10 p.m., she delivers that affidavit. To whom? Mr. Jordan. . . . At 3:48, he telephones Ms. Lewinsky about the draft affidavit, and at 3:49—you will see in red—both agree to delete a portion of the affidavit that created some implication that maybe she had been alone with the President.
>
> So Mr. Jordan was very involved in the drafting of the affidavit and the contents of that.

That is the theory proposed by the chart. That is the hypothesis they offer on the basis of the circumstantial evidence. But there are problems that absolutely destroy that because when we look beyond the suggestive juxtaposition and consider material overlooked by the managers, a very different picture emerges.

The key ''fact'' that chart 8 tries to establish is the statement that at 3:49 Mr. Jordan telephoned Ms. Lewinsky to discuss the draft affidavit, and they allegedly agreed ''to delete an implication that she had been alone with the President.''

There is a very serious difficulty with this ''theory.'' The chart blithely states that ''both agree[d] to delete [the] implications that she had been alone with the President.'' But that is not what evidence shows.

Ms. Lewinsky testified that she spoke to Mr. Jordan because she had concerns about the draft affidavit. According to her testimony, when asked whether Mr. Jordan agreed with what were clearly Ms. Lewinsky's ideas about changes in the affidavit, Ms. Lewinsky said, ''Yes, I believe so.''

Now, Mr. Jordan recalled the conversation in which Ms. Lewinsky raised the subject of her draft affidavit. He remembered her saying that she ''had some questions about the draft of the affidavit.'' But his testimony was emphatic that he was ''not interested in the details,'' that the ''problems she had with what had been drafted for her

signature [were] for her to work out with her counsel,'' and that ''you [Ms. Lewinsky] have to talk to your lawyer about it.'' And Ms. Lewinsky did talk to her lawyer about it.

The record is perfectly clear about that. Indeed, it could not be clearer, although you would not know this from chart 8, that the idea of deleting the reference to her being alone with the President came from her own lawyer, Mr. Carter. He testified to the grand jury—this is the lawyer who actually drafted the affidavit. He was referring to a passage about Ms. Lewinsky being alone with the President and he said:

Paragraph 6 has in its [draft] form as the last part of the last sentence ''and would not have been a 'private meeting, that is not behind closed doors'. . . .''

According to Mr. Carter:

This paragraph was modified when we sat down in my office [on January 7], the day after the events described on chart 8.

Mr. Carter further testified that ''before the meeting on the 7th, it was my opinion that I did not want to give Paula Jones' attorney any kind of a hint of a one-on-one meeting. What I told Monica was, ''If they ask you about it, you will tell them about it. But I'm not putting it in the affidavit. I am not going to give them that lead to go after in the affidavit, because my objective is not to have you be deposed.''

It is clearly Mr. Carter who deleted the reference to being alone with the President. The bottom line is that the insinuations on that chart just don't survive scrutiny.

I want to say a final thing about all the charts involving circumstantial evidence. You remember how many telephone calls were up on these charts. I am going to let you in on a little secret—a secret that a lot of you who are lawyers know. It is pretty easy to get telephone call records and to identify telephone calls. But it is a common trick to put them up, even though you don't know what is going on in the telephone calls, and ask people to assume some insidious relationship between events and the telephone call. No matter how many telephone calls are listed on the chart, you don't know, without testimony, what was happening in that phone call, unless the mere existence—and there are cases where the mere existence of a phone call is probative, but not in these cases. Here they are trying to weave a web, and no particular call is of significant importance.

The incontroverted evidence shows that, in fact, Mr. Jordan spoke to the President on many, many, many occasions. He was a friend; he has been a friend of the President since 1973, and a call between them was a common occurrence. When asked in the grand jury if Mr. Jordan believed that the pattern of telephone calls to the President was ''striking,'' Mr. Jordan replied, ''It depends on your point of view. I talk to the President of the United States all the time, and so it's not striking to me.''

Mr. Jordan also testified that he never had a telephone conversation with the President in which Ms. Lewinsky was the only topic.

The House managers ask you to believe, simply on faith, that if two things happen on the same day, they are related. This relation may be logical, but it is not necessarily factual. I just want to make this point with a couple of telephone calls. Take Mr. Manager HUTCHINSON's chart for January 17, 1998, the day of the President's deposition in the Jones case.

This chart suggests that there are two calls between Mr. Jordan and the President after the President had concluded his deposition. One call is at 5:38, and the other is at 7:02. The chart does not tell you several important things. First, these two calls each lasted 2 minutes. Second, and more significantly, Mr. Jordan testified to the grand jury as to both telephone conversations:

On Saturday, the 17th, in the two conversations I had with the President of the United States, we did not talk about Monica Lewinsky or his testimony in the deposition.

Mr. Jordan was asked:

Or [about] the questions asked of him in the deposition?

And he replied:

That is correct.

In another exchange, the prosecutors asked Mr. Jordan:

Did the President ever indicate to you [in the January 17 telephone conversations] that Monica Lewinsky was one of the topics that had come up?

Jordan replied:

He did not.

The prosecutors asked:

Did the President ever indicate to you [in these two conversations] that your name had come up in the deposition as it related to Monica Lewinsky?

And Mr. Jordan answered:

He did not.

The managers, in the absence of evidence that anyone endeavored to obtain Ms. Lewinsky a job in exchange for her silence, indeed, in the face of direct testimony of all of those involved that this did not happen, ask you to simply speculate. They ask you to speculate that since they have thrown a lot of telephone calls up there, they must have some sinister meaning. And they ask you to speculate that a lot of those phone calls must have been about Ms. Lewinsky, and they ask you to speculate further that in one of those unidentified, unknown phone calls, somebody must have said, ''Let's get Ms. Lewinsky a job in exchange for her silence.''

There is no evidence for that. It is not there. It is just a theory.

With regard to all this evidence about the job search, when you look at these dates, when you have the right chronology in mind, and when you look at the relevant and uncontested facts, these facts are there; they don't have to be discovered: There is no, no evidence of wrongdoing of any kind in connection with Ms. Lewinsky's job search effort in New York City. This is not a case of the managers' presentation resting on even circumstantial as opposed to direct evidence. They don't even have circumstantial evidence here. All they have is a theory about what happened, which isn't based on any evidence either direct or circumstantial.

Nothing in this evidence is really contested when you get right down to it; strictly as a matter of who said what to whom when. When lawyers ask you to ''keep your eye on the big picture,'' when they ask you, ''don't lose the forest for the trees,'' or ''don't get lost in the details,'' that is usually because the details—the stubborn facts—refute and contradict the big picture.

So it is here. You can keep adding zero to zero to zero for a very long time, and indeed forever, and you will still have zero. The big picture here just doesn't exist. And no matter how many times the House managers keep making the assertion, there is just no evidence of any kind.

I realize that it has taken us a good bit of time and painstaking—perhaps even painful—attention for each one of you to walk through these facts in a lawyerly manner. I am also keenly aware of the old saying that when all is said and done with a lawyer, there is more said than done. But we needed to take a look carefully and specifically at this evidentiary material with regard to these five grounds in the same way that Ms. Mills took you through very specifically yesterday with regard to the other two grounds to try and dispel the popular misconception that we were either unwilling or unable to rebut the facts. We have rebutted the facts.

The simple fact is that there is no evidence indirectly to support the allegation that the President obstructed justice in his December 17 telephone call with Ms. Lewinsky in his statements to his aides, in his statements to Betty Currie with relation to gifts, or the job search. It sometimes has been claimed by the managers that we have adopted a ''so what'' defense trying to take lightly or to justify the improper actions that are at the root of this case. Well, Senators, with all respect, that argument is easy to assert, but it is false, a straw man asserted, only to be knocked down.

We have tried in our presentations the last few days and today to treat the evidence in a fair and a candid and a realistic way about the facts as the record reveals them. We have tried to show you that the core charges of obstruction of justice and perjury cannot be proven. We are not saying that the alleged conduct doesn't matter. We are saying that perjury didn't occur, and obstruction of justice didn't happen.

We haven't tried to sugar-coat or excuse conduct that is wrong. I think that Mr. Manager BUYER used the right phrase when he referred to ''self-inflicted wounds.'' There is no doubt that

there are self-inflicted wounds here, wounds that are very real and very painful and very troubling. There is just no question about that. The question before you is whether these self-inflicted wounds rise to such a level of lawless and unconstitutional conduct that they leave you no alternative, no choice but to assume the awesome responsibility for reversing the results of two national elections.

On that question, what the situation demands is not eloquence, which the very able managers have in abundance, but rather a relentless focus on the facts, the law, and the Constitution, all of which are on the side of the President.

It is a great honor for me to stand here. This body has been called ''the anchor of the Republic.'' And it is that constitutional ability, that political sanity, that is needed now. There is a story, which is perhaps apocryphal, that when Thomas Jefferson returned from France where he served as Ambassador while his colleagues were writing the Constitution, that he met with George Washington, and he asked Washington why they had found it necessary to create the Senate. Washington is said to have silently removed the saucer from his teacup and poured the tea into the saucer and told Jefferson that like the act he had just performed, the Senate would be designed to cool the passion of the moment. Historically, this place has been really a haven of sanity, balance, wisdom in debating controversial issues which have been passionately felt, with candor, with courage, and civility.

So once again, I think it is your responsibility and yours alone, committed to you by the Constitution, to make a very somber judgment. The President has spoken powerfully and personally of his remorse for what he has done.

Others have pointed out the poisonous partisanship that led the other body to argue for impeachment on the most narrowly partisan vote in its history.

I think that the bipartisan manner, however, in which you have conducted this impeachment trial is a welcome change from the events of the last year.

We ask only that you give this case and give this country constitutional stability and the political sanity which this country deserves. The President did not commit perjury. He did not obstruct justice, and there are no grounds to remove him from office.

Thank you.

RECESS

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we recess the proceedings for 15 minutes, but that Senators be prepared to resume at 5 minutes after 4, because we have to hear the eloquence of one of our former colleagues.

There being no objection, at 3:49 p.m., the Senate recessed until 4:10 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 the Senate is prepared now to hear the final presentation to be made by White House counsel, and at the conclusion of that, I will have a brief wrapup, a statement to make about how we hope to proceed on Friday and generally on Saturday. I will do that at the close of this presentation. I yield the floor, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes Mr. Counsel Bumpers to continue the presentation in the case of the President.

Mr. Counsel BUMPERS. Mr. Chief Justice, my distinguished House managers from the House of Representatives, colleagues, I have seen the look of disappointment on many faces, because I know a lot of people really thought they would be rid of me once and for all. (Laughter.)

I have taken a lot of ribbing this afternoon. But I have seriously negotiated with some people, particularly on this side, about an offer to walk out and not deliver this speech in exchange for a few votes. (Laughter.)

I understand three have it under active consideration. (Laughter.)

It is a great joy to see you, and it is especially pleasant to see an audience which represents about the size of the cumulative audience I had over a period of 24 years. (Laughter.)

I came here today for a lot of reasons. One was that I was promised a 40-foot cord. I have been shorted 28 feet. CHRIS DODD said he didn't want me in his lap. I assume he arranged for the cord to be shortened.

I want to especially thank some of you for your kind comments in the press when it received some publicity that I would be here to close the debate on behalf of the White House counsel and the President.

I was a little dismayed by Senator BENNETT's remark. He said, ''Yes, Senator Bumpers is a great speaker, but he was never persuasive with me because I never agreed with him.'' (Laughter.)

I thought he could have done better than that. (Laughter.)

You can take some comfort, colleagues, in the fact that I am not being paid, and when I finish, you will probably think the White House got their money's worth. (Laughter.)

I have told audiences that over 24 years, I went home almost every weekend and returned usually about dusk on Sunday evening. And you know the plane ride into National Airport, when you can see the magnificent Washington Monument and this building from the window of the airplane—I have told these students at the university, a small liberal arts school at home, Hendrix—after 24 years of that, literally hundreds of times, I never failed to get goose bumps.

The same thing is true about this Chamber. I can still remember as though it was yesterday the awe I felt when I first stepped into this magnificent Chamber so full of history, so beautiful. And last Tuesday, as I returned, after only a short 3-week absence, I still felt that same sense of awe that I did the first time I walked in this Chamber.

Colleagues, I come here with some sense of reluctance. The President and I have been close friends for 25 years. We fought so many battles back home together in our beloved Arkansas. We tried mightily all of my years as Governor and his, and all of my years in the Senate when he was Governor, to raise the living standard in the delta area of Mississippi, Arkansas and Louisiana, where poverty is unspeakable, with some measure of success; not nearly enough.

We tried to provide health care for the lesser among us, for those who are well off enough they can't get on welfare, but not making enough to buy health insurance. We have fought about everything else to improve the educational standards for a State that for so many years was at the bottom of the list, or near the bottom of the list, of income, and we have stood side by side to save beautiful pristine areas in our State from environmental degradation.

We even crashed a twin engine Beech Bonanza trying to get to the Gillett coon supper, a political event that one misses at his own risk. We crashed this plane on a snowy evening at a rural airport off the runway sailing out across the snow, jumped out—jumped out—and ran away unscathed, to the dismay of every politician in Arkansas. (Laughter.)

The President and I have been together hundreds of times at parades, dedications, political events, social events, and in all of those years and all of those hundreds of times we have been together, both in public and in private, I have never one time seen the President conduct himself in a way that did not reflect the highest credit on him, his family, his State and his beloved Nation.

The reason I came here today with some reluctance—please don't misconstrue that, it has nothing to do with my feelings about the President, as I have already said—but it is because we are from the same State, and we are long friends. I know that necessarily diminishes to some extent the effectiveness of my words. So if Bill Clinton, the man, Bill Clinton, the friend, were the issue here, I am quite sure I would not be doing this. But it is the weight of history on all of us, and it is my reverence for that great document—you have heard me rail about it for 24 years—that we call our Constitution, the most sacred document to me next to the Holy Bible.

These proceedings go right to the heart of our Constitution where it deals with impeachment, the part that

provides the gravest punishment for just about anybody—the President—even though the framers said we are putting this in to protect the public, not to punish the President.

Ah, colleagues, you have such an awesome responsibility. My good friend, the senior Senator from New York, has said it well. He says a decision to convict holds the potential for destabilizing the Office of the Presidency. And those 400 historians—and I know some have made light about those historians, are they just friends of Bill?

Last evening, I went over that list of historians, many of whom I know, among them C. Vann Woodward. In the South we love him. He is the preeminent southern historian in the Nation. I promise you—he may be a Democrat, he may even be a friend of the President, but when you talk about integrity, he is the walking personification, exemplification of integrity.

Well, colleagues, I have heard so many adjectives to describe this gallery and these proceedings—historic, memorable, unprecedented, awesome. All of those words, all of those descriptions are apt. And to those, I would add the word ''dangerous,'' dangerous not only for the reasons I just stated, but because it is dangerous to the political process. And it is dangerous to the unique mix of pure democracy and republican government Madison and his colleagues so brilliantly crafted and which has sustained us for 210 years.

Mr. Chief Justice, this is what we lawyers call ''dicta''—this costs you nothing. It is extra. But the more I study that document, and those 4 months at Philadelphia in 1787, the more awed I am. And you know what Madison did—the brilliance was in its simplicity—he simply said: Man's nature is to get other people to dance to their tune. Man's nature is to abuse his fellow man sometimes. And he said: The way to make sure that the majorities don't abuse the minorities, and the way to make sure that the bullies don't run over the weaklings, is to provide the same rights for everybody. And I had to think about that a long time before I delivered my first lecture at the University of Arkansas last week. And it made so much sense to me.

But the danger, as I say, is to the political process, and dangerous for reasons feared by the framers about legislative control of the Executive. That single issue and how to deal with impeachment was debated off and on for the entire 4 months of the Constitutional Convention. But the word ''dangerous'' is not mine. It is Alexander Hamilton's—brilliant, good-looking guy—Mr. Ruff quoted extensively on Tuesday afternoon in his brilliant statement here. He quoted Alexander Hamilton precisely, and it is a little arcane. It isn't easy to understand.

So if I may, at the expense of being slightly repetitious, let me paraphrase what Hamilton said. He said: The Senate had a unique role in participating with the executive branch in appointments; and, two, it had a role—it had a role—in participating with the executive in the character of a court for the trial of impeachments. But he said—and I must say this; and you all know it—he said it would be difficult to get a, what he called, well-constituted court from wholly elected Members. He said: Passions would agitate the whole community and divide it between those who were friendly and those who had inimical interests to the accused; namely, the President. Then he said—and these are his words: The greatest danger was that the decision would be based on the comparative strength of the parties rather than the innocence or guilt of the President.

You have a solemn oath, you have taken a solemn oath, to be fair and impartial. I know you all. I know you as friends, and I know you as honorable men. And I am perfectly satisfied to put that in your hands, under your oath.

This is the only caustic thing I will say in these remarks this afternoon, but the question is, How do we come to be here? We are here because of a 5-year, relentless, unending investigation of the President, $50 million, hundreds of FBI agents fanning across the Nation, examining in detail the microscopic lives of people—maybe the most intense investigation not only of a President, but of anybody ever.

I feel strongly about this because of my State and what we have endured. So you will have to excuse me, but that investigation has also shown that the judicial system in this country can and does get out of kilter unless it is controlled. Because there are innocent people—innocent people—who have been financially and mentally bankrupt.

One woman told me 2 years ago that her legal fees were $95,000. She said, ''I don't have $95,000. And the only asset I have is the equity in my home, which just happens to correspond to my legal fees of $95,000.'' And she said, ''The only thing I can think of to do is to deed my home.'' This woman was innocent, never charged, testified before a grand jury a number of times. And since that time she has accumulated an additional $200,000 in attorney fees.

Javert's pursuit of Jean Valjean in Les Miserables pales by comparison. I doubt there are few people—maybe nobody in this body—who could withstand such scrutiny. And in this case those summoned were terrified, not because of their guilt, but because they felt guilt or innocence was not really relevant. But after all of those years, and $50 million of Whitewater, Travelgate, Filegate—you name it—nothing, nothing. The President was found guilty of nothing—official or personal.

We are here today because the President suffered a terrible moral lapse of marital infidelity—not a breach of the public trust, not a crime against society, the two things Hamilton talked about in Federalist Paper No. 65—I recommend it to you before you vote—but it was a breach of his marriage vows. It was a breach of his family trust. It is a sex scandal. H.L. Mencken one time said, ''When you hear somebody say, 'This is not about money,' it's about money.'' (Laughter)

And when you hear somebody say, ''This is not about sex,'' it's about sex.

You pick your own adjective to describe the President's conduct. Here are some that I would use: indefensible, outrageous, unforgivable, shameless. I promise you the President would not contest any of those or any others.

But there is a human element in this case that has not even been mentioned. That is, the President and Hillary and Chelsea are human beings. This is intended only as a mild criticism of our distinguished friends from the House. But as I listened to the presenters, to the managers, make their opening statements, they were remarkably well prepared and they spoke eloquently—more eloquently than I really had hoped.

But when I talk about the human element, I talk about what I thought was, on occasion, an unnecessarily harsh, pejorative description of the President. I thought that the language should have been tempered somewhat to acknowledge that he is the President. To say constantly that the President lied about this and lied about that—as I say, I thought that was too much for a family that has already been about as decimated as a family can get. The relationship between husband and wife, father and child, has been incredibly strained, if not destroyed. There has been nothing but sleepless nights, mental agony, for this family, for almost 5 years, day after day, from accusations of having Vince Foster assassinated, on down. It has been bizarre.

I didn't sense any compassion. And perhaps none is deserved. The President has said for all to hear that he misled, he deceived, he did not want to be helpful to the prosecution, and he did all of those things to his family, to his friends, to his staff, to his Cabinet, and to the American people. Why would he do that? Well, he knew this whole affair was about to bring unspeakable embarrassment and humiliation on himself, his wife whom he adored, and a child that he worshipped with every fiber of his body and for whom he would happily have died to spare her or to ameliorate her shame and her grief.

The House managers have said shame, an embarrassment is no excuse for lying. The question about lying—that is your decision. But I can tell you, put yourself in his position—and you have already had this big moral lapse—as to what you would do. We are, none of us, perfect. Sure, you say, he should have thought of all that beforehand. And indeed he should, just as Adam and Eve should have, just as you and you and you and you and millions of other people who have been caught

in similar circumstances should have thought of it before. As I say, none of us is perfect.

I remember, Chaplain—the Chaplain is not here; too bad, he ought to hear this story. This evangelist was holding this great revival meeting and in the close of one of his meetings he said, ''Is there anybody in this audience who has ever known anybody who even comes close to the perfection of our Lord and Savior, Jesus Christ?'' Nothing. He repeated the challenge and, finally, a little-bitty guy in the back held up his hand. ''Are you saying you have known such a person? Stand up.'' He stood up and said, ''Tell us, who was it?'' He said, ''My wife's first husband.''

Make no mistake about it: Removal from office is punishment. It is unbelievable punishment, even though the framers didn't quite see it that way. Again, they said—and it bears repeating over and over again—they said they wanted to protect the people. But I can tell you this: The punishment of removing Bill Clinton from office would pale compared to the punishment he has already inflicted on himself. There is a feeling in this country that somehow or another Bill Clinton has gotten away with something. Mr. Leader, I can tell you, he hasn't gotten away with anything. And the people are saying: ''Please don't protect us from this man.'' Seventy-six percent of us think he is doing a fine job; 65 to 70 percent of us don't want him removed from office.

Some have said we are not respected on the world scene. The truth of the matter is, this Nation has never enjoyed greater prestige in the world than we do right now. I saw Carlos Menem, President of Argentina, a guest here recently, who said to the President, ''Mr. President, the world needs you.'' The war in Bosnia is under control; the President has been as tenacious as anybody could be about Middle East peace; and in Ireland, actual peace; and maybe the Middle East will make it; and he has the Indians and the Pakistanis talking to each other as they have never talked to each other in recent times.

Vaclav Havel said, ''Mr. President, for the enlargement of the North Atlantic Treaty Organization, there is no doubt in my mind that it was your personal leadership that made this historic development possible.'' King Hussein: ''Mr. President, I've had the privilege of being a friend of the United States and Presidents since the late President Eisenhower, and throughout all the years in the past I have kept in touch, but on the subject of peace, the peace we are seeking, I have never, with all due respect and all the affection I held for your predecessors, known someone with your dedication, clear-headedness, focus, and determination to help resolve this issue in the best way possible.''

I have Nelson Mandela and other world leaders who have said similar things in the last 6 months. Our prestige, I promise you, in the world, is as high as it has ever been.

When it comes to the question of perjury, you know, there is perjury and then there is perjury. Let me ask you if you think this is perjury: On November 23, 1997, President Clinton went to Vancouver, BC. And when he returned, Monica Lewinsky was at the White House at some point, and he gave her a carved marble bear. I don't know how big it was. The question before the grand jury, August 6, 1998:

What was the Christmas present or presents that he got for you?

Answer: Everything was packaged in the Big Black Dog or big canvas bag from the Black Dog store in Martha's Vineyard and he got me a marble bear's head carving. Sort of, you know, a little sculpture, I guess you would call, maybe.

Was that the item from Vancouver?

Yes.

Question, on the same day of the same grand jury,

When the President gave you the Vancouver bear on the 28th, did he say anything about what it means?

Answer: Hmm.

Question: Well, what did he say?

Answer: I think he—I believe he said that the bear is the—maybe an Indian symbol for strength—you know, to be strong like a bear.

Question: And did you interpret that to be strong in your decision to continue to conceal the relationship?

Answer: No.

The House Judiciary Committee report to the full House, on the other hand, knowing the subpoena requested gifts, is giving Ms. Lewinsky more gifts on December 28 seems odd. But Ms. Lewinsky's testimony reveals why he did so. She said that she ''never questioned that we would not ever do anything but keep this private, and that meant to take whatever appropriate steps needed to be taken to keep it quiet.''

They say:

The only logical inference is that the gifts, including the bear symbolizing strength, were a tacit reminder to Ms. Lewinsky that they would deny the relationship, even in the face of a Federal subpoena.

She just got through saying ''no.'' Yet, this report says that is the only logical inference. And then the brief that came over here accompanying the articles of impeachment said, ''On the other hand, more gifts on December 28th . . .'' Ms. Lewinsky's testimony reveals her answer. She said that she ''never questioned that we were ever going to do anything but keep this private, and that meant to take whatever appropriate steps needed to be taken to keep it quiet.''

Again, they say in their brief:

The only logical inference is that the gifts, including the bear symbolizing strength, were a tacit reminder to Ms. Lewinsky that they would deny the relationship even in the face of a Federal subpoena.

Is it perjury to say the only logical inference is something when the only shred of testimony in the record is, ''No, that was not my interpretation. I didn't infer that.'' Yet, here you have it in the committee report and you have it in the brief. Of course, that is not perjury.

First of all, it is not under oath. But I am a trial lawyer and I will tell you what it is; it is wanting to win too badly. I have tried 300, 400, maybe 500 divorce cases. Incidentally, you are being addressed by the entire South Franklin County, Arkansas Bar Association. I can't believe there were that many cases in that little town, but I had a practice in surrounding communities, too. In all those divorce cases, I would guess that in 80 percent of the contested cases perjury was committed. Do you know what it was about? Sex. Extramarital affairs. But there is a very big difference in perjury about a marital infidelity in a divorce case and perjury about whether I bought the murder weapon, or whether I concealed the murder weapon or not. And to charge somebody with the first and punish them as though it were the second stands our sense of justice on its head.

There is a total lack of proportionality, a total lack of balance in this thing. The charge and the punishment are totally out of sync. All of you have heard or read the testimony of the five prosecutors who testified before the House Judiciary Committee—five seasoned prosecutors. Each one of them, veterans, said that under the identical circumstances of this case, they would never charge anybody because they would know they couldn't get a conviction. In this case, the charges brought and the punishment sought are totally out of sync. There is no balance; there is no proportionality.

But even stranger—you think about it—even if this case had originated in the courthouse rather than the Capitol, you would never have heard of it. How do you reconcile what the prosecutors said with what we are doing here? Impeachment was debated off and on in Philadelphia for the entire 4 months, as I said. The key players were Governor Morris, a brilliant Pennsylvanian; George Mason, the only man reputedly to be so brilliant that Thomas Jefferson actually deferred to him; he refused to sign the Constitution, incidentally, even though he was a delegate because they didn't deal with slavery and he was a strict abolitionist. Then there was Charles Pinckney from South Carolina, a youngster at 29 years old; Edmund Randolph from Virginia, who had a big role in the Constitution in the beginning; and then, of course, James Madison, the craftsman. They were all key players in drafting this impeachment provision.

Uppermost in their minds during the entire time they were composing it was that they did not want any kings. They had lived under despots, under kings, and under autocrats, and they didn't want anymore of that. And they succeeded very admirably. We have had 46 Presidents and no kings. But they kept talking about corruption. Maybe that

ought to be the reason for impeachment, because they feared some President would corrupt the political process. That is what the debate was about—corrupting the political process and ensconcing one's self through a phony election; maybe that is something close to a king.

They followed the British rule on impeachment, because the British said the House of Commons may impeach and the House of Lords must convict. And every one of the colonies had the same procedure—the House and the Senate. In all fairness, Alexander Hamilton was not very keen on the House participating. But here were the sequence of events in Philadelphia that brought us here today. They started out with maladministration and Madison said, ''That is too vague; what does that mean?'' So they dropped that. They went from that to corruption, and they dropped that. Then they went to malpractice, and they decided that was not definitive enough. And they went to treason, bribery, and corruption. They decided that still didn't suit them.

Bear in mind one thing: During this entire process, they are narrowing the things you can impeach a President for. They were making it tougher. Madison said, ''If we aren't careful, the President will serve at the pleasure of the Senate.'' And then they went to treason and bribery. Somebody said that still is not quite enough, so they went to treason and bribery. And George Mason added, ''or other high crimes and misdemeanors against the United States.'' They voted on it, and on September 10 they sent the entire Constitution to a committee they called the Committee on Style and Arrangement, which was the committee that would draft the language in a way that everybody would understand—that is, well crafted from a grammatical standpoint. But that committee, which was dominated by Madison and Hamilton, dropped ''against the United States.'' And the stories will tell you that the reason they did that was because they were redundant, because that committee had no right to change the substance of anything, and they would not have dropped it if they had not felt that it was redundant. Then they put it in for good measure. And we can always be grateful for the two-thirds majority.

This is one of the most important points of this entire presentation. First of all, the term ''treason and bribery''—nobody quarrels with that. We are not debating treason and bribery here in this Chamber. We are talking about other high crimes and misdemeanors. And where did ''high crimes and misdemeanors'' come from? It came from the English law. And they found it in English law under a category which said distinctly ''political'' offenses against the state.

Let me repeat that. They said ''high crimes and misdemeanors'' was to be because they took it from English law where they found it in the category that said offenses distinctly ''political'' against the state.

So, colleagues, please, for just one moment, forget the complexities of the facts and the tortured legalisms—and we have heard them all brilliantly presented on both sides. And I am not getting into that.

But ponder this: If high crimes and misdemeanors was taken from English law by George Madison, which listed high crimes and misdemeanors as ''political'' offenses against the state, what are we doing here? If, as Hamilton said, it had to be a crime against society or a breach of the public trust, what are we doing here? Even perjury, concealing, or deceiving an unfaithful relationship does not even come close to being an impeachable offense. Nobody has suggested that Bill Clinton committed a political crime against the state.

So, colleagues, if you are to honor the Constitution, you must look at the history of the Constitution and how we got to the impeachment clause. And, if you do that, and you do that honestly, according to the oath you took, you cannot—you can censor Bill Clinton, you can hand him over to the prosecutor for him to be prosecuted, but you cannot convict him. You cannot indulge yourselves the luxury or the right to ignore this history.

There has been a suggestion that a vote to acquit would be something of a breach of faith with those who lie in Flanders field, Anzio, Bunker Hill, Gettysburg, and wherever. I did not hear that. I read about it. But I want to say, and, incidentally, I think it was Chairman HYDE who alluded to this and said those men fought and died for the rule of law.

I can remember a cold November 3 morning in my little hometown of Charleston, AR. I was 18 years old. I had just gotten one semester in at the university when I went into the Marine Corps. So I was to report to Little Rock to be inducted. My it was cold. The drugstore was the bus stop. I had to be there by 8 o'clock to be sworn in. And I had to catch the bus down at the drugstore at 3 o'clock in the morning. So my mother and father and I got up at 2 o'clock, got dressed, and went down there. I am not sure I can tell you this story. And the bus came over the hill. I was rather frightened anyway about going. I was quite sure I was going to be killed, only slightly less frightened that Betty would find somebody else when I was gone.

The bus came over the schoolhouse hill and my parents started crying. I had never seen my father cry. I knew I was in some difficulty. Now, as a parent, at my age, I know he thought he was giving not his only begotten son, but one of his begotten sons. Can you imagine? You know that scene. It was repeated across this Nation millions of times. Then, happily, I survived that war, saw no combat, was on my way to Japan when it all ended. I had never had a terrible problem with dropping the bomb, though that has been a terrible moral dilemma for me because the estimates were that we would lose as many as a million men in that invasion.

But I came home to a generous government which provided me under the GI bill an education in a fairly prestigious law school, which my father could never have afforded. I practiced law in this little town for 18 years, loved every minute of it. But I didn't practice constitutional law. And I knew very little about the Constitution. But when I went into law school, I did study constitutional law, Mr. Chief Justice. It was very arcane to me. And trying to read the Federalist Papers, de Tocqueville, all of those things that law students are expected to do, that was tough for me. I confess.

So after 18 years of law practice, I jumped up and ran for Governor. I served as Governor for 4 years. I guess I knew what the rule of law was, but I still didn't really have much reverence for the Constitution. I just did not understand any of the things I am discussing and telling you. No. My love for that document came day after day and debate after debate right here in this Chamber.

Some of you read an op-ed piece I did a couple of weeks ago when I said I was perfectly happy for my legacy, that during my 24 years here I never voted for a constitutional amendment. And it isn't that I wouldn't. I think they were mistaken not giving you fellows 4 years. (Laughter.)

You are about to cause me to rethink that one. (Laughter.)

The reason I developed this love of it is because I saw Madison's magic working time and time again, keeping bullies from running over weak people, keeping majorities from running over minorities, and I thought about all of the unfettered freedoms we had. The oldest organic law in existence made us the envy of the world.

Mr. Chairman, we have also learned that the rule of law includes Presidential elections. That is a part of the rule of law in this country. We have an event, a quadrennial event, in this country which we call a Presidential election, and that is the day when we reach across this aisle and hold hands, Democrats and Republicans, and we say, win or lose, we will abide by the decision. It is a solemn event, a Presidential election, and it should not be undone lightly or just because one side has the clout and the other one doesn't.

And if you want to know what men fought for in World War II, for example, in Vietnam, ask Senator INOUYE. He left an arm in Italy. He and I were with the Presidents at Normandy, on the 50th anniversary, but we started off in Anzio. Senator DOMENICI, were you with us? It was one of the most awesome experiences I have ever had in my life. Certified war hero. I think his relatives were in an internment camp. So ask him, what was he fighting for? Or

ask BOB KERREY, certified Medal of Honor winner, what was he fighting for? Probably get a quite different answer. Or Senator CHAFEE, one of the finest men ever to grace this body and certified Marine hero of Guadalcanal, ask him. And Senator MCCAIN, a genuine hero, ask him. You don't have to guess; they are with us, and they are living, and they can tell you. And one who is not with us in the Senate anymore, Robert Dole, ask Senator Dole what he was fighting for. Senator Dole had what I thought was a very reasonable solution to this whole thing that would handle it fairly and expeditiously.

The American people are now and for some time have been asking to be allowed a good night's sleep. They are asking for an end to this nightmare. It is a legitimate request. I am not suggesting that you vote for or against the polls. I understand that. Nobody should vote against the polls just to show their mettle and their courage. I have cast plenty of votes against the polls, and it has cost me politically a lot of times. This has been going on for a year, though.

In that same op-ed piece, I talked about meeting Harry Truman my first year as Governor of Arkansas. I spent an hour with him—an indelible experience. People at home kid me about this because I very seldom make a speech that I don't mention this meeting. But I will never forget what he said: ''Put your faith in the people. Trust the people. They can handle it.'' They have shown conclusively time and time again that they can handle it.

Colleagues, this is easily the most important vote you will ever cast. If you have difficulty because of an intense dislike of the President—and that is understandable—rise above it. He is not the issue. He will be gone. You won't. So don't leave a precedent from which we may never recover and almost surely will regret.

If you vote to acquit, Mr. Leader, you know exactly what is going to happen. You are going to go back to your committees. You are going to get on with this legislative agenda. You are going to start dealing with Medicare, Social Security, tax cuts, and all those things which the people of this country have a nonnegotiable demand that you do. If you vote to acquit, you go immediately to the people's agenda. But if you vote to convict, you can't be sure what is going to happen.

James G. Blaine was a Member of the Senate when Andrew Johnson was tried in 1868, and 20 years later he recanted. He said, ''I made a bad mistake.'' And he said, ''As I reflect back on it, all I can think about is that having convicted Andrew Johnson would have caused much more chaos and confusion in this country than Andrew Johnson could ever conceivably have created.''

And so it is with William Jefferson Clinton. If you vote to convict, in my opinion, you are going to be creating more havoc than he could ever possibly create. After all, he has only got 2 years left. So don't, for God sakes, heighten the people's alienation, which is at an all-time high, toward their Government. The people have a right, and they are calling on you to rise above politics, rise above partisanship. They are calling on you to do your solemn duty, and I pray you will.

Thank you, Mr. Chief Justice.

The PRESIDING OFFICER. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I believe that that concludes the White House presentation. I remind all Senators that we will reconvene tomorrow beginning at 1 p.m. On Friday, under the provisions of Senate Resolution 16, we will begin the question and answer period for not to exceed 16 hours. The majority will begin the questioning, and as we go forward in that process, we will alternate back and forth across the aisle. I have discussed this proposition, obviously, with Senator DASCHLE, and we have discussed it in our conferences. We looked at a number of other alternatives, but we thought that this would be a fair way to proceed, that we would begin from this side with a Senator who will be named, and go to the other side, back and forth.

We think this provides fairness and I hope all Members will entrust the Chief Justice to be fair during this portion of the deliberations, and for the managers and counsel to, of course, be succinct in their answers and respond to the question that is actually asked.

At this time I would anticipate approximately 5 hours of questions and answers being used tomorrow, Friday. We would then reconvene on Saturday at 10 a.m., and again resume questioning, alternating back and forth. We have not set any definite time for Saturday. We will need to see how the questions go. We don't really know whether we will need 5 hours or 10 hours or the full 16. But if we reach a point on Saturday where we need to conclude the day's proceedings and we feel there are still more questions that would need to be asked, then after communication on both sides of the aisle we would decide how to go forward.

It is my hope that we can complete this questioning period during the day Friday and Saturday and conclude it Saturday. I hope the Senators will be thoughtful in their questions. They must be in writing. Please be brief with your written presentation. Dissertations would not be appreciated in writing at this point. And we will do our best, Mr. Chief Justice, to deal with the question of repetition or redundancy, and try to have some process that Senator DASCHLE and I will use to get the Senators' questions to the Chief Justice.

I thank all Senators for their attention during the past 2 weeks, both in the presentation of the case by the House managers and the presentation by the White House counsel. Obviously, the Senators have been here, attentive. We have listened. I think we have learned a great deal, and I appreciate the way the Senate has conducted itself.

(The following notices of intent were received on Wednesday, January 20, 1999:)

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATORS HARKIN AND WELLSTONE

In accordance to Rule V of the Standing Rules of the Senate, I (for myself and for Mr. Wellstone) hereby give notice in writing that it is my intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to debate by Senators on any motion to dismiss, any motion to subpoena witnesses and/or to present any evidence not in the record during the trial of President William Jefferson Clinton:

(1) The phrase ''without debate'' in Rule VII;

(2) the following portion of Rule XX: '', unless the Senate directs shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record''; and

(3) In Rule XXIV, the phrase ''without debate'', ''except when the doors shall be closed for deliberation, and in that case'' and '', to be had without debate''.

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(3) In Rule XXIV, the phrases ''without debate'', ''except when the doors shall be closed for deliberation, and in that case'' and '', to be had without debate''.

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATORS WELLSTONE AND HARKIN

In accordance to Rule V of the Standing Rules of the Senate, I (for myself and for Mr. Harkin) hereby give notice in writing that it is my intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to debate by Senators on a motion to dismiss during the trial of President William Jefferson Clinton:

(1) The phrase ''without debate'' in Rule VII;

(2) the following portion of Rule XX: '', unless the Senate directs shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record''; and

(3) In Rule XXIV, the phrases ''without debate'', ''except when the doors shall be closed for deliberation, and in that case'' and '', to be had without debate''.

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATORS HARKIN AND WELLSTONE

In accordance to Rule V of the Standing Rules of the Senate, I (for myself and for Mr. Wellstone) hereby give notice in writing that it is my intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to debate by Senators on a motion during the trial of President William Jefferson Clinton:

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(3) In Rule XXIV, the phrases ''without debate'', ''except when the doors shall be closed for deliberation, and in that case'' and '', to be had without debate''.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. I move the Senate stand in adjournment under the previous order.

The motion was agreed to; and at 5:10 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Friday, January 22, 1999, at 1 p.m.

(Under the order of Wednesday, January 20, 1999, the following material was submitted at the desk during today's session:)

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–834. A communication from the President of the United States, transmitting, pursuant to law, the Annual Report on Foreign Economic Collection and Industrial Espionage; to the Select Committee on Intelligence.

EC–835. A communication from the Comptroller General of the United States, transmitting, a report of historical information and statistics regarding rescissions proposed by the executive branch and recissions enacted by Congress through October 1, 1998; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations and to the Committee on the Budget.

EC–836. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a cumulative report on rescissions and deferrals dated November 17, 1998; referred jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Energy and Natural Resources, and to the Committee on Foreign Relations.

EC–837. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, a report of estimates of the status of discretionary spending and the discretionary limits; transmitted jointly, pursuant to the order of January 30, 1975, as modified by the order of April 11, 1986, to the Committee on Appropriations, to the Committee on the Budget, to the Committee on Agriculture, Nutrition, and Forestry, to the Committee on Armed Services, to the Committee on Banking, Housing, and Urban Affairs, to the Committee on Commerce, Science, and Technology, to the Committee on Energy and Natural Resources, to the Committee on Environment and Public Works, to the Committee on Finance, to the to the Committee on Foreign Relations, to the Committee on Governmental Affairs, to the Committee on the Judiciary, the Committee on Health, Education, Labor, and Pensions, to the Committee on Small Business, to the Committee on Veterans Affairs, to the Committee on Indian Affairs, and to the Select Committee on Intelligence.

EC–838. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Department's annual report on performance goals related to prescription drug user fees; to the Committee on Health, Education, Labor, and Pensions.

EC–839. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, the Food and Drug Administration's report on the modernization of tracking systems used to support the Administration's review process; to the Committee on Health, Education, Labor, and Pensions.

EC–840. A communication from the Assistant Secretary of State for Legislative Affairs, transmitting, pursuant to law, the report of a rule entitled ''Schedule of Fees for Consular Services, Department of State and Overseas Embassies and Consulates; Final Rule'' (Notice 2711) received on December 21, 1998; to the Committee on Foreign Relations.

EC–841. A communication from the Assistant Secretary of State for Legislative Affairs, transmitting, pursuant to law, the report of a rule entitled ''Passport Procedures—Amendment to Validity of Passports Regulation'' (Notice 2720) received on December 21, 1998; to the Committee on Foreign Relations.

EC–842. A communication from the Director of the Federal Bureau of Prisons, Department of Justice, transmitting, pursuant to law, the report of a rule entitled ''Designation of Offenses Subject to Sex Offender Release Notification'' (RIN1120–AA85) received on December 16, 1998; to the Committee on the Judiciary.

EC–843. A communication from the Deputy Under Secretary for Natural Resources and Environment, Department of Agriculture, transmitting, pursuant to law, the report of a rule regarding the use and occupancy of National Forest System lands (RIN0596–AB35) received on November 30, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–844. A communication from the Administrator of the Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled ''Fees for Official Inspection and Weighing Services'' (RIN0580–AA66) received on December 18, 1998; to the Committee on Agriculture, Nutrition, and Forestry.

EC–845. A communication from the Chairman of the Advisory Council on Historic Preservation, transmitting, pursuant to law, the Council's annual report for fiscal years 1996 and 1997; to the Committee on Energy and Natural Resources.

EC–846. A communication from the Executive Director of the Presidio Trust, transmitting, pursuant to law, the report of a rule entitled ''Management of the Presidio: Freedom of Information Act, Privacy Act, and Federal Tort Claims Act'' (RIN3212–AA01) received on December 21, 1998; to the Committee on Energy and Natural Resources.

EC–847. A communication from the Assistant Secretary for Installations, Logistics, and Environment, Department of the Army, transmitting, pursuant to law, a report on the emergency detonation of a chemical agent filled round at Dugway Proving Ground, Utah; to the Committee on Armed Services.

EC–848. A communication from the Chief of the Programs and Legislation Division, Office of Legislative Liaison, Department of the Air Force, transmitting, pursuant to law, notice of a cost comparison on the C4 Computer Systems Support functions at Offutt Air Force Base, Nebraska; to the Committee on Armed Services.

EC–849. A communication from the Director of the Office of Personnel Management, transmitting, pursuant to law, the Office's report under the Inspector General Act for