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House of Representatives

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

Senate

MONDAY, JANUARY 25, 1999

The Senate met at 1:04 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES

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

PRAYER

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

Dear God, we are moved by Your accessibility to us and our accountability to You. We hear Your promise sounding in our souls, ''Be not afraid, I am with you.'' We place our trust in Your problem-solving power, Your conflict-resolving presence, and Your anxiety-dissolving peace. So we report in to You for duty. What You desire, You inspire. What You guide, You provide.

This is Your Nation; we are here to serve You. Just as Daniel Webster said that the greatest conviction of his life was that he was accountable to You, we press on with a heightened awareness that You are the unseen Lord of this Chamber, the silent Listener to every word that is spoken, and the Judge of our deliberations and decisions.

Bless the Senators with the assurance that Your work, done with total trust in You and respect for each other, will not lack Your resources. Surpass any impasse with divinely inspired solutions. You are our Lord and Savior. Amen.

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

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

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

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial are approved to date.

Pursuant to the provisions of Senate Resolution 16, there are 6 hours 33 minutes remaining during which Senators may submit questions in writing directed to either the managers, on the part of the House of Representatives, or the counsel for the President.

The majority leader is recognized.

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

ORDER OF PROCEDURE

Mr. LOTT. As is obvious by the absence of the managers and counsel, and a number of the Senators, the two parties are still meeting in conference at this time. I believe we are close to reaching an agreement which would outline today's impeachment proceedings. It will probably be an hour or so before we can complete that because we need to explain it in detail to our respective conference, and also make sure that we reduce it to writing so we understand exactly what we are agreeing to.

I will in a moment ask that the Senate stand in recess until 2 p.m. I apologize for any inconvenience to Senators and the Chief Justice. But I think that what we are discussing in the long run would save some time and lead us to a fair procedure through the balance of the day and how we begin tomorrow.

RECESS

Therefore, I now ask unanimous consent that the Senate stand in recess until 2 p.m.

Mr. GREGG. Mr. Chief Justice, reserving the right to object——

The CHIEF JUSTICE. The Senator from New Hampshire.

Mr. GREGG. Mr. Chief Justice, I have a parliamentary inquiry that I would like to share.

The CHIEF JUSTICE. The Parliamentarian says it takes unanimous consent.

Mr. GREGG. I ask unanimous consent to——

Mr. LEAHY. Reserving the right to object, I believe that if it is going to be made, Mr. Chief Justice, if it requires unanimous consent, that it would be wise if it can be done at a time when both leaders are on the floor.

Mr. GREGG. I withdraw the unanimous consent.

There being no objection, at 1:08 p.m., the Senate recessed until 2:06 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, it is my understanding that the question and answer period is now completed. In a moment I will propound a unanimous consent agreement that will outline the next steps in this process.

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

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UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. In the meantime, I would ask unanimous consent that Senators be allowed to submit statements and introduce legislation at the desk today. I further ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 1 p.m. on Tuesday to resume the articles of impeachment.

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

Ms. MIKULSKI. Reserving the right to object, I note that the Democratic leader is not in the Chamber.

May I inquire, has this been cleared?

Mr. LOTT. I just want to observe, Mr. Chief Justice, that there are still some discussions underway. You will note that Senator DASCHLE is not here, and unless there is objection to what I just did, I am prepared to note the absence of a quorum so that we can have time for Senators to return to the Chamber.

Ms. MIKULSKI. Point of clarification for the majority leader. Did the Senator say that we would come in tomorrow at 1 p.m.?

Mr. LOTT. I did. If I might respond, Mr. Chief Justice, there had been some discussion about coming in earlier, but because of a number of conflicts, I understand, from the House managers and concerns that we would need that time to continue to have discussions, we thought we would go ahead and come in at 1. But let me add that if during the process of the day there is a decision that we need to change that to either earlier or later, we could revise that request. This is just to move the process forward, as we have announced each day we would come in at 1 except on Saturday. But if there is a need to change the time, we will certainly be prepared to consider that request.

Ms. MIKULSKI. Mr. Chief Justice, I thank the majority leader.

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LOTT. Mr. Chief Justice, I had earlier asked a couple of unanimous consent requests, but the Democratic leader was not on the floor, and it was not officially objected to or officially ruled as not having been objected to. So I am going to assume that is all null and void, and we are going to start over again.

The CHIEF JUSTICE. The requests are withdrawn.

Mr. LOTT. Now, to repeat what we had earlier discussed and to make sure Members understand it, it is our understanding and our agreement that the question and answer period is now completed.

ORDER FOR SUBMISSION OF STATEMENTS AND INTRODUCTION OF LEGISLATION

Mr. LOTT. I ask unanimous consent that Senators be allowed to submit statements and introduce legislation at the desk today.

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

ORDER OF PROCEDURE

Mr. LOTT. With regard to the time that will be involved today and the time that we will come in on Tuesday, we will have further discussions on that, and we will have a consent request on that later in the day or at the close of business.

Now I have a unanimous consent request that will allow us to have a clear understanding and an orderly procedure for the balance of the day. I have discussed this with my counterpart on the other side of the aisle, both conferences have had a chance to talk about it, and I think it is a fair way to proceed, where we would have a chance to discuss the issues that are before us and get us to a conclusion of this part of the impeachment proceedings in a logical way.

UNANIMOUS-CONSENT REQUEST

Mr. LOTT. First, Mr. Chief Justice, I ask unanimous consent that following the conclusion of the arguments by the managers and the counsel today on the motion to dismiss—and I note that the next order of business is 2 hours equally divided, 1 hour on each side, on a motion to dismiss when and if it is filed by any Senator—and after that, it be in order for Senator HARKIN to make a motion to open all debate pursuant to his motion timely filed and that the Senate proceed immediately to the vote pursuant to the impeachment rules.

I further ask that following that vote, if defeated, it be in order to move to close the session for deliberations on the motion to dismiss, as provided under the impeachment rules, and the Senate proceed to an immediate vote.

I further ask that if the Senate votes to proceed to closed session, that those deliberations must conclude by the close of business today, notwithstanding the 10-minute rule allocated under the impeachment rule.

The CHIEF JUSTICE. Is there objection?

Mr. HARKIN. I object.

Mr. FEINGOLD addressed the Chair.

The CHIEF JUSTICE. The Senator from Iowa.

Mr. HARKIN. Reserving the right to object.

Mr. LOTT. Mr. Chief Justice, does he reserve the right to object or did he object?

The CHIEF JUSTICE. The Parliamentarian tells me the Senator does not have the right to reserve the right to object.

Mr. FEINGOLD addressed the Chair.

Mr. HARKIN. I just have a modification that I would like to discuss with the leader, a brief modification of that, that would not engender an objection.

Mr. LOTT. Mr. Chief Justice, so we can proceed with this in an appropriate manner, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I renew my request as previously outlined, with one change; that is, that it say in the first sentence ''unanimous consent that following the conclusion of the arguments by the managers and the counsel today on the motion to dismiss, that it be in order for Senator HARKIN to make a motion to open that debate.'' Instead of ''all,'' the word is ''that'' debate.

With that and no other changes, I renew that request.

Mr. HARKIN. Mr. Chief Justice, I reserve the right to object.

OK, I don't have any——

Mr. LOTT. The reservation is withdrawn, I believe.

Mr. FEINGOLD. Mr. Chief Justice, I object.

The CHIEF JUSTICE. Objection is heard.

Mr. FEINGOLD addressed the Chair.

Mr. LOTT. Mr. Chief Justice, I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LOTT. Mr. Chief Justice, welcome to the operations of the U.S. Senate.

I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LOTT. Mr. Chief Justice, was the unanimous consent agreement agreed to?

The CHIEF JUSTICE. Not yet.

Mr. LOTT. I renew my request.

Mr. FEINGOLD addressed the Chair.

The CHIEF JUSTICE. Objection is heard.

Mr. FEINGOLD. Mr. Chief Justice, I and Senator COLLINS, the junior Senator from Maine, ask unanimous consent that when the Senate consider the anticipated motion to dismiss, that it shall vote on two separate questions: First, whether to dismiss article I of the articles of impeachment; and, second, whether to dismiss article II.

Mr. GRAMM. I object.

The CHIEF JUSTICE. There is a pending request for unanimous consent by the majority leader, who has not surrendered the floor.

Mr. LOTT. Under his reservation, if the Senator would yield to me, I believe if we can get this agreed to, he can make his request and then it can be ruled on.

Mr. Chief Justice, I yield the floor if the Senator would like to proceed in that fashion.

I renew my request, again, for the unanimous consent as outlined earlier.

The CHIEF JUSTICE. Is there objection? In the absence of an objection, it is so ordered.

Mr. FEINGOLD. Mr. Chief Justice, I renew my request, along with the junior Senator from Maine—the unanimous consent request that when the Senate proceeds to vote on the anticipated motion to dismiss, that the question be divided into a separate vote on article I of the articles of impeachment, and then a separate vote on article II of the articles of impeachment.

Mr. GRAMM. I object.

The CHIEF JUSTICE. Objection is heard.

Mr. LOTT. Mr. Chief Justice, now, if I could, I will outline the result of our efforts there. I thank Senator DASCHLE and my colleagues on his side of the aisle and this side of the aisle for trying to come up with a process that is fair and that would give us an opportunity today to debate this important issue. It is never easy to get 100 Senators to agree on a method to proceed, so I think this was a good accomplishment. I thank one and all.

I understand that now Senator BYRD will offer the motion to dismiss. For the information of all Members, once that motion is offered, there will then be 2 hours for debate. The House managers will be recognized to open the debate, and following that will be the White House arguments. Then the House managers will be recognized again for closing remarks. At that point, the consent agreement would apply.

I anticipate taking our first break at the conclusion of the first 2 hours of arguments by the managers and White House counsel, unless there is an urgent need to do so earlier. Then we will go forward with this agreement, which will require a vote on the Harkin motion to open the debate; the vote on the amendment to close debate on the motion to dismiss; and then the debate which would go on, the 10-minute rule notwithstanding, until the close of business today.

I yield the floor.

Mr. BYRD addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from West Virginia.

MOTION TO DISMISS

Mr. BYRD. Mr. Chief Justice, I send a motion in writing to the desk.

The CHIEF JUSTICE. The clerk will read the motion.

The legislative clerk read as follows:

The Senator from West Virginia, Mr. BYRD, moves that the impeachment proceedings against William Jefferson Clinton, President of the United States, be, and the same are, duly dismissed.

The CHIEF JUSTICE. Pursuant to Rule XXI of the Senate Rules on Impeachment, the managers on the part of the House of Representatives and the counsel for the President each have up to 1 hour to argue the motion.

The Chair recognizes the House managers.

Mr. Manager CANADY. Mr. Chief Justice, Members of the Senate, on behalf of the House of Representatives, I rise to speak in opposition to the motion to dismiss. During the hour allotted to the managers, I will offer a few introductory comments concerning why adoption of the motion would be inconsistent with constitutional standards and harmful to the institutions of our Government. Mr. HUTCHINSON, Mr. GRAHAM, and Mr. GEKAS will present arguments concerning the facts and the law, and then Mr. HYDE will close.

At the outset, I must urge you to consider the fact that this motion to dismiss is without precedent. The Senate has never—not once in the more than 200-year history of our Constitution—dismissed a proceeding against an official who remained in office after impeachment by the House of Representatives. I humbly urge you not to depart from the Senate's well-established practice of fully considering cases of impeachment and rendering a judgment of either conviction or acquittal.

In the midst of the great differences between the President's counsel and the House managers, there actually is at least a little common ground. Both sides agree that the impeachment and removal power is designed to protect the well-being of the institutions of our Government. But there is a critical difference that divides us, as is obvious from the argument that has gone before.

The managers have argued that this power—the power of impeachment and removal—is a positive power granted by the Constitution to maintain the integrity of Government, a power to preserve, protect, and strengthen our constitutional system against the misconduct of officials that would subvert, undermine, or weaken the institutions of our Government.

The President's lawyers, on the other hand, advance a much narrower view of the role of the impeachment power in protecting our institutions. Their case rests on the argument that it is a power to be used only in response to conduct threatening devastating harm to the system of Government—at least when it is used against a President.

But I submit to you that Alexander Hamilton did not contemplate that the impeachment process would be so restricted when he spoke of it as a ''method of national inquest into the conduct of public men.'' And James Iredell did not have such a narrow view in mind when he spoke of the accountability through impeachment of anyone who ''willfully abuses his trust.'' Iredell did not have such a limited view when he spoke of the impeachment of a President who, as he said, ''acted from some corrupt motive or other.''

Under the standards urged by the President's lawyers, the misdeeds of Richard Nixon would not be the threshold for impeachment and removal. What he did was corrupt. The legal rights of citizens were treated with contempt. President Nixon showed an egregious lack of respect for the law. But all these misdeeds did not threaten the sort of ruinous harm to the system of Government that the President's lawyers argue would be required to justify conviction and removal. After all, the core charges against President Nixon related to the coverup of a third-rate burglary.

Members of the Senate, as you consider the motion to dismiss, I ask you to pause and reflect on the consequences of the standard advocated by the President's lawyers. Consider the consequences for the system of justice of allowing the President's dangerous example of lawlessness to stand. Consider the consequences for the Presidency itself.

I respectfully submit to you that the standard advocated by President Clinton's lawyers will debase and degrade the institution of the Presidency. I know that is not the intention of the President's lawyers, but it is the necessary consequence of their position.

Only 42 men have held the office of President of the United States. Some of them have been ordinary men of limited talent. A handful of our Presidents have been great men. Most have been capable men who brought special skills to the office. No matter what our individual judgments may be concerning President Clinton, it is clear that he is one of the most intellectually gifted and politically skilled men to hold the office of President.

He was raised to this great eminence—the most powerful office in the greatest Nation in the history of the world—an unparalleled opportunity, honor and privilege. And in this position of eminence and honor, and in this position of trust, what did he do? He made a series of choices that has brought us to this day. He made the choice to violate the law—and he made that choice repeatedly. He knew what he was doing. He reflected on it. Perhaps he struggled with his conscience. But when the time came to decide, he deliberately and willfully chose to violate the laws of this land. He chose to turn his back on the very law he was sworn to uphold. He chose to turn his back on his solemn oath of office. He chose to turn his back on his constitutional duty.

As you deliberate on this motion, I ask you to consider what William Jefferson Clinton has done to the integrity of the great office he holds as a trust. I ask you to consider the harm he has caused, the indignity he has brought to the institution of the Presidency.

Some have asked of us, ''Where is the compassion and where is the spirit of forgiveness?'' Let me say that I, for one, believe in forgiveness. Without forgiveness, what hope would there be for any of us? But forgiveness requires repentance; it requires contrition. And so I must ask, where is the repentance? Where is the contrition?

It is true that the President has expressed regret for his personal misconduct. But he has never—he has never—accepted responsibility for breaking the law. He has never taken

that essential step, as the argument advanced so vigorously by his counsel makes clear. He has refused to accept responsibility for breaking the law. He has stubbornly resisted any effort to be held accountable for his violations of the law, for his violations of his constitutional oath, and his violation of his duty as President. To this day, he remains adamantly unrepentant. And, of course, under our system of justice, even sincere repentance, which is so lacking here, does not eliminate all accountability.

In the discussion thus far, the debate has brought the concept of proportionality to the fore from time to time. You have been urged to reject your own precedents—the clear precedents establishing that crimes such as lying under oath justify conviction and removal. The principle of proportionality, it has been urged, requires that the rule you have applied to Federal judges not be applied to the President of the United States.

I will be the first to concede that removing a President of the United States is, without doubt, a more momentous decision than removing one of the hundreds of Federal judges who hold office in this country. When the Chief Executive is removed, the gravity of the matter undeniably reaches a higher level. But it is also true—and it must not be forgotten—that when the President engages in a calculated and sustained course of conduct involving obstruction of justice and perjury, the gravity of the consequences for the Nation also reaches a far higher level. Such lawless conduct by the President does immeasurably more to subvert public respect for the law than does the misconduct of any Federal judge or any other Federal official.

As has been pointed out more than once, the Constitution contains a single standard for impeachment and removal of all civil officers; there is not one standard for the President and another standard for everyone else. There is nothing in the Constitution that requires you—or allows you—to set a lower standard of integrity for the President than the standard you have set for other officials who have been convicted and removed by your solemn action.

Although they can point to nothing in the Constitution, the President's lawyers assert that the President is simply different because he is elected. So let me say this. The Senate itself has established a standard of integrity for its own elected Members that President Clinton could not meet. As recently as 1995, an elected Senator resigned under imminent threat of expulsion for offenses that included acts similar to the acts of obstruction of justice committed by President Clinton.

Senator Robert Packwood was elected, yet he was on his way to certain expulsion. Listen to what the Senate Select Committee on Ethics had to say about Senator Packwood's conduct. He was guilty, the committee found, of

> * * * withholding, altering and destroying relevant evidence . . . conduct which is expressly prohibited by 18 United States Code, section 1505. . . . Senator Packwood's illegal acts constitute a violation of his duty of trust to the Senate and an abuse of his position as a United States Senator, reflecting discredit upon the United States Senate.

The statute referred to by the committee in the Packwood case is closely analogous to the obstruction of justice statute the President has violated. Senator Packwood unlawfully sought to impede the discovery of evidence. President Clinton has done the same thing. For his violation of the law, Senator Packwood, an elected Senator, was judged worthy of expulsion from the Senate.

But the President's lawyers argue the President should be held to a lower standard of integrity than the standard you have set for yourselves as Members of the Senate. According to them, the Constitution establishes a lower standard of integrity for the President than the standard for Senators, a lower standard than the standard for Federal judges, and a lower standard than the standard for members of the Armed Forces of the United States.

Ladies and gentlemen of the Senate, I submit to you that the President's lawyers, honorable as they are, are simply wrong. They advocate an arbitrary standard that would insulate the President from the proper accountability for his misconduct under our Constitution. Our Constitution does not establish a lower standard of integrity for the President of the United States.

The Senate, I respectfully submit to you, should follow the well established precedents. The Senate should reject the motion to dismiss.

The CHIEF JUSTICE. The Chair recognizes Mr. HUTCHINSON.

Mr. Manager HUTCHINSON. Mr. Chief Justice, how much time has expired?

The CHIEF JUSTICE. Twelve minutes.

Mr. Manager HUTCHINSON. Mr. Chief Justice, ladies and gentlemen of the Senate, in my former life, when I tried cases, the defense counsel would routinely offer a motion to dismiss and my clients would always ask me how they could argue to dismiss a case before we had a chance to put on our evidence. I would always explain that there was more than sufficient evidence to get this case to a jury and they didn't have to worry.

We all know that granting a motion to dismiss is a weapon that is rarely used in court. It is a severe remedy that cuts off an individual's right to seek justice in court. For that reason, a motion to dismiss must fail if there is any substantial evidence to support the case. In addition, as you evaluate evidence under a motion to dismiss, the facts are to be considered in a way that is most favorable to the respondent—in this case the House managers.

For example, if there is a dispute between the testimony of Ms. Lewinsky and the President in consideration of this, I would urge you to—and believe that under proper rules you should—consider that in the favor of the theory of the articles of impeachment.

It has been explained to me many times that standard courtroom rules do not apply in the U.S. Senate. But, still, granting a motion to dismiss by the Senate has the same effect—to cut short the trial and avoid the development of the facts—as it would in any State court case. In this case of impeachment, the House of Representatives found that there was substantial evidence to support these articles. And the Senate should not summarily dismiss the charges.

I might add that, despite Mr. Ruff's references, the House standard for the articles of impeachment was not simply probable cause. My colleagues on the Judiciary Committee looked at a much higher standard of clear and convincing evidence.

But, coming back to the Senate, to dismiss the case would be unprecedented from a historical standpoint, because it has never been done before; it would be damaging to the Constitution, because the Senate would fail to try the case; it would be harmful to the body politic, because there is no resolution of the issues of the case; but, most importantly, it would show willful blindness to the evidentiary record that has thus far been presented.

An appropriate question, you might ask, is: How should you decide whether this motion should be granted? I would contend that you should decide this issue based upon the facts that you have before you in the record and not on any other criteria. A motion to dismiss should not be granted because you do not think there are presently enough votes for conviction.

Let me assure you that I want this over. As Bruce Lindsey, sitting over here, will probably attest, this is bad for me politically. I am from Arkansas, the State Bill Clinton dominated politically for years, and certainly its most influential politician. But we do have our responsibilities, and I happen to believe that we should follow the process which is dictated by the Constitution and the facts.

I know I am making legal arguments to this Court of Impeachment, in which I understand you make your own rules, and I respect that. But, as opposing counsel pointed out on many occasions, there are reasons for these rules of procedure and they have relevance to your deliberations today. Again, your decision should be based upon the facts, and so let's discuss the facts.

Does the record support the charges of obstruction of justice and perjury? To look at this from a different angle, because we talked about it at length, let's examine how the President responded to critical developments in the Federal civil rights case in which he was a defendant.

First, how did he handle those people he knew to be witnesses? The President did not want them to testify, and, if

they did testify, he did not want them to testify truthfully. Two of those witnesses were Monica Lewinsky and Betty Currie.

Clearly, he did not want them to testify in the Federal civil rights case and, likewise, his lawyers today do not want those witnesses to testify before this body.

Now, let's look at what happened when the President learned that Monica Lewinsky was on the witness list. Very quickly, it was December 5 that the witness list came in. He learned about it probably the next day, December 6. Monica Lewinsky visited with him and said Vernon Jordan was not doing very much on the job front. The President's response is, okay, I will talk to him. I will get on it.

Now, Ms. Lewinsky assumed that was a brushoff, but he was serious about it because he later learned that day that at the latest—he learned later that day that Monica was on the witness list when he met with the lawyers.

After that, the next day, he meets with Vernon Jordan at the White House. And even though Mr. Jordan says he thinks it was unlikely that the job situation was discussed, Mr. Jordan makes it clear that he ultimately went to work to get Ms. Lewinsky a job at the direction of the President. According to Mr. Jordan's grand jury testimony on June 9, he testified, ''The President asked me to get Monica Lewinsky a job.'' That is undisputed. He had testified to the same grand jury, ''He,'' referring to the President, ''is the source of it coming to my attention in the first place.''

And so as the result of the President's request, Vernon Jordan got to work, met with Ms. Lewinsky, assisted her in securing key job interviews and kept the President informed. The job search became critical when she was put on the witness list on December 5, and the December 11 order of Judge Wright served to reinforce the urgency of the matter.

Now, all of this was happening when the President knew she was a witness in the civil rights case, but the individuals affected by the President's unlawful scheme of obstruction may not have been privy to his plans. He kept Ms. Lewinsky in the dark about her being a witness until he had the job search well underway. And Mr. Jordan indicates that he was simply trying to get Ms. Lewinsky a job at the direction of the President without any clue that she was a witness until she got the subpoena on December 19.

Now, the President kept his information about Ms. Lewinsky being on the list away from her until he called her at 2 a.m. in the morning on December 17 to let her know the news.

So how does the President handle witnesses in the judicial system that are a danger to him? He wanted to make sure that they were taken care of and cooperative in concealing the truth from the courts.

The next critical step for the President to assure that Ms. Lewinsky sticks with her predesigned cover stories was that she would not deviate from that even though they were now in the court system. Vernon Jordan testified in the grand jury that ''it didn't take an Einstein to know when she was under subpoena the circumstances changed,'' and, of course, that is clear.

When Ms. Lewinsky was placed on the witness list, the truth became a threat to the President. He tried to avoid the truth at all costs and was willing to obstruct the legal processes of the judicial system in order to protect himself. The obstruction started with the job favors and then continued through the December 17 conversation with the President when the President encouraged her to keep using the cover stories even though she would be under oath as a witness, encouraged her to sign a false affidavit, and then on December 28, according to the testimony of Ms. Lewinsky, the President sent Betty Currie to retrieve items of evidence for the purpose of concealment and with the obvious effect of obstructing the truth.

Despite the concerted effort of the President in keeping Monica Lewinsky from being a truthful witness, the President was not yet home free. He still had to go through the hurdle of his own deposition on January 17. And even though he knew there were going to be questions about Monica Lewinsky, he was hopeful that the false affidavit, the representations of his attorney, Robert Bennett, and the President's own affirmation of the false affidavit would be sufficient to prevent questioning about Ms. Lewinsky. But it didn't work. Despite this effort, the Federal district court judge ordered the President to respond to the questions. At that point he had a choice. He could tell the truth under oath, or he could provide false statements. He chose the latter, and that decision forced a continued pattern of obstruction.

During the deposition, he asserted the name of Betty Currie at least six times, and by doing so he dared the plaintiff's lawyers to question Ms. Currie as a witness. They knew it, and he knew it. When the Jones lawyers returned from the deposition, they immediately set about issuing a subpoena for Betty Currie. And what did the President do? He immediately set about attempting to assure that Betty Currie would not state the truth when called as a witness.

They defended that she wasn't a witness, she wasn't a prospective witness, but yet we produced the subpoena that she was a prospective witness, and they wanted her to testify and everyone knew it. The President called her at home, arranged for her to come in the next day, and put her through the questioning: He was never alone with Monica, trying to establish that; that Monica was the aggressor and that the President did nothing wrong. That is what he was trying to accomplish through his questioning of Betty Currie.

Can you imagine how uncomfortable Betty Currie was, must have felt on that occasion, being called in to see her boss, then having the President recreate a fictional account in order to prevent the truth from coming out in a court of law. But once was not enough, and 2 days later Ms. Betty Currie was brought in for the same series of questions. The message was clear. You have got to cover for the President even though the purpose was unlawful.

And so we see a pattern developing. When it comes to a witness, whether it is Monica Lewinsky or Betty Currie, the choice is made. The President encouraged the witness to lie, and the President chose to impede the administration of justice rather than assuring that the laws be faithfully executed.

But the President had one final choice, and that was in his grand jury testimony in August. At this point, the embarrassment of the relationship was public, and that could no longer serve as an excuse not to tell the truth. But, once again, the President chose not to abide by his oath but to evade the truth and provide false statements; not to protect his family, not to preserve the dignity of the Presidency, but to prevent the grand jury from knowing the truth in their investigation and to continue the coverup began during the truth-seeking process in the civil rights case.

I do not have time to cover all the facts, but they are more than substantial, they are compelling, and they are convicting.

Let me leave you with some questions. First of all, who asked Vernon Jordan to get Monica Lewinsky a job? The answer? It was the President.

Secondly, who suggested that Monica Lewinsky sign an affidavit to avoid testifying in the civil rights case, which by its nature had to be false? The answer? It was the President. Who obstructed the truth when Monica Lewinsky was subpoenaed as a witness? It was the President. Who impeded the gathering of evidence when the Federal court subpoena called for the production of gifts? The answer? It was the President. Who tampered with the testimony of Betty Currie when it was clear she was a witness in the case? It was the President. Who took an oath and failed to tell the truth before the courts of our land? It was the President.

I state these facts with sadness, but these facts are true. The motion should be defeated.

I thank the Senate. On behalf of the managers, Mr. Chief Justice, I reserve the remainder of the time.

The CHIEF JUSTICE. Very well. The Chair recognizes counsel for the President.

Ms. Counsel SELIGMAN. Mr. Chief Justice, ladies and gentlemen of the Senate, distinguished House managers, good afternoon. My name is Nicole Seligman. I am a member of the law firm

of Williams & Connolly here in Washington, DC. I have been privileged to represent President Clinton as personal counsel since 1994.

I am honored to stand before you today to argue in support of the motion to dismiss the impeachment proceedings that has been offered by the senior Senator from West Virginia, Senator BYRD.

The Constitution reposes in this body and nowhere else the sole authority to try impeachments. It has placed in your hands alone the decision whether to dismiss now or to go forward. There is no judicial review. There is no judicial guidance other than that which each of you, in your wisdom, may choose to apply by analogy from judicial experience. There are no particular rules of civil or criminal procedure that you must follow. The Constitution has freed you from that. It has wisely placed in your hands alone the ability to make a sound judgment in the manner you think best for the reasons you think best, based on your wisdom and experience, as to what is best for this Nation at this moment in the proceedings.

We submit to you that the moment has arrived where the best interests of the Nation, the wise prescription of the framers, and the failure of the managers' proof, all point to dismissal. You have listened. You have heard. The case cannot be made. It is time to end it.

Without presuming to infringe on the constitutional authority that is yours alone, and without repeating at undue length the arguments that you heard over the past few weeks, I do want to set out briefly the reasons that we believe to be some of the grounds on which an early and fair disposition of this difficult matter might rest. There are at least four such grounds. Each one stands by itself as sufficient reason to vote for the motion of Senator BYRD.

The first ground is the core constitutional issue before you, the failure of the articles to charge impeachable offenses. They do not do so. They do not allege conduct that, if proven, violated the public trust in the manner the framers intended when they wrote the words ''treason, bribery, or other high crimes and misdemeanors.'' For absent an element of immediate danger to the state, a danger of such magnitude that it cannot await resolution by the electorate in the normal cycle, the framers intended restraint. There is no such danger to the state here. No one has made that claim, or could, or would. A vote for the motion is a vote for constitutional stability.

Impeachment was never meant to be just another weapon in the arsenal of partisanship. By definition, a partisan split like that which accompanied these articles from the House of Representatives creates doubt that makes plain a constitutional error of the course that we are on. As Senator William Pitt Fessenden wrote 130 years ago on a great and decisive historical occasion, the impeachment trial of Andrew Johnson:

> Conviction upon impeachment should be free from the taint of party and leave no ground for suspicion upon the motives of those who inflict the penalty.

His words echoed those of Alexander Hamilton who, in the much quoted Federalist 65, had warned, in his words, of ''the greatest danger that the decision''—that is the decision by the Senate—''will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt.''

Now, Mr. Manager GRAHAM has candidly acknowledged that reasonable people could disagree about the propriety of removal. He said they absolutely could. We suggest to you that there can be no removal when even the prosecutor agrees that such reasonable doubts exist. If reasonable people can disagree, we suggest to you that reasonable Senators should dismiss. The constitutional standard for impeachment is not met here.

The second and third grounds we offer to you relate to the deeply flawed drafting of the articles by the House of Representatives. They have left the House managers free to fill what Mr. Ruff described as ''an empty vessel,'' to define for the House of Representatives what it really had in mind when it impeached the President. But that is not a role that the Constitution allows to be delegated to the House managers. It is not a role that the Constitution allows them to fill. It is a role that is explicitly and uniquely reserved to the full House of Representatives which, under our Constitution, has the sole power to impeach.

The articles also are unconstitutionally defective for yet another reason, because each article combines a menu of charges, and the managers invite the Members of this body to convict on one or more of the charges they list. The result is the deeply troubling prospect that the President might be convicted and removed from office without two-thirds of the Senate agreeing on what the President actually did. Such a result would be in conflict with the requirement that the President cannot be convicted unless two-thirds of this body concurs. The requirement of a two-thirds supermajority is at the core of the constitutional protection afforded the President and the American people. The Founding Fathers were wise to guarantee that protection, and it has protected the Presidency for more than two centuries. The House must not be allowed to erode that protection today. The articles, as drafted, are unconstitutional.

The fourth ground for the motion is based on the facts. Mr. Manager MCCOLLUM has twice asserted that this body must first determine whether the President committed crimes, and then move on to the question of removal from office. Recognizing that each Senator is free to choose the standard of proof that his or her conscience dictates, we submit that if the question is, as the managers would have it, whether the President has committed a crime, that standard should be proof beyond a reasonable doubt. And it is clear that such a standard, that is, proof to the level of certainty necessary to make the most significant decisions you face in life, cannot possibly be met here. The presentations last week demonstrated that the record is full of exculpatory facts and deeply ambiguous circumstantial evidence that will make it impossible for the managers to meet this standard or, in fact, any standard that you might in good conscience choose to apply here.

Now, the managers have with great ingenuity spun out theories of wrongdoing that they have advanced repeatedly, persistently, passionately. But mere repetition, no matter how dogged, cannot create a reality where there is none. The factual record is before you. We submit that it does not approach the kind of case that you would need to justify the conviction and removal of the President from office. And calling witnesses is not the answer. All the evidence you need to make your decision is before you, documented in thousands of pages of testimony given under oath or to the FBI agents and Mr. Starr's prosecutors under penalty of law.

These, then, are the four grounds for the motion to dismiss. I know many of these arguments are not new to you, and I will try to be brief as I review them.

The question before this body requires solemnity on all of our parts. It inevitably creates no small measure of apprehension. In our Nation's political history, in our legal history, it is fair to say that few decisions of such overwhelming magnitude have been confronted by this body. There could be no matter more clearly placed in your hands alone by the Constitution, and on its resolution rests more than the political fate of William Clinton; there rests the course of our democracy in the coming years of the new century and for untold years thereafter.

Constitutional history confirms that the decision before you was meant to be significant and difficult to make. It demonstrates that only the most extraordinary of charges warrants the most extraordinary of outcomes. Any question, any doubt, must be resolved in favor of the electoral will, for it is the will of the people, the people who have all sovereignty in our law, that in the end is the foundation of our democracy. And we submit that the doubt here is pervasive: Doubt about whether the charged conduct, efforts to conceal a private personal embarrassment, could reasonably be deemed a violation against the state at all, let alone a violation so severe as to compel removal; doubt about the constitutionality of the articles as drafted; doubt about the sufficiency of the managers' case; and that doubt upon doubt upon doubt

makes a vote to dismiss the only fair choice.

Let me turn then to the fundamental constitutional argument.

The impeachment power was meant to remove the President of the United States from office only for the most serious abuses of official power or for misbehavior of such magnitude that the collective wisdom of the people would compel immediate discharge. One of America's leading professors of constitutional law, Professor Akhil Amar of the Yale Law School, has framed the problem poignantly and concisely, stating:

> The question to ask is whether [President Clinton's] misconduct is so serious and malignant as to justify undoing a national election [and] canceling the votes of millions.

We know the answer. It was provided by Charles Black in his classic book on impeachment when he wrote that:

> Impeachment and removal should be reserved only for offenses that so seriously threaten the order of political society as to make pestilent and dangerous the continuance in power of their perpetrator.

James Madison made much the same point two centuries earlier, stating that an impeachment provision of some kind was ''indispensable'' because a President's ''loss of capacity or corruption . . . might be fatal to the Republic.''

The statements and writings of the framers of our Constitution and centuries of scholarship and the meaning of that brief but so significant phrase, ''high crimes and misdemeanors,'' enable us to establish with solid assurance that the conduct charged against the President does not amount to an impeachable offense.

Our argument today is a simple one: Ordinary civil and criminal wrongs may be addressed through ordinary civil and criminal processes, and ordinary political wrongs may be addressed at the ballot box or by public opinion. Only the most serious public misconduct, aggravated abuse of Executive power, is meant to be addressed through exercise of the Presidential impeachment power.

The conduct here arises out of a private lawsuit. Let me talk for a moment about that lawsuit which is the backdrop for these proceedings.

The Jones case arose out of an alleged incident that predated the President's first term as President. The charges at issue here arise out of the President's conduct in that lawsuit. No charge relates to his official conduct as President. Indeed, as we know, the Supreme Court told President Clinton that he could not delay defending the Jones lawsuit until he was out of office. And when it ruled that way, the Court emphasized just this very point. It made clear that he might have been able to delay or avoid the lawsuit if it had related to his official conduct, because the law provides various immunities for such lawsuits; but precisely because it related to his private actions, it would be allowed to go forward.

In drawing that conclusion, interestingly, the Supreme Court actually looked to the wisdom of James Wilson, a framer, a Supreme Court Justice, and a constitutional commentator, and cited the distinction he drew between a President's acts performed in his ''public character,'' for which he might be impeached, according to Justice Wilson, and acts performed in his private character, to which the President is answerable, as any other citizen, in court.

We agree that there might be extreme cases where private conduct would so paralyze the President's ability to govern that the impeachment power must be exercised, where the certainty of guilt and the gravity of the charge would leave no choice. But charges arising out of the President's efforts to keep an admittedly wrongful relationship secret are, by no analysis, of that caliber.

Some have suggested that making this argument is the same as arguing that the President is above the law. That simply is not so. The often repeated statement that no man—or woman, I should add—is above the law is, of course, true. Once he leaves office, the President is as amenable to the law as any citizen, including for private conduct during his term of office. As my colleagues Mr. Ruff and Mr. Craig argued to you last week, if a grand jury should choose to consider charges against this President, his status as a former President will not prevent that consideration.

But here is the point: Impeachment is not meant to punish an individual; it is a protection for the people; in Alexander Hamilton's words, a remedy for great ''injuries done to the society itself.'' It is, as your 19th century predecessor, Senator Garrett Davis, pointed out in the Andrew Johnson proceedings, ''the extreme remedy . . . intended for the worst political disorders of the executive department.''

The House managers appear to argue that the President must be removed nonetheless, because to do otherwise places him above the law. But there is one thing that can be said with certainty about the impeachment power. Although it may have that result, it is not meant to punish the man, to set an example, or to provide a ''cleansing'' of the political process; it is meant to protect the state. If it is punishment the House managers seek, they are in the wrong place, in the wrong job, at the wrong time, and for the wrong reasons.

A question has arisen whether, as a general matter, any violation of law demands removal because it would be a violation of the President's duty to take care that the laws be faithfully executed or a breach of the public trust. But, again, the history of the clause makes clear that the framers intentionally chose not to make all crimes or even all felonies impeachable.

I suggest we would all agree that, in the broadest possible sense, a proven violation of criminal law is a violation of a public trust. But the framers consciously elected not to make impeachment the remedy for ''all crimes and misdemeanors.'' When the framers wished to address all crimes, they knew how to do it, and they did it. In article IV, section 2, the Constitution states that, ''A Person charged in any State with Treason, Felony, or other Crime'' is susceptible to extradition—''or other crime.'' The framers knew how to say it, but they didn't say it about impeachment, because that is not what they meant.

Some also have argued that the experience of judicial impeachments in this body undermines this argument. They claim that judges have been removed for purely private conduct and that a President should be treated no differently. This argument completely misses the mark as well.

By constitutional design, judges are very different from a President. Presidents are elected for a fixed term, while Federal judges serve with life tenure. Presidents are elected by the people in one of the great periodic exercises of national will, and their tenure is blessed as the choice of the people.

Judges, on the other hand, are appointed and confirmed by the representatives of the people, but their selection does not represent a direct expression of the will of the people. Judges' tenure is conditioned on good behavior, while that of a President is not. And there is an obvious reason for this distinction. Life tenure, which was designed to assure judicial independence, plainly becomes a problem in the event of a judge who is not fit to serve. A President may be voted out by the people, a judge may not; hence the good behavior requirement and the duty upon the Congress to enforce it in those exceptional cases where it must be enforced.

It is possible to debate forever whether the good behavior clause represents an independent basis for impeachment or whether, in the case of judges, it is a factor to be weighed when this body exercises its sound judgment to decide what constitutes a high crime or misdemeanor. But there is no need to resolve that dispute here. Either way, it is clear, as the Watergate impeachment inquiry report established, that the term ''high crimes and misdemeanors'' is given content by the context of the charge and the office at issue. Because of issues of legitimacy, accountability, and tenure, the framers decided that Federal judges needed the additional check of the good behavior clause—language they left out of the articles creating Congress and the Presidency.

And the Presidency is, of course, different. Alexander Hamilton said, in Federalist 79, that a judge could be impeached for malconduct. But in the words of the Watergate Impeachment Inquiry Report—a report I remind you

that Mr. Manager CANADY has commended to your consideration—Presidential impeachment is distinctive. The report stated—and I quote, because it is an important quote—''Because impeachment of a President is a grave step for the nation, it is to be predicated only upon conduct seriously incompatible with either the constitutional form and principles of our government or the proper performance of the constitutional duties of the presidential office. . . . The facts must be considered as a whole in the context of the office,'' the report concludes. The office matters. For judges, the good behavior standard comes in one way or the other. For the President, the standard is different.

As I mentioned, Mr. Manager GRAHAM candidly acknowledged last Saturday that reasonable people could disagree as to whether this President should be removed from office, even if they believe he acted as charged—reasonable people could disagree. In this connection, consider, if you will, the words of Senator William Pitt Fessenden, written 130 years ago. Senator Fessenden was one of the seven brave Republicans who crossed party lines to vote against the conviction of President Johnson in his 1868 impeachment trial. He wrote—and I quote—''the offense for which a Chief Magistrate is removed from office . . . should be of such a character as to commend itself at once to the minds of all right thinking men as, beyond all question, an adequate cause.'' Think about that phrase—''beyond all question.'' Where there is room for reasonable disagreement, there is no place for conviction.

If many in this Chamber and in this Nation believe that these charges do not meet the bar of high crimes and misdemeanors, then the question must be asked, Why prolong this process?

I would like to turn briefly now to two grounds for dismissal based on the manner in which the House drafted these articles. The first is that each of the articles contain several quite different charges. The House compounded its charges. It is tempting to ask how, in a matter of such importance, we can urge what might appear to be a procedural, highly technical argument like this one.

There are several answers to that. The first is that it is neither ''procedural'' nor ''highly technical.'' It goes to the very heart of our constitutional protections and raises concerns about fairness and the appearance of fairness in this proceeding as so many Senators have so eloquently noted in the past when the issue has arisen.

As Senator KOHL stated in the Judge Nixon impeachment matter, in which a similar omnibus article was defeated—and I quote:

> The House is telling us it's OK to convict Judge Nixon on Article III even if we have different visions of what he did wrong. But that's not fair to Judge Nixon, to the Senate, or to the American people. Let's say we do convict on Article III. The American people—to say nothing of history—would never know exactly which of Judge Nixon's statements we regarded as untrue. They'd have to guess. What's more, this ambiguity would prevent us from being totally accountable to the voters for our decision.

As the Senator said, that is an unacceptable outcome, one that was ''not fair to Judge Nixon, to the Senate, or to the American people.''

Judge Nixon was acquitted on this article. We suggest to you that the House is now asking this Senate to convict President Clinton on just such articles. And that is not fair either to President Clinton, to this Senate, or to the American people.

The second response is that—even if this troubling problem were procedural—fair, constitutional procedures go to the heart of the rule of law. As the Supreme Court has stated, ''The history of liberty has largely been the history of observance of procedural safeguards.'' It would, indeed, be ironic if, in the course of this proceeding in which the vindication of the rule of law has so often been invoked, this body were to ignore an important procedural flaw.

The legal basis for this argument is by now well known. Article I, section 3 of the Constitution provides that on articles of impeachment ''no Person shall be convicted without the Concurrence of two-thirds of the Members present.'' This requirement is plain. There must be, in the language of the Constitution, ''Concurrence,'' which is to say, genuine, reliably manifested agreement among those voting to convict.

Without clarity on exactly what the President would be convicted for, there can be no concurrence. These requirements of concurrence and a two-thirds vote are the twin safeguards of the framers' plain intent to assure that conviction not come easily.

And let there be no doubt, these articles present textbook examples of a prosecutorial grab bag. Look at article II, which, by its terms, charges obstruction of the Jones litigation. It presents six topics related to the Jones litigation and one related to the very separate issue of grand jury obstruction. The first six acts alleged are unrelated in time or alleged intent to the seventh. Under no conceivable theory are they part of the same scheme, and no one ever has claimed them to be. But as it is drafted, and as it must be voted on by this body, under the Senate rules, the article would allow certain Senators to convict on obstruction of the Jones case and others on grand jury obstruction. That is not concurrence in a vote on an article, as the Constitution demands it. An indictment against any American drafted like these articles could not go near the jury. It would be dismissed. And no lesser standard should apply here.

A second fatal flaw in the drafting is their complete lack of specificity, which makes it impossible to know precisely what the President is alleged to have done wrong. This defect is most troublesome in the article I perjury charges, which never simply state what the President said that was allegedly perjurious. The defect is a plain and obvious constitutional one: The House of Representatives has unconstitutionally neglected its ''sole'' power to impeach and delegated to the House managers that which cannot constitutionally be delegated—the power to decide what the House meant. The result has been what can charitably be described as a fluid approach to the identification of charges against the President. The House majority and its managers have sought to add, delete, amend, expand and contract the list as this matter has proceeded from Mr. Starr, to the committee, to the full House, to this body.

They also, mystifyingly, have insisted on couching their charges as examples. How on Earth can an accused defend against examples? Where is the notice? Where is the due process? And no sooner was this very concern raised here by Mr. Ruff than they did it again. This is quite extraordinary.

In response to Mr. Ruff's challenge, the managers put out a press release, on January 19, purporting to list allegedly perjurious statements on which you are to vote. And what did they say? They offered more examples. They said in response—and I quote—''Here are four examples of perjurious statements made to the grand jury:''

Ladies and gentlemen, almost 40 years ago, the Supreme Court made clear that this kind of charging is unacceptable. When an indictment leaves so much to the imagination of individuals, other than the constitutionally designated charging body, it must be dismissed. Again, no lesser standard should apply here.

Our fourth ground for dismissal is based on the facts. The evidence, in the tens of thousands of pages before you, establishes that the case against the President cannot be proven with any acceptable degree of certainty. The record is filled with too much that is exculpatory, too much that is ambiguous, too much from the managers that requires unfounded speculation.

A very brief look at the articles and the facts makes clear that in light of the uncontested exculpatory facts, such as the direct denials from Ms. Currie, from Mr. Jordan, and from Ms. Lewinsky of various alleged misconduct, the managers cannot possibly meet their burden of proof here. Look briefly at article I. Much of it challenges the President's assertions of his own state of mind, his understanding of the definition given to him, his understanding of the meaning of a word, his legal opinion of his Jones testimony, his mindset during statements of his lawyer, Robert Bennett. The managers offer speculation and theories about these matters, but you are not here to try speculation and theories. You are here to try facts. And the facts do not support their theories.

Other claims in article I are so insubstantial as to be frivolous and unworthy of the time and attention of this

historic body. Certain answers about the particulars of the admitted intimate relationship between the President and Ms. Lewinsky—whether their admitted inappropriate encounters were properly characterized as occurring on ''certain occasions'' is but one example—could not possibly have had any bearing on the Starr investigation. These answers were even irrelevant, immaterial, to Mr. Starr.

Remember, in the grand jury the President admitted to the relationship, admitted it was improper, admitted it occurs over time, admitted he had sought to hide it, admitted he had misled his wife, his staff, his friends, the country. But how it began, exactly when it began, how many intimate encounters there were, whether there were 11 or 17 or some other number and with what frequency, these are details irrelevant to the Starr investigation, and I must say, irrelevant to your decision whether to remove the freely elected President of the United States.

There has been much discussion about the Jones deposition here and whether it, too, is a part of article I. The point is a simple one. The House of Representatives exercised its constitutional authority, and in a bipartisan vote defeated an article of impeachment based on the answers in the Jones deposition. Those answers are not before you and the managers' sleight of hand cannot now put them back into article I. The article charges only the statements made in the grand jury about that deposition. The managers ask you to look at one response: The President's lawyerly assertion that the Jones deposition was not legally perjurious, however frustrating or misleading, and to read that as an affirmation of every answer he gave. But the grand jury testimony must be read as a whole.

What did the President convey during that testimony? Certainly not that he was standing behind every word in the Jones deposition as the whole truth. He spent 4 hours in the grand jury explaining that testimony—adding to it, clarifying it, discussing the confusing deposition questions and answers, and pointing out his efforts to be literally truthful, if not forthcoming, explaining what he had tried to do, the line he had tried to walk, however successfully or unsuccessfully. He laid it all out. He was not asked by Mr. Starr to reaffirm or adopt the earlier testimony, and he did not reaffirm or adopt it.

This brings us to the last issue in article I, the so-called touching issue. My colleague, Mr. Craig, has talked at length about the legal and practical obstacles to a case based on an oath against an oath. Whether compelled by law or practice, the rule reflects the commonsense proposition that there will always be a reasonable doubt as to the truth when the case rests merely on an oath against an oath. That is why seasoned prosecutors said in the House of Representatives that they would never bring such a case. That is why you need no more information to conclude that conviction on that basis will not be possible.

The evidence also undermines the allegations of article II. My colleagues, Ms. Mills and Mr. Kendall, made a detailed review of the allegations in each of the seven subparts of article II. They went over the evidence in great detail, and I am certainly not going to repeat that here. They pointed to the significant amount of direct evidence in the record that controverts the claims made in this article, most notably the consistent statements by Ms. Lewinsky that no one ever asked, suggested, or encouraged her to lie, and that no one ever promised her a job for her silence.

They demonstrated that with regard to the transfer of gifts, the testimony of Ms. Lewinsky and Ms. Currie has consistently been inconsistent, but that even Ms. Lewinsky has acknowledged it was she who was concerned about the gifts and who raised the issue with the President. And the fact that the President gave Ms. Lewinsky more gifts on December 28 simply cannot be reconciled with any theory of the managers' case.

Ms. Mills reviewed the evidence concerning the President's conversation with Ms. Currie on the Sunday after the Paula Jones deposition. However ill-advised that conversation might have been under the circumstances, it was not criminal. The President was motivated by his own anxieties and by a desire to find out what Ms. Currie knew in anticipation of the media storm he feared would break, as it surely did. Contrary to the suggestion of Mr. Manager HUTCHINSON, Ms. Currie had not yet been subpoenaed at the time of that conversation. Ms. Currie was not on any Jones case witness list at the time of the conversation. She testified that she felt absolutely no pressure to change her account during that conversation. She never testified that she felt uncomfortable—again, contrary to the suggestion of Mr. Manager HUTCHINSON. She was not a witness. There was no pressure. There is a completely reasonable explanation.

Let me be clear here: There is no evidence that the President ever asked Ms. Lewinsky to file a false affidavit or told her to give false testimony if she appeared as a witness. Both believed Ms. Lewinsky could file a limited but true affidavit that might—might—avoid a deposition in the Jones case. While the two had discussed cover stories to explain Ms. Lewinsky's visits, Ms. Lewinsky never testified that they discussed the cover stories in the context of the possibility of her testifying personally, as article II alleges.

Now you have heard in detail from Mr. Craig and Mr. Kendall about the fleeting moment in the Jones deposition when Mr. Bennett tried unsuccessfully to prevent the President being questioned about Ms. Lewinsky by citing her affidavit. The judge immediately overruled the objection. It did not obstruct in any way the Jones lawyers' ability to question the President.

The statement had no effect. And the tape of the President cannot disprove the President's testimony that he wasn't paying attention. He doesn't comment, concur, or even nod. With a weak case at hand, the managers have tried to turn a blank stare into a high crime.

The last subpart of article II is flawed in many respects: The article alleges obstruction of the Jones case, but the President's misleading statements to his White House aides about Ms. Lewinsky had no effect on that case at all. In any event, the effect of the President's statements on his aides was no different than on the millions of Americans who had heard and seen the President make similar denials on television.

And finally, the subpart claims obstruction of the grand jury, whereas the whole point of article II is alleged obstruction of the Jones case. As I asked before, what is it doing here?

As to Ms. Lewinsky's job search, all the managers have presented it is a theory, a hypothesis in search of factual support.

The direct evidence is clear and uncontradicted. Ms. Lewinsky, Mr. Jordan, the President, and people at the New York City companies Ms. Lewinsky contacted all testified that there was no relation of any of the job search activity to the Jones case—none. Not a single witness supports the managers' theory. As we demonstrated, their core theory that the job assistance intensified after the Court's December 11 order was based on plain and simple error. And without that support, the theory collapsed.

No doubt, the managers' response will be that that is why witnesses are needed, to help the managers make their case. But witnesses will not fill the void in the evidence:

First, because the evidence, as we have shown, is overwhelmingly uncontested. If there is no dispute, why do witnesses have to be questioned at all? House Majority Counsel Schippers himself made this point when speaking of the very same transcripts and FBI interviews that you all have before you. He stated to the Judiciary Committee: ''As it stands, all of the factual witnesses are uncontradicted and amply corroborated.''

Second, because the actual disagreements—for example, what was in the President's mind in his deposition?—are about conclusions that must be drawn from the undisputed evidence, not disputes in the evidence itself. More evidence will not inform a judgment on the President's state of mind.

Third, because those witnesses with testimony pertinent to the charges have already repeated their testimony again and again and again—in some instances, 5 or 10 times—over and over and over to FBI agents, to prosecutors, to grand jurors. Experienced career prosecutors, trying to make their best

case against the President, questioned scores of witnesses. They compiled tens of thousands of pages of evidence. They questioned Ms. Lewinsky on at least 22 separate occasions. They questioned Mr. Jordan on at least five occasions. They questioned Ms. Currie on at least eight occasions. On one day alone—July 22, 1998—prosecutors asked Ms. Currie more than 850 questions, and that was only 1 of her 5 appearances before the grand jury or FBI agents. And they did, in fact—contrary to the suggestion of the managers—question witnesses, including Ms. Lewinsky, after the President's testimony to the grand jury.

These witnesses whom I have mentioned, who were questioned repeatedly, are not alone. They could not possibly add to their testimony, or amend it, in any significant way that could alter the judgment you could make today. Yet, it is the hope that these witnesses will be forced to change their testimony, to provide evidence where there now is none, that drives the current desire to question them.

Let me make a few final points about this witness issue. ''Bringing in witnesses to rehash testimony that's already concretely in the record would be a waste of time and serve no purpose at all.'' That is our argument, but those are not my words, they are the words of Mr. Manager GEKAS, spoken just last fall, talking about this same factual record you have before you.

And Mr. Manager GEKAS was correct. ''We had 60,000 pages of testimony from the grand jury, from depositions, from statements under oath. That is testimony that we can believe and accept. Why re-interview Betty Currie to take another statement when we already have her statement? Why interview Monica Lewinsky when we had her statement under oath, and with a grant of immunity that, if she lied, she would forfeit?''

Again, that is our argument, but, again, those are not my words, those are the words of Chairman HYDE. He, too, was correct. Those words apply with equal force today. The witnesses are on the record. Their testimony is known. There is no need to put them through the ordeal of testimony again.

The House managers, no doubt, will answer that that was then, this is now. But that is not good enough. The House had a constitutional duty to gather and assess evidence and testimony and come to a judgment as to whether it believed the President should be removed from office—not to casually and passively serve as a conveyor belt between Ken Starr and the U.S. Senate, not to ask this body to do the work the House failed to do.

The actual power to remove the President resides here, of course. But the power to take that first step rests with the House. And the House exercised it: The articles explicitly find that certain conduct occurred and that that conduct warrants ''removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.'' If there was any doubt about the testimony on which they based their judgment in reaching that conclusion, such doubt should have been resolved before any Member rose to say ''aye'' to an article of impeachment calling, for the first time in 130 years, for the Senate to decide on the removal of the President.

The President did not obstruct justice. The President did not commit perjury. The President must not be removed. The facts do not permit it.

Now, ladies and gentlemen of the Senate, I hope I have outlined clearly for you some of the many valid grounds on which you might base a decision to vote for the motion offered by Senator BYRD.

On constitutional grounds, the matters simply don't meet the test of high crimes and misdemeanors, as specified by the framers or interpreted by hundreds of historians. As a matter of law, these articles are defective. In a court, they would be dismissed in a heartbeat for vagueness and for being prosecutorial grab bags.

The evidence itself, after being gathered in what may be one of the largest criminal investigations in this country's history, fails to offer a compelling case and is based largely on weak inferences from circumstantial evidence. Each of these is reason enough to end this trial now, without further proceedings.

As Senator Bumpers said more personally and eloquently than I could hope to, the President has been punished; he is being punished still—as a man, as a husband, as a father, as a public figure. Beyond his family, you have been reminded that the criminal law will still have jurisdiction over Bill Clinton the day he leaves office. And while I am confident the case would have no merit in a court of law, that is the venue in which justice may be sought against an individual.

So the sole question you are faced with is the most important one: Do you, for the first time in 210 years of our freedom, set aside the ultimate expression of a free people and exercise your power to remove the one national leader selected by all of us?

If you don't believe this body should remove the President, or if you believe that no amount of requestioning of witnesses or torturing facts will change enough minds to garner the two-thirds majority necessary to remove the President, or if you simply have heard enough to make up your mind, then the time to end this is now.

The President has expressed many times how very sorry he is for what he did and for what he said. He knows full well that his failings have landed us in this place, and he is doing all he can to set right what he has done wrong.

The entire Nation—indeed the world—is now looking to this body, to this Chamber, to this floor, for sound judgment, and we are asking you not to answer a serious personal wrong with a grievous constitutional wrong. When we ask you to vote for Senator BYRD's motion to dismiss, we do not mean that nothing ever happened, that this is no big deal—and that is where we lawyers have done a disservice to the language—because this is a big deal. It is a very big deal. Punishment will be found elsewhere. Judgment will be found elsewhere. Legacies will be written elsewhere. None of that will be dismissed. None of that can ever be dismissed.

We ask you to end this case now so that a sense of proportionality can be put back into a process that seems long ago to have lost all sense of proportionality. We also ask you to end the case now so that the family members and others who did no wrong can be spared further public embarrassment.

We also ask you to end this case now so that the poisonous arrows of partisanship can be buried and the will of the people can be done—allowing all of you to spend your full days on the most pressing issues of the country.

You have heard the charges in full; heard the defense. Now is the time to define how the national interests can best be served by extending this matter indefinitely or ending it now. We submit that it is truly in the best interest of this Nation to end this ordeal in this Chamber at this time and in this way.

Thank you.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Could I inquire? Is there further presentation from the White House counsel, or will the time be used for concluding remarks by the House managers?

The CHIEF JUSTICE. The White House counsel has 6 minutes remaining; the managers have reserved 36 minutes.

Mr. Counsel RUFF. There will be no further presentation, Mr. Chief Justice.

RECESS

Mr. LOTT. In view of that, Mr. Chief Justice, I understand the White House counsel will have no further presentation to make, so what is left would be the concluding remarks by the House managers. I would like for us, when that is concluded, to go right into the votes.

In view of that, I think it would be a good idea to take a 15-minute break at this point. And I ask for that.

There being no objection, at 4:12 p.m., the Senate recessed until 4:38 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, I believe we are ready now for the closing part of the argument by the House managers on the motion to dismiss.

The CHIEF JUSTICE. The Chair recognizes the House managers. Mr. HUTCHINSON.

Mr. Manager HUTCHINSON. Thank you, Mr. Chief Justice, Senators. My

fellow Manager GRAHAM has extended me a few minutes before he comes up here just to allow me to respond to a couple of factual assertions by the White House counselors during the recent presentation. I know that there was a reference made to the impeachment proceedings of former President Nixon, and there were various articles that were considered. But one of them that I don't believe was talked about was obstruction of justice, and I believe that the Senators in this Chamber would agree that obstruction of justice has historically been a basis for impeachment of public officials because of the impact that it has on the administration of justice. And that was historically true during the time of the impeachment of President Nixon. It was an issue during that time and it should be no less of a concern this year, in 1999.

Now, when I listen to a defense attorney make a presentation, oftentimes I will listen to what they didn't cover as much as what they did cover. And you always have to go back to that because many times that points to a big gap of something they just can't explain. As I listened to the presentation, of course they addressed the assertion that Ms. Currie, Ms. Betty Currie was, in fact, not a witness at the time the President called her in and went through the questioning of her after his deposition on January 17. But, yet, it has been clearly established that she was a known witness at the time. Now, they hoped, they prayed, they wished, they counted for the fact that that subpoena would never be uncovered. But the subpoena was uncovered. The fact was established that she was put on the witness list and that she was a known witness at the time. But the fact is, it does not matter. She was a prospective witness, and that was what the President did when he came back and talked to her.

But what has never been addressed—has never been addressed—is why in the world did the President believe he needed to talk to her a second time. It was one time the questioning, but 2 days later she was brought in and taken through the same paces. The answer was, ''Well, he explained it.'' Well, he tried to explain why he did it the first time, he was trying to get information. There could be no explanation for the second instance of which she was called in and questioned. She was a witness, she was a known witness and she had to be talked to, and it was done twice.

Another thing that I do not recall ever being mentioned, they argue that, ''Well, there is no evidence of favors on a job search,'' and I believe that is not supported by the record. How many times has the President's attorneys discussed the description and the report by Mr. Vernon Jordan to the President, ''Mission accomplished''? I do not believe they have ever discussed that particular terminology. I do not believe they have ever discussed the terminology, the call from Mr. Vernon Jordan to Mr. Perelman saying, ''Make it happen if it can happen.''

So I think there are some gaps in their defense and, clearly, you understand that the facts have supported each of the allegations of obstruction that we have set forth.

They argue that, ''Well, there was no evidence of any false affidavit.'' Whether it is evidence that an affidavit was encouraged by the President of the United States, he suggested the affidavit and, as of necessity, it would have to be false if it was going to be accomplishing the intended purpose.

They are asking you in this motion to dismiss to ignore the evidence that we have presented, to ignore the testimony, the documentary evidence, to ignore the common sense and simply to accept the denials of the President of the United States. That is not what a motion to dismiss is about. We ask that we move forward to consider the full development of these facts.

I yield to Mr. GRAHAM.

The CHIEF JUSTICE. The Chair recognizes Mr. GRAHAM.

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. How much time do we have left?

The CHIEF JUSTICE. The House managers have 32 minutes remaining.

Mr. Manager GRAHAM. Thank you, Mr. Chief Justice. To my colleagues, my chairman wants 11 minutes. So, for my own sake, please let me know when we get close.

(Laughter.)

We meet again to discuss a very, very important event in our Nation's history. To dismiss an impeachment trial under these facts and under these circumstances would be unbelievable, in my opinion, and do a lot of damage to the law and to the ultimate decision this body has to make: whether or not Bill Clinton should be our President.

As I understand the general nature of the law, the facts and the law break our way for this motion. What I would like to discuss with you is whether or not a reasonable person could believe that Bill Clinton should not be our President and the facts that have been presented rise to the level of creating serious doubts about whether he is a criminal, not just a bad man who did bad things. For he is a good man in some ways, as all of us are, and he has done some things that everybody in this body will condemn roundly.

America needs no more lectures about Bill Clinton's misconduct, about his inappropriate relationship. We need no more lectures about his sins. We all have those. We need to resolve, Is our President a criminal? That is harsh, but the facts bear out those statements.

When you dismissed the judges for perjury and filing statements under oath, some of you said some very harsh things about those judges, not because you are harsh people, but because their conduct warranted it.

One thing I am not going to say, and I will quit this job before I do this, is, I am not going to run over anybody's conscience when they are exercising it as they deem appropriate for the good of this Nation. My name has been brought up a couple of times about whether or not reasonable people can disagree with me and still be reasonable about what we should do in this case. I have told you the best I can that there is no doubt these are high crimes, in my opinion. This is a hard decision for our country, but when I first spoke to you, I thought we would be better off if Bill Clinton left office, and I want the chance to prove to you why. Give me a chance to prove to you why I believe that, why my colleagues voted our conscience to get this case to where it should be, not swept under a rug, but in a trial to a disposition.

I have lost no sleep worrying about the fact that Bill Clinton may have to be removed from office because of his conduct. I have lost tons of sleep thinking he may get away with what he did. But the question was: Could you disagree with LINDSEY GRAHAM and be a good American, in essence? Absolutely. You can disagree with me on abortion, and Mr. Hyde, and I am not going to trample on who you are, because I know that the liberal wing of the Democratic Party and the moderate wing of the Republican Party have different views than I do.

But I didn't come up here to run you down. I came up here to build my country up the way I think it needs to be built up.

Ladies and gentlemen of the Senate, if you will listen to our case, if you will let us explain why we have lost no sleep asking for this President to be removed and why we voted to get it here and you disagree with me at the end of the day, I will never ever say you don't love your country as much as I do. That is what that statement was meant to convey, and it will convey that until I am dead and gone.

The idea that 130 years ago a Senator took a vote and made a statement that the only way you can remove a President is it has to be unquestionable in anybody's mind tells me he sure thought a lot of himself. I am glad to see that stopped in the Senate. One hundred thirty years later, we don't have people like that anymore. What that conveyed to me was that a person made a hard decision and tried to create a standard that slams somebody else who came out differently.

I hope that is not what this is all about. He goes down in history, but I wouldn't want that as part of my epitaph, that when I voted my conscience, I reached a level that if you didn't go where I was, there is something wrong with you.

What did Bill Clinton do, and why are we all here? Are we here because of Ken Starr, because of LINDSEY GRAHAM, because of—why are we here? We are here because William Jefferson Clinton, in my opinion—we are here because on our watch in the House, the President

of the United States, when he was a defendant in a lawsuit, instead of trusting the legal system to get it right, did everything possible, in my opinion, to undermine the rule of law, including going to a grand jury in August of last year and committing perjury after people in this body and prominent Americans said, ''Stop it.'' And now we are here to say, ''Well, we really didn't mean it. The motion to dismiss means we're sort of just kidding, Mr. President.''

If you believe he is not guilty of these offenses based on this stage of the trial, then you ought to grant the motion to dismiss, but you will be changing the law as we know it today. We haven't had a chance to present our case, really, and all the facts should break our way. You can believe this if you would like. They stood up here and argued that the conversation between President Clinton and his secretary, Betty Currie, was to find out what she knew to refresh his memory. If you think that when the President goes to Betty Currie and makes the following statement, ''Monica wanted to have sex with me and I couldn't do that,'' that he is trying to figure out what she knew and is trying to refresh his memory, you can do that. I would suggest that ''ain't'' reasonable. If you believe that he wanted to figure out whether he was alone or not with her and he had to ask Betty, that is not reasonable. That is a crime.

Let me tell you the subtleties of this case, things that really tell you a lot about why we are here—William Jefferson Clinton. Before we get into the subtleties of this case, Senator Bumpers made a very eloquent speech about the ups and the downs of this case and about his relationship with the President and how close it was, and the human nature of what is going on here. But here is what he said:

> You pick your own adjective to describe the President's conduct. Here are some that I would use: indefensible, outrageous, unforgivable, shameless.

How about illegal?

And he says:

> I promise you the President would not contest any of those or any others.

When you put in the word ''illegal,'' everything is a big misunderstanding.

Take this case to a conclusion, so America will not be confused as to whether or not their President committed crimes. There will be people watching what we do here, and they will be confused as to whether or not the conversation between President Clinton and Ms. Currie was illegal or not. Let us know. That is so important.

Let us know—when he went to Monica Lewinsky and talked about a cover story—if that is what we want to go on here every day. And a trial 20 months from now does us no good, because this happened when he was President, ladies and gentlemen. This happened when he raised the defense, ''You can't sue me because I'm President.''

And what did he do after that defense was taken away from him by the Supreme Court? He went back to somebody who is very loyal to him, somebody who admires him, somebody whom you and I pay her salary—his secretary. And he put her in a situation, through misleading her, that she was going to pass on his lies. That is not what we pay her to do. He put her in a situation where she was going to incur legal costs because he cared more about himself than he did his secretary. He put his Cabinet Members, he put the people who work for him, in a horrible spot.

The subtleties of this case. Let me tell you one of the subtleties of this case. And this was read by the defense in this case:

> The President had a followup conversation with Mr. Morris during the evening of January 22, 1998, when Mr. Morris was considering holding a press conference to blast Monica Lewinsky out of the water. The President told Mr. Morris to be careful. According to Mr. Morris, the President warned him not to be too hard on Ms. Lewinsky because ''there's some slight chance that she may not be cooperating with Starr and we don't want to alienate her by anything we're going to put out.''

And they were trying to tell you that ''ain't'' bad, that is a good thing. The best you can get from that statement is the President, when approached with the idea of blasting her, said, ''Let's wait.''

The subtleties in this case. Who is this young lady? His consensual lover. But this case started not about consensual loving. This case started about something far from consensual loving. This case started about something like a Senator who ran into problems with you all. And if you will let us develop our case, you may have a hard time reconciling those two decisions. But that is up to you.

Please don't dismiss this case. For the good of this country, for the good of the law, let us get to what happened here.

John Podesta—the subtleties of this case—he talked to him about what happened, and he said, ''I had no relationship with her whatever.'' Everybody who went into that grand jury, who talked to Bill Clinton, was lied to. And they passed those lies on to a Federal grand jury. You know what? In America that is a crime, even if you are President. And you need to address whether that happened or not. Don't dismiss this case.

But you know what is even more subtle is that John Podesta, somebody who is very close to him, once he said nothing happened, felt the need to ask one more question—and pardon me for saying this—''Does that include oral sex?'' That says a lot about what Mr. Podesta thinks about Mr. Clinton, because he felt he had to go one step further, and in his grand jury testimony he tells us the President took that behavior off the table.

Some of you are worried about the perjury charge in this case. Let me tell you right now, you should have no worries, because you have a dilemma on your hands that is easy to resolve in terms of whether or not the President committed perjury in the grand jury. If you believe that he said that he was truthful when he said, ''I never lied,'' or, ''I was always truthful to my subordinates, to the people that work for me, to my aides,'' then when he told John Podesta, ''Our relationship did not include oral sex,'' he was being truthful. If he was being truthful to John Podesta, he lied through his teeth about everything else in the grand jury when he considered or when he approached the grand jury with the idea that, ''Our relationship was of one kind of sex but not the other.'' He told John Podesta it wasn't there at all.

You pick the lie, but it is there. And if you can reconcile that, you are better than I am. That is up to you all. And does it really matter? So what? I think it matters a great deal if you are suing for sexually harassing somebody, and they are on to the fact that you can't control yourself enough to stop it 4 or 5 years after you are sued, and you are doing it in the White House with somebody half your age. I think that would matter. Maybe that is the difference between getting bamboozled in court and having to pay $850,000.

People are going to be confused if we don't bring this case to a conclusion. I suggest to you, it matters a great deal, that any major CEO, any low-level employee of any business in the country, would have been tossed out for something like that. But I know he is the President. Electing somebody should not distance them from common decency and the rule of law to the point that, when it is all over with, you don't know what you have got left in this country.

Is that what you want to do in this case? Just to save this man, to ignore the facts, to have a different legal standard, to make excuses that are bleeding this country dry?

The effect of this case is hurting us more than we will ever know. Do not dismiss this case. Find out who our President is. Come to the conclusion, not that it was just bad behavior, it was illegal behavior. Tell us what is right. Tell us what is wrong. Give us some guidance. Under our Constitution, you don't impeach people at the ballot box, you trust the U.S. Senate. And I am willing to do that. Rise to the occasion for the good of the Nation.

Thank you very much.

The CHIEF JUSTICE. Do the House managers have any additional presentation?

Mr. Manager GRAHAM. Yes. I am sorry. Mr. Chief Justice, I now yield to Manager HYDE.

The CHIEF JUSTICE. The Chair recognizes Manager HYDE.

Mr. Manager HYDE. Thank you, Mr. Chief Justice.

Mr. Ruff, and counsel, and distinguished Senators, I want to be very candid with you, and that may involve diplomatic breaches because I am

parliamentarily illiterate. But nonetheless, I looked at this motion to dismiss and I was astounded, really. If the Senate had said something similar to the House, it would certainly have received such treatment as comports with comity, and I don't know enough about comity to wave that flag, but I don't want to waive my rights to raise that issue, anyway.

I know Black's Law Dictionary is a resource book for all of us, but I looked in the Thesaurus about ''dismiss'' and I came up with ''disregard, ignore, brush off.'' I just was surprised that this motion is here now before we conclude the case.

Some years ago when I was trying lawsuits, I appeared before a judge in Chicago. My opponent was an oldtimer who was just mean—a good lawyer, but he was mean—and the judge interrupted him in one tirade and he said, ''Counsel, I have a lot of respect for you. I wish you had a little respect for this court.'' I sort of feel that way. I sort of feel that we have fallen short in the respect side because of the fact that we represent the House, the other body, kind of blue-collar people, and we are over here trying to survive with our impeachment articles.

The most salient reason for defeating this motion is article I, section 3 of the Constitution which says that the Senate shall have the sole power to try—to try—all impeachments. Now, a trial, as I understand it, is a search for truth, and it should not be trumped by a search for an exit strategy.

It seems to me this motion elevates convenience over constitutional process and by implication ratifies an unusual extension of sovereign immunity. If these articles are dismissed, all inferences in support of the respondents, in support of us, the managers, should be allowed; and if you allow all reasonable inferences in our favor, what kind of a message does it send to America to dismiss the articles of impeachment? Charges of perjury, obstruction of justice are summarily dismissed—disregarded, ignored, brushed off. These are charges that send ordinary folk to jail every day of the week and remove Federal judges. But I can see this President is different. But if the double standard is to flourish on Capitol Hill, I don't think we have accomplished a great deal.

Yes, it is cumbersome. These proceedings are archaic in many ways. The question period was something out of the Old Bailey, I guess. I don't know. But democracy is untidy. I will stipulate that. It is untidy. But it is also a blessing. Impeachment and trial by the Senate were devised by our framers to make this difficult process as definitive as possible.

''Let's get the matter behind us.'' That is a mantra. That is a cliche. We all say it. You won't get it behind you if you dismiss this without voting on the articles. You guarantee contention. You will never get it behind us. Vote these articles up or down. That is the only way they really get it behind us.

What this is—this motion—is a legal way of saying, ''so what'' to the charges that we levied here. Now, look at what these charges are. So what that the President violated his oath of office and willfully corrupted and manipulated the judicial process for his personal gain and exoneration. So what that President Clinton willfully provided perjurious, false, and misleading testimony to the grand jury on several topics. So what that the President corruptly encouraged a witness in a Federal civil rights action brought against him to execute a sworn affidavit in that proceeding that he knew to be perjurious, false, and misleading. So what that the President encouraged a witness to lie to the grand jury and conceal evidence. So what that the President has undermined the integrity of his office, has brought disrepute on the Presidency, has betrayed his trust as President, and has acted in a manner subversive to the rule of law and justice, to the manifest injury of the people of the United States.

That is an awful lot to dismiss with a brushoff, to ignore with a mere ''so what.''

No, it may be routine. We certainly don't have enough experience in these impeachment matters, and thank God for that. It may be routine to file a motion to dismiss. But I take very seriously a motion to dismiss, especially when it is offered by the very distinguished Senator who did that. But I hope in a bipartisan way, I would hope some Democrats would support the rejection of this motion, as difficult as it is, because I don't think this whole sad, sad, drama will end. We will never get it behind us until you vote up or down on the articles. And when you do, however you vote, we will all collect our papers, bow from the waist, thank you for your courtesy, and leave and go gently into the night. But let us finish our job.

Thank you.

Mr. WELLSTONE addressed the Chair.

Mr. LOTT. Parliamentary inquiry, Mr. Chief Justice Rehnquist.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. I believe under the agreement we entered into the next order of business, then, would be the vote on the motion by Senator HARKIN to go into open session; is that correct?

The CHIEF JUSTICE. The managers have used their time. The Chair recognizes the Senator from Iowa, Mr. HARKIN.

MOTION TO SUSPEND THE RULES

Mr. HARKIN. Mr. Chief Justice, in accordance with rule V of the Senate Standing Rules, I and Mr. WELLSTONE filed a notice of intent to move to suspend the rules solely regarding the debate by Senators on the motion to dismiss, so Senators can have open rather than a closed debate on this issue.

This motion is offered on behalf of myself and Senators WELLSTONE, FEINGOLD, LEAHY, LIEBERMAN, JOHNSON, INOUYE, SCHUMER, WYDEN, KERREY, BAYH, TORRICELLI, LAUTENBERG, ROBB, DODD, MURRAY, DORGAN, CONRAD, KENNEDY, KERRY, DURBIN, BOXER, GRAHAM, BRYAN, LANDRIEU, and MIKULSKI.

My motion is at the desk. However, Mr. Chief Justice, I send a corrected copy of my motion to the desk. There were two typos in it; I want to have it corrected.

Mr. LOTT addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

Mr. LOTT. If it is appropriate at this point, I ask the Senators if they would remain at their desks so we can go through this vote, and I ask unanimous consent, since we are all here, to reduce the time for the vote from 15 minutes to 10 minutes.

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

Is there objection to the Senator from Iowa modifying his motion?

Without objection, it is modified.

The clerk will report the motion.

The legislative clerk read the motion, as modified, as follows:

I move to suspend the following portions of the Rules and 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 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''.

Mr. HARKIN. Mr. Chief Justice, I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The CHIEF JUSTICE. The clerk will call the roll.

The legislative clerk called the roll.

The CHIEF JUSTICE. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 43, nays 57, as follows:

[Rollcall Vote No. 2]

[Subject: Harkin motion to suspend the rules]

YEAS—43

Akaka	Feingold	Levin
Bayh	Feinstein	Lieberman
Biden	Graham	Mikulski
Bingaman	Harkin	Moynihan
Boxer	Hollings	Murray
Breaux	Hutchison	Reed
Bryan	Inouye	Reid
Cleland	Johnson	Robb
Collins	Kennedy	Schumer
Conrad	Kerrey	Specter
Daschle	Kerry	Torricelli
Dodd	Kohl	Wellstone
Dorgan	Landrieu	Wyden
Durbin	Lautenberg	
Edwards	Leahy	

NAYS—57

Abraham	Fitzgerald	McConnell
Allard	Frist	Murkowski
Ashcroft	Gorton	Nickles
Baucus	Gramm	Roberts
Bennett	Grams	Rockefeller
Bond	Grassley	Roth
Brownback	Gregg	Santorum
Bunning	Hagel	Sarbanes
Burns	Hatch	Sessions
Byrd	Helms	Shelby
Campbell	Hutchinson	Smith (NH)
Chafee	Inhofe	Smith (OR)
Cochran	Jeffords	Snowe
Coverdell	Kyl	Stevens
Craig	Lincoln	Thomas
Crapo	Lott	Thompson
DeWine	Lugar	Thurmond
Domenici	Mack	Voinovich
Enzi	McCain	Warner

The CHIEF JUSTICE. Are there any other Senators wishing to vote or change their vote? If not, on this vote the yeas are 43, and the nays are 57. Two-thirds of the Senators voting, and a quorum being present, not having voted in the affirmative, the motion is rejected.

Mr. REID addressed the Chair.

The CHIEF JUSTICE. The Chair recognizes the Senator from Nevada.

Mr. REID. May we have order in the Chamber, please?

The CHIEF JUSTICE. The Senate will be in order.

ORDER FOR CLOSED SESSION

Mr. LOTT. Mr. President, I move that we now go into closed session for the purpose of Senators debating the motion to dismiss.

The motion was agreed to.

The CHIEF JUSTICE. The Chair, pursuant to rule XXXV, now directs the Sergeant-at-Arms to clear the galleries, close the doors of the Chamber, and exclude all the officials of the Senate not sworn to secrecy.

RECESS

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that we take a 10-minute break for the purposes of closing the doors and preparing for the debate.

There being no objection, at 5:23 p.m., the Senate recessed until 5:50 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

CLOSED SESSION

(At 5:50 p.m., the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 9:51 p.m., at which time, the following occurred.)

OPEN SESSION

(At 9:51 p.m., the doors of the Chamber were opened and the Senate resumed proceedings in open session.)

Mr. NICKLES. I ask unanimous consent that the Senate now return to open session.

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

ORDER FOR ADJOURNMENT

Mr. NICKLES. I ask unanimous consent that when the Senate adjourns, it stand in adjournment until the hour of 12 noon on Tuesday, and I further ask consent that during the remainder of the trial it be in order for Members to submit unanswered questions to the Chair.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

PROGRAM

Mr. NICKLES. On tomorrow, we will resume and begin debate on the motion to subpoena. I now ask unanimous consent that the time for argument be reduced to 4 hours, equally divided, as provided for under Senate resolution 16.

The CHIEF JUSTICE. Is there objection? It is so ordered.

Mr. NICKLES. Mr. Chief Justice, for the information of all colleagues, tomorrow we will begin the debate at 12 noon instead of 1 o'clock.

ADJOURNMENT UNTIL TOMORROW

Mr. NICKLES. I ask that the Senate stand in adjournment as under the previous order.

There being no objection, at 9:51 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Tuesday, January 26, 1999, at 12 noon.

(Under a previous order, 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–926. 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 recissions and deferrals dated December 30, 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, and to the Committee on Foreign Relations.

EC–927. A communication from the Secretary of Labor, transmitting, pursuant to law, a report on two violations of the Antideficiency Act involving the Occupational Safety and Health Administration Salaries and Expenses Account and the Working Capitol Fund Account; to the Committee on Appropriations.

EC–928. A communication from the Executive Director of the Northeast Low-Level Radioactive Waste Commission, transmitting, pursuant to law, the Commission's annual report for fiscal year 1998; to the Committee on Energy and Natural Resources.

EC–929. A communication from the Director of the Office of Regulations Management, Department of Veterans Affairs, transmitting, pursuant to law, the report of a rule entitled ''Board of Veteran's Appeals: Rules of Practice-Revision of Decisions on Grounds of Clear and Unmistakable Error'' (RIN2900–AJ15) received on January 12, 1999; to the Committee on Veterans' Affairs.

EC–930. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the report of an unauthorized transfer of U.S.-origin defense articles to a private firm by the Government of Israel; to the Committee on Foreign Relations.

EC–931. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, a list of international agreements other than treaties entered into by the United States (98–186 to 98–189); to the Committee on Foreign Relations.

EC–932. A communication from the Assistant Legal Adviser for Treaty Affairs, Department of State, transmitting, pursuant to law, the text of international agreements other than treaties entered into by the United States (99–1 to 99–4); to the Committee on Foreign Relations.

EC–933. A communication from the Under Secretary of Defense for Acquisition and Technology, transmitting, pursuant to law, the Department's report on Defense purchases from foreign entities for fiscal year 1998; to the Committee on Armed Services.

EC–934. A communication from the Director of Defense Procurement, Office of the Under Secretary of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Order for Supplies or Services'' (Case 97–D024) received on January 12, 1999; to the Committee on Armed Services.

EC–935. A communication from the Director of Defense Procurement, Office of the Under Secretary of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Para-Aramid Fibers and Yarns'' (Case 98–D310) received on January 12, 1999; to the Committee on Armed Services.

EC–936. A communication from the Director of Defense Procurement, Office of the Under Secretary of Defense, transmitting, pursuant to law, the report of a rule entitled ''Defense Federal Acquisition Regulation Supplement; Simplified Acquisition Procedures'' (Case 97–D306) received on January 12, 1999; to the Committee on Armed Services.

EC–937. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Announcement of Proposal Deadline for the Competition for the 1999 Brownfields Cleanup Revolving Loan Fund Pilots'' (FRL6220–7) received on January 12, 1999; to the Committee on Environment and Public Works.

EC–938. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District'' (FRL6213–9) received on January 12, 1999; to the Committee on Environment and Public Works.

EC–939. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Illinois'' (FRL6216–4) received on January 12, 1999; to the Committee on Environment and Public Works.

EC–940. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; Illinois'' (FRL6215–3) received on January 12, 1999; to the Committee on Environment and Public Works.

EC–941. A communication from the Director of the Office of Regulatory Management and Information, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision,