

there certainly was no request by the President that she reveal those gifts.

Now, of course he says he did. He says he did later. But that is absolutely contradicted by her testimony.

The CHIEF JUSTICE. Senator REID of Nevada sends this question for White House counsel:

Would you please comment on any of the legal or factual assertions made by the managers in their response to the previous question?

Ms. Counsel MILLS. There is, obviously, a conflict in the testimony between the President, who said he directed Ms. Lewinsky to turn over whatever she had, and Ms. Lewinsky's statements. I would just like to read to you, given the House managers' reference that we must credit her grand jury testimony, the version of her grand jury testimony, which you all will no doubt remember it as one of the ones I read to you that was never presented by the House managers, and that is on August 20, 1998, after the President had testified:

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

On that same day when she was asked that same question, if it is her grand jury testimony that is to be addressed, she also said:

A JUROR. Now, did you bring up Betty's name or did the President bring up Betty's name?

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

All of those are in her grand jury testimony. So her grand jury testimony is the testimony that states he might not have given any response. So, to the extent the House managers' theory is that "Let me think about it" leads to obstruction of justice, her grand jury testimony does not state that.

The CHIEF JUSTICE. Senators SPECTER, HELMS, ABRAHAM, ASHCROFT, and STEVENS direct this question to the President's counsel:

President Clinton testified before the grand jury that he was merely trying to "refresh" his memory when he made these statements to Betty Currie. How can someone "refresh" their recollection by making statements they know are false?

Ms. Counsel MILLS. I think one of the things I tried to address in addressing what the President's testimony was with respect to his conversation with Ms. Currie was obviously he was understandably concerned about the media attention that he knew was impending. And in particular, as he walked through the questions, he was thinking

about his own thoughts and seeking, as I think I talked about, concurrence or input or some type of reaction from Ms. Currie.

I think in making those statements, he was asking questions to see what her understanding was based on some of the questions that had been posed to him by the Jones lawyers, because some of them were so off base. And so he was asking from Ms. Currie essentially what her perception was, what her thoughts were.

I think as you walk through each one of those questions, he was expressing what his own thoughts and feelings were with regard to this and was seeking some concurrence or affirmation from her. I think he was agitated. I think he was concerned. He knew what was going to happen, and I think that is why he posed the question in the way that he did.

The CHIEF JUSTICE. A question from Senator BAYH to counsel for the President:

Can you comment on the importance of "proportionality" to the rule of law?

Mr. Counsel RUFF. How much time do we have? Thank you, Senator.

I think proportionality, in all its many guises, is an issue that has given us some pause, going well back into the investigative phase of this matter, and I think many who have watched and who have made their lives and careers as professional prosecutors, indeed many who have been criminal defense lawyers or just plain sensible citizens watching, have asked whether the resources and the energy and the time devoted to this matter and the manner in which it has been treated at every stage before it ever got to the House of Representatives does, in fact, reflect an appropriate assessment of the conduct being investigated and the seriousness of the conduct, which is not ever to suggest that we condone perjury or obstruction of justice.

We all recognize, if those offenses have been committed, they are worth pursuing. But one only need look at the testimony and the professional prosecutors who testified before the Judiciary Committee to get a sense of what the world of professional prosecutors would do faced with these kinds of allegations in this kind of setting, and that really is the key: How many prosecutors would ever reach into the middle of an ongoing civil litigation and bring these kinds of charges?

The proportionality, obviously, has other implications and certainly goes right to the heart of the role played by this body. That is, what is the proportional response to whatever you think of the President as a man, whatever you think of his conduct. Even if you should conclude—although we do not believe you should—that he violated the law in some respect, what is the constitutionally proportional response to your judgment. And there you go

right back to the essence of what the framers were talking about, which is responding with the ultimate sanction only when the ultimate problem is posed to you.

I suggest, as I have on too many occasions, I fear, that if that is the proportionality question you are asking—and all must at some point ask that question—the answer has to be clear, that no one ever thought in 1787 and, I suggest to you, in the intervening 212 years that it would be a proportional response to the conduct alleged here to remove a President.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

ORDER OF PROCEDURE

Mr. LOTT. Mr. Chief Justice, I believe we have reached a point where we can take a break. I think we have had responses to approximately 50 questions today. Now we will have a chance to assess, on all sides, what additional questions might be needed to be asked tomorrow. I remind my colleagues that we are scheduled to resume at 10 a.m. on Saturday.

NOTICE OF INTENT TO SUSPEND THE RULES OF THE SENATE BY SENATOR HUTCHISON, SENATOR SPECTER, SENATOR LIEBERMAN, SENATOR HAGEL, SENATOR COLLINS, AND SENATOR SNOWE

In accordance with Rule V of the Standing Rules of the Senate, I (for myself and for Mr. SPECTER, Mr. LIEBERMAN, Mr. HAGEL, Ms. COLLINS, and Ms. SNOWE) hereby give notice in writing that it is my intention to move to suspend the following portions of the *Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials* for the final deliberation on the articles of impeachment of the trial of President William Jefferson Clinton:

(1) 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

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

ADJOURNMENT

Mr. LOTT. If there is nothing further, I move we adjourn, Mr. Chief Justice.

The motion was agreed to; and at 5:49 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Saturday, January 23, 1999, at 10 a.m.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. ENZI). The Chair recognizes the majority leader.

MEASURES PLACED ON THE CAL-
ENDAR—S. 254, S. 269, S. 270, AND
S. 271

Mr. LOTT. Mr. President, there are four bills at the desk that are due for