

what was happening during the discussions among Judge Wright and the lawyers. For that purpose, is the Senate next going to authorize the deposition of Judge Wright and the other lawyers who attended the deposition? The circumstances under which Mr. Ward came to take such an affidavit and what he knows about the variety of issues mentioned in the House Managers' proffer on this item will undoubtedly be fair subjects of discovery by the President's lawyers if this is admitted.

The House Managers characterized documents as certain telephone records and the participants in various telephone calls whose identities are not revealed by the records. Indeed, those proffered documents are without authentication. The House Republican Managers' brief goes even farther, suggesting that the telephone records will prove what happened at the White House gate on December 6, and asserting the identity of those who participated in telephone calls and the content of those telephone calls and concluding that they prove meetings and conversations that were not even by telephone. The documents appear to be a series of numbers. Giving them content and context will require more than mere authentication and any such testimonial explanation can be expected to engender further discovery, as well.

Now let me turn to the witnesses that the House Managers have identified by name and for which they are expressly seeking subpoenas at the outset of this discovery period. I understand that under Senate Resolution 16 Senators must vote for or against the entire package of witnesses and discovery requested by the House.

The House Republican Managers have already interviewed Monica Lewinsky after Mr. Starr arranged for that interview and had her ordered to comply. In light of the circumstances under which she has already been forced to cooperate with the House Republican Managers, any doubt as to the coercion being exercised through her immunity agreement could not be more starkly seen. I seriously question Ms. Lewinsky's freedom to express herself in the present circumstances and suggest that her immunity situation will inevitably affect the credibility of anything that she might "add" to the House's case. Mr. Starr has the equivalent of a loaded gun to her head, along with her mother's and her father's.

Consider also the report in *The Washington Post* on Tuesday that Mr. Starr tore up her immunity agreement once before when she tried to clarify her February 1998 proffer to note that she and the President had talked about using a "cover story" before she was ever subpoenaed as a witness in the Jones case, not after. That is now a key point of the House Managers' prof-

fer but it points now in the other direction by suggesting that she is now willing to testify that the President "instructed" her to invoke cover stories if questioned in connection with the Jones case. Would not such a shift in testimony necessarily lead to discovery into the impact of the immunity agreement on her testimony and the many twists and turns in the 7-month negotiation between Mr. Starr and Ms. Lewinsky's attorneys and the pressures exerted upon her over the last six months?

Moreover, press accounts of the celebrated interview of Ms. Lewinsky by the House Managers last weekend suggest that she may also have said things during that interview that were favorable to the President. The President's counsel are now in the untenable position of having to oppose the House Managers' motion without specific knowledge of any exculpatory information that Ms. Lewinsky may have provided that would weigh against the need to call her as a witness. That is unfair and contrary to basic precepts of our law. The House Managers created this circumstance and should not benefit from it.

The House Managers also insist that they must open discovery to take the deposition of Vernon Jordan. Mr. Jordan has been interviewed or testified under oath before Starr's grand jury at least five times already. The House Managers' proffer is merely that they expect that his live testimony will lead to reasonable and logical inferences that might help their case and somehow link the job search to discouraging her testimony in the Jones case. That is not a proffer of anything new but an attempt to take another shot at eliciting testimony that Mr. Starr could not.

The House Managers also insist that the Senate must depose Sidney Blumenthal. Mr. Blumenthal also testified before the Starr grand jury. The House Managers' proffer notes nothing new that he would be expected to provide.

If the President has been willing to forego the opportunity to cross examine the witnesses whose grand jury testimony has been relied upon by the House Managers, that removes the most pressing need for further discovery in this matter. After all, Ms. Lewinsky and Mr. Jordan, and to a lesser extent, Mr. Blumenthal, were interviewed for days and weeks by the FBI, trained investigators, Mr. Starr's lawyers and then testified, some repeatedly, before the Starr grand jury. That is about as one-sided as discovery gets—no cross examination, no opportunity to compare early statements with the way things are reconfigured and re-expressed after numerous preparation sessions with Mr. Starr's office.

These witnesses testified under threat of prosecution by Mr. Starr. Ms.

Lewinsky remains under a very clear threat of prosecution, even though she has a limited grant of immunity from Starr. This special prosecutor has shown every willingness to threaten and prosecute.

If the President has not initiated efforts to obtain more discovery and witnesses and is willing to have the matter decided on the voluminous record submitted to the House, the House Managers carry a heavy burden to justify extending these proceedings further and requiring the reexamination of people who have already testified.

I heard over and over from the House Managers that there is no doubt, that the record established before the House and introduced into this Senate proceeding convinced the House to vote for articles of impeachment to require the removal of the President from office last month. The House Managers have told us that they have done a magnificent job and established their case.

Based on the House Managers' Motion and their proffer in justification, I do not believe that they have justified extending these proceedings into the future through additional depositions and additional evidence. Can anyone confidently predict how many witnesses will be needed to sort through the evidentiary supplement that the House proffers and the issues that it raises? Can anyone confidently predict how long that discovery will take and how long this trial will be extended? And for what? What is the significant and ultimate materiality to the fundamental issues being contested at this trial of the materials the House is moving now to include in the record? Although the House Managers can say that they only sought to depose three witnesses, does anyone think that in fairness the President's lawyers and the House Managers together will not end up deposing at least 10 people if the Senate were to grant the House motion?

The Senate should not extend these proceedings by a single day. The Senate runs a grave risk of being drawn down into the mire that stained the House impeachment proceedings. Republicans and Democrats have all told me that they do not believe that there is any possibility that this trial will end in the conviction of the President and his removal. In that light, the Senate should have proceeded to conclude this matter rather than extend it. ●

MOTION TO DISMISS THE ARTICLES OF IMPEACHMENT AGAINST WILLIAM JEFFERSON CLINTON

● Mr. LEAHY. Mr. President, this Senate is the last of the 20th century. We begin this first session of the 106th Congress facing a challenge that no other Senate in over 100 years has been

called upon to meet; namely, whether to remove from office the person the American people elected to serve as the President of the United States.

What we do in this impeachment of the President, in terms of the standards we apply and the judgments we make, will either follow the Constitution or alter the intent of the Framers for all time. I have heard more than one Senator acknowledge that in that sense it is not just the President but also the Senate that is on trial in this matter.

The Senate now has an opportunity, as provided in S. Res. 16, to vote on a motion to conclude these proceedings by adopting Senator BYRD's motion to dismiss. I commend Senator BYRD and agree with him that such action is both appropriate and in the best interests of the nation. I do not believe that the House Managers have proven a case for conviction and removal of the President on the Articles of Impeachment sent by the House last year. I further suggest that those articles are improperly vague and duplicitous.

#### THE PRESIDENT'S CONDUCT

We can all agree that the President's conduct with a young woman in the White House was inexcusable. It was deeply disappointing, especially to those who know the President and who support the many good things he has done for this country. His conduct in trying to keep his illicit relationship secret from his wife and family, his friends and associates, and from the glare of a politically-charged lawsuit and from the American public, though understandable on a human level, has had terrible consequences for him personally and for the legacy of his presidency.

Last week Senator Bumpers reminded us of the human costs that have been paid by this President and his family. The underlying lawsuit has now been settled and a financial settlement of \$850,000 has been paid on a case that the District Court judge had dismissed for failing to state a claim. The President has admitted terribly embarrassing personal conduct before a Federal grand jury, has seen a videotape of that grand jury testimony broadcast to the entire nation and had excerpts replayed over and over, again. Articles of Impeachment were reported by the House of Representatives against a President for only the second time in our history.

The question before the Senate is not whether William Jefferson Clinton has suffered, for surely he has as a result of his conduct. The question is not even whether William Jefferson Clinton should be punished and sent to jail on a criminal charge, for the Constitution does not confer that authority on this court of impeachment. The question, as framed by the House, is whether his conduct violated federal criminal laws and, if he did, whether those crimes

constitute "other high crimes and misdemeanors" warranting his removal from the office of President to which he was reelected by the people of the United States in 1996.

#### SPECIAL PROSECUTOR STARR

Justice Robert Jackson, when he was Attorney General in 1940, observed that the most dangerous power of the prosecutor is the power to "pick people that he thinks he should get, rather than cases that need to be prosecuted." When this happens, he said, "it is not a question of discovering the commission of a crime and then looking for the man who has committed it, it is a question of picking the man and then . . . putting investigators to work, to pin some offense on him." "It is here," he concluded, "that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself."

In the case of President William Jefferson Clinton, things became personal a long time ago. I am not alone in questioning Mr. Starr's conduct. His own ethics advisor felt compelled to resign his position after Mr. Starr appeared before the House Judiciary Committee as the head cheerleader for impeachment.

It now appears that Mr. Starr has gone from head cheerleader to the chief prosecutor for impeachment. Over the last week he forced Ms. Lewinsky to cooperate with the House Republican managers as part of her immunity agreement. She must "cooperate" under the threat that Mr. Starr may decide to prosecute her, her mother or her father if he is not satisfied.

#### THE SENATE

It is now up to the Senate to restore sanity to this process, exercise judgment, do justice and act in the interests of the nation. We will be judged both today and by history on whether we resolve this case in a way that serves the good of the country, not the political ends of any political party or particular person.

I doubt that any Senator can impartially say that the case against the President has been established beyond a reasonable doubt. In this matter, my view is that is the appropriate standard of proof. Here the Senate is being asked to override the electoral judgment of the American people with respect to the person they elected to serve them as the President of the United States. In this matter the charges have not been established beyond a reasonable doubt in a criminal case.

The inferences the House Managers would draw from the facts are not compelled by the evidence. Indeed, the House Managers fail to take into account Ms. Lewinsky's admitted interest in keeping her relationship with President Clinton from the public and

out of the Jones case. They ignore the role of Linda Tripp in Ms. Lewinsky's job search and the fact that it was Ms. Tripp who suggested that Ms. Lewinsky involve Vernon Jordan. In light of these and other fundamental flaws in the House Manager's case, I doubt whether many can vote that the articles have been established by clear and convincing evidence.

I know that Republican Senators as well as Democratic Senators have told me that they do not believe there is any realistic possibility that the Senate will convict the President and remove him from office. I agree. Having heard the arguments from both sides and considered the evidence, I do not believe that there is any possibility that the Senate will convict the President on the Articles of Impeachment and remove him from office. That being so, I believe that the interests of the nation are best served by ending this matter now, at the earliest opportunity.

As a consequence of the House's action, the impeachment process is continuing to preoccupy the Congress into this year. This unfinished business of constitutional dimension will necessarily displace the other important business facing the country until it is resolved. I believe this matter should be concluded and we should turn our attention to legislative matters.

History has judged harshly the Radical Republicans who pursued impeachment against President Andrew Johnson. I believe that history will likewise render a harsh judgment against those who have fomented this impeachment of William Jefferson Clinton on the charges brought forward by the House of Representatives. I do not believe those charges have been or can be proven. I do not believe that the House Managers have justified the Senate overriding the 1996 presidential election and ordering the duly elected President of the United States removed from office.

When the Chief Justice as presiding officer sustained objection to the House Managers' mischaracterization of the Senate in this matter, it highlighted the House Managers' misconceptions of the trial. Senators are not merely serving as petit jurors who will be instructed on the law by a judge and are asked to find facts. Senators have a greater role and a greater responsibility in this trial. As the Chief Justice properly observed: "The Senate is not simply a jury; it is a court in this case."

Our job is to do justice in this matter and to protect the Constitution. In that process, I believe we must serve the interests of the nation and fulfill our responsibilities to the American people. I believe that this impeachment trial should have been concluded now and that the Articles of Impeachment should be dismissed. ●