

Mr. Ward concluded, "I have no idea if he was paying attention. He could have been thinking about policy initiatives, for all I know."⁹³ The House Managers have not presented sufficient evidence to sustain the burden of proof with respect to this allegation.

6. *The Conversations with Betty Currie*

The Article alleges that "[o]n or about January 18 and January 20-21, 1998, William Jefferson Clinton related a false and misleading account of events relevant to a Federal civil rights action brought against him to a potential witness in that proceeding. . . ."⁹⁴ This allegation embraces two conversations between the President and Betty Currie, his executive secretary. On January 18, 1998, the day after his deposition in the *Jones* case, the President met with Ms. Currie and asked her a series of leading questions that he promptly answered himself by declaring "Right?"⁹⁵ He had a similar conversation on January 20, 1998.

The House Managers argue that the President knew that these rhetorical questions were false and the only purpose for raising these questions was to influence the testimony of Ms. Currie.⁹⁶

What is clear from the evidence is the fact that Ms. Currie was not influenced by the President's statements. Ms. Currie testified to that effect to the Grand Jury on July 22, 1998.

"Q: Now, back again to the four statements that you testified the President made to you that were presented as statements, did you feel pressured when he told you those statements?"

"A: None whatsoever.

"Q: What did you think, or what was going through your mind about what he was doing?"

"A: At the time I felt that he was—I want to use the word shocked or surprised that this was an issue, and he was just talking."⁹⁷

Ms. Currie added in her testimony:

"Q: That was your impression, that he wanted you to say—because he would end each of the statements with "Right?", with a question.

"A: I do not remember that he wanted me to say "Right." He would say, "Right?" and I could have said, "Wrong."

"Q: But he would end each of those questions with a "Right?" and you could either say whether it was true or not true.

"A: Correct.

"Q: Did you feel any pressure to agree with your boss?"

"A: None."⁹⁸

What is unclear from the evidence is the President's intent in making these statements. The President has testified: "I do not remember how many times I talked to Betty

Currie or when. I don't. I can't possibly remember that. I do remember, when I first heard about this story breaking, trying to ascertain what the facts were, trying to ascertain what Betty's perception was. I remember that I was highly agitated, understandably, I think."⁹⁹

The President's assertion is not without plausibility. He initiated the conversation after the *Jones* deposition where he learned that all of the details of his relationship with Monica Lewinsky were known by the *Jones* lawyers and shortly would be public knowledge. He faced an immediate public and political disaster. Although he knew what went on, he had to know what Betty Currie knew, not to influence her testimony but to determine the potential gaps in this story. Ms. Currie was the key "go-between" with Ms. Lewinsky and her recollection had to be confirmed. More precisely, the President had to know if his story would be contradicted by Ms. Currie.

Given the facts, the President's explanation is as plausible as that advanced by the House Managers. They have not established beyond a reasonable doubt that the President had the specific intent to transform these events into the crimes of obstruction of justice or witness tampering.

7. *The Corruption of Potential Grand Jury Witnesses*

The final subpart of the second Article of Impeachment states that "[o]n or about January 21, 23, and 26, 1998, William Jefferson Clinton made false and misleading statements to potential witnesses in a Federal Grand Jury proceeding in order to corruptly influence the testimony of those witness." The Managers have alleged that this caused the Grand Jury to receive "false and misleading information."

In his Referral, Independent Counsel Starr outlines denials about an affair with Ms. Lewinsky that the President made to members of his senior staff: John Podesta, Erskine Bowles, Sidney Blumenthal, and Harold Ickes.¹⁰⁰ The lies that the President told ranged from immaterial¹⁰¹ to despicable.¹⁰² These lies call into question the President's character and judgment regarding this personal affair, but they most certainly do not rise to the level of criminal behavior.

In order to constitute obstruction of justice, the President would have had to specifically intended these individuals to go before the Grand Jury and lie. It is just as plausible, if not more plausible, that the President was simply trying to conceal and deny the affair from the public at large. The President spoke to his staff because of the appearance of press articles; their conversations had nothing whatsoever to do with the Grand Jury. As the Democratic Minority of the House Judiciary Committee pointed out: "does anyone really think the President

would have admitted to this relationship . . . if no Grand Jury had been sitting?"¹⁰³ Independent Counsel Starr called senior aides to the President before the Grand Jury because his prosecutors knew that the President, in furtherance of the public denials he was making, would have lied to his aides. Under the OIC and House Manager's theory, by publically denying the affair, the President tampered with all the grand jurors, who must have known of his denials. This simply cannot be the case. The President is dishonorable for lying to his aides and putting them in legal jeopardy in this way, but he is not a criminal.

MESSAGES FROM THE HOUSE

At 12:30 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 92. An act to designate the Federal building and United States courthouse located at 251 North Main Street in Winston-Salem, North Carolina, as "Hiram H. Ward Federal Building and United States Courthouse."

H.R. 149. An act to make technical corrections to the Omnibus Parks and Public Lands Management Act of 1996 and to other laws related to parks and public lands.

H.R. 158. An act to designate the United States courthouse located at 316 North 26th Street in Billings, Montana, as the "James F. Battin United States Courthouse."

H.R. 171. An act to authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes;

H.R. 193. An act to designate a portion of the Sudbury, Assabet, and Concord Rivers as a component of the National Wild and Scenic Rivers System.

H.R. 233. An act to designate the Federal building at 700 East San Antonio Street in El Paso, Texas, as the "Richard C. White Federal Building."

H.R. 396. An act to designate the Federal building located at 1301 Clay Street in Oakland, California, as the "Ronald V. Dellums Federal Building."

MEASURES REFERRED

The following bills were read the first and second times by unanimous consent and referred as indicated:

H.R. 92. An act to designate the Federal building and United States courthouse located at 251 North Main Street in Winston-Salem, North Carolina, as "Hiram H. Ward Federal Building and United States Courthouse"; to the Committee on Energy and Natural Resources.

H.R. 149. An act to make technical corrections to the Omnibus Parks and Public Lands Management Act of 1996 and to other laws related to the parks and public lands; to the Committee on Energy and Natural Resources.

H.R. 158. An act to designate the United States courthouse located at 316 North 26th Street in Billings, Montana, as the "James F. Battin United States Courthouse"; to the Committee on Environment and Public Works.

¹⁰³Clinton Report, supra note 40, at 385 (Minority Views).

⁹³Legal Times, February 1, 1999.

⁹⁴H. Res. 611.

⁹⁵HMTB, supra note 38, at 65.

⁹⁶Ms. Currie was not a witness in the *Jones* proceeding at the time of these conversations. House Managers argue that the President knew she would be called as a witness because of his constant references to Ms. Currie in his *Jones* deposition. Moreover, Ms. Currie became a witness on January 23, 1998, when the *Jones* lawyers added her to their witness list. White House counsels argue that Ms. Currie's addition to the witness list was not prompted by the President's testimony, but by information secretly provided to the *Jones* lawyers by Linda Tripp. They further add that it cannot be reasonably assumed that the President was aware that Ms. Currie was likely to be called as a witness. Obstruction and witness tampering statutes require knowledge that the individual is or will be a witness. This argument remains unresolved, but a lack of resolution injects further uncertainty as to the allegations.

⁹⁷The Record, supra note 27, Volume III, Part 1 at 668 (Currie Grand Jury testimony on 7/22/98).

⁹⁸Id.

⁹⁹The Record, supra note 27, Volume III, Part 1 at 593 (Clinton Grand Jury testimony on 8/17/98).

¹⁰⁰Referral from Independent Counsel Kenneth W. Starr to the House of Representatives, House Doc. 105-310, at 198-203 (September 11, 1998).

¹⁰¹Mr. Podesta testified that the President told him that after Ms. Lewinsky left the White House (to work at the Department of Defense), she returned to visit Ms. Currie and that Ms. Currie was with them at all times. *Id.* at 88 (quoting Podesta Grand Jury Testimony of 6/16/98).

¹⁰²In his Senate Deposition Testimony Mr. Blumenthal testified that he related to the Grand Jury that on 1/21/98 the President told him that Ms. Lewinsky had "come on to" him, he [the President] had "rebuffed" her, and that Ms. Lewinsky then "threatened" him with telling people that the two had an affair. See 145 Cong. Rec. S1248 (daily ed. February 4, 1999).

H.R. 171. An act to authorize appropriations for the Coastal Heritage Trail Route in New Jersey, and for other purposes; to the Committee on Energy and Natural Resources.

H.R. 193. An act to designate a portion of the Sudbury, Assabet, and Concord Rivers as a component of the National Wild and Scenic Rivers System; to the Committee on Energy and Natural Resources.

H.R. 233. An act to designate the Federal building located at 700 East San Antonio Street in El Paso, Texas, as the "Richard C. White Federal Building"; to the Committee on Environment and Public Works.

H.R. 396. An act to designate the Federal building located at 1301 Clay Street in Oakland, California, as the "Ronald V. Dellums Federal Building"; to the Committee on Environment and Public Works.

MEASURE PLACED ON THE CALENDAR

The following joint resolution was read the second time and placed on the calendar:

S.J. Res. 11. Joint resolution prohibiting the use of funds for military operations in the Federal Republic of Yugoslavia (Serbia and Montenegro) unless Congress enacts specific authorization in law for the conduct of those operations.

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-1900. A communication from the Deputy Assistant Administrator, Office of Diversion Control, Department of Justice, transmitting, pursuant to law, the report of a rule entitled "Schedules of Controlled Substances: Placement of Modafinil Into Schedule IV" (DEA-17F) received on February 17, 1999; to the Committee on the Judiciary.

EC-1901. A communication from the Secretary of Transportation, transmitting, pursuant to law, the Department's report on the National Intelligent Transportation Systems (ITS) Program for calendar year 1997; to the Committee on Environment and Public Works.

EC-1902. A communication from the Director of the Office of Government Ethics, transmitting, a draft of proposed legislation to authorize activities of the Office of Government Ethics for Fiscal Years 2000 through 2007; to the Committee on Governmental Affairs.

EC-1903. A communication from the Chief of the Regulations Branch, Internal Revenue Service, Department of the Treasury, transmitting, pursuant to law, the report of a rule entitled "Differential Earnings Rate for Mutual Life Insurance Companies" (Notice 99-13) received on February 18, 1999; to the Committee on Finance.

EC-1904. A communication from the Assistant Secretary for Legislative Affairs, Department of State, transmitting, pursuant to law, the report of a rule entitled "Bureau for International Narcotics and Law Enforcement Affairs; Prohibition on Assistance to Drug Traffickers" (Notice 2840) received on February 17, 1999; to the Committee on Foreign Relations.

EC-1905. A communication from the Assistant to the Board of Governors of the Federal Reserve System, transmitting, pursuant to law, the report of a rule entitled "Regulation T: Credit by Brokers and Dealers; List of Foreign Margin Stocks" received on February 18, 1999; to the Committee on Banking, Housing, and Urban Affairs.

EC-1906. 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 "Formic Acid; Tolerance Exemptions" (FRL5600-4) received on February 17, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1907. A communication from the Administrator of the Farm Service Agency, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Implementation of Preferred Lender Program and Streamlining of Guaranteed Loan Regulations" (RIN0560-AF38) received on February 18, 1999; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1908. A communication from the Director of the Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone off Alaska; Vessels Greater Than 99 feet LOA Catching Pollock for Processing by the Inshore Component in the Bering Sea" (I.D. 021199A) received on February 17, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1909. A communication from the Secretary of Transportation, transmitting, a draft of proposed legislation entitled "The Federal Aviation Administration Authorization Act"; to the Committee on Commerce, Science, and Transportation.

EC-1910. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Uniform Criteria for State Observational Surveys of Seat Belt Use" (Docket NHTSA-98-4280) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1911. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Transport Category Airplanes Equipped with Day-Ray Products, Inc., Fluorescent Light Ballasts" (Docket 96-NM-163-AD) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1912. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; International Aero Engines AG (IAE) V2500-A5/-D5 Series Turbofan Engines" (Docket 98-ANE-08-AD) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1913. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Pratt and Whitney JT9D Series Turbofan Engines" (Docket 98-ANE-28-AD) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1914. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Saab Model SAAB SF340A and SAAB

340B Series Airplanes" (Docket 98-NM-373-AD) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1915. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; McDonnell Douglas Model MD-90-30 Series Airplanes" (Docket 98-NM-269-AD) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1916. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Construcciones Aeronauticas, S.A. (CASA), Model C-212 Series Airplanes" (Docket 98-NM-141-AD) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1917. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Airworthiness Directives; Textron Lycoming Reciprocating Engines IO-540 and O-540 Engines Equipped With Slick Aircraft Products Magnetos" (Docket 98-ANE-81-AD) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1918. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment to Class D and Class E Airspace; St. Joseph, MO" (Docket 98-ACE-49) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1919. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment of Class E Airspace; Griffin, GA" (Docket 98-ASO-26) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1920. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Amendment to Class E Airspace; Burlington, KS" (Docket 98-ACE-45) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1921. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments" (Docket 29463) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1922. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments" (Docket 29464) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1923. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Standard Instrument Approach Procedures; Miscellaneous Amendments" (Docket 29465) received on February 18, 1999; to the Committee on Commerce, Science, and Transportation.

EC-1924. A communication from the General Counsel of the Department of Transportation, transmitting, pursuant to law, the report of a rule entitled "Revocation and Establishment of Restricted Areas; NV" (Docket 98-AWP-27) received on February 18, 1999;