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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

TUESDAY, JANUARY 26, 1999

The Senate met at 12:02 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:

Gracious God, You not only guide our steps, You order our stops for quiet times of prayer. We hear Your words spoken through the psalmist. ''Be still and know that I am God; I will be exalted among the nations, I will be exalted in the earth''—Psalm 46:10. Help us absorb the true meaning of these words translating the original Hebrew. You call us to let up, leave off, let go, and truly know that You are God. You are in control. We cannot be still inside until we reaffirm that You are in control of us, this Nation, and this Senate. We exalt You El Shaddai, all-sufficient one; Adonai, our Lord; Jehovah-raah, our Shepherd who guides; Jehovah-rapha, who heals our bodies and our relationships; Jehovah-shammah, God who is here. Strengthen the Senators as they seek to exalt You, as these pages of American history are written during this trial. You bless the Nation that exalts You! Through Him who taught us to seek first Your kingdom and Your righteousness. 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.

The Chair recognizes the majority leader.

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

ORDER OF PROCEDURE

Mr. LOTT. For the information of all Senators, we are now prepared to hear arguments regarding the subpoenaing of witnesses and the taking of their depositions. I understand the House managers will submit the list and begin their argument; the White House counsel will then state their arguments, with the House managers making the final closing statement. This period has been limited to 4 hours instead of the 6 hours that had been earlier indicated.

I also expect a motion may be offered again to close the session with regard to deliberations by the Senators. I need some further consultation with Senator DASCHLE to confirm that. It could be that we could work it out without having to do the recorded vote. Therefore, votes could occur this evening—probably between 4:30 p.m. and 5 o'clock.

As always, we expect to take a break after about an hour and a half in the proceedings, and it may be a little bit longer than usual, so that if Senators were not able to grab a quick bite, they might be able to grab a little something in the cloakroom during that first break. So it might be a little longer than ordinary. And I expect that will occur sometime around 1:30 approximately.

Before we begin, since I see that there are still a few Senators who are not in the Chamber, I suggest the absence of a quorum, Mr. Chief Justice.

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. If all Senators, counsel and managers would return to their desks, I believe we are ready to begin.

Mr. Chief Justice, again, just for the information of all Senators, what happens next is I believe that a manager will be recognized on behalf of the House to present a motion with regard to subpoenaing witnesses and then the presentations will begin first by the House managers and then by the White House counsel and then closed by the House managers to be spread over 4 hours, but that at approximately 1:30 we will take a break so that we can assess how to proceed the balance of the day, and perhaps even get a bite to eat if Senators hadn't had that opportunity. It won't be an extended break, but it will be longer than normal.

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

I believe we are ready to proceed, Mr. Chief Justice.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BRYANT on behalf of the House managers.

MOTION FOR APPEARANCE OF WITNESSES AND ADMISSION OF EVIDENCE

Mr. Manager BRYANT. Mr. Chief Justice, I have a motion to present.

The CHIEF JUSTICE. The manager will send the motion to the desk. The clerk will read the motion.

The legislative clerk read as follows:

Motion of the United States House of Representatives for the appearance of witnesses at a deposition and to admit evidence not in the Record.

Now comes the United States House of Representatives, by and through its duly authorized Managers, and respectfully submits to the United States Senate its motion for the appearance of witnesses at a deposition and to admit evidence not in the record in connection with the Impeachment Trial of William Jefferson Clinton, President of the United States.

The House moves that the Senate authorize and issue subpoenas for the appearance of the following witnesses at a deposition for the purpose of providing testimony related to the Impeachment Trial:

1. Monica S. Lewinsky;
2. Vernon Jordan; and
3. Sidney Blumenthal.

Further, the House moves that the Senate admit into evidence the following material not currently in the record:

1. the affidavit of Barry Ward, Law Clerk to the Honorable Susan Webber Wright, U.S. District Court Judge for the Eastern District of Arkansas;

2. the sworn declaration of T. Wesley Holmes, and attachments thereto; and

3. certain telephone records which document conversations between Monica S. Lewinsky and William Jefferson Clinton, including a 56-minute exchange on December 6, 1997.

Additionally, the House petitions the Senate to request the appearance of William Jefferson Clinton, President of the United States, at a deposition, for the purpose of providing testimony related to the Impeachment Trial.

The CHIEF JUSTICE. Pursuant to Senate Resolution 16, as modified by the order of January 25, the managers on the part of the House of Representatives and counsel for the President each have 2 hours to present their arguments on this motion.

The Chair recognizes Mr. Manager BRYANT.

Mr. Manager MCCOLLUM.

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

Mr. Chief Justice and Members of the Senate, we are here today to argue for the presentation of witnesses, and I want to state at the outset a couple of observations of mine regarding this.

The House managers have always understood the Senate's sense of the rules on these matters, and we don't question that fact. But I think it is important, to set the record clear here today, to say at the outset that we have always believed, and we still do believe, that 10 or 12 witnesses are what we should have and should have been permitted to call to prove our case. We have estimated that this could be done in a matter of 2 weeks at the outside, including all cross-examination. That is what we think the normal order would have been; it is what we think it should have been. But we have been told again and again, and we believe it is true, that if we made such a request it would not be approved. And a few weeks ago we thought—maybe even a few days ago—that we could submit a list of maybe five or six witnesses and there would be a reasonable chance that for deposition they would be approved and maybe two or three of them actually could be presented here live in the Chamber.

Now we have been led to believe, and we think it is an accurate assessment, that in order to get a vote to approve the opportunity to take depositions alone, whether or not anyone is called, we cannot submit more than two or three witnesses to you.

That is what we have done today. We have submitted a motion for simply three witnesses: Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal.

The two people who know the most about this are Monica Lewinsky and President William Jefferson Clinton, and while we have not submitted to you today the name of President Clinton in our motion, we strongly urge that if you allow us to have witnesses, which we believe you should, that you, in addition—or even if you don't—on your own call President Clinton here to testify. We think that it is exceedingly important that you have an opportunity, we have an opportunity for you to examine him and these other witnesses to get at the truth of this matter and to end all the speculation that would resolve this matter and let you draw the proper inferences and conclusions.

I will simply say that I am going to make a brief outline of the matter of why we should have witnesses for you, the three we are asking for, and I will be followed in order, so you can get some sequence to this, by Manager BRYANT, who will discuss in detail the reason why we think it is appropriate to call specifically Monica Lewinsky; Manager HUTCHINSON, who will discuss Mr. Jordan as a witness; and Manager ROGAN, who will discuss Mr. Blumenthal.

If our motion is granted—I want to make this very, very clear—at no point will we ask any questions of Monica Lewinsky about her explicit sexual relations with the President, either in deposition or, if we are permitted, on the floor of the Senate. They will not be asked. That, of course, assumes that White House counsel does not enter into that discussion, and we doubt that they would.

Secondly, we do not see why the entire process of deposing and calling all of these witnesses right here live would have to take more than just a very few days, 2, 3, 4, 5, maybe early next week at the latest. There is no reason why it has to be longer than that. We absolutely reject the argument that some were making—and I do not know why they were making it—that somehow, if we have a single witness out here, it is going to mean weeks and weeks of protracted delay in this trial.

That is not so, and certainly not so with the three witnesses we are asking you today to permit us to present.

I also want to address the argument that has been made by some that witnesses should only be permitted if there is new evidence.

Now, we believe, we managers, that we will present to you new evidence with the witnesses that we have asked you to let us depose, but think through this with me for one moment. Under the rules you have set up, if we take depositions, which we are required to do, of every one of these witnesses, at the end of the day when those depositions are completed, all the new evidence that we could imagine certainly will be—from those three witnesses—in those depositions, and the argument will be made, I am sure, that there is no reason to have a live witness out here at all.

That had to be a preconceived notion by somebody who thought of that in the first place. If that is the argument, that should not be the standard. It should be one of the standards but not the standard, not the sole standard. There is a lot more to a witness, and the reason why you need to have a witness out here, than simply new evidence.

In real criminal trials, virtually all witnesses are deposed before they are brought to trial, and then the counsel on each side decide which witnesses they will call. They are called. They are examined. They are cross-examined. And unless a witness is deceased or laid up or there is some other extraordinary reason why that witness isn't there, especially a key witness, then the witness normally is here live.

It is especially true in a case like this where much of the evidence, not necessarily all of it—there is quite a bit of direct evidence—but much of the evidence is circumstantial and requires you to draw, as many finders of fact do all across this country every day, inferences and conclusions that involve the credibility of the witness, that involve the way it is said, that involve inflections and spontaneity of the witness, the exchange of the counsel asking the question and the witness, and a description and flavor of which you simply can't get without having the person here to observe.

That is what jurors do all the time. I think it is especially important, as well, because there is conflicting testimony.

Now, I do not suppose we have a stand here today, but you have in front of you a credibility of witness instruction I think we passed out. We would like for you to keep it. It is a credibility of witness instruction that—here it is over here on this side. It is a credibility of witness instruction that is

longer than that. I just excerpted a part of it and put it up here on this board. I know you can't all see that but you should have this sheet. If you don't, please ask for it. This is a jury instruction that is given in the District of Columbia. It is something that is given here as a part of our Federal system. And it is important, I think, for this particular paragraph, to read it, to understand it, because you wouldn't even write this jury instruction if you didn't expect to have live witnesses:

In reaching a conclusion as to the credibility of any witness, you may consider any matter that may have a bearing on the subject.

That is part of the instruction.

You may consider the demeanor and behavior of the witness.

I think that is important. It is the third paragraph you looked at, the bottom paragraph.

You may consider the demeanor and the behavior of the witness on the witness stand; the witness' manner of testifying; whether the witness impresses you as a truthful person; whether the witness impresses you as having an accurate memory and recollection; whether the witness has any motive for not telling the truth; whether the witness had a full opportunity to observe the matters about which he or she has testified; whether the witness has any interest in the outcome of this case or friendship or hostility toward other people concerned with this case.

Demeanor, manner, truthfulness, how the witness impresses you—if you don't have that witness here, and it is a critical witness, there is no way as a trier of fact you can make those judgments fairly. There just isn't any way. We think that it is terribly critical, not only that we are permitted to depose these witnesses, but with respect particularly to Monica Lewinsky and perhaps all three of them, that we be permitted to bring those witnesses here at the end of the day and examine them and let the President's counsel examine them.

The arguments of the President's counsel have been, to some extent, to you and to me—and I have heard it repeated several times—that somehow circumstantial evidence is not that important, that it is somehow inferior to direct evidence. I am not going to pass out a jury instruction on that again. You have already heard us talk about that. The reality is the jury instruction, if we passed one out to you today, would say exactly what we said before: Circumstantial evidence is given the same weight, the same weight as direct evidence. Inferences have to be drawn.

I don't know any case in this country in a criminal matter—or rarely; I should not say ''any.'' I suppose there is a confession that always you get once in a while and you read about it in the paper. But in almost every criminal case, you have to draw inferences; there has to be circumstantial evidence of some sort. There is nothing wrong with that. President's counsel has said that somehow the nature of the evidence means that you should automatically acquit him. I just don't buy that at all.

What are inferences? Let's put inferences up for a second so you can look at that. Inferences are on this side. This is another jury instruction. I don't know if you have got this one, but we will give it to you. This is another one that is given out:

An inference is a deduction or a conclusion which you . . . as finders of facts—are permitted to draw . . . from the facts which have been established by either direct or circumstantial evidence. In drawing inferences you should exercise your common sense. . . . You are permitted to draw from the facts which you find to be proven, such reasonable inferences as would be justified in light of your experience.

A few days ago one of the White House counsel, Mr. Kendall, attempted to make you think it was very difficult to prove a crime by circumstantial evidence. You may remember Mr. Kendall told the story about a fellow who came out of his house one morning and he saw his driveway was wet and he immediately thought it must have rained last night. But, Mr. Kendall said, this man noticed right after that that his neighbor's water sprinkler was dripping and he thought, well, maybe the water sprinkler caused it to be wet. And he used that illustration—ended the story right there—of how difficult circumstantial evidence is and how likely you might draw the wrong conclusion from inferences.

Mr. Kendall didn't allow you to proceed with the next commonsense step that shows how powerful circumstantial evidence can be. Let's suppose the man got up in the morning, he walked out of his house, he saw that his driveway was wet, he thought maybe it had rained. He immediately observed the water sprinkler was dripping. He thought, well, maybe the water sprinkler caused it and he looked down the street then and looked at not only his neighbor's sidewalk where it was wet as well as his, and the driveway, but he looked at his neighbor's. And he looked at several others all around his neighborhood and they were dry.

The obvious conclusion from circumstantial evidence is the neighbor's water sprinkler caused his sidewalk or his driveway to be wet and it didn't rain. It is a kind of a reasonable, commonsense, inferential, circumstantial conclusion you are allowed to draw. You are the finders of fact, and I think that that suggestion was wrong.

But this is why we need witnesses. You need to be able to see the temperament, you need to be able to have the background, you need to be able to have the feel or the flavor to draw those inferences properly.

In the impeachment case before you, you have both direct and circumstantial evidence that the President engaged in a pattern of obstruction, perjury, and witness tampering designed to deny the court in the Jones case what Judge Wright had determined that Jones had a right to discover in order to prove her claim. You have to use your common sense to get at this. Seeing, hearing, observing those live witnesses is important.

If you remember at the outset of this case, at the outset of these proceedings, I tried to draw your attention to what this was about in a nutshell. Some have said it is a theory of the case. The White House wants to call it speculation. It is not speculation. It is what, from all the evidence—especially once you have heard Monica Lewinsky and Vernon Jordan and Sidney Blumenthal, I think adding the flavor that you need to have, adding the body language you need to observe, adding the credibility that you need to establish in this—I think that is the proper inference and the proper conclusion you need to draw.

What was that nutshell? I won't bore you with going into every detail again, but I want to remind you what the record, we think, shows that this additional witness presentation would augment and be very important to. It shows the President had a well-thought-out scheme. He resented the Jones lawsuit. He was alarmed when Monica Lewinsky's name appeared on the witness list and even more alarmed when Judge Wright issued her order signaling the court would hear the evidence of the relationship.

To keep his relationship with Monica Lewinsky from the court once it was apparent to him he was going to have to testify, he knew he would have to lie to the court. To succeed at this, he decided he had to get Monica Lewinsky to file a false affidavit to try to avoid her testifying. He needed to get her a job to make her happy, to make sure she executed the affidavit and then stick with her lies if questioned.

Then the gifts were subpoenaed. He had to have her hide the gifts, the only tangible evidence that could link him to her. She came up with the idea of giving them to Betty Currie and the President seized on that. Who would think to ask Betty? Then he would be free to lie to the court in the deposition. But after this, he realized he had to make sure Betty would lie and cover for him. He got his aides convinced to repeat his lies to the grand jury and the public, and all this worked until the dress showed up. Then he lied to the grand jury to try to cover up and explain away his prior crimes.

The President knowingly, intentionally, willfully set out on a course of conduct in December 1997 to lie to the Jones court, to hide his relationship, and to encourage others to lie and hide evidence to conceal the relationship with Monica Lewinsky from the court.

That is the straightforward case that we presented. It is there. But it is very important that you recognize this is not speculation but it is supported by the evidence. But it needs to have the witnesses here.

I am not going to go into every one of the articles. I am not going to go over all that again. You have them in

front of you. But you know there are four provisions, four different provisions of the perjury article, and there are seven counts in the obstruction article. And, in addition to the seven counts, we believe you have the right to consider the lies the President made in the civil Paula Jones deposition as a part of his obstruction of justice, as written in the body of that article.

Why do I raise what is there on the table? Well, you can find the President guilty of any one of the perjury or obstruction of justice charges. In our judgment, if you find him guilty of any one, you can convict him and you can remove him from office. We think that is appropriate. We think that you should, that every one of them rises to that level.

I want to make a point to you, too, for example, about the first one in the perjury, about the nature and details of his relationship with Monica Lewinsky. Let's just say for a minute, so you will get this one clear, if I could beg your indulgence, there were a lot of questions raised out here about particular statements that might be perjurious, some of which may have sounded a little bit more stretched to you than others did. But the body and the gravamen of that is that they are all grand jury perjury about that relationship. Cumulatively, that is what you are voting on. You are not voting on each and every one of these; particularly ''the'' singular lie that hangs the President of the United States. And there are four—there are three more in addition to that to look at. So, please, look at all of them.

We also strongly believe that each of these constitutes high crimes and misdemeanors. It is very hard for us to conceive that there is a different standard for impeaching the President and impeaching a judge. We know that has been argued to you out here, but it is very hard for us to conceive of this. On the other hand, I am aware that many of you believe, and I am sure some of you at least do—I hope it is not many, but I said many—that no matter whether or not the President is guilty of the perjury and obstruction of justice, everything that is in here in great detail, everything we have told you, there are some of you who believe that none of that rises to the level of a high crime and misdemeanor and that the President should not be removed from office.

On the other hand, I think that the majority of you do believe that, if the President committed all of this, surely it would rise to the level of high crimes and misdemeanors. How can you leave a man in office who is President of the United States who has so intentionally, through his scheme that he has concocted to deny the court justice, deny information to a person who is trying to plead their case, gone through it systematically and lied again and again and again and then went intentionally, calculatingly, and lied to the grand jury about it again?

It is very hard to conceive of that. But I also suspect that most of you at the end of the day will question some of these and, as I said earlier, you don't have to conclude that he committed all of them to convict him, certainly not to find him guilty of the charges, but somewhere in between. Is it 50 percent of them? Is it seven-eighths of them? How many of them does it take? What is the weight for some of you? Each one of you will be judging this differently.

But in that process, there is no doubt in my mind that you need to go through the process of looking and hearing from these witnesses to make that decision, and if you have a doubt, not in your own mind, maybe some of you have no doubt at all that he is guilty of any and all of these crimes, but if you think one of your other colleagues does have that doubt at this moment, for gosh sakes, let's let the witnesses come here and let us have the chance to erase that doubt in the way you normally do in a trial.

For a few of the criminal charges under the articles of impeachment, under both of them, it is our judgment that the President's guilt is so clear and convincing and compelling that we don't think that any witnesses are needed to be called in deposition or in person.

First, contrary to the impressions that the White House counsel would like to leave you, it should be clear to anybody reading the record that the President committed perjury before the grand jury when he told that he never touched certain body parts of Ms. Lewinsky, which touching the President admitted would clearly be within the definition of sexual relations in the Jones case.

Ms. Lewinsky testified that he touched these parts on a number of different occasions in a manner clearly within the President's understanding of that definition. The record contains testimony from at least six different friends and counselors with whom Ms. Lewinsky spoke and described these details contemporaneously as they occurred.

White House counsel has repeatedly tried to dismiss this absolutely clear perjury by claiming that Ms. Lewinsky's testimony is uncorroborated and, therefore, you couldn't prove perjury to the court. They say again and again and again, it is a ''he says-she says'' situation.

This is a gross misstatement of the law. Even if there were no corroborating witnesses—and there are in this case—a person could be and would be convicted of perjury before any court in this country based on the evidence that is in this record now. We don't have to bring anything else in here, and we are not planning to do so to prove that.

The law covering grand jury perjury, which has been on the books since 1970, does not require a corroborating witness and does not require corroborating evidence. There are more than 100 people serving in Federal prison today who have been convicted under this 1970 grand jury statute for perjury where it is one person's word against another, several of them for lies about sexual relations.

All you need to convict is to accept Monica Lewinsky had no motive to lie about this, the President did, and you have to draw the inferences you logically can from the chain of events that are in this record. But even though you don't need any corroborating testimony, there is corroborating testimony. There are the six people—friends and counselors—with whom she talked about this contemporaneously. Again, the White House counselors have tried to persuade you, wrongly, that you should not consider this, that this would not be admissible, these corroborating witnesses in any courtroom in the country, they say, and that is not true.

There are at least three exceptions to the hearsay rule which would, in all probability, permit those prior consistent statements to come in and corroborate that testimony.

The bottom line is the perjury of the President in this case is as plain as day on the record, and we don't need to call any witnesses on this matter. And we also believe there are a number of other perjuries in that grand jury, that I am not going to go into detail about, that are just as plain on the record. We don't need to call witnesses that he perjured himself when he told the grand jury it was his goal to be truthful in the Jones deposition. That is what he told the grand jury. It was his goal to be truthful.

The record is replete with many lies that he told in that deposition and, in the face of telling the grand jury that his goal was to be truthful, he committed perjury.

Nor do we believe that any witness needs to be called to further establish the President's guilt of the crime that is obstruction of justice and witness tampering in the case where he met Betty Currie on the day after his Jones deposition and suggested to her all those false declaratory statements that we have been over so many times in here.

Betty Currie's testimony in this matter is undisputed on the record. The White House counsel's argument that the President was just refreshing his memory is absurd on its face.

The same is true of the obstruction of justice and perjury charges related to allowing his attorney during the Jones deposition to make false and misleading statements with regard to Ms. Lewinsky's affidavit and then lying about not even paying attention to the attorneys' exchange with the judge on this matter. The record is clear. You watched the videotape on it. Inferences are perfectly appropriate to be drawn from body language. You saw it on the videotape. You saw it. No more witnesses are needed. The President committed these crimes.

On the other hand, we believe that you do need—we need to bring in witnesses to resolve conflicting testimony to give you a true picture of the President's scheme to lie and conceal evidence for the other obstruction of justice charges and certainly for the last perjury charge. They are more complex. They are more dependent on circumstantial evidence and inferences you logically have to draw. And that is why you need to hear from Monica Lewinsky, Vernon Jordan and Sidney Blumenthal, to tell you about these things themselves.

When you do, you are just plain going to get a different flavor; you are going to feel the sense of this. We believe you will find at the end of the day, once you have done that, even though you don't need to use this standard, that the President is guilty of the entire scheme we presented to you in every detail beyond a reasonable doubt.

Remember, you don't need to convict him to find him guilty of all of the crimes we have suggested by any stretch of the imagination. You don't need to use the beyond a reasonable doubt standard. That is not required of you. But we can understand why many of you or some of you might.

The reality is that we are in a position—you are in a position—where you need, though, to make these determinations, and to make them you need to have the witnesses. In any courtroom where you are going to certainly judge something beyond a reasonable doubt, you need to assess the credibility of the witnesses where you have conflicting testimony.

One point in that regard, too, is, we have heard White House counsel say a number of times that somehow the fact that there is so much conflicting testimony makes our case weaker. That is not so. Again, unless the bad guy admits he is guilty, when you go to trial in a criminal case you always have conflicting testimony, at least you certainly have the accused denying it, and very, very frequently, most often, you have a lot of other people who are conflicting.

The fact that there is conflict is something for the triers of fact to resolve, but, again, resolve by listening to the witnesses, checking their demeanor, watching their body language, determining their credibility, feeling the case-flow, seeing how it fits together, watching.

I am not going to be the one describing what Monica Lewinsky is going to show you if she comes in here. I am going to tell you, even if we depose her, having had the opportunity to talk with this intelligent and very impressionable young woman the other day, I can tell you that she herself will convey this story to you in a way that it cannot be conveyed off a piece of paper. It just cannot be.

I suppose that is why the White House counselors are so afraid of our calling any witnesses. They don't want you to have the opportunity to see that, an opportunity you can only get the full flavor of if not only you let us take the depositions, but you at least let us call her live here on the floor, preferably with our other two witnesses as well.

They know that the written record conceals this. There is no way to lift that out. There is no way for you to see the relationship, how she responds to the questions, how she answers, how she conducts herself in making it very apparent what the President's true meaning and intent was.

If you remember, a lot of this is his state of mind. In the not too distant future, Monica Lewinsky is going to be free of the gag order and is going to go out and talk to people freely. She should. At that point in time, she is going to have the public judging her, and they are going to be judging this case, as will history, and I suggest that the public at that point in history as well will be judging you and not judging the Senate well if it doesn't let her come here and testify.

Let me briefly turn to the last thing I want to do. I want to describe, so you know what it is, the three additional pieces of new evidence we would like admitted in this motion.

First is the affidavit of Barry W. Ward who had been a law clerk to Judge Wright during the consideration of the Jones case. None of this, I think, should be controversial, but we do have it, and I want to cover it briefly. In his affidavit, he attests to the fact that at President Clinton's deposition in the Jones case, that he, Mr. Ward, was sitting at the conference table next to Judge Wright, that he was able to observe the colloquy between the judge and Mr. Bennett.

You recall, Mr. Bennett was engaged in this colloquy about the affidavit of Monica Lewinsky. And that is what you saw, the film footage of the President and the questions. Was the President observant? Was he watching? Was he keen? And that affidavit goes to that point. And it is the testimony of Mr. Ward with regard to the fact that the President was observant.

Secondly, we have a piece of new evidence, and that is the declaration of the Jones attorney, T. Wesley Holmes, and the attached copies of the subpoena in that case, the subpoena in that case to Betty Currie, dated January 22, 1998, along with proof of service, dated January 27, 1998.

Mr. LEAHY addressed the Chair.

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

Mr. LEAHY. Mr. President, parliamentary inquiry. It is my understanding that Senate Resolution 16 says——

The CHIEF JUSTICE. The Senator from Vermont is advised it takes unanimous consent to allow a parliamentary inquiry in the proceeding.

Mr. LEAHY. Mr. Chief Justice, I object to the references the manager is making to new information. It is my understanding that from Senate Resolution 16, the material outside the record may only be presented in connection with a motion to expand the record. This new information—we have skirted it already with the Lewinsky interview this weekend, but now the latest that Mr. Manager MCCOLLUM states, I would say respectfully, expands that record and, indeed, we are not at that point.

The CHIEF JUSTICE. Yes. I think the motion that the managers have made is a motion to authorize the presentation of evidence that is not in the record. And so I think that is a fair comment. I overrule the objection.

Mr. LEAHY. I thank the Chief Justice.

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

The attachments to Mr. Holmes' declaration is the proof of the subpoena being issued to Betty Currie in January, on January 22, 1998, along with service in the Jones case on January 27, 1998, and a copy of the supplemental witness list, including the name of Betty Currie, which was served on January 23, 1998. And in his declaration, Mr. Holmes explains that Ms. Currie was subpoenaed because of testimony given by President Clinton in his deposition and because of reliable information which the attorneys had received to this effect—that Ms. Currie was an instrumental person in facilitating Monica Lewinsky's meetings with the President and central to their ''cover story,'' as Mr. Holmes refers to it. He explicitly denies that any ''Washington Post'' article played any part in the decision of the Jones attorneys to subpoena Ms. Currie.

And in the third and final piece of new evidence that we ask you to take in and accept is a declaration and accompanying documents with regard to a telephone conversation showing that a conversation occurred on December 6 for 56 minutes between the President and Ms. Lewinsky, which we believe that is what it shows. Obviously, the phone records show the phone records. And they state what they are. But we suggest to you that that is relevant information because it confirms what we think the testimony in the record otherwise would lead you to believe.

At this point in time, having given you an overview and having given you this amount of new evidence, I want to turn the microphone over and yield to my colleague, Mr. BRYANT, the rest of the time.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager BRYANT.

Mr. Manager BRYANT. Mr. Chief Justice, may I inquire as to our time remaining?

The CHIEF JUSTICE. Just under 90 minutes.

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

Distinguished Senators, a recent letter from Manager HYDE to Senator DASCHLE stated that it has always been the position of the House managers

that a trial with the benefit of relevant witnesses is in the best interest of the Senate and the American people. The defense attorneys for the President, as well as others in this body, have publicly stated that they do not want witnesses.

Through the question-and-answer session that we have just participated in over the last few days, some in this body have made it clear that they would prefer a few sharply focused witnesses limited only to the most relevant witnesses. We heard this. And as a result of our submission this morning, you will see that we have proposed three witnesses.

Now, as background, we have brought this down from some 15 witnesses that we initially thought we would like to call. We eliminated, obviously, many witnesses that we would still like to call. But with respect for this body, and certainly the sensitivity that we feel, we heard that three witnesses would be probably the best situation.

I think from, again, the tone of the questions, the directness of many of the questions, we did get that message clearly. And from these three witnesses we feel that we have the broadest coverage of the two articles of impeachment.

Within the obstruction article, there are in essence seven so-called counts, seven instances that we allege. And with these three witnesses, we managed to cover six of those seven, with the one that we don't quite cover being the tampering with Betty Currie. As you will note she is not on that list. But, again, bringing this down to three, we had to eliminate, again, some witnesses we would have preferred to call.

Also, based on what we have read and what we have heard, it is clear that a very few have already determined that even assuming the truth of the articles of impeachment—the perjury and obstruction of justice—that they are insufficient to convict this President of high crimes and misdemeanors. Since each of you, as Senators, must consider this matter and vote your own conscience with impartial justice, that is apparently your individual decision, although with all due respect, I would suggest a premature decision before all the proof and all the arguments are made.

One example of not having heard a complete case is Ms. Lewinsky. She is probably the most relevant witness, that is, aside from the President himself who so far has indicated through his counsel that he will not testify; and I might add also has not answered the questions that at least some Senators sent to the White House for his answering, based on his attorney's statement that he would be willing to answer questions.

So with that aside, Ms. Lewinsky is probably the most important witness left. And wouldn't you at least like to see and hear from her on this? As the triers of fact, wouldn't you want to observe the demeanor of Ms. Lewinsky and test her credibility—as I say, look into the eyes and test the credibility of these witnesses? Compare her version of the testimony to the contested events. And remember, the President's attorneys, in numerous ways, in their vigorous defense of the President, have challenged Ms. Lewinsky's version of the facts.

I believe the majority of other Senators have not yet reached a final determination, and it is to you now that I make this further proposition. If there is one witness you and the American people honestly do need to hear, it is Ms. Lewinsky. As you probably read in the newspapers, her lawyers don't want her to testify. They are good lawyers, and they don't want to have her out here.

And despite the protestations of the White House and their attorneys during the House hearings that they wanted to hear fact witnesses, we now know absolutely and without a doubt the White House does not want to hear Ms. Lewinsky—does not want you to hear Ms. Lewinsky. And Ms. Lewinsky, if the truth be known, probably does not want to come in here and testify.

These are not our witnesses. We didn't get this case in a brown envelope. We sort of didn't have any choice in selecting the witnesses. The witnesses are all out there—basically White House employees, friends of the White House, or former employees. These are not going to be our friends if they come in and testify. They are not going to be sympathetic to us, although we can anticipate that they would tell the truth. And that certainly would be our belief with Ms. Lewinsky if she were called.

We believe she understands her responsibility, despite any feelings that she might have about the President, or the job that he is doing as President, that she understands the responsibility to tell the truth.

And Senators, she does have a story to tell. And given the link that she has, that common thread that she has in most of the charges of these articles of impeachment, I would suggest that she should be permitted to testify.

I would go further to say that a closure of this case is somehow necessary, and without the direct presentation by Ms. Lewinsky, we all—political and public—would be denied the complete picture that she should be able to give us to better sort this out. As Manager GRAHAM said yesterday, please don't leave us all hanging for the answers we so dearly need.

Is this good, is it bad or is it ugly? We managers believe that it is bad, ugly and illegal. We all like to talk about the Constitution, and it is a great document. The opportunity to confront witnesses is present in that Constitution, and it can be argued that this principle of confrontation of witnesses against you should apply to these proceedings. While we realize that confrontational right is one that belongs to the criminal defendant in the Constitution, in this case apparently any right to confront Ms. Lewinsky and other witnesses is being waived by the President and his lawyers since they don't want to call witnesses in these proceedings.

Isn't it time, though, for the rest of us to make that choice that we do want to see and hear some witnesses? Her testimony, in particular, would be extraordinarily enlightening in resolving factual disputes about the very charges for which we ask you to convict the President of the United States for the felonies of perjury and obstruction of justice. These particular charges go to the very heart of our cobranch of government, the Judiciary. And Members of the Senate, in terms of the impact on our judicial system in the search for truth, there is no difference between a person lying, which is perjury, and a person paying another person to lie, which is bribery. The bribery is in the Constitution and the perjury is not specifically mentioned.

In terms of this proposition of proportionality, is the 106th Senate prepared to have as its record of sexual harassment laws that perjury about sex is not illegal? After all, that is what this whole proportionality argument is about, that if it is about sex it is OK to lie. Because Senator Bumpers said that upwards of 80 percent of his divorce cases from his Arkansas practice of law involve lying, that does not legitimize perjury, nor should it provide any authority for this Senate to somehow legitimize perjury if it is just about sex.

We allege that the President, in a reasoned and in a calculated manner, prevented Paula Jones from obtaining truthful testimony and evidence that might have helped her lawsuit. At the time the President attempted his coverup efforts, he, obviously, felt the disclosure of that information in the Paula Jones case would be material and helpful to her. The President not only committed himself to illegal actions, but he enlisted others to assist, some knowingly, and others, perhaps, unknowingly.

Ms. Lewinsky is one of these who, interestingly enough, might fit into both categories of knowing and unknowingly at different times. She would be able to share with this Senate the so-called tone and tenor of her conversations with the President. Who else can do that but she or the President?

This tone and tenor and observing her demeanor and listening to her talk about that filing of the affidavit and those things, and how the President talked to her and how she read what he said and exactly what he did say, these are all very important, because as we know in Washington, and so many other places where there is a lot of power and prestige and so forth, there are actions that can be prompted without even a direct specific order. Things can get done even without it being said just by the tone and tenor, the gestures, the appearance and so forth of

certain things. Often these direct words, as I said, are not necessary. And Ms. Lewinsky can tell you about some of these occasions.

An appropriate examination—and an appropriate cross-examination, I might add; let's don't limit the White House attorneys here—of Ms. Lewinsky on the factual disputes of the affidavit and their cover story, wouldn't that be nice to hear? The concealment of gifts—what really happened there and the job search—why did she get the job within 48 hours of the affidavit, after months of unsuccess? Wouldn't it be nice to hear Ms. Lewinsky's version of this when it is so important to the overall case of obstruction of justice?

These are just a few examples where the Senate could be helped by her testimony, and it very well could be dispositive, and it is even possible that she could help the President in some ways. But I assure you that she is an impressive young lady, and I suspect that she still very much does admire the President and the work that he is doing for this country. Yet, she would be a person who in all likelihood would be forthcoming.

If you have not made up your mind, and, indeed, if you have further interest in resolving many of the facts here, I do commend Ms. Lewinsky for your consideration. It would be my intent to lead her through direct examination, the perjury charge, as it is alleged with the President, by having her simply affirm those provisions of her written testimony which are the ones that are generally referred to as salacious, without specifically mentioning those words.

On the more complicated obstruction of justice, the pattern of obstruction of justice which does not involve these salacious details and matters, they will be addressed more specifically. It would be my intent for immediate clarification and to dissolve discrepancies and different inferences that have been drawn by House managers and defense counsel for the President, to ask her about the December 28 transfer of Ms. Lewinsky's gifts from the President—transfer to Ms. Currie, particularly the cellular telephone call that has been put into issue by the defense team, about her conversation with the President and her offer to allow him to review this false affidavit before she submitted it to her lawyer and eventually to the court, and his comment that he didn't need to review it because he had seen 15 others just like it. Wouldn't you like to know what are we talking about—15 others? Fifteen drafts or 15 other type of affidavits in other cases?

She would also be asked about her job interviews and her discussions with the President about these job interviews over a period of time, which are very important, her discussions with Vernon Jordan, and specifically why she felt that the interview that she did with Revlon the day after she signed the affidavit, her impression that it went poorly, whereas we heard—not testimony, but statements in the presentation of White House lawyers that, in fact, it didn't go poorly, it went very well, but she felt it went so poorly that she went immediately out to call Vernon Jordan. Why? Why not hear her come in and tell us why she did that?

There will, of course, be other matters of record that she can clarify, and certainly being available to the White House defense team she will be vigorously cross-examined. I am sure that might also clarify other matters.

It is my feeling that a fair and comprehensive examination without interruption could be conducted of Ms. Lewinsky in 2 to 4 hours, and depending on the length of cross-examination by White House attorneys, we may not need any redirect examination.

While defense counsel for the President and others for the President—I heard it so many times, I am not sure exactly who said this so I don't want to attribute to defense counsel, and maybe they haven't even said it, but there has been word out of the White House that if we call one witness, we might as well settle into a siege here in the Senate; we will be here for months and months and months. I suggest that is an outrageous statement, that we will need that amount of time to pursue this case if witnesses are called.

We are confident that that, basically in its best case, is an attempt to discourage you from calling witnesses; and in its worst case, unfortunately, is a veiled threat that they will be dilatory and drag this out for months and months if the Senate would allow.

House managers are establishing a good-faith effort to cut our witnesses, as I said, down to three people, and to commit to reasonable times of examination with the assurance that we will finish this as quickly as we can and we will hope and perhaps the Senate their defense team.

Witnesses can be called and a fair trial could be accomplished if all concerned would agree. Would the Senate consider requesting the President's defense team to also select 3 or fewer witnesses in an effort to move this process along? And we think, too, that the depositions, while they are important, if they are solely for the purpose of discovery, I ask, why would the White House need to discover what Vernon Jordan has to say, what Betty Currie has to say, or Sidney Blumenthal, or John Podesta—any of these witnesses? They would have to take Monica Lewinsky's deposition, but any other discovery deposition, it seems to me, they have complete access to already.

As I close, I want to leave you with some words that have been of some comfort to me, and I think we have all needed some comfort at times during these proceedings. It is a very short quote of the opening remarks of Judiciary Committee Chairman Peter Rodino in 1974. Again, in part, he says:

> We know that the very real security of this Nation lies in the integrity of its institutions and the informed confidence of its people.

He talked about the Nixon hearings.

> We will conduct our deliberations in that spirit. It has been said that our country, troubled by too many crises in recent years, is too tired to consider this one. In the first year of the Republic, Thomas Paine wrote, ''Those who expect to reap the blessings of freedom must, like men, undergo the fatigue of supporting it.''

Back to Rodino:

> Now for almost 200 years, Americans have undergone the stress of preserving their freedom and the Constitution that protects it. It is now our turn.

Ladies and gentlemen of the Senate, I respectfully ask you to permit the House managers to call these 3 named witnesses and add this additional evidence. I thank you. I yield to Mr. Manager HUTCHINSON.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. Mr. Chief Justice, ladies and gentlemen of the Senate, my responsibility is to address the testimony of Vernon Jordan and the need to call him as a witness in this case.

Before I go into the details of that, let me just reflect for a moment on the Senate trial process. I said many days ago that I had confidence in the United States Senate, and I thought that at this particular juncture it might be good if I reassured you that I still had confidence in the United States Senate. When I think about the trial process that we are going through, I have to compliment you on the fact that you have structured a bipartisan process. I think that is important because you gave this process credibility. So you did the right thing, and I, for one, am pleased with what you were able to accomplish in that endeavor.

Now, whenever you achieve a bipartisan process, you have to make compromises along the way. And the result is a format that is not particularly helpful to the trial managers, the House managers, who wish to call witnesses. We have struggled through that. But notwithstanding the present difficulty, I still compliment you and thank you for what you have done in achieving that bipartisan consensus. I think back to that meeting that I had early on, and some other managers, with the bipartisan group of Senators from this body—and I now look at some from both sides of the aisle—and I went in there with this high-minded thought that we could make a case for witnesses because of what the other managers have described as the tone and demeanor of witnesses. Well, that was quickly brushed aside by them saying, ''No, no, no, we want to hear about what conflicts exist in the testimony; just tell us what the conflicts are because that is a strong case for calling witnesses.'' Well, that threw me back on my heels. So I went back and, as you know, in the question and answer session I addressed the question of conflicts. I think we did a good job of outlining the conflicts between various witnesses.

Well, then I was informed that, ''We really are not as interested in the conflicts because the conflicts exist in the current transcript. Therefore, really, we want to know what new information and what dynamic these witnesses can add.'' That threw me back for a curve. So we looked at this again and we tried to make a case.

I'm going to show you what new dynamics and questions can be asked. Ultimately, when you take the depositions, many of those questions are going to be answered. So you come back full circle to where we started in the beginning—that ultimately I hope witnesses are called so you can evaluate their credibility, determine their demeanor, and assess the truth in this case. I think that is important. I know people talk about me as being a former Federal prosecutor. Actually, at one time, I confess, I represented a defendant in a murder case. This gentleman was charged with murder, and the prosecution in Logan County, Arkansas —near Senator Bumpers' hometown— decided they wanted to handle one of the key witnesses by deposition, as that person was out of State. I objected and objected, because I thought that witness ought to be in the courtroom. The judge overruled me and said, ''You can go take the deposition and the defense counsel will be there to cross-examination.'' So we traipsed off to the other State and took this witness' deposition, and she made a lousy witness. I said she would not be believed for anything because of the way she appeared. Well, we brought the transcript back to the courtroom. The prosecution, over my objection, put the transcript into the record and, all of a sudden, that cold transcript was believable —particularly when they had it read by another witness that didn't look anything like the original lady. My client was convicted, but that case was reversed in the Arkansas supreme court because the court said it was important that the jury look into the eyes of the witness, see the demeanor of that witness and determine the credibility.

So ultimately, we come back to that same point—that somehow you are going to have to resolve the conflicts. I know of only one way to do it. We have tried to be extraordinarily helpful and cooperative with the United States Senate. I came in with this idea that we were going to present this case with 14 or 15 witnesses. Clearly, that is off the table. We have narrowed this down to 3 witnesses; that is tough to decide, but we believe that represents the basic heart of the obstruction of justice case and gets to at least 6 of the 7 elements, so that you can evaluate that. But we want to assist you, clearly, in getting to the truth, but also to bring this matter to a conclusion fairly and as expeditiously as possible.

Now, let's look to Mr. Vernon Jordan. Should he be called as a witness in this case? His testimony goes to the heart of one of the elements of obstruction of justice—that is, the job search and the false affidavit, and the interconnection between those. I have tried, during my presentation of this case, to present portions of his testimony—excerpts, if you will, from his testimony. But you will see that he has testified 5 times before the Federal grand jury. I have read all of this. I am not going to ask for a show of hands, but how many of you have read all of this? And so you have had to rely upon a trial—an ordeal by lawyers, rather than a trial by witnesses because I have had to present the testimony of Vernon Jordan in excerpt fashion with limited quotes here and there—as the defense counsel has done likewise. That makes it difficult because the problem is, one, you are hearing it from her, but, second, it is not a story, it is excerpts, and there is no way you can assess the truth because of that.

If you look at the times that Mr. Jordan has testified before the grand jury: March 3, 1998; March 5, 1998; May 28, and June 9; the last time he ever testified was June 9, 1998—let's look at what has happened since then, since Mr. Jordan last testified before the grand jury. I believe these charts are in front of you.

July 22, Ms. Currie testified before the grand jury. So any of the facts we gain from Ms. Currie were not utilized in the last examination of Vernon Jordan.

August 6, what happened on that date? Ms. Lewinsky testified before the grand jury and she revealed some new facts during that time that Mr. Jordan has never had an opportunity to explain, respond to, or answer. I will go into that. One of them is about disposing of notes. The second one is about drafting the affidavit. And, of course, by that time the DNA on the dress had been revealed.

Then the next thing that happened was the President's revelation to the Nation that this relationship did exist. And then he testified before the grand jury. All of the facts revealed from those instances were not revealed at the time Vernon Jordan last testified before the grand jury.

Obviously, any lawyer would understand there are naturally questions that arise from each of those incidents that could be posed to Mr. Jordan. Why has that not been done? Quite frankly, I have talked to, as I mentioned the other day, the attorney for Mr. Jordan. I have not talked to Mr. Jordan personally. I think that clearly the Senate does not want us to do that until we get past this next hurdle. But those are the things that need to be resolved.

Let me address briefly three areas of conflicts and testimony between Mr. Jordan and Ms. Lewinsky that point up other areas of questioning that would be appropriate that he should have the opportunity to explain.

I have been accused of being harsh to Mr. Jordan, and I don't mean to be that way. There have been certain things that have been stated by witnesses in this case that ought to be explained, that ought to be questioned of Mr. Jordan. But we need to have good answers to these questions. We need to know those answers.

The first conflict—I will get to that—is between Mr. Jordan's testimony and Ms. Lewinsky's testimony about whether Mr. Jordan knew the true nature of the relationship with the President.

In Mr. Jordan's testimony of May 28, he was asked a question, ''You're saying no one to your recollection ever suggested or alleged a sexual relationship prior to the 18th of January between Monica Lewinsky and the President.'' The answer: ''That is correct.''

That was on May 28. Ms. Lewinsky was asked the same series of questions months later—in August of 1998—and she indicated, she testified, ''And I remarked that I really didn't look at him as the President''—that, ''I saw him more as a man and reacted to him more as a man and got angry at him like a man and just a regular person. Mr. Jordan asked me what I got angry at the President about. So I told him when he doesn't call me enough or see me enough.''

Another statement:

> And so after we had the conversation I was just talking about with Mr. Jordan, he said to me, ''Well, you know what your problem is,'' and I said, ''What?'' He said, ''Don't deny it,'' and he said, ''You're in love. That's what your problem is.''

This is Monica Lewinsky referring to what Mr. Jordan had said.

So clearly those are relevant questions that need to be readdressed to Mr. Jordan because they were raised by Ms. Lewinsky in subsequent testimony that have never been asked to him in that fashion.

There is a conflict in the testimony between Mr. Jordan and Ms. Lewinsky about whether the subpoena was discussed at the December 22 meeting. Mr. Jordan testified in March that, ''We did not talk about the subpoena. She wanted to know about her job. That was the purpose of her coming.'' And the question was, ''Anything beyond that?'' The answer was, ''No.''

And that is March 6 of 1998. Ms. Lewinsky testified contrary.

Let's turn our attention then to December 22, which is the day she met with Frank Carter. ''And I think you said you were going to meet with Mr. Jordan.'' Answer: ''So I came to see Mr. Jordan earlier, and I also wanted to find out if he had in fact told the President that I had been subpoenaed.''

That was her testimony which is in direct conflict—that the subpoena was discussed on the same day that she went to see Mr. Carter about the representation.

Where is the relevance in this?

If you recall, Mr. Jordan said it didn't take an Einstein to figure out that, whenever you combine whenever she got the subpoena, that it changed the circumstances.

Here you have three problems. You have a job search, you have a witness

in court, and if you combine that with the knowledge of a relationship, those are three dynamite issues combining together that should cause anyone—not just one change of circumstances but it elevates it to a higher level of danger because of the correlation between each of those three separate facts—each of these conflicts, and the testimony of Monica Lewinsky goes to those key fundamental issues. And Mr. Jordan has never been asked sufficiently about those areas.

The third conflict—this is key—is the testimony of Monica Lewinsky. Mr. Jordan testified that he never talked to Ms. Lewinsky about Linda Tripp. That is his March 5, 1998, testimony. But Ms. Lewinsky testifies in her August 6 testimony about a meeting with Mr. Jordan on December 31.

This is the third exhibit. I will read that:

> And I met Mr. Jordan for breakfast on . . . the morning of [December] 31st, at the Park Hyatt Hotel. And in the course of the conversation I told him that I had had this friend, Linda Tripp . . . and I was a little bit concerned because she had spent the night at my home a few times and I thought—I told Mr. Jordan, I said, well, maybe she's heard some—you know—I mean, maybe she saw some notes lying around. And Mr. Jordan said, ''Notes from the President to you?'' And I said, ''No, notes from me to the President.'' And he said, ''Go home and make sure they're not there.''

This is Ms. Lewinsky's testimony of August 6 before the grand jury.

And before anything is said, I am not accusing anyone of anything. But let me tell you, it would be significant if Mr. Jordan is asked a question if that is a true statement and he says yes. It is significant to the case. If he says no, that is significant because there is a clear conflict in the testimony of Ms. Lewinsky. And her testimony goes to the heart of the issue. If he says, ''I don't remember,'' which is a third alternative—by the way, I hate giving these prospective witnesses all my questions—but if he says, ''I don't remember,'' that does not put the issue in dispute with Ms. Lewinsky and establishes really her recollection of the incident.

So I could go through more. I could go through more conflict with Ms. Lewinsky about whether Mr. Jordan saw the unsigned draft copy of her affidavit, a key issue in this case. Ms. Lewinsky testifies one way. Mr. Jordan did not have the benefit of Ms. Lewinsky's testimony when he was asked earlier in the grand jury. So that needs to be addressed with him.

There is a conflict with Ms. Lewinsky on whether they discussed the contents of the affidavit—not just whether they saw the signed affidavit, but whether the contents were discussed. The question to Mr. Jordan was, ''Did you ever discuss with Ms. Lewinsky what she was going to include in the affidavit?'' Answer: ''I was not Ms. Lewinsky's lawyer. The answer to that is no.''

But he goes on and elaborates on that. Ms. Lewinsky testified that she and Jordan did have a conversation about deleting a certain sentence in the affidavit and reworking that.

That is what I just covered on the contents of the affidavit.

Let me just go to one other on the conflict where the affidavit was discussed at their last meeting. Mr. Jordan testified in March that she came into the office:

> She gave me a tie. I said, ''Monica, I am really busy, thank you.'' And she thanked me, and she is gone.

''Any subsequent conversation?'' The answer: ''No.''

Ms. Lewinsky's testimony is:

> I stopped in to see him for five minutes to thank him for giving me the job, and I gave him a tie.

She further testified,

> I believe I showed him a copy of the affidavit.

Clear conflict, very important, once again showing a connection between the job, the false affidavit, and, of course, if you tie in the other aspect about the relationship, it gets very significant and something that needs to be further inquired about.

So there are some of the conflicts between the testimony, and an area that we need to inquire of Mr. Jordan about.

The notes to the President that Ms. Lewinsky said she had a conversation with him about, that has never been addressed to Mr. Jordan whatsoever.

The December 19 meeting we need to explore more with Mr. Jordan. This is the meeting when Ms. Lewinsky was subpoenaed. She called Mr. Jordan. He says, ''Come over.'' She goes over there to meet with Mr. Jordan, and during that meeting, according to the telephone logs, Mr. Jordan received a call from the President of the United States. Mr. Jordan has testified that he told the President that Ms. Lewinsky got subpoenaed.

That appears to be exactly during the meeting—the conversation he is having with Ms. Lewinsky.

I think appropriate questions to Mr. Jordan are: Did you excuse Ms. Lewinsky from the meeting? Did you have a private conversation with the President about the subject that you were talking to Ms. Lewinsky about? And when you renewed your conversation with Ms. Lewinsky, did you in fact tell her about your conversation with the President? If Ms. Lewinsky was not told about that conversation, I think there is some significance there, that things were going on that people were compartmentalizing and not sharing with the other interested parties, and I think that is significant and that needs to be explored. His involvement with reviewing the affidavit needs to be developed, and the conflicts, his knowledge of the nature of the relationship with Ms. Lewinsky.

So all of these need to be further explored. There are a number of unanswered questions.

One final area. I obviously have a number, but I don't want to belabor this point. There was testimony I mentioned about Mr. Isikoff and how Betty Currie felt compelled to go see Mr. Jordan about Mr. Isikoff inquiring about the courier records on the gifts from Ms. Lewinsky to the President. There is some indication that that information might have been shared with Mr. Frank Carter because Ms. Lewinsky testified that she received a page from Mr. Carter, her attorney, about the Isikoff call, the Isikoff request. How did that information get to Mr. Carter? I think there are some legitimate questions that should be asked there.

So we would respectfully ask the Senate to permit us to call Mr. Jordan as a witness, to depose him. But, further, we hope we will be able to call him so that you can evaluate the conflicts that I am sure exist now, that very likely will exist later on as well. The story needs to be told. The truth should be determined. Justice should be accomplished. That is done not through lawyers up here talking, it is not done through transcripts, but through witnesses. Edmund Burke said that to fail to hear the evidence is to fail to hear the cause. I know that you have transcripts, but I would contend to you that to fail to hear these witnesses is in essence to fail to hear the cause.

RECESS

Mr. LOTT. Mr. Chief Justice, could I inquire about the balance of the time remaining for the House managers?

The CHIEF JUSTICE. Yes. The managers have 52 minutes remaining.

Mr. LOTT. Do they intend to use more of their time now?

Well, Mr. Chief Justice, I ask unanimous consent that we take a 30-minute break at this point.

There being no objection, at 1:22 p.m., the Senate recessed until 1:59 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I have a unanimous consent request to propound. We have discussed this with Senator DASCHLE and it has been cleared.

I ask unanimous consent that following the conclusion of the arguments by the managers and the White House counsel today on the motion to subpoena witnesses, it be in order at that point only for Senator HARKIN or Senator WELLSTONE to make a motion to open that 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 subpoena witnesses, as provided under the impeachment rules of the Senate and proceed to immediate vote.

If we have any change in either one of these, certainly we would have to ask for consent on that and would notify Members to that effect.

I further ask that if the Senate votes to proceed to closed session, those deliberations be limited to 3 hours equally divided between the two leaders, notwithstanding the 5-minute allocation of time under the impeachment rule.

I further ask unanimous consent that when the Senate concludes its business today, it stand in adjournment until 1 p.m. on Wednesday, January 27.

Finally, I ask unanimous consent that pursuant to S. Res. 16, the votes occur immediately upon convening on Wednesday, first on the motion to dismiss, and if defeated, the motion to subpoena witnesses without intervening action or debate.

The CHIEF JUSTICE. In the absence of objection, it is so ordered.

Mr. LOTT. I believe, Mr. Chief Justice, we are ready to proceed with White House counsel.

The CHIEF JUSTICE. The Chair recognizes Mr. Counsel Kendall.

Mr. Manager ROGAN. Mr. Chief Justice, we reserve our time.

The CHIEF JUSTICE. Very well.

Mr. Kendall.

You are going to use it now? You have 52 minutes remaining. The Chair recognizes Mr. Manager ROGAN.

Mr. Manager ROGAN. Thank you, Mr. Chief Justice, Members of the Senate. When I was a trial judge back in California, there was something I had to do in every single case, whether it was a criminal or civil case, and that was to advise the triers of fact —in that particular case, the jury—that what the lawyers say is not evidence. This is a universal warning that is given in courtrooms throughout the country to the triers of fact, because the law prefers that those people who have to make the determination as to what the facts are make that determination based not only on interpretation of the evidence, but based upon what the evidence actually is. And that has been the underpinning of our argument before this body from the very first day as to why witnesses are needed—not to accommodate us, but for the Senate to be able to make the ultimate conclusion as to what is the truth.

A perfect example of why the evidence should come from witnesses rather than lawyers can be seen from the fact that throughout these proceedings lawyers on both sides have tried to characterize what is the evidence and tried to characterize the interpretation that this body should adopt.

I am reminded when we were before the Judiciary Committee, just before we voted articles of impeachment, White House counsel suggested to our committee, as they do before this body, that the President's state of mind during his various statements under oath were intended to mislead people but to be truthful. They say the President didn't lie. Instead, they say he carefully crafted these hypertechnical definitions to protect himself from any perjury charge.

We believe the evidence will show that by so doing, Paula Jones was denied the information a Federal judge said she was entitled to have and, thereby, perjury and obstruction of justice lie.

Before the Judiciary Committee, Mr. Ruff reaffirmed this was the President's strategy. This is what Mr. Ruff told our committee:

Question to Mr. Ruff:

I do want to make sure I understand your position. From the beginning, the President has taken the position that he never lied to the American people or lied while giving testimony under oath. Essentially claims he simply misled [them] with a different definition, and he was sending the same message both to the American people and the court.

Answer by Mr. Ruff:

I think that is fair, Congressman. Yes.

Question:

And he did that intentionally, because in his own mind he drew a distinction between the technical definition of ''sexual relations'' and the definition of ''improper relationship,'' or something along those lines, which is how he now characterizes his relationship with Monica Lewinsky?

Answer by Mr. Ruff:

Yes, I think that's correct.

Question:

You suggested earlier in your testimony this distinction is one he has drawn since the Jones deposition. My notes indicate you said the definitions are one that he held in his mind in January and in August and he has so testified.

Answer by Mr. Ruff:

Yes.

Question:

In determining whether the President either perjured himself or lied under oath in this matter, you are asking the committee to look to his state of mind from the beginning of this whole episode and make that determination?

Answer:

Yes.

Members of this body, we suggest that the evidence has shown, and the evidence will further show by the calling of the witnesses that we propose, that the President denied under oath specific facts that were relevant to the case, relevant to the Jones case, relevant to the perjury and obstruction investigation by the grand jury, and, in so doing, among the other lies that my colleagues have pointed out, we will show that he lied to his aides.

This is important, because he, the President, admitted he knew that his aides were potential witnesses in a criminal investigation before the grand jury. This is the portion of the grand jury transcript where the President testified about his conversations with key aides once the Monica Lewinsky story became public.

Question to the President:

Did you deny it to them or not, Mr. President?

Answer: . . .I did not want to mislead my friends, but I wanted to find language where I could say that. I also, frankly, did not want to turn any of them into witnesses, because I—and, sure enough, they all became witnesses.

Question: Well, you knew they might be witnesses, didn't you?

Answer: And so I said to them things that were true about this relationship. That I used—in the language I used, I said, there's nothing going on between us. That was true. I said, I have not had sex with her as I defined it. That was true. And did I hope that I would never have to be here on this day giving this testimony? Of course. But I also didn't want to do anything to complicate this matter further. So, I said things that were true. . ..

The President's position is they were misleading, but they were true. No lies, and that is precisely what Mr. Ruff told the Judiciary Committee, and that is the position that White House counsel takes before this body.

Remember, the grand jury was conducting a criminal investigation. They were seeking evidence of possible perjury and obstruction of justice, and the White House contends before this body that the President did nothing to obstruct their investigation. The evidence shows that he did. One of those witnesses who will demonstrate that to this body is the President's own aide, Sidney Blumenthal. That is why we request this body to allow Mr. Blumenthal to be deposed, and, further, we hope that you will allow him the opportunity to testify before you so that you can gauge his credibility and his demeanor as he presents the answers that we expect he will give.

Mr. Blumenthal's testimony puts him in direct conflict with the claims of the President and shatters the myth of the President's truthful but misleading answers given under oath.

Just for a quick way of background, Mr. Blumenthal, on January 21, 1998, was an assistant to the President. That was the day the Monica Lewinsky story broke in the national press through the Washington Post. That story broke in the morning.

Later the same day, Mr. Blumenthal met both with the First Lady and then with the President to discuss these news revelations. One month later, Mr. Blumenthal was called to testify before the grand jury. His testimony was not particularly helpful during that time because, through most of the questioning that involved conversations that he had at the White House, Mr. Blumenthal claimed executive privilege.

That issue was apparently litigated, and then he returned in June to testify before the grand jury twice, on June 4 and on June 25, 1998.

When Mr. Blumenthal was free to share his recollections of the events, this is how Mr. Blumenthal characterized his meetings with President and Mrs. Clinton before the grand jury. It is interesting to note, by the way, that there was a dual lie going on here from the President. The President was lying to his wife, who could never be called as a witness against him, but he was also lying to his aides whom he admitted could be called.

This is from Mr. Blumenthal's testimony on June 4.

The First Lady said that she was distressed that the President was being attacked, in

her view, for political motives, for his ministry of a troubled person. She said that the President ministers to troubled people all the time. . .and he does so out of religious conviction and personal temperament.

* * * * *

And the First Lady said he had done this dozens if not hundreds of times with people, the President came from a broken home and this was very hard to prevent him from trying to minister to these troubled people.

So I related that conversation to the President. . .. And I said to him that I understand that you. . .want to minister to troubled people, that you feel compassionate, but that part of the problem with troubled people is that they're. . .troubled. . ..

I said, ''However, you're President and these troubled people can just get you in incredible messes. . .you have to cut yourself off from them.''

And he said, [meaning the President, he said,] ''It's very difficult for me to do that, given how I am. I want to help people.''

Then Mr. Blumenthal testified that the President said Dick Morris suggested that the President go on television and admit in a national address whatever he may have done wrong.

Once again Mr. Blumenthal testified:

And I said to the President, ''What have you done wrong?'' And he said, ''Nothing. I haven't done anything wrong.'' [And] I said, ''Well, then, that's one of the stupidest ideas I've ever heard. Why would you do that if you've done nothing wrong?''

And it was at that point that he gave his account of what happened to me and he said that Monica—and it came very fast. He said, ''Monica Lewinsky came at me and made a sexual demand on me.'' He rebuffed her. He said, ''I've gone down that road before, I've caused pain for a lot of people and I'm not going to do that again.''

She threatened him. She said that she would tell people they'd had an affair, that she was known as the stalker among her peers, and that she hated it and if she had an affair or said she had an affair then she wouldn't be the stalker anymore.

And I repeated to the President that he really needed never to be near people who were troubled like this, that it was just—he needed not to be near troubled people like this. And I said, ''You need to find some sure footing here, some solid ground.''

And he said, ''I feel like a character in a novel. I feel like somebody who is surrounded by an oppressive force that is creating a lie about me and I can't get the truth out. I feel like the character in the novel Darkness at Noon.''

And I said to him, I said, ''When this happened with Monica Lewinsky, were you alone?'' He said, ''Well, I was within eyesight or earshot of someone.''

I said, ''You know, there are press reports that you made phone calls to her and that there's voice mail. Did you make phone calls to her?''

He said that he remembered calling her when Betty Currie's brother died and that he left a message on her voice machine that Betty's brother had died and he said she was close to Betty and had been very kind to Betty. And that's what he recalled.

And then in his June 24 deposition, Mr. Blumenthal expanded on this thinking. He was asked the question:

In your conversation with the President when he stated that Monica Lewinsky threatened to disclose an affair, or fabricate an affair in a public disclosure, did you understand him to be saying that if the President didn't concede or didn't agree to have some [type] of sexual contact with her, that she would report an affair?

Answer: My understanding was that she demanded to have sexual relations. He rejected her. And she said that—this is —I recall him saying—that, ''They called me the Stalker.'' That's what Lewinsky said. ''And if I can say we had an affair, then they won't call me that,'' something like that.

Question: Now, you previously characterized Ms. Lewinsky's comments to the President as a threat, if you will?

Answer: Right, yeah, I would interpret—that's my understanding.

Then Mr. Blumenthal told the grand jury about the impact the President's emphatic denials had upon his state of mind— the mind of a potential grand jury witness.

Question: In response to my question how you responded to the President's story about a threat or discussion about a threat from Ms. Lewinsky, you mentioned you didn't recall specifically. Do you recall generally the nature of your response to the President?

Answer by Mr. Blumenthal:

It was generally sympathetic to the President. And I certainly believed his story. It was a very heartfelt story, he was pouring out his heart, and I believed him.

* * * * *

Question: Did the President explain to you what Monica Lewinsky's trouble was that he was helping?

Answer: No.

Question: And you never asked him?

Answer: No.

Question: Did anyone else, including the First Lady, tell you what Monica Lewinsky's trouble was that the President was ministering about?

Answer: No.

* * * * *

Question: What did you understand the President to mean by, he had done nothing wrong?

Answer: My understanding was that the accusation against him, which appeared in the press that day, was false, that he had not done anything wrong.

Question: That he had not had any sort of sexual relationship?

Answer: He had not had a sexual relationship with her and had not sought to obstruct justice or suborn perjury.

Mr. Blumenthal then went on to say he then asked the President about some of these reports that there were phone calls between him and Monica Lewinsky.

Question: Did the President say anything to you about telephone calls with Monica Lewinsky?

Answer: As I testified, I had said to him that there were reports that his voice was on her voice mail, her tape machine at home to take message—message machine. And he said to me that he could recall that after Betty's brother died he may have called Monica because Monica had been very close to Betty. And Betty didn't have a way of relating to her that her brother had died, so that he had called and left a message that Betty's brother died.

Question: Did he suggest to you that that was the only call he had ever made to Monica Lewinsky?

Answer: That's the only one he told me about.

Question: Did you ask him if there were any more calls than that?

Answer: He said that's the only one he could remember.

Well, we now know certainly from White House logs that ''the only one the President remembered'' isn't quite true, that in fact I believe it was over 50 telephone conversations between the President and Monica Lewinsky. And it begs the question: Why was the President, on the day this story broke, pulling his aides in to relay information that the President knew was patently false when he knew that they were potential witnesses before the grand jury?

Now, it is important to remember that this testimony from Mr. Blumenthal was given 1 month before Monica Lewinsky decided to opt to cooperate with the Office of Independent Counsel. Thus, these questions were asked of him in a vacuum without the benefit of Ms. Lewinsky's extensive testimony, as well as the President's own grand jury testimony. And the House managers agree that these and other areas need to be more fully explored with the gentleman under oath in light of the later revelations that occurred surrounding this case.

Now, we know a couple of things. We know that the Monica Lewinsky story broke on January 21. We know that the President spoke to Sidney Blumenthal the very same day. We know that the President said he knew his aides could be potential witnesses before the grand jury. And we also know that Mr. Blumenthal was called three times before the grand jury—once in February, twice in June.

There is an important question that was never asked Mr. Blumenthal during his testimony. It could not have been asked because at the time he testified, the revelation that the President shared with America in August and Monica Lewinsky's revelation had not yet been aired. If the President knew that Mr. Blumenthal was going to be a witness, a potential witness before the grand jury, if 6 months after this story broke the President presumably knew that his aide had gone down, not once but twice, to the grand jury, I would like to know from Mr. Blumenthal: Did the President ever come up to you and say something to you? Did he ever say to you: Do you remember that story I told you back in January? Well, now that you're actually going to be a witness, I know that you're going down to testify before the grand jury, I don't want you to give the grand jury a false impression. I don't want you to give false information to the grand jury. I don't want you to be a cog in the wheel of an obstruction of giving the grand jury the opportunity to hear the truth. I need to recant for you what I told you.

There is no evidence of that. And we would like to find that out. And the only way we can do that is by deposing Mr. Blumenthal and hopefully bringing him in and sharing that information with this body.

Another area we would like to inquire about is the area of a potential plan to destroy Monica Lewinsky if she

ever decided to cooperate with law enforcement authorities. Mr. Blumenthal told the grand jury that, following the Monica Lewinsky news revelations, White House aides held twice-a-day staff briefings, at 8:30 in the morning and at 6:45 in the evening, every day to discuss, among other topics, the media impact of the Lewinsky scandal and how to deal with it in the press.

Mr. Blumenthal testified that the primary purpose of these meetings was to discuss press strategy.

In making his presentation to the Judiciary Committee last month, chief investigative counsel, David Schippers, related some of the quotes that emanated in the press following the Lewinsky story. I want to read a few paragraphs from Mr. Schippers' presentation:

Worst of all, in order to win, it was necessary to convince the public, and hopefully, those grand jurors who read the newspapers, that Monica Lewinsky was unworthy of belief. If the account given by Monica to Linda Tripp was believed, then there would be a tawdry affair in and near the oval office. Moreover, the President's own perjury and that of Monica Lewinsky would surface. How do you do this? Congressman GRAHAM showed you. You employ the full power and credibility of the White House and the press corps of the White House to destroy the witness.

Mr. Schippers then quoted from several news sources. Now, this is just a few days after the President told Mr. Blumenthal that Monica was known as ''the stalker.''

Inside the White House, the debate goes on about the best way to destroy ''that woman'' as President Clinton called Monica Lewinsky. Should they paint her as a friendly fanaticist or as a malicious stalker?

Again, January 30th:

It's always very easy to take a mirror's eye view of this thing, look at this thing from a completely different direction and take the same evidence and posit a totally innocent relationship in which the President was a victim of someone, rather like the woman who followed David Letterman around.

From another source, ''One White House aide called reporters. . .''

One White House aide called reporters to offer information about Monica Lewinsky's past, her weight problem, and what the aide said was her nickname ''the stalker.''

Just hours after the story broke, one White House source made unsolicited calls offering that Lewinsky was the troubled product of divorced parents.

And the reference goes on and on. You can find the complete reference in the committee report.

Now the question is, Was this a mere coincidence that the President's false statements to Mr. Blumenthal about Monica Lewinsky being a ''stalker'' quickly found their way into press accounts, even though those accounts are attributed by the press to sources inside the White House? The answer to the question is, yes, it is a coincidence, according to White House counsel. And we heard that from them just 3 days ago. Mr. Ruff said in his presentation, and I am quoting:

The White House, the President, the President's agents, the President's spokespersons, no one has ever trashed, threatened, maligned, or done anything else to Monica Lewinsky. No one.

Mr. Blumenthal needs to be questioned now under the light of the facts as we now know them. All we have from Mr. Blumenthal are the facts as he testified before the revelations saw the light of day, and he needs to be questioned for the benefit of those who must make a determination of credibility and the determination of guilt or innocence. This is the reason we have included Mr. Blumenthal on our proposed list. He is just one example of several aides whose testimony is already before you in the record. But we feel it would be beneficial not only for the body to hear him, but certainly to question him in light of the revelations that occurred following his grand jury testimony.

Mr. Chief Justice, with that, we reserve the balance of our time.

The CHIEF JUSTICE. Very well, the Chair recognizes Mr. Counsel Kendall for the White House.

Mr. Counsel KENDALL. Mr. Chief Justice, ladies and gentleman of the Senate, House managers, the purpose of the managers' motion and what I am going to address, is whether you need to add any evidence to the record before you. And that is all I am going to address. Now, I am tempted—it is like waving a red flag at the bull to take on the substantive arguments that have been presented here as to why the President is guilty. I am going to refrain from doing that, but my refraining from doing that is not because I agree with them, but that we have already addressed them. I think here that the proper procedure is just address the need for new evidence to add to the record before you.

The managers' case is in no way—no way—harmed by being unable to call witnesses at this point. The independent counsel conducted a wide-ranging investigation. It was intense. It was comprehensive of every conceivable allegation against the President after the Lewinsky publicity erupted on January 21, 1998. In the record of publicly available materials, which the Senate has asked the House managers to certify, the actual number of pages is somewhat understated, because as I mentioned before, frequently four or five pages of transcript are reproduced on a single page of the bound. But, in fact, there are over 10,000 pages of grand jury testimony, over 800 pages of other testimony such as depositions, 3,400 pages of documentary evidence, 1,800 pages of audio transcripts, and 800-some pages of FBI interviews.

The Office of Independent Counsel has an unlimited budget with unlimited investigative resources, ranging from the FBI to private investigators. Its agents interviewed people all over the country, used several different grand juries, conducted hundreds of interviews, even called people back from abroad. If the OIC could have turned up anything that was negative or prejudicial, it would be in those volumes. You can rest assured that they did their best to find that evidence.

And the Starr team has been fully supportive of the pro impeachment forces in the House of Representatives; indeed, so supportive that the independent counsel's ethics advisory professor, Sam Dash, resigned to protest Mr. Starr's zealous advocacy of the impeachment of the President.

Just this week, Mr. Starr and his staff have aggressively continued to support the House managers during these Senate proceedings. Some commentators have commented that the independent counsel is, perhaps, the honorary 14th House manager.

Now, I rehash this all not to cast aspersions at Mr. Starr, but to remind the Senate that after 5 years and $50 million President Clinton may be the most investigated person in America. I would certainly say this for Mr. Starr: He is thorough. He is thorough. After all the work that has been done for them by the independent counsel, there is simply no way that the House managers are prejudiced by not being able to add to this record at this point.

Now, Mr. Manager MCCOLLUM repeated this morning that we are afraid of witnesses. We are not. We have reviewed in detail in our presentations what the evidence shows about both the perjury and the obstruction of justice allegation. We are not at all afraid of what the witnesses would say. Indeed, we know what they are going to say because it is all right there in the volumes before you. We think that you have everything there on the basis in which you can make a fair judgment and achieve a fair resolution. The managers' hope to call more witnesses is simply a product of their desire, their hope, their prayer, that something will come to rescue their case.

Let's be clear about one thing: Any delay in the process necessary for us to have fair discovery is on their heads. Our point here is that there is simply no need to go outside this record, because what you have before you is voluminous, and it is a completely adequate basis for your decision.

As I pointed out the other day in the questioning period, the only thing left out of this record is evidence that might be exculpatory or helpful to the President. And if we must, we will as conscientious lawyers, seek out that helpful additional evidence through discovery.

This body has been scrupulously fair in these proceedings, and I am confident it will be fair concerning our need for discovery if the ''genie'' of discovery is let out of the bottle and live witnesses are deemed to be appropriate. Then we are going to need a fair period of time for our own discovery.

But, again, the point today on this motion is that the managers have simply identified no particular need for witnesses, no specific areas of testimony that might contribute to what is already in the record and, indeed, no

material questions—you can always think of questions that were unasked—but no material questions, given the allegation in the two articles that are not in the record before you.

Just recall, in the House the managers believed that this was an adequate record to come to you and urge removal of the President. They rested on that record in the House, and they impeached an elected President on the basis of that record. They cannot now complain that it is, for some reason, unfair to submit this same record to you for judgment at this point. We are not afraid of or reluctant to call witnesses, but we think that at the end of the day, the addition of more testimony from the three witnesses you have heard about won't affect any evidentiary judgment you have to make.

Mr. Manager BARR declared during his presentation a week ago Friday, on January 15, that this was in fact a relatively simple case, although we, the White House lawyers, would try to nitpick the evidence. He told you that what we have before us, Senators and Mr. Chief Justice, is really not complex—critically important, yes, but not essentially complex. The able House managers have kept insisting on their need for witnesses, but they haven't indicated what substantial, material, and relevant questions the witnesses would be asked, which haven't already been asked, or why such questions are essential or even relevant to the resolution of this proceeding.

Frankly, I think this is because there just aren't that many more questions to ask of these witnesses. Mr. Manager MCCOLLUM kind of let the cat out of the bag on this one when, a week ago Friday, he told you, ''I don't know what the witnesses will say, but I assume if they are consistent, they will say the same thing that's in here.''

I was surprised at some of the statements the managers made during the questioning period on Friday and Saturday. Mr. BRYANT said, ''We would very much like to talk to some of these witnesses.'' And he added, ''It is very critical that you talk to the witness before having that witness testify.'' Mr. Manager MCCOLLUM stated, ''As a matter of fact, we think we would have been incompetent and derelict as presenters of the evidence if we hadn't talked to them first.'' Just this Sunday Mr. Manager HYDE, on ''Meet the Press,'' observed that the purpose of the court-ordered Office of Independent Counsel's chaperoned interview of Ms. Lewinsky last Sunday was to get a sense of what kind of a witness she would make.

I say this respectfully, but I am duty-bound to observe that it is, in fact, a dereliction of duty to have come this far in the process, to have made this serious set of charges as have been made against the President to seek his removal, and not to have talked to the witnesses on whom they purport to rely. How can they have come this far and now tell you: Oh, yes, we now need to meet face to face with the witnesses? We don't know what they sound like, how credible they will be, but we have rested our judgment on this. We need to see them personally.

This procedure, I submit to you, is just backward. First, they filed the charges, which have been spoon fed by Mr. Starr. They don't bother to check these out; they take them at face value, and now they finally want to talk to the witnesses, and they again use Mr. Starr to threaten Ms. Lewinsky with imprisonment unless she cooperates with them.

Now, it is no answer to say that the witnesses didn't want to talk to us. There was a way to talk to them in the House of Representatives, and that was through the subpoena power that the House could have used if they had wanted to talk to their witnesses, if they had fulfilled the obligation they had before they proffered these charges to you.

This has been a partisan process on the part of the House managers. In the House, they had the votes. They didn't think they needed to talk to witnesses. When you have the votes and the independent counsel on your side, you don't need to independently develop the evidence. Indeed, Sunday, on CNN, Mr. Manager CANNON provided some insight——

Mr. HUTCHINSON addressed the Chair.

The CHIEF JUSTICE. The Senator from Arkansas.

Mr. HUTCHINSON. I object to White House counsel's continual reference to comments made on television programs which are outside the record before the Senate.

The CHIEF JUSTICE. This is on a motion to call additional witnesses, and the argument has been very free form and kind of far reaching. I think this is a permissible comment, so I overrule the objection.

Mr. Counsel KENDALL. Thank you, Mr. Chief Justice. I think Mr. Manager CANNON's comments did provide some insight into the need for witnesses or the justification for witnesses here. He noted that the Republicans had lost five seats in the November election, and he went on to say that, accordingly, the Republicans felt a need to speedily complete impeachment in the lame duck session before the 106th began its session. He said, ''Republicans on the Judiciary Committee were committed to being done by the time we got done,'' and that is where we got on that track with no witnesses.

Now, they are trying to take a different track, and I think it comes from desperation. You have had the case analyzed before you; you have had the evidence in the case assessed. I think it has been demolished in an adversary proceeding.

The House managers are like the character in David Copperfield, Mr. Micawber, who was always hoping that something would turn up. They continue to hope that something will turn up for them. They don't know what it is, but they believe they will know it when they see it and they hope if, for the first time in these proceedings, they actually talk to the witnesses on whom they have relied, they will find something to persuade you to overcome the evidence in the record.

Now the managers have said, ''Well, we told the White House that they could have called witnesses in the House if they wanted to, and they chose not to do so, so it is really their fault.'' I respectfully submit to you that only in the world of Franz Kafka do you have to present evidence of your own innocence before you even hear the charges or the allegations against you.

It was the burden of the House to establish, by an adequate evidentiary basis, a case for impeaching the President. They failed to do that, I respectfully submit. They are a little like a blackjack player who sees 20 on the table and has 19 and is going to try to draw that 2, hoping against the odds. Here they are simply gambling. And gambling may have its place as a recreation, but I don't think it has a place in this impeachment trial when the fate of the President is at stake.

Now, I don't want to be uncharitable to the House managers—and they are able—but I think it is perhaps appropriate to remind you, as my partner Ms. Seligman did in her argument yesterday, that in their own Chamber the House managers sang a very different song about the need for witnesses. And to be fair, this was not just one manager; they sang as kind of a barbershop chorus. Most of them are on the record to this effect, and I think the very best witnesses you have about the need for witnesses are the House managers themselves.

Let's listen to some of the comments of the managers on whether live witnesses needed to be heard to supplement the evidence in the many volumes already gathered by the independent counsel.

For example, on November 5, Mr. Manager HYDE said:

> We believe the most relevant witnesses have already testified at length about the matters in issue, and in the interest of finishing our expeditious inquiry we will not require most of them to come before us to repeat their testimony.

He added that, ''[Monica Lewinsky and Linda Tripp] have already testified under oath. We have their testimony. We don't need to reinvent the wheel.''

The very next day, on November 6, Mr. Manager GEKAS stated:

> 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.

On December 1, during a hearing before the House Judiciary Committee to which the committee received testimony concerning the consequences of perjury and related crime, Mr. Manager CHABOT stated:

> We could call more and more and more witnesses. We are trying to get this wrapped up

as expeditiously as possible. I think both sides want to do that. If we call more witnesses and drag this on into next year, then they are going to scream because they say we are on a fishing expedition, we have already got enough evidence.

At that same period, Mr. Manager CANADY said, of the need for witnesses:

Now, we do have a responsibility to make certain that we act on a solid basis. We should not move forward with articles of impeachment on the basis of insubstantial evidence. I think all of us agree on that. The fact of the matter is that we have a mountain of sworn testimony. . . .

On December 9, Congressman COBLE, who was a member of the House Judiciary Committee, told us during our presentation on behalf of the White House:

Mr. Ruff, I want to address a couple of myths and one myth is that we have no evidence because there have been no fact witnesses called . . .

Five volumes sit alongside me. These are the same five volumes that are at our table that contain sworn testimony before a criminal grand jury, FBI interviews, depositions and other materials.

Mr. Manager HYDE made two statements on the floor of the House of Representatives during the debate over the articles of impeachment which I think bear quotation here.

On December 18, Mr. Manager HYDE stated:

We had the facts, and we had them under oath. We had Ms. Lewinsky's heavily corroborated testimony under a grant of immunity that would be revoked if she lied; we accepted that . . . .

And then the next day, on Saturday, December 19, Mr. Manager HYDE stated:

No fact witnesses, I have heard that repeated again and again. Look, 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. We chose to believe it and accept it. Why reinterview 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?

''Why interview Monica Lewinsky when we had her statement under oath, and with a grant of immunity that if she lied, she would forfeit.''

After the House voted its two articles of impeachment, the House managers still sought no need for live witnesses. On December 29, Mr. Manager GEKAS stated:

We are going to make the case that there is already enough testimony under oath, in one grand jury testimony and affidavits.

Then again, a week later, Mr. Manager GEKAS stated:

In my judgment, there might not be any real rationale for calling Linda Tripp or Betty Currie or Vernon Jordan if the testimony of Monica Lewinsky is accepted as being what she offered on grand jury terms.

Rollcall reported on January 7 that Mr. Manager CANNON stated, regarding calling Ms. Currie as a witness in the Senate trial:

I am reluctant to call [Ms. Currie] because it's a rotten, nasty thing to do to a public servant.

When confronted with this inconsistency, the managers, who are talented attorneys and successful Congressmen, have all argued, ''Oh, well. The forum has changed,'' as if it is no big deal for the House to impeach a President without witnesses. But it would be unconscionable for the Senate to acquit the President without first doing the ''rotten, nasty thing''—Mr. Manager CANNON's phrase—to some witnesses. How can you have a trial, they protest, without witnesses? One might ask, How can you have a hearing without witnesses? But the House did. How can you impeach a President without witnesses? The House showed you.

Finally, it is instructive to note that when the managers were presenting their case in the House in the Judiciary Committee, they did not declare that they would insist on witnesses when they got to the Senate. They did not tell their colleagues, We will not need witnesses in the House because we will have them in the Senate. No. They rushed this through the House because they had the votes and now they want to delay in the Senate because they are afraid they don't have the votes.

There is no reason, we respectfully submit, to delay this Chamber, to drag out these proceedings and defer doing the business of the American people.

I would like to discuss each of the five categories. I will call them categories. There are three witnesses. Then there are the two affidavits, and then there are the telephone records. There are really six. I would like to discuss these in terms of whether they add anything, or whether the managers have made a proffer that they add anything to the record which is now before you, because I think that is the question you have to determine.

On this motion, you are not voting whether substantively to convict the President. You are simply determining, Is the record adequate?

Let's first take Ms. Lewinsky. On Sunday the House managers, with the gentle assistance of the independent counsel prosecutors, were able to interview Ms. Lewinsky after schlepping her across the country from California. They did so despite the fact that the Senate had established by a 100-to-0 vote a procedure for the orderly calling of witnesses after discussion and debate. They did so after declining to interview Ms. Lewinsky at any time during the House proceedings when they could have compelled her appearance by the House subpoena power. And they did so without providing us here with any reliable record for what that ''talk-fest'' on Sunday may have produced.

Newspaper reports indicate that the managers did not take notes. You will recall, of course, that during the questioning period on Saturday they explicitly rejected a request they received during the question period that they provide either an unedited transcript or a videotape of that interview to be sure that the interview would be open to scrutiny for fairness, and ascertain whether Ms. Lewinsky in that interview really did add anything to the record. They declined to do that. But when they emerged from the Mayflower Hotel on Sunday, after meeting for their sidewalk press conference, we heard some general statements generally commending Ms. Lewinsky. Mr. Manager BRYANT called her ''an impressive person.'' Mr. Manager HUTCHINSON praised her ''intelligence and poise.''

I thought to myself, where have we heard that before about Ms. Lewinsky? It was deja vu all over again. Of course, we heard from Mr. Jordan, from Ambassador Richardson, and from the people who interviewed Ms. Lewinsky for a job in New York. It is helpful that the House managers have now at least confirmed those observations in the record.

At their press conference we heard the managers make some abstract pronouncements about what Ms. Lewinsky was going to add—she would be a valuable witness; she would be a helpful witness; and it was a productive meeting and a benefit to our case.

That is what we heard. But Ms. Lewinsky's lawyer, Mr. Plato Cacheris threw, if I might say, some cold water on those happy and optimistic pronouncements. It could not have been clearer in his comments that, not surprisingly, nothing new whatsoever had emerged from that session. You really didn't hear that. I think the House managers were quite honest about the session, because you heard nothing about what had emerged from that today.

Mr. Cacheris told the press conference—some of you may have seen it: Ms. Lewinsky answered all their questions; there was nothing new; she added nothing to the record that is already sitting before the Senate. She shouldn't be called to the Senate to testify.

The New York Times reported yesterday that after the interview, Ms. Lewinsky told a friend: It went really well; I feel positive about it, but I didn't have anything new to say.

Now, according to the Washington Post, the managers were focused on making sure Ms. Lewinsky had no intention of changing her testimony. The Washington Post went on to confirm that she did not indicate any desire to change her testimony in any way. And the Post article continues that, in fact, Lewinsky reaffirmed her grand jury statement that no one ever asked her to lie or offered her a job in exchange for a false affidavit in the Jones case.

Now, as you are well aware, Ms. Lewinsky was interviewed extensively by the Office of Independent Counsel. She testified twice before the grand jury. She gave a lengthy deposition to the prosecutors. She was extensively interviewed by the agents. There are over 20 interview reports.

I should also add that a great deal of this comes after the President was examined in the grand jury on August 17. Ms. Lewinsky has given detailed and explicit testimony, particularly in her August 26 deposition, as to her account of the physical relationship she had with the President. Nothing at all would be added by further interrogation of her. Nothing could be gained by repetition in a Senate deposition or in the well of this body by a repetition of that testimony.

I confess I don't fully understand—I seem to hear Mr. Manager BRYANT and Mr. Manager MCCOLLUM say slightly different things about what they intended to present in the way of Ms. Lewinsky's testimony. The record on that is what it is. But whenever I hear somebody tell me, as the very able Mr. Manager BRYANT did, they don't need to cross-examine, really, I am reminded of what Senator Bumpers said, and he got it from H.L. Mencken, who probably got it from somebody else: The more they say they don't have to cross-examine, the more need I feel to cross-examine.

I don't know what they intended to do there, but in the grand jury the President plainly acknowledged an improper relationship with Ms. Lewinsky. He declined to answer further key questions about that. The Office of Independent Counsel did not seek either to compel him or it didn't seek to issue a new grand jury subpoena which would cause the President to come back and go through those explicit details.

The testimony is what it is, and I don't think anything further from Ms. Lewinsky is going to in any material way affect it or even add to it.

With regard to some of the conflicts that are there, I think we have addressed those in the question period. I am not going to go over them again in full. Did the improper relationship begin in November? Did it begin 6 or 7 weeks later? That conflict is utterly immaterial, I respectfully submit, in view of what the parties have acknowledged. Mr. Manager HYDE, indeed, stated in a House Judiciary Committee hearing on December 1 that that particular point did not strike him as a terribly serious count, and I agree with that.

The managers have claimed, Mr. Manager HUTCHINSON claimed this morning, that there is a contradiction in the President, in the testimony of the President and Ms. Lewinsky with regard to cover stories. This is not true. We have gone over that again and again. There is nothing that links this testimony to any deposition in the Jones case. These were discussed, the record shows, in a nonlegal context.

I don't think there is anything further to be gained from Ms. Lewinsky's testimony that is not already there in the record.

Now, Mr. Vernon Jordan, let's take him. Mr. Manager HUTCHINSON was kind enough to leave up here his copies of Mr. Vernon Jordan's five appearances before the grand jury. He held them up on a chart. I think it is proper to point out that Mr. Jordan's testimony runs over 900 pages. On March 3, the transcript is 196 pages; 2 days later, on March 5, with the transcript running to 212 pages, Mr. Jordan emerged from the grand jury, and he made the following statement which I would like to play for you:

(Text of videotape presentation:)

First of all it is a fact that I helped Monica Lewinsky find private employment in New York. Secondly, it is a fact that I took Monica Lewinsky to a very competent lawyer, Frank Carter, here in Washington, D.C. And thirdly, it is a fact that I kept the President of the United States informed about my activities. I want to say two further things. One is I did not in any way tell her, encourage her, to lie. And secondly that my efforts to find her a job were not a quid pro quo for the affidavit that she signed.

Mr. Jordan testified a third time before the grand jury on May 5, and that transcript runs to 285 pages. Finally, he testified two more times, on May 28, for 128 pages, and he observed as he exited the grand jury room, if we could have the videotape again:

(Text of videotape presentation:)

For the fourth time I have answered every question over and over and over again. I suspect, however that I will have to answer the same questions over and over and over again.

And guess what. Mr. Jordan was clairvoyant because he was called back to the grand jury for a fifth time on June 9. He said as he exited:

(Text of videotape presentation:)

When I came here in March, early March, I said that I helped Ms. Lewinsky get a lawyer. I helped her get a job. I had assurances that there was no sexual relationship and I did not tell her to lie. That was the truth then. And that is the truth today. And I've testified five times, over and over again to those truths.

One of the justifications Mr. Manager HUTCHINSON offered for calling Mr. Jordan was to explore an alleged conflict between Mr. Jordan and Ms. Lewinsky over whether Mr. Jordan had told her to go home and make sure that notes she had been keeping were not there. Here, I think Mr. Manager HUTCHINSON is referencing a statement that Ms. Lewinsky made in her proffer to the Office of Independent Counsel describing her recollection of a breakfast she believed she had with Mr. Jordan. It is in the appendix volume at page 716.

Now, the thing to note, ladies and gentlemen, about this statement is its date. Ms. Lewinsky said this on February 1, 1998. She had written then that she expressed concern about Ms. Tripp to Mr. Jordan and that Ms. Tripp may have seen notes when she was in Ms. Lewinsky's house. According to the offer, ''Mr. Jordan asked if the notes were from the President. Ms. Lewinsky said that they were notes to the President. Mr. Jordan suggested to Ms. Lewinsky,'' the proffer says, ''that she check to make sure they were not there, or something to that effect,'' from Ms. Lewinsky.

Now, contrary to this supposed conflict, Mr. Jordan was never asked in the grand jury on any of the five occasions he was there—all of which, I remind you, were after this February 1 proffer about this matter. He wasn't asked about it. It doesn't concern the President, in any event. And I think, most importantly, it is nowhere alleged, if you look in the actual articles—if you look at article II, nowhere is this conversation alleged in any way as a basis for impeachment, a basis for charging the President with obstruction. I think in fact it is a gratuitous smear of Mr. Jordan. And it certainly does not provide a basis for extending this proceeding to ask him questions about it.

Now, Mr. Manager HUTCHINSON also claims that there is a conflict between the testimony of Ms. Lewinsky and Mr. Jordan on the issue of whether they discussed specific changes that were subsequently made in her affidavit. He said to you that he thought that was a basis for calling them as witnesses. However, the record is clear, it could not be clearer, that the idea of certain deletions in the affidavit came from Ms. Lewinsky's lawyer, Mr. Frank Carter.

As I mentioned in my presentation on Thursday, Ms. Lewinsky discussed that she had talked to Mr. Jordan about some affidavit changes and he told her: Go talk to your lawyer.

In any event, Ms. Lewinsky's lawyer, Mr. Frank Carter, testified unequivocally to the grand jury: I don't recall Vernon ever asking me the substance of what Monica told me or tried to talk about the substance of what Monica told me. He clearly never told me how I should proceed or what I should do.

Mr. Carter further testified that paragraph 6 of the affidavit in its draft form, the last part of the sentence, ''has certain words about the private meeting.''

That paragraph, Mr. Carter—Ms. Lewinsky's lawyer—testified, was modified when we sat down in my office on January 7. He further testified that it was his idea before that meeting to take it out because he didn't want to give Ms. Jones' lawyers any hint of a one-on-one meeting.

There is simply no basis to call Mr. Vernon Jordan once again to have him go through the things he has testified about a great many times already.

Now we come to Sidney Blumenthal. Mr. Manager ROGAN very ably argued that there was a need to call Mr. Blumenthal because of Mr. Blumenthal's testimony as to what the President had told him, Sidney Blumenthal, in the aftermath of the explosion of publicity over the Lewinsky matter in January a year ago.

First of all, there is no conflict here that is material because the President has never disputed Mr. Blumenthal or his aide's accounts of this conversation. Any dispute is wholly immaterial as to the two counts—the two articles of impeachment. The President was examined extensively about this subject

in his own grand jury testimony and he testified as to what he tried to say. But he also added that in this period things were a ''blur,'' is a term he used one time; ''a blizzard'' was a term he used another time—that he had discussions with a number of his aides, including Mr. Blumenthal, he tried to be careful in what he said, he thought he was technically accurate, but he would not dispute and did not dispute their characterizations of what they recalled of the conversations with him.

Again, Mr. Blumenthal—Mr. ROGAN pointed this out—testified three times before the grand jury. His recollection of his conversations with the President has been analyzed in detail and a further round of deposition would add nothing of substance to that testimony. Indeed, the President's speech to the Nation the day of his grand jury testimony, when he spoke to the Nation on the evening of August 17, also represented an acknowledgment by the President that he had misled his aides, such as Sidney Blumenthal.

As I indicated last Thursday, however, any statements to the White House staff could have had no impact whatsoever on the Paula Jones case, as article II alleges each of the seven grounds has, because Mr. Blumenthal had no firsthand knowledge of the President's relation with Ms. Lewinsky. He could only report to the grand jury what the President had told him, however misleading those statements of the President may have been at the time. There is no dispute here, there is no material reason to call Mr. Blumenthal, except to try to embarrass the President by the presentation of testimony from a member of his senior staff.

Now, the next two things that the managers would seek to add to the record are not, they tell you, live witness testimony. But don't let that fool you. They want to put in two sworn declarations—like an affidavit—from two people. One of them is a Mr. Wesley Holmes, a lawyer for Ms. Paula Jones, and the other is Mr. Barry Ward.

Now, I don't have the pleasure of knowing Mr. Wesley Holmes, but I do know Mr. Barry Ward. He is a very intelligent, very hard-working and knowledgeable young lawyer in Little Rock, AR, who works as a law clerk for Chief Judge Wright. He has got an encyclopedic knowledge of Razorback athletic lore. He has a lot of fine characteristics. He is very helpful as a law clerk and gets information to you and back very efficiently. But there is one thing Mr. Ward is not, and I am sure he would agree with that, he is not a mind reader. He is not a mind reader. There were a number of people in the room at the deposition. None of them were mind readers. They could all give their testimony about what they thought was going through the President's mind. The President has addressed that a number of times. You have seen the videotape.

Now, the second witness is exceedingly interesting, and that is Mr. Holmes. And Mr. Holmes would give a sworn declaration to, among other things, say what he had in mind when he issued the witness subpoena to Betty Currie which was several days—which was days after the President's conversation with her on December 18.

Well, he would be a very interesting witness to depose, let me tell you. This is one of Paula Jones' lawyers talking about offering a declaration about his litigation strategy. And I think the opportunity to depose him would provide a great deal of information about what really motivated the events of January 1998. I think we could show that there were a number of connections between the independent counsel, Linda Tripp, and the Paula Jones lawyers. But I don't think you need to get into that briar patch because Mr. Holmes is not a mind reader any more than Mr. Ward is. You simply don't need that testimony to illuminate the record.

Now, the last category—let me just, before I leave that, make the point that while the managers would like very much to throw in a couple of sworn declarations, you should be assured of our need to take discovery and, in Mr. Holmes' case, take comprehensive discovery. I don't think anything in S. Res. 16—I don't know if you have gotten to this, but I don't read the resolution as authorizing simple hearsay evidence.

We would need to depose the Paula Jones lawyers in some detail, and I think they have now waived significant legal protections that would make that possible.

Finally, there was a category of telephone records. It is a little hard to address that category. Those are just documents. I don't think the record need be expanded by their addition, and I will tell you why.

Telephone records, as I said the other day, really tell you nothing, unless—it is very important to time, to date a particular call. They really are inscrutable. You have to have the witness testify about what they mean. I don't see anything in there that would justify opening the record to add certain telephone records.

Finally, I want to be candid with you. I don't want to be alarmist, I want to be honest, though, about what opening the door for discovery will mean for this process. I said before that the Senate had been fair in these proceedings, and it has been fair. I think the identification of a specific record which the parties could agree on, have in the sunlight, talk about, argue about, was the fair thing to do and the right thing to do. I think if discovery is inevitable, we will anticipate and believe that you will be fair in allowing us the discovery we are going to need.

I ask you, if you would, to read our trial memorandum, because at pages 124 to 130 we have set forth there our need for discovery. It is not a new invention. Should the Senate decide to authorize the House managers to call additional witnesses live in this proceeding or have the depositions taken, we will be faced with a critical need for the discovery of evidence useful to our defense.

I made the point that the discovery of evidence in the Office of the Independent Counsel proceeding was—not to put too fine a point on it—not aimed at getting us exculpatory or helpful evidence. We need to be able to do that. We have never had the kind of compulsory process, the kind of ability to subpoena documents and witnesses that you will have in a garden variety civil case. We have not had access to a great deal, many thousands of pages of evidence which is, first of all, in the hands of the House managers that they got from the Office of Independent Counsel, but did not put into the public record, did not print up. We also need discovery of those other documents, witness testimony transcripts, interview notes, other materials, which may be helpful or exculpatory that are in the hands of the independent counsel.

Our dilemma is this: We do not know what we do not know. That is what discovery means. You have to get discovery so you can find out what is available. It may not necessarily prolong a trial, but it makes you available to defend your client in the way you have to be able to do as a lawyer. It doesn't turn on the number of witnesses.

The calling of these witnesses produces a need in us to be ready to examine them, to cross-examine them. It initiates a process that leaves us unprepared and exposed unless we have adequate discovery. This is a proceeding, I need not remind you—I know everyone recognizes its gravity—to remove the President of the United States. You have to give us, and I believe you will, the discovery that will enable us to represent the President adequately, competently and effectively.

The sequence of discovery is also important. I want to be clear about that. It is all very well and I recognize how it happens for one side to say, ''Well, we are going to put on three witnesses and they can put on three witnesses.'' Ladies and gentlemen of the Senate, we don't know right now how to make a reasoned choice because we haven't had the discovery you would normally have to do that. We would first need to obtain and review the relevant documents. I have indicated where those are. We would then need to be able to depose relevant witnesses. We need to know whether the witness depositions that the House managers had taken would need to lead to other depositions there. Only at that point when we have had discovery of our witnesses will we be able to identify the witnesses we might want to call.

This is a logical procedure, and I think those of you who have tried cases will recognize it as such. It is simply impossible from where we now are to see how a witness designated by the House managers can be fairly rebutted without ourselves having access to all of the available evidence.

Given what is at stake, I think fundamental fairness requires fair discovery. We will be expeditious, but in the event the genie is out of the bottle, we need time, we need access to defend the President in the way any client ought to be defended.

I think the Senate has wisely elected to proceed on a voluminous record, a record that is available for public scrutiny that was assembled by people not favorable to the President. I think you have enough evidence to make your decision on the basis of that record.

But in the event you decide to expand it, affording us adequate discovery is essential if we are really going to practice the rule of law as I believe the Senate would intend for that rule of law to be practiced in its proceedings.

But let me conclude by saying that I don't think, and I respectfully submit to you, that there is a need to prolong this process. We hope that you will render your decision in a manner that is speedy, and we are confident that you will decide to make that decision in a manner that is fair, and that this body will, as so often it has done in past times of crisis, be able to bring to the country both the closure and reconciliation that the country wants so very much. Thank you.

The CHIEF JUSTICE. Does counsel for the President have any more presentation?

Mr. Counsel KENDALL. If I may, Mr. Chief Justice, I reserve the remainder of my time.

The CHIEF JUSTICE. No, you can't reserve it. It is open, respond and rebuttal.

Mr. Counsel KENDALL. I will then quitclaim the rest of my time.

The CHIEF JUSTICE. Very well.

(Laughter.)

Mr. Manager BRYANT. Mr. Chief Justice, may I inquire how much rebuttal time we have remaining?

The CHIEF JUSTICE. Thirty minutes.

Mr. Manager BRYANT. Thank you, Mr. Chief Justice. I will be brief and ask other managers to come up and follow me. I have four quick points to make.

Before I get into that, I want to thank my distinguished colleague from DC, Mr. Kendall. Over my practice of law for several years, I have received a number of jabs before in the courtroom, but never so gentle and never so eloquently, and I thank you.

I think his presentation was very good, but probably makes the best illustration of why witnesses are needed in that he has chosen to use selective quotes. He likes to use those quotes and point to the managers over there where we were quoted without a real context and certainly that is what this hearing has been about so far, both sides picking and choosing among quotes that best illustrate the point we want to make at the time.

Really, what we need is the big picture, the entire, complete picture that witnesses and only witnesses can provide in this case.

Let me go back to a couple of the selective quotes, and that is the quotes that we made back in the House when we were involved in the proceedings, which I would remind each one of you involved these very same stacks of books here, the record, that they have shown you in the past in a very, I guess very often form, that this is the record here; why do we need to go outside the record? That very same record was there in the House, and it was at that time Mr. Lowell, the minority counsel, was representing the President's interests, but also Mr. Kendall was there. In fact, both together examined Mr. Starr. That was when they were making the request for the witnesses, based on this very same record. Notwithstanding that, we need witnesses. I simply point that out to you to show you that Mr. Kendall and his very talented staff do not have a monopoly on consistency.

Another example of selective quoting has to do with quotes made about our occasion to visit Ms. Lewinsky, to talk to her. This was the one witness we have not been able to talk to. He pulled those quotes out as if we need to talk to all the witnesses. We don't need to talk to all the witnesses, but we just need to sit down and talk with her. I might tell you she was ably represented by three attorneys. She had as many lawyers there as we did and perhaps more. So she was not imposed upon.

I think in terms of my statement about discovery, I think I perhaps was misunderstood, but I certainly conceded the White House might want discovery to depose Ms. Lewinsky, but I still have a hard time determining why they would need to discover what Ms. Currie might want to say, who sits right outside the President's office every day, or what Mr. Jordan might say, who plays golf with Mr. Clinton every day, or Mr. Podesta, his former Chief of Staff.

I am just trying to save this Senate some time and question why we would need to go through discovery of those types of people.

My last point I would like to make before I bring Mr. HUTCHINSON in is Mr. Kendall makes a point, and I am not sure where they were going in perhaps trying to worse case this situation, in terms of taking forever and a day to conclude all kinds of witnesses. He alluded we needed to take all the lawyers of Paula Jones and question her motivation. I suggest to you that a real clue for her motivation for this lawsuit, we could say, was the 850,000 reasons motivation she received the other day. But let me end with that note and bring up Mr. HUTCHINSON who will continue this process.

Thank you.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HUTCHINSON.

Mr. Manager HUTCHINSON. I thank you, Mr. Chief Justice. I will just take a moment.

Mr. Kendall did an outstanding job, as he always does, of making his case for not calling witnesses. I thought the most compelling example as to why we need witnesses was the fact that he called a live witness, Vernon Jordan. Mr. Jordan testified here in this Chamber. Why did they not present a transcript? Why did he want to bring a live witness? Because it was real. It was alive. He was more meaningful than a transcript. He told the story in short, concise ways that I have not been able to do during my presentation during the last week. We would like to have the same opportunity, not through video, but to present a live witness so that he could cross-examine, so that we could question. I think that is a fair proceeding.

Now, Mr. Kendall raised the point that the statements about the notes that Ms. Lewinsky testified she discussed with Mr. Jordan were referenced in her February 1998 proffer. When I was making my point, I was referencing her August grand jury testimony, not the February proffer, because my recollection is that the February proffer that was submitted by Mr. Ginsburg had subsequently become a subject of litigation because we were not able to reach an immunity agreement. So perhaps that was the reason that subject was not inquired into by the independent counsel. For whatever reason, my review of the transcripts is that that subject was never broached with Mr. Jordan. I do not profess perfect knowledge of it, but that is my understanding of it.

And then finally I want to also look at the discovery that Mr. BRYANT referenced. There was a gambling illustration that Mr. Kendall used about blackjack. But another part of poker is bluffs. And I don't know whether they are bluffing. I don't know whether they are serious about all the discovery that they need to have. But I know that lawyers do that sometimes to intimidate, to scare you away.

But I think even more important is that the House managers have submitted to the rules of the Senate. We were not particularly happy about all of them, but we recognized it was important to have legitimacy in this process. We accept that. We move on.

I hope that whatever rules of discovery, whatever limitations you wish to put, whatever timeframes you wish to put, that the White House counsel will be as amenable to the desire of this Senate and this Nation to conclude this as we have been in adopting what our desires are to your schedule.

I yield to Mr. MCCOLLUM.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager MCCOLLUM.

Mr. Manager McCOLLUM. Mr. Chief Justice, thank you very much.

I want to make a couple of observations, and one of them seems pretty apparent. Mr. Kendall says they are not afraid and I was wrong in characterizing them as being afraid—the White House counsel—of calling witnesses. But I am going to tell you, I cannot rationalize any other way why he would

be out here to make the pitch as hard as he is against witnesses, especially the sort of threat that this is going to go on and on and on if we open the door and we call three witnesses. You know, we are down from thinking we ought to have 10, 12, maybe 15 witnesses, to 3—Monica Lewinsky, Vernon Jordan, and Sidney Blumenthal. And we have introduced three—or proposed to introduce three very simple pieces of new evidence. That can't take a lot of discovery, the need to go further than that. You know, if he wants to produce witnesses, that is fine. But I just can't imagine why that opens that door.

Mr. Holmes, he talks about, the attorney. What is the significance of that declaration or affidavit, that sworn declaration that we would like you to take in that says, ''well, we have to depose Mr. Holmes. That was put in very simply because the counsel on the other side—I don't accuse them of doing it intentionally—but the other day they misled us, I think unintentionally misled you, on the idea that the President, at the time he left the deposition in the Jones case and went over to talk to Betty Currie the next day, didn't and couldn't have had any idea that she was going to be called as a witness. In fact, I think they said she never was on the witness list and she never was subpoenaed.

What Mr. Holmes' declaration does, as I said earlier, is bring into the record the subpoena that in fact was issued within a day or so of that time of when Betty Currie was talked to. Remember, she was talked to twice, the notice about it and her name being put on the witness list—that is what that is all about—and a general explanation of why they chose, as attorneys, to make that case, why they chose to put her name out there, and subpoena her, so it is clear on the record.

Very simple. If you look at it—and I am sure you will have it before you—his declaration is very short. It is like three paragraphs. And it goes straight to the point. And it encloses these accompanying documents.

I don't think you should, for one minute, think it opens the door to some great big, gigantic discovery period. That is simply an idle threat to intimidate, in my judgment—with a proper intimidation effort, proper tactic; I don't accuse him of anything improper—to try to discourage you from letting us have these three witnesses.

Second, I want to point out that with respect to some of the things that I said, one thing I did say earlier is I don't know what all the witnesses would say if we called them. I don't know what they all would say, certainly. But I would expect them all to be consistent with what they have already said in their sworn testimony. And there is nothing inconsistent with my expecting them to be consistent on the facts.

We already know with that sworn testimony in the case of Monica Lewinsky—she has immunity—that if she deviates and goes off of it, she can get herself in trouble. But by no means does my expectation that the testimony you already have will remain true mean that I don't think there are new things to be brought out or that you shouldn't have live witnesses here.

And I thought it interesting that Mr. Kendall totally ignored the one thing that was most significant, in my mind, and that is, the whole idea that there is a need for witnesses out here to determine their credibility, to check their demeanor, to see how they respond to questioning, to do all of those things that I described earlier, that any reasonable attorney in any courtroom setting in this country in a criminal case—and you do have to decide whether the crimes were committed or not—would expect to do. So you can, as my colleagues have said, look them in the eye and make that determination yourself. He didn't even address that. And I think that that alone is sufficiently good reason to have a live witness here, as I said before to you.

So with that in mind, I will yield to Mr. ROGAN.

The CHIEF JUSTICE. The Chair recognizes Mr. ROGAN.

Mr. Manager ROGAN. Mr. Chief Justice, Members of the Senate, Mr. Kendall made a very able and strong presentation. It was particularly effective when he brought up a series of quotations from House Members and House managers talking about the need for witnesses or the lack thereof. It would be more effective if it were presented in context, but it could not be, because the context of every single one of those quotations was in reference to the distinction between the House's function as the accusatory body versus the Senate's constitutional function of being the body where an impeachment case is tried. There he blurs the distinction. That is why in the Constitution a President is impeached solely on the majority vote. But removal requires at the trial a two-thirds vote.

Now, Mr. Kendall's presentation begs the question, did the founders get it wrong when they designed this process? Did the founders simply intend for us to waste our resources rather than conserve them and simply do the very same thing, first in one body and then in the other, with the sole distinction that the only difference would be the ultimate vote? That was not their intent. That was not the procedure established by the Constitution. And it is not the procedure recognized throughout the country in court proceedings.

There is a reason why courts of inferior jurisdiction will be able to hold a defendant in a criminal case to answer for trial at a preliminary hearing based on hearsay testimony, based on transcripts, based solely on police reports.

But that defendant at a trial has a constitutional right to come forward. And the right to confront and cross-examine witnesses is supremely guaranteed in the Constitution, because the Framers understood the difference, even if White House counsel refuses to acknowledge the difference.

Now the argument they have really isn't with the House managers. Their argument is with the precedence of the House. Their argument, in fact, is with people like the venerable Barbara Jordan, our late distinguished former colleague. She understood the difference between the House's function in an impeachment role versus the Senate's function. She said during the Rodino hearings in establishing the division between the two branches of the legislature, the House and the Senate:

> Assigning to one the right to accuse and to the other the right to judge, the Framers of the Constitution were very astute. They did not make the accusers and the judges the same person.

Now, in the words of Yogi Berra, ''I fear that we are going through deja vu all over again'' with Mr. Kendall's able proceeding, because what he has accentuated in this presentation has been accentuated by White House counsel ever since they first rose to address this body at the lectern, and that is the complaint that no witnesses were called before the House Judiciary Committee, and how wrong it is for members of the House managers now to assert the need and the right to have witnesses before this body when, in fact, no witnesses were called before the Judiciary Committee.

Once again, he mistakes the function of the two Houses. But I would invite the Members of this body, if that is an issue concerning them, to go back and review the voluminous transcripts during the Judiciary Committee where Chairman HYDE did everything but get on his knees and beg the members of the President's defense team, beg our colleagues on the other side of the aisle, to identify for us which witnesses they wished to dispute, what facts they wanted to challenge, let us know who the witnesses are where there is a contention in the evidence, and despite their complaining, and despite their griping and despite their anger over a supposedly unfair process, they never once identified in the factual record whose testimony they wished to challenge.

What we heard repeatedly, day after day in the hearing and outside before the cameras, was an attack upon the process rather than an identification of the issues where there are factual disputes. In fact, they refused to identify, despite the repeated pleas of Chairman HYDE, who those witnesses were that they felt were appropriate, because the chairman said, ''Tell us who they are, we will call them.''

They champion the cause of witnesses in word but they do not champion the cause of witnesses in deed, at least not in the House, because the same people who were complaining of the unfairness in the House for not having witnesses suddenly have an allergic reaction to the concept of witnesses being called before this body where it counts the most, where the ultimate decision is to be made, where

the triers of fact have to make the constitutional decision whether the case is sufficient for removal of the President.

And Mr. Kendall's repeated hints and statements that somehow they were denied some form of due process in the House by not being able to call witnesses is patently unfair and does not withstand the test of the record. Chairman HYDE alluded to it a couple of days ago, and based upon Mr. Kendall's presentation, I feel it is worth a minute or two of this body's time. Mr. Kendall has stated in these proceedings, and I am quoting:

We have never had the chance to call witnesses ourselves, to examine them, to cross-examine them, to subpoena documentary evidence—at no point in this process.

The record is to the contrary:

On October 5, the House passed a procedure by a voice vote which included the right to call witnesses. On October 21, the House Judiciary Committee staff met with Messrs. Ruff, Kendall and Craig. At that time, Judiciary Committee staff asked the White House to provide any exculpatory information and provide a list of any witnesses the President wished to call. On November 9, the House Judiciary Committee staff wrote to Messrs. Ruff, Kendall and Craig and again informed them of the President's right to call witnesses. On November 19, Independent Counsel Starr testified before the House Judiciary Committee. The President's counsel was given the opportunity to question the independent counsel. The President's counsel did not ask a question relating to the facts of the independent counsel's report and allegations against the President. On November 25, Chairman HYDE wrote a letter to the President asking the President, among other things, to provide any exculpatory information and inform the committee of any witnesses he wished to call. On December 4, 2 working days before the presentation of the President to the Judiciary Committee, counsel for the President requested to put on 15 witnesses. The White House was allowed to present all 15 witnesses, and not a single one of the 15 witnesses did they wish to call, that they asked to call, were factual witnesses.

And so the complaints of unfairness are unfair.

One other point I want to make, because again I see a reversal in roles, is that Mr. Kendall can't seem to decide in what type of ''ogre'' role he wants to portray us, because he said in his presentation just a few minutes ago that we were somehow—at least he alluded to the fact we were somehow tools of Judge Starr and the Office of Independent Counsel. I was a little surprised to hear him suggest that Judge Starr spoon-fed us the charges, and that Judge Starr spoon-fed them to us to the point where he didn't know whether Judge Starr should be deemed an honorary member of the House management team.

Well, that is an interesting proposition, because it seemed to me just a day or two ago the same lawyers who are now making this allegation were claiming constitutional unfairness before this body and asking that this body dismiss the articles of impeachment. Why? Because the House Judiciary Committee and the managers didn't present the exact same charges that the independent counsel suggested. You can't have it both ways. You can't fashion the argument depending on what the result is being sought, and yet that is exactly what the managers with the White House counsel are attempting to do.

Yesterday we were renegades who didn't follow the strict rules of Judge Starr and didn't give them proper notice. Now, of course, he is the marionette and we are the puppets doing his will.

Members of this body, it is the job of the House of Representatives, it is the constitutional obligation of the House of Representatives, to act as the accusatory body in an impeachment proceeding. The Constitution gives the authority to this body the right to try that case. This is the place for trial. This is the place to determine guilt. This is the place to determine credibility. This is the place for witnesses.

Mr. Chief Justice, I yield the remainder of our time to our distinguished chairman of the House Judiciary Committee.

The CHIEF JUSTICE. The Chair recognizes Mr. Manager HYDE. Mr. Manager HYDE, you have 9 minutes remaining.

Mr. Manager HYDE. I won't use the entire 9 minutes.

Mr. Chief Justice, distinguished counsel and Senators, I will be very brief. Mr. ROGAN and my colleagues have handled this very well, but there are just a couple of things I want to talk about.

It is disturbing, it is annoying, it is irritating when I hear that the counsel for the President had been cut off from information, that we have sequestered things. I pleaded with them to produce witnesses, made the subpoenas available to them. They have a positive allergy to fact witnesses.

Oh, they will come up with academics. We saw a parade of professors. You know what an intellectual is? It is someone who is educated beyond their intelligence. I certainly don't mean that of some of those Harvard professors who they paraded out, even though we disagreed with them, but you would get eye strain looking for a fact witness.

And it is remarkable, the flexibility they have, that they complain that we called no witnesses in the House. Now they are complaining that we are calling witnesses in the Senate as though they don't understand the difference in the threshold. There we had to prove we had enough to submit to the Senate for a trial but not try it over there. And a majority vote prevails over there. Here, you have an extraordinary mountain to climb: a two-thirds vote and the trial is here, and that is the difference.

And witnesses help you. They won't help me. I know the record. I am satisfied a compelling case is here for removal of the President. But they will help you. And we aren't dragging this out. We have been as swift as decency will let us be throughout this entire situation.

Their defense has never been on the facts. If they can come up with a good fact witness that has something to say, we will see a reenactment of the Indian rope trick, it seems to me. We will see professors, though, if past is prologue. I don't know. But the threat of prolonged hearings, I suppose, is supposed to make you tremble. It doesn't to me, but then different things—different strokes, I guess, for different folks. Their defense has been to demonize Mr. Starr to a fare-thee-well and then yell about the process. That is their defense.

I will be frank with you. I am not sure I could stand a lot more of that. But that is what they will do. As far as the information not available to them, maybe not. Maybe some of the stuff we got from the independent counsel was held in executive session, but it was available to Mr. CONYERS, available to Abbe Lowell, available to every Democrat on the Judiciary Committee, and they went through it. I wrote with Mr. CONYERS to Mr. Starr a letter saying, ''Show us what you didn't send us. Let's look at what you have over there. There might be some exculpatory material.'' Mr. CONYERS sent his people over and they looked and they looked and they looked, and I would assume they were in touch with you folks. I would assume they were. If they weren't, they should have been. That is a breakdown in communication.

We have a good case. We have an excellent case without the witnesses. But the witnesses help you. We have narrowed it down to three—a pitiful three. I should think you would want to proceed with that minimum testimony, and Mr. Kendall can try his cross-examination skills on them, and that I want to watch.

Thank you.

The CHIEF JUSTICE. The time of both sides has now expired. The Chair recognizes the majority leader.

RECESS

Mr. LOTT. Mr. Chief Justice, in view of the time that we have been in without a break, the next pending business is that we would want to have a motion by Senator HARKIN or Senator WELLSTONE. Before we do that, I suggest that, without objection, we take a 15-minute break.

There being no objection, at 3:42 p.m., the Senate recessed until 4:04 p.m.; whereupon, the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Chair recognizes the majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that during each

day the Senate sits as a Court of Impeachment, it be in order for Senators to submit to the desk statements and introduce legislation.

The CHIEF JUSTICE. In the absence of objection, it is so ordered.

Mr. LOTT. Now, Mr. Chief Justice, I believe at this point it would be in order for a motion to be made that we go into open debate, if any, and then when that is dispensed with, we would go to the move to close and would deal with that issue, and then we would begin the closed session. And so I believe we are ready for a motion to be offered, if any, at this time.

The CHIEF JUSTICE. 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's Standing Rules, I filed a motion of intent to move to suspend the rules to open debate on this motion to subpoena witnesses. The motion is at the desk. It is No. 5, I believe.

The CHIEF JUSTICE. The clerk will report the motion.

The legislative clerk read as follows:

The Senator from Iowa, Mr. HARKIN, for himself and Mr. WELLSTONE, moves to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials in regard to debate by Senators on a motion to subpoena witnesses 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 and by 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 in that case'' and '', to be had without debate.''

Mr. HARKIN addressed the Chair.

The CHIEF JUSTICE. The Senator from Iowa.

Mr. HARKIN. 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 assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from Maryland (Ms. MIKULSKI) is absent due to illness.

The yeas and nays resulted—yeas 41, nays 58, as follows:

[Rollcall Vote No. 3]

[Subject Harkin motion to suspend the rules]

YEAS—41

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

NAYS—58

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

NOT VOTING—1

Mikulski

The CHIEF JUSTICE. On this vote the yeas are 41, the nays are 58. Two-thirds of those Senators voting, a quorum being present, not having voted in the affirmative, the motion is not agreed to.

The Chair recognizes the majority leader.

Mr. LOTT. Mr. Chief Justice, that motion being defeated, I believe it is now in order to move to close the session so we can have debate on the question of the motion to subpoena witnesses.

The CHIEF JUSTICE. The majority leader is correct.

Mr. LOTT. I so move, Mr. Chief Justice.

The CHIEF JUSTICE. The question is on the motion.

The motion was agreed to.

The CHIEF JUSTICE. The motion carries.

Mr. LOTT. Mr. Chief Justice, I would like to ask that Senators remain at their place, but I will put in a request for a quorum just momentarily so the appropriate arrangements can be made for the closed session.

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.

CLOSED SESSION

(At 4:29 p.m., the quorum was dispensed with and the doors of the Chamber were closed. The proceedings of the Senate were held in closed session until 8:01 p.m., at which time the following occurred:)

OPEN SESSION

(At 8:01 p.m., the doors of the Chamber were opened and the Senate resumed proceedings in open session.)

Mr. LOTT. Mr. Chief Justice, I now ask unanimous consent that the Senate return to open session.

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

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. LOTT. Mr. Chief Justice, I ask unanimous consent that the Senate stand in adjournment as under the previous order.

There being no objection, at 8:02 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Wednesday, January 27, 1999, at 1 p.m.

(Under a previous order, the following material was submitted at the desk during today's session.)

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 307. A bill to amend title XVIII of the Social Security Act to eliminate the budget neutrality adjustment factor used in calculating the blended capitation rate for Medicare + Choice organizations; to the Committee on Finance.

By Mr. COVERDELL (for himself, Mr. LEVIN, Mr. MCCAIN, Mr. TORRICELLI, Mrs. HUTCHISON, and Mr. CLELAND):

S. 308. A bill to amend the Internal Revenue Code of 1986 to provide a 2- month extension for the due date for filing a tax return for any member of a uniformed service on a tour of duty outside the United States for a period which includes the normal due date for such a filing; to the Committee on Finance.

By Mr. MCCAIN (for himself and Mr. THURMOND):

S. 309. A bill to amend the Internal Revenue Code of 1986 to provide that a member of the uniformed services shall be treated as using a principal residence while away from home on qualified official extended duty in determining the exclusion of gain from the sale of such residence; to the Committee on Finance.

By Mr. COVERDELL (for himself and Mr. CLELAND):

S. 310. A bill provide for a Dekalb-Peachtree Airport buyout initiative; to the Committee on Commerce, Science, and Transportation.

By Mr. MCCAIN (for himself, Mr. COVERDELL, Mr. CLELAND, and Mr. KERREY):

S. 311. A bill to authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial in the District of Columbia

or its environs, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. MCCAIN (for himself, Mr. COVERDELL, and Mr. HAGEL):

S. 312. A bill to require certain entities that operate homeless shelters to identify and provide certain counseling to homeless veterans, and for other purposes; to the Committee on Veterans' Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. ASHCROFT (for himself and Mr. BAUCUS):

S. Con. Res. 4. A concurrent resolution expressing the sense of Congress that assistance to South Korea should be conditioned on South Korea's compliance with its international trade commitments and on South Korea's termination of its unfair trade practices and subsidies; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. WYDEN (for himself and Mr. SMITH of Oregon):

S. 307. A bill to amend title XVIII of the Social Security Act to eliminate the budget neutrality adjustment factor used in calculating the blended capitation rate for Medicare+Choice organizations; to the Committee on Finance.

MEDICARE+CHOICE PAYMENT EQUITY ACT OF 1999

● Mr. WYDEN. Mr. President, my colleague from Oregon Senator GORDON SMITH, and I are introducing this legislation today to correct an inequity in the payment formula for Medicare+Choice plans. In states like Oregon, with historically low cost health care systems, these inequities leave many Medicare beneficiaries with few or no choices in their health care services.

The Balanced Budget Act of 1997 contained a promise to provide seniors with more choices, but that promise has gone unfulfilled because of these inequities.

The legislation that Senator SMITH and I are introducing today will fulfill that promise by fully funding what is known as the ''blend'' portion of the formula used to determine payment rates. The legislation brings parity to areas that have been historically efficient in delivering health care services. Under the current system, the Medicare payment formula has not rewarded these areas for their efficiency and low costs. As a result, beneficiaries in these areas have not received the range of benefits available in areas with less efficient and more costly health care systems.

This legislation also assures beneficiaries will no longer be penalized because they live in a rural or low-cost area. We must assure that seniors living in Oregon and other low cost areas receive the full promise of Medicare+Choice.

With managed care playing a larger role in Medicare, this bill is needed now more than ever. Nearly 100 plans elected to drop out of the Medicare program for 1999. Many of those plans served seniors in low cost and rural areas, leaving too many beneficiaries not only without choice but also out in the cold. Other managed care plans made benefit changes that limit the promise we all had hoped would occur through Medicare+Choice.

We need to make sure that all seniors are included in the Medicare+Choice promise and that managed care plans in Oregon, Iowa and other low-cost areas are no longer penalized because of their historic efficiency. Senator SMITH and I urge our colleagues to support this bill.

I would like to thank Senator SMITH and his staff for their assistance, and ask unanimous consent that a copy of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 307

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Medicare+Choice Payment Equity Act of 1999''.

SEC. 2. ELIMINATION OF BUDGET NEUTRALITY ADJUSTMENT FACTOR IN CALCULATING THE BLENDED CAPITATION RATE FOR MEDICARE+CHOICE ORGANIZATIONS.

(a) IN GENERAL.—Section 1853(c) of the Social Security Act (42 U.S.C. 1395w–23(c)) is amended—

(1) in paragraph (1)(A), by striking the comma at the end of clause (ii) and all that follows before the period at the end; and

(2) by striking paragraph (5) and redesignating paragraphs (6) and (7) as paragraphs (5) and (6) respectively.

(b) CONFORMING AMENDMENTS.—Part C of title XVIII of the Social Security Act (42 U.S.C. 1395w–21 et seq.) is amended—

(1) in section 1853(c)—

(A) in the matter preceding subparagraph (A) of paragraph (1), by striking ''(6)(C) and (7)'' and inserting ''(5)(C) and (6)''; and

(B) in paragraphs (1)(B)(ii) and (3)(A)(i), by striking ''(6)(A)'' and inserting ''(5)(A)''; and

(2) in subsections (b)(3)(B)(ii) and (c)(3) of section 1859, by striking ''1853(c)(6)'' and inserting ''1853(c)(5)''.

(c) SUBMISSION TO CONGRESS.—Not later than 20 days after the date of enactment of this Act, the Secretary of Health and Human Services shall submit to Congress a legislative proposal that provides for aggregate decreases in Federal expenditures under the medicare program under title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) as are equal to the aggregate increases in such expenditures under such program resulting from the amendments to the Social Security Act made by subsections (a) and (b).

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to payments made for periods beginning on or after January 1, 2000.●

By Mr. COVERDELL (for himself, Mr. LEVIN, Mr. MCCAIN, Mr. TORRICELLI, Mrs. HUTCHISON, and Mr. CLELAND):

S. 308. A bill to amend the Internal Revenue Code of 1986 to provide a 2-month extension for the due date for filing a tax return for any member of a uniformed service on a tour of duty outside the United States for a period which includes the normal due date for such a filing; to the Committee on Finance.

THE UNIFORMED SERVICES FILING FAIRNESS ACT

● Mr. COVERDELL. Mr. President, American soldiers in the modern military operate under a great deal of strain. Forced to work harder with fewer resources, our men and women in uniform bear a heavy burden defending our nation. This is especially true for those deployed overseas. Not only must these troops defend American interests, but they also live under constant threat of attack and must spend months away from their homes and their families.

In addition to their duty to protect our nation's security, American service men and women still must fulfill obligations back home, including paying their taxes. However, in an incredible cart-before-the-horse scheme that could only be found in our nation's tax code, the federal government extends for our troops abroad the deadline for filing income tax forms by 2 months, but requires that service men and women still pay interest and penalties during the extension period. Mr. President, this is unconscionable.

The Uniformed Services Filing Fairness Act, which I introduce today with Senators LEVIN, MCCAIN, TORRICELLI, HUTCHISON, and CLELAND is simple. It codifies the current two-month extension period available to our troops and eliminates the interest and penalties that would otherwise be charged. The Joint Committee on Taxation has estimated the cost of this commonsense correction at just $4 million over 10 years. Mr. President, how can we not afford to pass this bill?

We must show our nation's soldiers that we support them through concrete action. The bill I introduce today will help make the lives of soldiers deployed overseas a little easier. I hope my colleagues will join me in this simple, inexpensive correction of an unfair tax law.●

By Mr. MCCAIN (for himself and Mr. THURMOND):

S. 309. A bill to amend the Internal Revenue Code of 1986 to provide that a member of the uniformed services shall be treated as using a principal residence while away from home or qualified official extended duty in determining the exclusion of gain from the sale of such residence; to the Committee on Finance.

THE UNIFORMED SERVICES HOME SALES ACT OF 1999

● Mr. MCCAIN. Mr. President, I, along with Senator THURMOND, and others are proud to sponsor this bill to allow members of the Uniformed Services, who are away on extended active duty, to qualify for the same tax relief on the profit generated when they sell their main residence as other Americans.

This bill will not create a new tax benefit; it merely modifies current law to include the time members of the Uniformed Services are away from home on active duty when calculating the number of years the homeowners has lived in their primary residence. In short, this bill is narrowly tailored to remedy a specific dilemma.

The Taxpayer Relief Act of 1997 delivered sweeping tax relief to millions of Americans through a wide variety of important tax changes that affect individuals, families, investors and businesses. It was also one of the most complex tax laws enacted in recent history.

Mr. President, as with any complex legislation, there are winners and losers. But in this instance, there are unintended losers: members of the Uniformed Services.

The 1997 act gives taxpayers who sell their principal residence a much-needed tax break. Prior to the 1997 act, taxpayers received a one-time exclusion on the profit they made when they sold their principal residence, but the taxpayer had to be at least 55 years old and live in the residence for 2 of the 5 years preceding the sale. This provision primarily benefitted elderly taxpayers, while not providing any relief to younger taxpayers and their families.

Fortunately, the 1997 act addressed this issue. Under this law, taxpayers who sell their principal residence on or after May 7, 1997, are not taxed on the first $250,000 of profit from the sale, joint filers are not taxed on the first $500,000 of profit they make from selling their principal residence. The taxpayer must meet two requirements to qualify for this tax relief. The taxpayer must (1) own the home for at least 2 of the 5 years preceding the sale, and (2) live in the home as their main home for at least 2 years of the last 5 years.

Mr. President, I applaud the bipartisan cooperation that resulted in this much-needed form of tax relief. The home sales provision sounds great, and it is. Unfortunately, the second part of this eligibility test unintentionally and unfairly prohibits many of our women and men in the armed forces from qualifying for this beneficial tax relief.

Constant travel across the United States and abroad is inherent in the Uniformed Services. Nonetheless, some members of the Uniformed Services choose to purchase a home in a certain locale, even though they will not live there much of the time. Under the new law, if a serviceman does not have a spouse who resides in the house during his absence or the spouse is also in the military and also must travel, that service member will not qualify for the full benefit of the new home sales provision, because no one ''lives'' in the home for the required period of time. The law is prejudiced against dual-military couples who are often away on active duty. They would not qualify for the home sales exclusion because neither spouse ''live'' in the house for enough time to qualify for the exclusion.

This bill simply remedies an inequality in the 1997 law. The bill amends the Internal Revenue Code so that members of the Uniformed Services will be considered to be using their house as their main residence for any period that they are away on extended active duty. In short, members of the Uniformed Service will be deemed to be using their house as their main home, even if they are stationed in Bosnia, the Persian Gulf, in the ''no man's land,'' commonly called the DMZ between North and South Korea, or anywhere else on active duty orders.

In 1998 alone, the United States had approximately 37,000 men and women deployed to the Persian Gulf region, preparing to go into combat, if so ordered. There were also 8,000 American troops deployed in Bosnia, and another 70,000 U.S. military personnel deployed in support of other commitments worldwide. That is a total of 108,000 women and men deployed outside of the United States, away from their primary home, protecting and furthering the freedoms we Americans hold so dear.

We are in a period of robust growth. Many Americans are reaping the benefits of our country's growth by investing in the stock market. Many of our nation's recent millionaires became millionaires through the stock market. However, many middle- and lower-income Americans do not hold vast amounts of stocks, bonds, mutual funds, and the like. Therefore, how does the average American participate in our nation's robust growth? Through home ownership.

Appreciation in the value of a home because of our country's overall economic growth allows everyday Americans to participate in our country's prosperity. Fortunately, the Taxpayer Relief Act of 1997 recognized this and provided this break to lessen the amount of tax most Americans will pay on the profit they make when they sell their homes.

The 1997 home sale provision unintentionally discourages home ownership among members of the Uniformed Services, which is bad fiscal policy. Home ownership has numerous benefits for communities and individual homeowners. Having a fixed home provides Americans with a sense of community and adds stability to our nation's neighborhoods. Home ownership also generates valuable property taxes for our nation's communities.

We also cannot afford to discourage military service by penalizing military personnel with higher taxes merely because they are doing their job. Military service entails sacrifice, such as long periods of time away from friends and family and the constant threat of mobilization into hostile territory. We must not use the tax code to heap additional burdens upon our women and men in uniform.

In my view, the way to decrease the likelihood of further inequalities in the tax code, intentional or otherwise, is to adopt a fairer, flatter tax system that is far less complicated than our current system. But, in the meantime, we must insure that the Tax Code is as fair and equitable as possible.

The Taxpayers' Relief Act of 1997 was designed to provide sweeping tax relief to all Americans, including our women and men in uniform. Yes, it is true that there are winners and losers in any tax code, but, this inequity was unintended, Enacting this narrowly tailored remedy to grant equal tax relief to the members of our Uniformed Services restores fairness and consistency to our increasingly complex Tax Code.●

By Mr. COVERDELL (for himself and Mr. CLELAND):

S. 310. A bill to provide for a Dekalb-Peachtree Airport Buyout initiative; to the Committee on Commerce, Science, and Transportation.

DEKALB-PEACHTREE AIRPORT BUYOUT COMPLETION ACT

● Mr. COVERDELL. Mr. President, I rise today to introduce legislation—the Dekalb-Peachtree Airport Buyout Completion Act—which accelerates the long-awaited buy-out of homes and businesses around Georgia's second busiest airport. Specifically, this legislation grants a priority airport designation for the Dekalb-Peachtree Airport and authorizes the FAA to make available $35 million for the buyout initiative.

This is a very import project to the citizens of Dekalb County, Georgia. In the 1990s, the Federal Aviation Administration proposed to buy the businesses and residential properties located in the Dekalb-Peachtree Airport's Runway Protection Zone. This was the result of FAA studies that found increased operations at the airport too noisy and too unsafe for residents and businesses in the northern vicinity. While the citizens of Georgia and myself are grateful that the FAA has assisted in purchasing some of the properties, this financial assistance has been extremely slow. The FAA's failure to provide the remaining federal financial assistance in a timely manner has caused local residents and businesses to remain in limbo and very upset. Businesses cannot expand and poorer residents cannot afford to move out until the buyout is complete. Those residents who have moved out are leasing their homes to lower-income individuals and families. These circumstances have also caused the crime rate in the area to substantially go up.

My proposed legislation would help alleviate this problem by authorizing the federal funds necessary to complete the buyout of the remaining residential and business properties. I look forward to working with my colleagues in the Senate on this important proposal and urge its speedy consideration.●

By Mr. MCCAIN (for himself, Mr. COVERDELL, Mr. CLELAND, and Mr. KERREY):

S. 311. A bill to authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial in the District of Columbia or its environs, and for other purposes; to the Committee on Energy and Natural Resources.

DISABLED VETERANS MEMORIAL LEGISLATION

● Mr. MCCAIN. Mr. President, I rise to offer legislation to authorize the Disabled Veterans' LIFE Memorial Foundation to establish a memorial on Federal land in the District of Columbia to honor all disabled American veterans. This legislation is not controversial, costs nothing, and deserves prompt consideration and passage during the first session of the 106th Congress.

As a nation, we owe a debt of gratitude to all Americans who have worn their country's uniform in the defense of her core ideals and interests. We honor their service with holidays, like Veterans Day and Memorial Day, and with memorials, including the Vietnam Wall and the Iwo Jima Memorial. But nowhere in Washington can be found a material tribute to those veterans whose physical or psychological well-being was forever lost to a sniper's bullet, a landmine, a mortar round, or the pure terror of modern warfare.

To these individuals, we owe a measure of devotion beyond that accorded those who served honorably but without permanent damage to limb or spirit. For these individuals, a memorial in Washington, D.C. would stand as testament to the sum of their sacrifices, and as proof that the country they served values their contribution to its cause.

We cannot restore the health of those Americans who incurred a disability as a result of their military service. It is within our power, however, to authorize a memorial that would clearly signal the nation's gratitude to all whose disabilities serve as a living reminder of the toll war takes on its victims.

Under the terms of this legislation, the Disabled Veterans' LIFE Memorial Foundation would be solely responsible for raising the necessary funding. Our bill explicitly requires that no Federal funds be used to pay any expense for the memorial's establishment.

I urge my colleagues to join me and Senators COVERDELL, CLELAND, and KERREY in support of this legislation. America's disabled veterans, of whom Senator CLELAND himself is one of our most distinguished, deserve a lasting tribute to their sacrifice. They honored us with their service; let us honor them with our support today.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 311

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORITY TO ESTABLISH MEMORIAL.

(a) IN GENERAL.—The Disabled Veterans' LIFE Memorial Foundation is authorized to establish a memorial on Federal land in the District of Columbia or its environs to honor disabled American veterans who have served in the Armed Forces of the United States.

(b) COMPLIANCE WITH STANDARDS FOR COMMEMORATIVE WORKS.—The establishment of the memorial authorized by subsection (a) shall be in accordance with the Act entitled ''An Act to provide standards for placement of commemorative works on certain Federal lands in the District of Columbia and its environs, and for other purposes'', approved November 14, 1986 (40 U.S.C. 1001 et seq.).

SEC. 2. PAYMENT OF EXPENSES.

The Disabled Veterans' LIFE Memorial Foundation shall be solely responsible for acceptance of contributions for, and payment of the expenses of, the establishment of the memorial authorized by section 1(a). No Federal funds may be used to pay any expense of the establishment of the memorial.

SEC. 3. DEPOSIT OF EXCESS FUNDS.

If, upon payment of all expenses of the establishment of the memorial authorized by section 1(a) (including the maintenance and preservation amount provided for in section 8(b) of the Act referred to in section 1(b)), or upon expiration of the authority for the memorial under section 10(b) of such Act, there remains a balance of funds received for the establishment of the memorial, the Disabled Veterans' LIFE Memorial Foundation shall transmit the amount of the balance to the Secretary of the Treasury for deposit in the account provided for in section 8(b)(1) of such Act.●

By Mr. MCCAIN (for himself, Mr. COVERDELL and Mr. HAGEL):

S. 312. A bill to require certain entities that operate homeless shelters to identify and provide certain counseling to homeless veterans, and for other purposes; to the Committee on Veterans' Affairs.

VETERANS LEGISLATION

● Mr. MCCAIN. Mr. President, I rise to introduce legislation to assist homeless veterans and eliminate some of the suffering of these less fortunate Americans who served their country in uniform. This legislation would develop better methods for identifying veterans who utilize federally funded homeless shelters so that they can be educated about veteran benefits to which they are entitled, including Department of Veterans Affairs health care.

A homeless shelter which receives federal funding would be required to inquire if a person entering the shelter is a veteran. This information would be used solely to assist in tracking the number of homeless veterans and providing counseling to the veteran regarding all available benefits, including job search, veterans preference rights, and medical benefits. Additionally, the Secretary of Veterans Affairs and the Secretary of Housing and Urban Development would coordinate these activities and specify a schedule for notifying the Department of Veterans Affairs of the status of these homeless veterans. It is the intent of this legislation to require homeless shelters to follow this procedure if they are to be eligible for additional Federal grants.

It goes without saying that this country owes a great deal to the men and women who bore arms to keep America free. Today there is no easy way to ensure that veterans who are homeless have access to the benefits they have earned. We do not even know how many of our veterans are homeless. I find this astonishing. The Department of Veterans Affairs estimates the number of homeless veterans to be between 275,000 and 500,000 over the course of a year. Conservatively, one out of every three individuals who is sleeping in a doorway, alley, or box in our cities and rural communities has worn a uniform and served our country. Mr. President, the time is right, right now, to give a helping hand.

Based on the figures the Department of Veterans Affairs does have, homeless veterans are mostly male; about three percent are women. The vast majority are single; most come from poor, disadvantaged communities; forty percent suffer from mental illness; and half have substance abuse problems. More than seventy-five percent served our country for at least four years, and Vietnam veterans account for more than forty percent of the total number estimated.

Mr. President, there are many complex factors affecting all homelessness: extreme shortage of affordable housing, poverty, high unemployment in big cities, and disability. A large number of displaced and at-risk veterans live with the lingering effects of post traumatic stress disorder (PTSD) and substance abuse, compounded by a lack of family and social support networks.

I do not mean to be critical of the Secretary of Veterans Affairs or the Secretary of Housing and Urban Development in offering this legislation. To a great degree, the Department of Veterans Affairs has been very responsive in taking care of some homeless veterans. But the ones who are receiving critical medical treatment and veterans benefits are those who know that such programs exist. It is incumbent on our government to reach out to all veterans, particularly those who are homeless. However, to do that, there must be a process in place.

Homeless veterans need a coordinated effort, between the Secretaries of Veterans Affairs and Housing and Urban Development, that provides secure housing and nutritional meals, essential physical health care, substance abuse aftercare, and mental health counseling. They may need job assessment, training, and placement assistance. To those who may argue that this is a new entitlement program, I would say that these rights and benefits currently exist for veterans today. Why would we as a nation not do everything in our power to provide this help for those less fortunate veterans?

Mr. President, our veterans deserve no less. I hope my colleagues will support this legislation and support our veterans.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 312

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. REQUIREMENT TO IDENTIFY AND PROVIDE COUNSELING TO HOMELESS VETERANS.

(a) REQUIREMENT.—Each entity that receives a grant from the Federal Government for purposes of providing emergency shelter for homeless individuals shall—

(1) identify whether or not each adult individual seeking such shelter from such entity is a veteran; and

(2) provide each such individual who is a veteran such counseling relating to the availability of veterans benefits (including employment assistance, health care benefits, and other benefits) as the Secretary of Veterans Affairs considers appropriate.

(b) COORDINATION OF ACTIVITIES.—The Secretary of Veterans Affairs and the Secretary of Housing and Urban Development shall jointly coordinate the activities required by subsection (a).

(c) NOTIFICATION.—(1) Entities referred to in subsection (a) shall notify the Secretary of Veterans Affairs of the number and identity of the veterans identified under paragraph (1) of that subsection.

(2) Such entities shall make such notification with such frequency and in such form as the Secretary shall specify.

(d) PROHIBITION ON FUNDS FOR NONCOMPLIANCE.—Notwithstanding any other provision of law, an entity referred to subsection (a) that fails to meet the requirements specified in that subsection shall not be eligible for additional grants or other Federal funds for purposes of carrying out activities relating to emergency shelter for homeless individuals.●

ADDITIONAL COSPONSORS

S. 4

At the request of Mr. WARNER, the name of the Senator from Montana (Mr. BURNS) was added as a cosponsor of S. 4, a bill to improve pay and retirement equity for members of the Armed Forces; and for other purposes.

S. 13

At the request of Mr. SESSIONS, the name of the Senator from Idaho (Mr. CRAIG) was added as a cosponsor of S. 13, a bill to amend the Internal Revenue Code of 1986 to provide additional tax incentives for education.

S. 26

At the request of Mr. FEINGOLD, the name of the Senator from Oregon (Mr. WYDEN) was added as a cosponsor of S. 26, a bill entitled the ''Bipartisan Campaign Reform Act of 1999.''

S. 135

At the request of Mr. DURBIN, the names of the Senator from New Mexico (Mr. BINGAMAN), the Senator from Minnesota (Mr. WELLSTONE), the Senator from South Dakota (Mr. JOHNSON), and the Senator from Iowa (Mr. HARKIN) were added as cosponsors of S. 135, a bill to amend the Internal Revenue Code of 1986 to increase the deduction for the health insurance costs of self-employed individuals, and for other purposes.

S. 146

At the request of Mr. ABRAHAM, the name of the Senator from Arizona (Mr. MCCAIN) was added as a cosponsor of S. 146, a bill to amend the Controlled Substances Act with respect to penalties for crimes involving cocaine, and for other purposes.

S. 185

At the request of Mr. ASHCROFT, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 185, a bill to establish a Chief Agricultural Negotiator in the Office of the United States Trade Representative.

S. 285

At the request of Mr. MCCAIN, the name of the Senator from Iowa (Mr. HARKIN) was added as a cosponsor of S. 285, a bill to amend title II of the Social Security Act to restore the link between the maximum amount of earnings by blind individuals permitted without demonstrating ability to engage in substantial gainful activity and the exempt amount permitted in determining excess earnings under the earnings test.

SENATE RESOLUTION 26

At the request of Mr. MURKOWSKI, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of Senate Resolution 26, a resolution relating to Taiwan's Participation in the World Health Organization.

SENATE CONCURRENT RESOLUTION—EXPRESSING THE SENSE OF CONGRESS THAT ASSISTANCE TO SOUTH KOREA SHOULD BE CONDITIONED ON SOUTH KOREA'S COMPLIANCE WITH ITS INTERNATIONAL TRADE COMMITMENTS AND ON SOUTH KOREA'S TERMINATION OF ITS UNFAIR TRADE PRACTICES AND SUBSIDIES

Mr. ASHCROFT (for himself and Mr. BAUCUS) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 4

Whereas Asia is the largest regional export market for America's farmers and ranchers, traditionally purchasing approximately 40 percent of all U.S. agricultural exports;

Whereas the Department of Agriculture forecasts that over the next year American agricultural exports to Asian countries will decline by several billion dollars due to the Asian financial crisis;

Whereas the United States is the producer of the safest agricultural products from farm to table, customizing goods to meet the needs of customers worldwide, and has established the image and reputation as the world's best provider of agricultural products;

Whereas American farmers and ranchers, and more specifically, American pork and beef producers, are dependent on secure, open, and competitive Asian export markets for their product;

Whereas United States pork and beef producers not only have faced the adverse effects of depreciated and unstable currencies and lowered demand due to the Asian financial crisis, but also have been confronted with South Korea's pork subsidies and its failure to keep commitments on market access for beef;

Whereas it is the policy of the United States to prohibit south Korea from using United States and International Monetary Fund assistance to subsidize targeted industries and compete unfairly for market share against U.S. products;

Whereas the South Korean Government has been subsidizing its pork exports to Japan, resulting in a 973 percent increase in its exports to Japan since 1992, and a 71 percent increase in the last year;

Whereas pork already comprises 70 percent of South Korea's agriculture exports to Japan, yet the South Korean Government has announced plans to invest 100,000,000 won in its agricultural sector in order to flood the Japanese market with even more South Korean pork;

Whereas the South Korean Ministry of Agriculture and Fisheries reportedly has earmarked 25,000,000,000 won for loans to Korea's pork processors in order for them to purchase more Korean pork and to increase exports to Japan;

Whereas any export subsidies on pork, including those on exports from South Korea to Japan, would violate South Korea's international trade agreements and may be actionable under the World Trade Organization;

Whereas South Korea's subsidies are hindering U.S. pork and beef producers from capturing their full potential in the Japanese market, which is the largest export market for U.S. pork and beef, importing nearly $700,000,000 of U.S. pork and over $1,500,000,000 of U.S. beef last year alone;

Whereas under the United States-Korea 1993 Record of Understanding on Market Access for Beef, which was negotiated pursuant to a 1989 GATT Panel decision against Korea, South Korea was allowed to delay full liberalization of its beef market (in an exception to WTO rules) if it would agree to import increasing minimum quantities of beef each year until the year 2001;

Whereas South Korea fell woefully short of its beef market access commitment for 1998; and,

Whereas United States pork and beef producers are not able to compete fairly with Korean livestock producers, who have a high cost of production, because South Korea has violated trade agreements and implemented protectionist policies: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) Believes strongly that while a stable global marketplace is in the best interest of America's farmers and ranchers, the United States should seek a mutually beneficial relationship without hindering the competitiveness of American agriculture;

(2) Calls on South Korea to abide by its trade commitments;

(3) Calls on the Secretary of the Treasury to instruct the United States Executive Director of the International Monetary Fund to promote vigorously policies that encourage the opening of markets for beef and pork products by requiring South Korea to abide by its existing international trade commitments and to reduce trade barriers, tariffs, and export subsidies;

(4) Calls on the President and the Secretaries of the Treasury and Agriculture to monitor and report to Congress that resources will not be used to stabilize the South Korean market at the expense of U.S. agricultural goods or services; and

(5) Requests the United States Trade Representative and the U.S. Department of Agriculture to continue bilateral consultations with the Government of South Korea on its failure to abide by its international trade commitments on beef market access, to consider whether Korea's reported plans for subsidizing its pork industry would violate any

of its international trade commitments, and to determine what impact Korea's subsidy plans would have on U.S. agricultural interests, especially in Japan.

NOTICES OF HEARINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that a full committee hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Tuesday, February 2, 1999, at 9:30 a.m. in room SD–106 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to consider the nomination of Carolyn L. Huntoon to be an Assistant Secretary of the Department of Energy for Environmental Management.

For further information, please contact David Dye of the committee staff at (202) 224–0624.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the information of the Senate and the public that an oversight hearing has been scheduled before the full Committee on Energy and Natural Resources. The purpose of this hearing is to review the Recreation Fee Demonstration Program.

The hearing will take place on Thursday, February 4, 1999, at 10 a.m. in room SD–106 of the Dirksen Senate Office Building in Washington, DC.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing record should send two copies of their testimony to the Committee on Energy and Natural Resources, United States Senate, SD–364 Dirksen Senate Office Building, Washington, DC 20510–6150.

For further information, please contact Jim O'Toole of the committee staff at (202) 224–6969.

ADDITIONAL STATEMENTS

UNIFORMED SERVICES FILING FAIRNESS ACT

● Mr. MCCAIN. Mr. President, I am proud to cosponsor this bill, with Senator COVERDELL and others, to provide a 2-month extension to file federal taxes for U.S. military personnel who are on duty abroad.

Current Treasury regulations allow military personnel to file federal tax forms on June 15 rather than April 15. However, filers who elect to use this exception are still subject to interest and penalties during that two-month grace period.

This legislation codifies the existing Treasury regulations and adds a waiver of the interest and penalties that could be charged during the two-month grace period against military personnel who elect to take the filing exception.

Military personnel, serving their country overseas are often isolated from the resources necessary to prepare their tax returns. The Internal Revenue Service and the Department of the Treasury recognized this reality and provided our nation's military personnel with a much-needed two-month grace period to file their taxes.

However, it is inconsistent to grant a grace period for filers, but to penalize those who take it. These brave men and women have not committed any wrongdoing; all they are doing is serving their country.

Travel to remote regions is inherent to military service. In 1998 alone, the United States had approximately 37,000 men and women deployed to the Persian Gulf region, preparing to go into combat, if so ordered. There were also 8,000 American troops deployed in Bosnia, and another 70,000 U.S. military personnel deployed in support of other commitments worldwide. That is a total of 108,000 women and men deployed outside of the United States, away from their primary home, protecting and furthering the freedoms we Americans hold so dear.

We cannot afford to discourage military service by penalizing military personnel with interest and penalties merely because the unique characteristics of their job makes it difficult to file their taxes on time. Military service entails sacrifice, such as long periods of time away from friends and family and the constant threat of mobilization into hostile territory. We must not use the tax code to heap additional burdens upon our women and men in uniform.

This measure will restore equity and consistency to this tax provision, and, at the same time, provide a small measure of tax relief to our men and women in the military.

I urge my colleagues to join me and my other cosponsors to support this much-needed measure.●

TRIBUTE TO MAJ. GEN. WILLIAM P. BLAND, JR.

● Mr. CLELAND. Mr. President, I rise today to honor Major General William P. Bland, Jr., a native of Statesboro, Georgia, who after more than four decades of dedicated service to the State of Georgia and to this country as an officer in the Georgia National Guard, is retiring and coming home to the Savannah area. On January 31, 1999, Maj. Gen. Bland will be honored during a retirement ceremony at the 165th Airlift Wing's headquarters in Savannah, where he started his career with the Georgia Air National Guard in 1962.

General Bland began his military service with the 165th Tactical Airlift Group in Savannah and later served as Deputy Commander of the Air National Guard at Air National Guard Support Center at Andrews Air Force Base. During the past eight years he has served as the Adjutant General for Georgia during which time he and his staff responded to blizzards and floods, directed 15,000 National Guardsmen for Olympic security, beefed up training for Guard volunteers, upgraded the state's military capabilities and reorganized the state defense department. As adjutant general, Bland led the Georgia Department of Defense and commanded more than 12,000 volunteer and full-time members of the Georgia Army and Air National Guards.

Bill's most challenging year as adjutant general came in 1996. He supervised the largest relocation of an Air National Guard unit in history with the move of the 116th Bomb Wing, which included 1,000 people and eight B–1 bomber airplanes, to Robins Air Force Base near Macon. The bomb wing's move helps ensure Robins' future as a military base because the B–1 is one of the Air Force's newest bombers and will remain in active service for many years to come. Bland also oversaw the 48th Infantry Brigade's deployment to the National Training Center at Fort Irwin, California, and witnessed the deployment of two units of the Georgia Army National Guard to Bosnia.

However, the most demanding duty in Bland's career came with the 1996 Olympics in Atlanta when he organized 15,000 National Guard volunteers from 47 states to help with security. Most recently he restructured the state Department of Defense by changing the department's contracting system and placing the Army and Air Guard recruiting under one office.

General Bland has made a positive impact on the lives of many Americans and personifies the definition of a true and loyal American who sets the standard for all citizens to live by. He is an outstanding example to his family and friends, and has been an asset to the many communities, states and nations that he has touched over the years.

Mr. President, I would like to honor and commend Major General William Bland for his outstanding and innumerable contributions over the years to the State of Georgia and to our entire nation, and I ask my colleagues to join me in saluting and congratulating Bill on his retirement and in wishing him many more joyous and successful years to come.●

SOLDIERS, SAILORS, AND AIRMEN'S BILL OF RIGHTS

● Mr. BURNS. Mr. President, I am pleased to join my colleagues on the Armed Services Committee in sponsoring the Soldiers, Sailors, and Airmen's Bill of Rights. This legislation addresses the critical need of improving retention in our military services. The President's Budget has too long ignored the challenges facing our military recruiters as they competed against the civilian sector for highly skilled personnel. For too long, we

have spend tax dollars training recruits in critical skills such as aviation maintenance, nuclear engineering, and medicine only to have these skills transferred to civilian companies. We need to stop the hemorrhaging and address the problems that underlie this issue.

First, we need to raise the pay of service personnel to keep salaries competitive with civilian equivalents. This bill raises base pay by 4.8% in 2000, with additional pay raises tied to the Employment Cost Index. Second, we need to provide incentives for active duty personnel to keep longer service commitments. To do this, we need to repair the damage done in 1986 to the military retirement system. This bill re-establishes the pre-1986 retirement system for military personnel who commit to serving their country for 15 years or more. Finally, we need to provide service members with the opportunity to save for their retirement. This bill would allow service members to contribute up to 5% of their base pay, before taxes, into the Thrift Savings Plan. This is the same plan available to all government civilian employees and has already encouraged thousands of government employees to take an active step in their retirement planning. By extending this benefit to the military, we encourage them to think ahead and to save for their retirements.

The quality of our uniformed service is second to none in the world. We owe it to the people standing on the front lines to ensure that their commitment to our country does not include a commitment to debt and poverty. This bill is an overdue first step in improving the quality of life for all of the men and women who serve in uniform. We owe it to them; we owe it to their families. I strongly encourage my colleagues to support its passage.●

CLARK CLIFFORD

● Mr. MOYNIHAN. Mr. President, at a time when we risk the ever coarsening of our pubic affairs, we would do well to remember a man whose service to this country was distinguished as no other for civility and elegance. I ask that this tribute to Clark M. Clifford by Sander Vanocur be printed in the RECORD.

The tribute follows

TRIBUTE TO CLARK CLIFFORD

(By Sander Vanocur at the Washington National Cathedral, November 19, 1998)

The following anonymous poem was sent to Clark Clifford's daughters, Joyce and Randall, by their sister, Faith, who could not be here today:

Think of stepping on shore
and finding it Heaven,
Of taking hold of a hand
and finding it God's,
Of breathing new air,
and finding its celestial air,
Of feeling invigorated
and finding it immortality,
Of passing from storm and tempest
to an unbroken calm,
Of waking up,
and finding it Home.

In the secular sense, Clark Clifford found that home in Washington more than fifty years ago. And having found that home, let it be said that while he was here, he graced this place.

It was a much different place when he and Marny came here, smaller in size but larger in imagination, made larger in imagination by World War II. It may have been, then and for a good time after, as John F. Kennedy once noted, a city of Southern efficiency and Northern charm. But it was also at least then, a place where dreams could be fashioned into reality. Being an intensely political city, dreams, as always, had to be fashioned by reality. And it was in this art of political compromise where Clark Clifford flourished. He was known as the consummate Washington insider. Quite often the term was used in the pejorative sense. It should not have been. If you believe as he did in what George Orwell meant when he wrote that in the end everything is political, it should be a cause for celebration rather than lamentation that he played the role, for if he had not played this role who else of his generation could have played it quite so well, especially when the time came to tell a President of the United States, who was also a very old friend, that the national interests of this nation could no longer be served by our continuing involvement in Vietnam?

We know of his public triumphs. Some of use also know of his personal kindnesses. Many years ago, at a very bleak period in both my personal and professional life—you know in this city it is bleak when your phone calls are not returned by people you have known for years—there were two individuals in this city who faithfully returned my calls. One was Ben Bradlee. The other was Clark Clifford. When Clark first invited me to his office during this bleak period to offer encouragement and guidance, he closed the door, took no phone calls, sat behind his desk, his hands forming the legendary steeple and listened and advised. On that first visit to his office I looked down on his desk where there appeared to be at least fifty messages, topped by what seemed to be inaugural medallions. I thought to myself on that first visit that Clark Clifford had put the world on hold just to listen to me. But the third time I came to his office, it occurred to me that it was just possible those messages had been there for twenty years.

Clark Clifford's final years were not what he would have wished for himself nor what his friends would have wished for him and for his family. They seemed to echo the first lines in Chapter Nine of Henry Adam's novel ''Democracy,'' perhaps the best novel ever written about this city. The lines are: ''Whenever a man reaches to the top of the political ladder, his enemies unite to pull him down. His friends become critical and exacting.'' On this occasion, I cannot speak of this enemies, but I can say that his friends will not be critical or exacting. We will think, instead, of Othello's words just before he dies:

''Soft you; a word or two before you go.

''I have done the state some service, and they know it—

''No more of that. I pray you, in your letters,

''When you shall these unlucky deeds relate.

''Speak of me as I am; nothing extenuate.

''Nor set down aught in malice.''

We who loved Clark Clifford will do that and more. We will say now and henceforth: Clark Clifford did the state some service and we know it.●

NOMINATIONS

Executive nominations received by the Secretary of the Senate January 26, 1999, under authority of the order of the Senate of January 6, 1999:

THE JUDICIARY

MARSHA L. BERZON, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE JOHN T. NOONAN, JR., RETIRED.

LEGROME D. DAVIS, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA, VICE EDMUND V. LUDWIG, RETIRED.

BARBARA DURHAM, OF WASHINGTON, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE BETTY BINNS FLETCHER, RETIRED.

TIMOTHY B. DYK, OF THE DISTRICT OF COLUMBIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FEDERAL CIRCUIT, VICE GLENN L. ARCHER, JR., RETIRED.

KEITH P. ELLISON, OF TEXAS, TO BE UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF TEXAS, VICE NORMAN W. BLACK, RETIRED.

GARY ALLEN FEESS, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, VICE JAMES M. IDEMAN, RETIRED.

BARRY P. GOODE, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE CHARLES E. WIGGINS, RETIRED.

RONALD M. GOULD, OF WASHINGTON, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE ROBERT R. BEEZER, RETIRED.

WILLIAM J. HIBBLER, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, VICE JAMES H. ALESIA, RETIRED.

MATTHEW F. KENNELLY, OF ILLINOIS, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS, VICE PAUL E. PLUNKETT, RETIRED.

LYNETTE NORTON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA, VICE MAURICE B. COHILL, JR., RETIRED.

RICHARD A. PAEZ, OF CALIFORNIA, TO BE UNITED STATES CIRCUIT JUDGE FOR THE NINTH CIRCUIT, VICE CECIL F. POOLE, RESIGNED.

VIRGINIA A. PHILLIPS, OF CALIFORNIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE CENTRAL DISTRICT OF CALIFORNIA, VICE WILLIAM M. BYRNE, JR., RETIRED.

STEFAN R. UNDERHILL, OF CONNECTICUT, TO BE UNITED STATES DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT, VICE PETER C. DORSEY, RETIRED.

T. JOHN WARD, OF TEXAS, TO BE UNITED STATES DISTRICT FOR THE EASTERN DISTRICT OF TEXAS, VICE WILLIAM WAYNE JUSTICE, RETIRED.

HELENE N. WHITE, OF MICHIGAN, TO BE UNITED STATES CIRCUIT JUDGE FOR THE SIXTH CIRCUIT, VICE DAMON J. KEITH, RETIRED.

RONNIE L. WHITE, OF MISSOURI, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF MISSOURI, VICE GEORGE F. GUNN, JR., RETIRED.