

In fourth day of impeachment trial

White House Counsel refutes case against Clinton

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21 January 1999

The opening statement by White House Counsel Charles C.F. Ruff in the Senate trial of President Clinton combined effective legal and constitutional arguments with veiled hints to his audience of 100 senators that a full-scale trial, with witnesses and intensive cross-examination, would have politically explosive and unpredictable results.

The bulk of Ruff's presentation was a painstaking and forceful dissection of the case presented by the 13 House Republican managers who addressed the Senate for more than 12 hours on January 14, 15 and 16. Ruff denounced the House impeachment vote as a "rush to judgment" with no serious foundations either in law or evidence.

In reviewing the constitutional issues, Ruff argued that the House Republicans, in bringing charges based on Clinton's private sexual relations, had failed to meet the standard of "high crimes and misdemeanors" required for impeachment. He cited Alexander Hamilton's warning in the Federalist Papers that if impeachment simply becomes the political weapon of the majority party in Congress against the president, "there will always be the greatest danger that the decision will be regulated more by the comparative strength of the parties than by the real demonstrations of innocence or guilt."

Ruff's presentation of the legal issues involved in the charge of perjury was particularly devastating to the Republican prosecutors. He gave the first serious analysis of the contradiction revealed when the House voted in favor of the article of impeachment based on perjury before the grand jury but defeated the article of impeachment based on perjury in the Paula Jones lawsuit.

By this very fact, he noted, "The House thus rejected the committee's core argument that perjury in a civil deposition warrants impeachment as much as perjury in any other setting. As to the committee's view that the constitutional standard for impeachment requires that all perjury be treated alike; thus, the House concluded no, and properly so."

The basic legal argument of the House prosecutors was the claim that any false statement under oath, regardless of the circumstances, subject matter or relevance of the statement, was an assault on the judicial branch of government of such a

magnitude as to warrant impeachment. The House implicitly rejected this argument in defeating the second perjury article, but in making their case to the Senate, the House managers proceeded as though the vote on the second article had never occurred.

Not only that, much of the factual argumentation by the House managers concerned claims that Clinton perjured himself in his Paula Jones deposition, even though that article failed to pass. Thus the House managers suggested that Clinton perjured himself before the grand jury when he declared that his testimony in the Paula Jones deposition was legally accurate, trying to smuggle in the claim of deposition perjury through the back door.

Ruff also demonstrated that the House articles of impeachment trampled on the fundamental Sixth Amendment right that an accused must be informed of the charges against him. The articles of impeachment were so vague that they constituted a violation of due process. "There is not a court anywhere--from highest to lowest--that would hesitate, if they were confronted with an indictment written like these articles, to throw it out," he declared.

The White House counsel cited a crude misrepresentation of his own comments before the House Judiciary Committee by James Sensenbrenner, the Wisconsin Republican who gave the opening summation for the House managers. Sensenbrenner's falsification of Ruff's own testimony was widely noted in the press, and Ruff told the senators to keep it mind throughout the proceedings. "Beware of the prosecutor who feels it necessary to deceive the court," he said.

(Sensenbrenner's speech contained many other lies, such as the claim that Paula Jones had been denied merit increases and was forced to quit her job because she rejected Clinton's advances. In reality, Jones received regular raises and left her job when she married and her husband moved to California.)

In his analysis of the factual issues underlying the charges of perjury and obstruction of justice, Ruff made the following points:

- The House Republicans went beyond even Independent Counsel Kenneth Starr in claiming to find perjury in Clinton's

grand jury testimony. They found an impeachable offense in Clinton's description of his sexual trysts with Monica Lewinsky as "occasional," although Starr did not quarrel with this as a description of 11 encounters in 18 months.

- The charge of obstruction of justice is based on speculation about Clinton's intentions, not testimony of witnesses. All of those who testified before Starr's grand jury--including Clinton, Lewinsky, Betty Currie and Vernon Jordan--agreed that there was no conspiracy to withhold evidence, buy Lewinsky's silence with a job, or present false testimony.

- House prosecutors cited as the principal evidence of obstruction of justice Lewinsky's return of gifts after they were subpoenaed by the attorneys for Paula Jones. They pointed to a phone call from Currie to Lewinsky on December 28, 1997, the day Lewinsky delivered a box of gifts to the White House secretary. But Ruff demonstrated from telephone records that the phone call had come an hour and a half after the gifts were returned.

- Ruff pointed to undisputed facts that contradicted the obstruction claim, particularly the fact that Clinton gave Lewinsky several more gifts on December 28, 1997, the very day that he was supposedly ordering Betty Currie to retrieve everything.

- Another glaring factual discrepancy in the House Republican case was exposed in relation to the supposed job-for-testimony agreement with Monica Lewinsky. The House managers claimed that Vernon Jordan had begun an intensified job search for Lewinsky on December 11, 1997, in response to a federal judge's decision that attorneys for Paula Jones could question Clinton about his sexual relations with subordinates. Ruff demonstrated that Jordan had met with Lewinsky several hours before the judge's ruling, which was issued while Jordan was on a plane to Amsterdam!

At several points during his two and a half hour presentation, Ruff touched on the role of right-wing activists in orchestrating and provoking the political crisis in Washington. He noted Linda Tripp's "oddly multifaceted role" in serving as a principal witness for the Office of Independent Counsel while supplying briefings to the attorneys for Paula Jones. Starr's office could have forbidden her to talk to Jones's attorneys, a standard practice with a witness in a criminal investigation, but "they inexplicably chose not to."

In his discussion of the perjury charge, he noted that during the Paula Jones deposition, Clinton's attorney Robert Bennett had urged Jones's attorneys to ask specific questions about Clinton's possible extramarital affairs, rather than rely on the limited definition of sexual relations agreed to by the judge. They refused to do so, an action which he said was "strange, unless one asked whether, armed with Ms. Tripp's intelligence,

they purposely sought in some fashion to present the independent counsel a record that would permit just the sort of dark interpretation both he and the managers have proffered."

In deliberately underplayed and convoluted language, Ruff was suggesting what is well-known in Washington but rarely spelled out--that the purpose of the Paula Jones suit was not to press a legitimate sexual harassment claim, but to entrap Clinton, maneuvering him into a position where he could be charged with criminal actions and impeached, as he has been.

Even more significant was his last reference to Linda Tripp at the end of his presentation, when he noted that Tripp was the only witness even to suggest that there was a link between Jordan's efforts to find Lewinsky a job and her affidavit in the Jones case. "Now I presume," Ruff continued, "that it is not the managers' intention to suggest that we bring Ms. Tripp before you to explore her motivation for making that suggestion."

Ruff was suggesting, again in a roundabout way but one certain to be understood by the House and Senate Republicans, that if they insist on bringing forward witnesses like Monica Lewinsky to detail once again Clinton's sexual affair, the White House can call Tripp, Lucianne Goldberg, Starr himself and others linked to the right-wing campaign to destabilize the Clinton administration.

While strong on legal and factual issues, Ruff's presentation suffered from the same political limitations as the overall effort by the White House to defend itself against the impeachment drive. Neither Clinton nor any of his official defenders will say what is: that the impeachment and Senate trial are the product of a conspiracy by extreme right-wing and semi-fascist elements which represents a direct threat to the democratic rights of the American people.



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