BEFORE THE SENATE OF THE STATE OF ARIZONA

SITTING AS A COURT OF IMPEACHMENT

In the Matter of the Impeachment of:	)
EVAN MECHAM, Governor of the State of Arizona.	)

Phoenix, Arizona
April 4, 1988
9:16 a.m.

TRIAL VOLUME 25

BEFORE THE HONORABLE FRANK X. GORDON,
PRESIDING OFFICER

For the Board of Managers: Storey & Ross
By William P. French, Esq.
and
Brown & Bain
By Paul Eckstein, Esq.

For the Respondent: Jerris Leonard, Esq.
and
Craft & Loesch
By Winfred O. Craft, Jr., Esq.

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Reported by: David R. Minder
and
Robert M. Ferrara

1 Phoenix, Arizona
April 4, 1988
2 9:16 a.m.

3 (Pages 5253 - 5262 sealed by order of Presiding Officer.)

4 THE PRESIDING OFFICER: Thank you, ladies and
5 gentlemen. The Court of Impeachment is reconvened. Show
6 the presence of the Board of Managers, their counsel, and
7 counsel for the respondent, and the the respondent is
8 present.

9 The clerk will now call the roll.

10 THE CLERK: Senator Alston?

11 SENATOR ALSTON: Present.

12 THE CLERK: Senator Brewer?

13 SENATOR BREWER: Present.

14 THE CLERK: Senator Corpstein?

15 SENATOR CORPSTEIN: Here.

16 THE CLERK: Senator De Long?

17 SENATOR DE LONG: Present.

18 THE CLERK: Senator Gabaldon?

19 SENATOR GABALDON: Here.

20 THE CLERK: Senator Gutierrez?

21 SENATOR GUTIERREZ: Present.

22 THE CLERK: Senator Hardt?

23 SENATOR HARDT: Here.

24 THE CLERK: Senator Hays?

25 SENATOR HAYS: Here.

THE CLERK: Senator Henderson?

SENATOR HENDERSON: Here.

THE CLERK: Senator Higuera?

SENATOR HIGUERA: Here.

THE CLERK: Senator Hill?

SENATOR HILL: Here.

THE CLERK: Senator Kay?

SENATOR KAY: Here.

THE CLERK: Senator Kunasek?

SENATOR KUNASEK: Here.

THE CLERK: Senator Lunn?

SENATOR LUNN: Here.

THE CLERK: Senator Macdonald?

SENATOR MACDONALD: Present.

THE CLERK: Senator Mawhinney?

SENATOR MAWHINNEY: Present.

THE CLERK: Senator Osborn?

SENATOR OSBORN: Present.

THE CLERK: Senator Pena?

SENATOR PENA: Here.

THE CLERK: Senator Rios?

SENATOR RIOS: Present.

THE CLERK: Senator Runyan?

SENATOR RUNYAN: Here.

THE CLERK: Senator Sossaman?

1 SENATOR SOSSAMAN: Here.
2 THE CLERK: Senator Steiner?
3 SENATOR STEINER: Here.
4 THE CLERK: Senator Stephens?
5 SENATOR STEPHENS: Here.
6 THE CLERK: Senator Stump?
7 SENATOR STUMP: Present.
8 THE CLERK: Senator Taylor?
9 SENATOR TAYLOR: Present.
10 THE CLERK: Senator Todd?
11 SENATOR TODD: Here.
12 THE CLERK: Senator Usdane?
13 SENATOR USDANE: Here.
14 THE CLERK: Senator Walker?
15 SENATOR WALKER: Here.
16 THE CLERK: Senator West?
17 SENATOR WEST: Present.
18 THE CLERK: Senator Wright?
19 SENATOR WRIGHT: Here.
20 THE PRESIDING OFFICER: The roll call shows all
21 Senators are present.
22 At this time, counsel will be delivering
23 their closing argument to the Senate, Court of
24 Impeachment, and as I understand it, they will be taking
25 each Article separately, with the Board of Managers to

1 open, the respondent to respond, and the Board of Managers
2 to close on each Article, Article I first, Article III
3 second; is that correct, Counsel?
4 All right. The Board of Managers may
5 proceed.
6 As I understand it, each side is going to
7 take 30 minutes on each of the Articles.
8 MR. ECKSTEIN: Mr. Presiding Officer, we would like
9 to reserve five minutes in rebuttal on both arguments.
10 THE PRESIDING OFFICER: You'll have to keep your
11 own time.
12 MR. ECKSTEIN: Mr. Presiding Officer, members of
13 the Court of Impeachment, standing before you at this
14 historic moment I can't help but think back to my first
15 day in law school over 25 years ago. I was standing in
16 the registration line on a warm September day looking up
17 at a string of Latin words over the portico of the
18 building that housed the library and many of the
19 classrooms in the law school. My two years of Latin at
20 West High here in Phoenix enabled me to understand the
21 literal meaning of the words, but not their history.
22 Those words, "Non Sub Homine Sed Sub Deo Et
23 Lege," Not Under Man But Under God and Law, were words
24 that I soon learned. Chief Justice Edward Cook used to
25 admonish King James I, that the royal prerogatives

1 asserted by the king were subject to the English common
2 law. Now, while it took an English civil war and the loss
3 of a king to solidify that axiom and that admonition, for
4 over 300 years now we have lived by the principle that we
5 all owe a higher duty to the law than we owe to any man,
6 whether that man is king or governor.
7 Boiled down to its very essence, stripped of
8 all rhetoric and razzmatazz, that is what Article I is all
9 about, whether respondent is above the law, whether
10 Colonel Milstead and Lieutenant Johnson and others owed a
11 higher duty to respondent than they did to their oath and
12 to the law.
13 At the beginning of this case, Mr. Leonard
14 suggested to you that the standard that should be used in
15 determining whether an impeachable offense has occurred is
16 whether the conduct is offensive, not just to the Senate,
17 but to the state as a whole. Who can deny that the
18 conduct of respondent and his men was not offensive?
19 Was it not offensive for respondent to refer
20 the investigation of a death threat to Max Hawkins, a
21 political crony, to be treated solely as a personnel
22 matter so that news of the threat would never see the
23 light of day?
24 Was it not offensive for respondent, after
25 hearing Colonel Milstead explain that the Attorney General

1 wanted to take statements from Officer Martinez and
2 Lieutenant Johnson, to order DPS not to cooperate with the
3 Attorney General? Was it not offensive for respondent to
4 lie about his knowledge of the threat on television?
5 I submit to you, ladies and gentlemen of the
6 Court of Impeachment, this whole course of conduct by
7 respondent and the persons he assigned to conduct the
8 investigation was not just offensive, it was grossly
9 offensive, not just illegal in the sense that it
10 constituted a violation of the Arizona Criminal Code in
11 the sense that they constituted obstruction of justice,
12 but obstruction of justice and neglect of duty in their
13 historic and broader sense, as the Presiding Officer told
14 you at the outset of this proceeding, and as the Senate
15 legal staff made clear to you in its memorandum of law
16 given to you on March 31st, as those terms must be read.
17 Until now, we have emphasized the facts and
18 spent precious little time telling you what acts justify
19 impeachment. As you listen to the argument this morning,
20 I would ask you to keep four things in mind.
21 First, this is not a criminal proceeding.
22 Commission of a crime, although there have been crimes
23 committed here, need not be proved.
24 Second, the purpose of impeachment is not to
25 punish the abusive officeholder, but to protect the

1 interests of the state and the office. Therefore, you
2 must look not just at the acts of the officeholder
3 personally, and what the officeholder and what respondent
4 personally knew and did, but at how he carried out his
5 duties and responsibilities through his subordinates and
6 through his agents.
7 The third point that you should keep in mind
8 is that under the Arizona constitution, a person who has
9 abused his power or neglected his duty or attempted in a
10 noncriminal sense to obstruct justice or corrupt justice
11 is guilty of a high crime or misdemeanor. A crime need
12 not be proved.
13 Fourth, and finally, I would ask you to keep
14 in mind, as the Senate legal staff has pointed out to you
15 at several places in their March 31st memorandum, that
16 under the Arizona Constitution, a person who has acted
17 without lawful authority or engaged in conduct that is
18 simply wrong is guilty of malfeasance, and malfeasance
19 justifies, indeed, cries out for conviction of the
20 impeachment charges.
21 While all the legal points offered by the
22 Senate legal staff are important, I would like to call
23 your particular attention to the last sentence in the
24 paragraph on credibility of witnesses. It reads:
25 "If you believe that any witness has

1 willfully testified falsely as to any material fact
2 or facts in the case, then you are at liberty to
3 disregard the entire testimony of that witness,
4 except insofar as it may have been corroborated by
5 other credible evidence in the case."
6 When you reflect on this legal principle and
7 the supplemental memorandum that we have submitted today,
8 which should be on your desks shortly, that reflects a
9 number of the statements by the respondent that are either
10 wrong or contradicted by himself or by others, I would ask
11 you to particularly keep in mind respondent's sworn
12 statement that he has been concerned about the reputation
13 of others in the face of a lifetime of reckless disregard
14 for the reputation of anyone who has stood in his path to
15 political power.
16 I would ask you to keep in mind respondent's
17 sworn statement on the morning of March 19, March 18, that
18 he "had complete confirmation that Lieutenant Johnson took
19 the Thad Curtis report," which, after lunch, he casually
20 recanted by saying, "I did not have the proof then, and I
21 do not have it now."
22 I would ask you to keep in mind respondent's
23 sworn statement that he had never been accused of being
24 dishonest or lying, in the face of numerous lawsuits
25 alleging and one jury finding of fraud.

1 I would ask you to keep in mind respondent's
2 sworn statement that he did not order the firing of Lee
3 Watkins, in the face of direct contradictory statements by
4 both Max Hawkins and Dr. Richard Burke.
5 I would ask you to keep in mind respondent's
6 sworn statement that his only criteria for vetoing a bill
7 is whether the bill does damage to the state, in the face
8 of his later admission that his veto of one bill was
9 tongue-in-cheek.
10 By these and a myriad of other statements
11 made in this chamber, respondent has demonstrated for all
12 the world to see his plain inability to tell the truth.
13 One other legal principle is important for
14 you to keep in mind. Indeed, it is so important that the
15 Senate legal staff inserted it at five separate places.
16 It reads as follows:
17 "Awareness by respondent that his actions
18 constituted a crime is not a prerequisite to a
19 finding that he committed a crime. Ignorance of
20 the law is no defense."
21 Thus, respondent's excuse that no one told
22 him that it was a felony to tamper with a grand jury
23 witness is not a valid defense even in a criminal trial,
24 let alone in an impeachment trial where the conduct of the
25 office is what is at issue. For as every eighth grader in

1 this state knows, ignorance of the law does not relieve a
2 person of criminal responsibility.
3 In his opening statement before this Court of
4 Impeachment, Mr. Craft told you in a moment of Freudian
5 candor, "We all felt the pressure of trying to stop
6 something that looked like it was totally out of control."
7 It is not always easy to follow the law, particularly when
8 following the law may prove to be politically
9 embarrassing. But does Mr. Craft seriously mean to
10 suggest that being under pressure is an excuse for
11 obstructing justice? I hope not.
12 Does Mr. Craft seriously mean to suggest that
13 respondent should be held to a different and a lower
14 standard than the rest of us? I hope not.
15 Does Mr. Craft seriously mean to suggest that
16 this body should give its imprimatur to the conduct of
17 respondent and those around him because they were trying
18 to stop something totally out of control? I hope not.
19 Let us turn to the proof of the threat, of
20 the reporting of the threat, the cover-up, the order to
21 Colonel Milstead and the aftermath. Who made the threat?
22 Lee Watkins, a man with a violent past, a man to whom
23 respondent was indebted and who consequently was
24 protected, was given three jobs for which he was not
25 qualified, a man who would not testify before this Court.

1 Who heard the threat? Peggy Griffith, a
2 loyal supporter of the respondent, with no motive to do
3 anything but to protect the respondent, to tell the truth,
4 a woman whose memory of the events has been confirmed in
5 every important respect.
6 To whom was the threat directed? A woman who
7 was publicly identified as the star witness for the state,
8 before the grand jury proceeding on the Wolfson loan, a
9 woman viewed as public enemy number one by the Mecham
10 administration.
11 What was said? "If Donna does not keep her
12 mouth shut, she will take a long boat ride and never come
13 back."
14 Now, I ask you to reflect back on Lieutenant
15 Colonel Phelps' testimony that the threat really had two
16 dimensions: One, that Donna Carlson should watch what she
17 says before the grand jury, a signal to her to watch her
18 testimony, to make sure she didn't hang the Governor, and
19 a second and more sinister part, that if Donna says the
20 wrong things before the grand jury, she is risking serious
21 physical harm and even death.
22 Either one of those dimensions is sufficient
23 to obstruct justice, to constitute abuse of power, to
24 constitute neglect of duty, and certainly to constitute
25 malfeasance.

1 Was it wrong? Was it wrong? The reporting
2 of the threat to the respondent and his staff is under
3 some controversy here, but the basic elements of what was
4 said are really not. Lieutenant Johnson reported to his
5 superior, as Dr. Burke said it was appropriate to do.
6 Lieutenant Johnson went to the law books to see if there
7 was a felony and determined that it was. Do you really
8 believe that Lieutenant Johnson would go to the books and
9 not tell anyone what he found?
10 Lieutenant Johnson's version is that he
11 reported the words of the threat as he understood them,
12 and I don't think there's any real dispute about that, and
13 he said that there was a possible felony that had been
14 committed, and that's where the dispute is.
15 Look carefully at Dr. Burke's version of the
16 testimony, the Chief of Staff of the Governor, certainly
17 no motive to hang or do harm to the Governor. He
18 testified that he knew enough from what he had heard to
19 know that the threat was serious. He had heard enough to
20 know that the threat would be investigated by DPS and the
21 Attorney General.
22 Now, while Dr. Burke did not recall
23 Lieutenant Johnson using the words "possible felony," he
24 testified he did not need to be told that a possible crime
25 or felony had been committed.

1 What is Mr. Craft's version? He heard enough
2 to say that Lee Watkins ought to be fired. Fired for some
3 trivial personnel dispute? I doubt it. He heard enough
4 to tell the respondent to distance himself from this
5 matter. And when it came time for Mr. Craft to write his
6 affidavit on this matter some two months after the event,
7 he carefully worded his affidavit to use words of
8 qualification. "To the best of my knowledge," he wrote,
9 "to the best of my knowledge, the words 'death threat' and
10 'felony' were not used."
11 And what's the respondent's own version of
12 what he heard? He knew the threat was made by Lee
13 Watkins. He knew of Lee Watkins' past and contribution to
14 the Mecham administration, as well as his threats to bring
15 the administration down, at least as testified to by Mr.
16 Steiger. He knew, after he was reminded, that Donna
17 Carlson was a grand jury witness, indeed, the star witness
18 against him. He knew the threat was directed against
19 Donna Carlson, and he knew that Peggy Griffith was a loyal
20 supporter of his.
21 The referral to Max Hawkins was not just a
22 casual act. However, the investigation by Mr. Hawkins
23 could not have been conducted more casually. Against all
24 rules, the first person he talks to is Lee Watkins. Then
25 when he talks to Peggy Griffith and interviews her, he

1 leaves her with the impression that it's just a spat and
2 that she's not to be believed.
3 That so-called investigation was designed to
4 insulate the respondent from the problem in those haunting
5 words that became familiar in another context last summer,
6 to create ground of plausible deniability to an
7 administration in desperate need of credibility.
8 Before Sunday, November 15, respondent and
9 his men knew that the Attorney General was investigating
10 this matter. The respondent knew it from a telephone
11 conversation he had with Peggy Griffith on the evening of
12 Friday, knew it from a conversation with Peggy Griffith
13 that evening.
14 Mr. Craft knew it from a telephone
15 conversation either that evening, in Peggy Griffith's
16 words, or the next morning, in Mr. Craft's recollection,
17 and Ray Russell knew it on the evening of Saturday,
18 November 14, from a conversation he had with his own
19 counsel, who had spoken with the Attorney General.
20 And yet none of those people, none of the men
21 around the Governor, saw fit to tell the Governor of the
22 investigation by the Attorney General, something they said
23 Colonel Milstead was obligated to do from the moment he
24 first learned of that on Friday afternoon.
25 Now, much has been made of a so-called

1 conflict in testimony between the respondent and Colonel
2 Milstead. When all is said and done, however,
3 respondent's version of the November 15 telephone
4 conversation is remarkably similar to Colonel Milstead's.
5 Respondent admits that that conversation took
6 place. He admits he did not give Colonel Milstead or the
7 DPS officers permission to talk to the Attorney General.
8 He admits he was convinced the Attorney General was out to
9 hang him and did not want anyone to help him do it. He
10 admits he very well could have told Colonel Milstead that
11 Colonel Milstead should not help the Attorney General hang
12 him.
13 He admits he was upset to hear that
14 Lieutenant Johnson had talked to anyone, and that the
15 Attorney General was pursuing the matter. He admits that
16 he knew that Peggy Griffith was not talking to the DPS,
17 and defiantly asked Colonel Milstead, "Who's your witness?
18 Who's your witness?" He admits he told Colonel Milstead
19 to tell the Attorney General that he had looked into the
20 matter and there was nothing to it.
21 What's in dispute? What's in dispute is
22 whether Colonel Milstead told the respondent that the
23 Attorney General wanted to take statements from both
24 Lieutenant Johnson and Officer Martinez. The respondent
25 saying he didn't recall anything about Lieutenant Johnson,

1 in fact, was sure that Lieutenant Johnson's name didn't
2 come up.
3 And he disputes that he ordered Colonel
4 Milstead, while he admits that he very well could have
5 told him not to help the Governor (sic), he doesn't admit
6 ordering Colonel Milstead not to cooperate with the
7 Attorney General, a fact publicly admitted by Max Hawkins
8 in his press release of January 19, Exhibit 24.
9 Respondent's deception of the public is every bit
10 aggregious as what we've been talking about.
11 By Monday evening, the respondent had had an
12 afternoon meeting in his office with Lieutenant Johnson,
13 Fred Craft, and Dr. Burke. He had heard a report from Max
14 Hawkins on the evening of November 13. He had had a
15 telephone conversation with Peggy Griffith on the evening
16 of November 13. He had had a telephone conversation with
17 Colonel Milstead on Sunday, November 15, and he read the
18 papers on Monday, November 16. And yet he said, when
19 asked on television that night, he did not know about the
20 threat and his Chief of Staff had probably been informed
21 about the threat. A curious statement, given the fact
22 that respondent had assigned the matter to be investigated
23 by Max Hawkins.
24 Dr. Burke politely characterized respondent's
25 statement as not true. If truth and voracity is an issue

1 in this case, I ask you to consider that respondent
2 exaggerated on the stand when he said he had never been
3 accused of being dishonest or lying, that he disassembled
4 boldly in the Cameron Harper interview. He had to be
5 reminded time and time again of his House testimony,
6 something as basic as whether he assumed that Donna
7 Carlson would be a grand jury witness.
8 He puffed, to say the least, when he said
9 that every senior member of his staff had been
10 investigated by the Attorney General. He misremembered
11 when he said he did not direct Max Hawkins to fire Lee
12 Watkins. And he lied, he lied when he said he knew that
13 Beau Johnson had stolen the Curtis report.
14 How much proof is required to demonstrate
15 that respondent has puffed, exaggerated, misremembered,
16 disassembled and out and out lied? If voracity is an
17 issue in this case, respondent's lack of voracity has been
18 demonstrated not just by clear and convincing evidence,
19 but beyond a reasonable doubt.
20 Now, as I said at the outset, respondent is
21 not being tried in a criminal trial, but in a Court of
22 Impeachment. High crimes and misdemeanors means more than
23 indictable offenses, though violations of indictable
24 offenses have been demonstrated. It includes abuse of
25 official power, neglect of duty and obstruction of

1 justice.

2 How can it not be an abuse of official power
3 or a neglect of duty to treat the threat made by a grand
4 jury witness so cavalierly? How can it not be obstruction
5 of justice to tell Colonel Milstead not to cooperate with
6 the Attorney General, whether or not an order is given?

7 Malfeasance means something that is wrong.
8 Was it right or wrong to have Max Hawkins conduct this
9 investigation and view it solely as a personnel matter?
10 Was it right or wrong to order Colonel Milstead not to
11 cooperate with the Attorney General? Was it right or
12 wrong for respondent to lie about what he knew?

13 Mr. Craft's statement that respondent and his
14 men all felt the pressure of trying to stop something out
15 of control reminds me of the opening lines from the Irish
16 poet, William Butler Yates' The Second Coming:

17 "Turning and turning in the widening gyre,
18 the falcon cannot hear the falconer, things fall
19 apart, the center cannot hold. Mere anarchy is
20 loosed upon the world. The blood dim tide is
21 loosed and everywhere the ceremony of innocence is
22 drowned. The best lack all conviction while the
23 worst are full of passionate intensity."

24 It has been demonstrated clearly and
25 convincingly in this Court that the worst are full of

1 passionate intensity. Let it not also be said that the
2 best lack all conviction.
3 I ask you to be true to your oaths and
4 convict the respondent on all charges set forth in Article
5 I of the Articles of Impeachment.
6 THE PRESIDING OFFICER: You may respond.
7 MR. CRAFT: Mr. Presiding Officer, ladies and
8 gentlemen of this Court of Impeachment, you and I have
9 been involved in this proceeding now for about five weeks,
10 going on six. And I think that there is one thing that
11 even you and I and the Board of Managers and the Presiding
12 Officer can all agree on, and that is that these
13 impeachment proceedings are unique. They're unique to all
14 of us. We've never been involved in one before.
15 And I would venture to say that in this
16 country of ours, that perhaps in the annals of all
17 democracy, no man has ever faced contemporaneously three
18 threats, a recall election, an impeachment, and a criminal
19 trial. I would ask you to give pause and to think about
20 what we are doing here, what this process is all about,
21 and what our responsibility is.
22 We are in fact, in Arizona's history, about
23 to leap into uncharted waters. We don't know where the
24 rocks and the shoals are. And I think that we should go
25 very slowly, and I think we should be very deliberative,

1 and I think we should look and see what the facts are and
2 how they fit this case. We can be part of an experiment
3 to enhance our democratic processes, or we can certainly
4 be part of an episode that could bring disrepute on our
5 system.
6 I submit to you that Governor Evan Mecham is
7 not the only one who is on trial here today. We all are.
8 What mostly is on trial is our system, and what I implore
9 you to do is think about that system, because if you wipe
10 out names of Evan Mecham and Ralph Milstead and Bob Corbin
11 and all the names, and step back and look at what
12 transpired, and remove the prejudice that maybe those
13 names and those parties might bring forth in your mind,
14 that should be the way in which you judge these
15 proceedings and these facts.
16 I was fortunate. I grew up in a military
17 family. My father was an Air Force officer and I was born
18 at McDill Field, Florida. My sister, who is here from
19 California, was born at Langley Field, Virginia. We were
20 very young. We traveled. We moved every two years of my
21 life until I got in high school.
22 I lived in Libya when Libya was friendly to
23 the United States. I was there during the Suez crisis of
24 1957. I lived in Japan for three years, and I fought in
25 Vietnam for a year. And one of the things that I always

1 thought and had faith in and talked to foreigners about
2 was the way in which our system operated. And, sure,
3 there are chinks in our system and in our armor, but I
4 think, like you, we all have a fundamental faith that our
5 system ultimately works. And that is something that we
6 are going to test in these proceedings, and ask you to
7 work with me to make sure that we give every benefit of
8 the doubt, that we do not destroy a process that will be
9 in place where we judge and where we put democracy to a
10 test at a later time.
11 These circumstances, I think, require that we
12 pay this special attention. And with that, let's look at
13 what the facts of this case really show. I think that
14 personally, at least, in addition to this being unique, I
15 had the opportunity and probably the unfortunate
16 circumstance of being both a staffer for Governor Mecham
17 when some of these events occurred for Article I, the
18 so-called obstruction of justice, as well as serving as
19 his defense counsel, as well as being called to the
20 witness stand.
21 I do have some insight into this, and I don't
22 think that I'm prejudiced by those involvements, and I beg
23 you to not discount it, because I happen to have been
24 perhaps in the wrong place at the wrong time, and I may
25 have tried your patience early on when we came into this

1 trial and we had to find and discover what the facts were
2 from the witnesses who were being called. We didn't have
3 the luxury of having three or four months to devote to the
4 case.
5 I think, to begin with, that it stretches the
6 imagination that a man who has been the target of so many
7 threats himself would be charged in a political trial with
8 obstructing justice, with somehow impeding an
9 investigation of a threat of bodily harm against one of
10 his former employees. Threats were everyday occasions for
11 this man, a man who has evaluated the seriousness of those
12 kinds of threats based upon information provided to him.
13 This is a man who understands them and who understands the
14 needs to protect people who have been threatened.
15 Evan Mecham's sympathies do not lie with the
16 maker of threats, and I don't care who they are. I cannot
17 believe, and if you search your own mind and your own
18 heart, I think you would agree, that whatever you can say
19 about Governor Evan Mecham, he would not intentionally try
20 to interfere or obstruct an investigation to determine
21 what the facts were relative to a death threat, or even a
22 threat.
23 The other point is that Governor Mecham knew
24 all of the players that were involved in this. This isn't
25 an issue that just came up and he happened to be informed

1 of allegations that occurred between people that he didn't
2 know. This Governor had an opportunity to know these
3 players, know these parties. And he made certain
4 judgments, and he did that based upon really two pieces of
5 information before that telephone call from Milstead to
6 the Governor on Sunday, and that was what he heard from
7 Lieutenant Johnson on Friday, November 13th, 1987, at
8 about 12:30 in the afternoon, and then around 6 o'clock
9 that night, what he heard from Max Hawkins, when Max
10 reported to him that he had interviewed the two who were
11 involved in this, Lee Watkins and Peggy Griffith, and he
12 said that it was a lot of hot air. That's the information
13 that the Governor really had.
14 And I want to draw you back for a second to
15 think about what the climate was like at that time, what
16 was happening on Friday, November 13th, through that
17 weekend, aiming for a conclusion of what we've seen as the
18 touchstone of this charge which occurred in a telephone
19 conversation on Sunday. This Governor had a brand new
20 staff. Every one of the single special assistants was
21 gone, save Ray Russell. He had recruited me from
22 Washington to come out and help, fill in. I had recruited
23 Dick Burke, my good friend, to act as his new chief of
24 staff, and who was on the job for really the first or the
25 second day. I think Dick said he was there Wednesday or

1 Thursday part-time. This was his first day on the job.
2 The Attorney General was investigating this
3 Governor for allegations that somehow the $350,000 loan
4 from Wolfson wasn't properly disclosed. There was a grand
5 jury that was going to proceed to hear testimony. We had
6 a complete breakdown in a relationship between the
7 Governor's office and the Attorney General's Office where
8 the Governor was left without -- was legally naked. He
9 had no legal support. He had no legal counsel. He was
10 forbidden to get it. Mr. Corbin has a monopoly on legal
11 services, and the head of the police of this state, the
12 state police, the Department of Public Safety, Mr.
13 Milstead, knew that he was on a short leash. He knew that
14 the Governor was looking to replace him. He knew what the
15 relationship was with the Governor's office and where he
16 stood.
17 The papers had been unrelenting in their
18 barrage of this administration. It was a story a day.
19 And the New Times article that came out that week, that
20 scurrilous piece of paper, which said the only untold
21 story left, ladies and gentlemen, was who was going to
22 assassinate and when were they going to assassinate this
23 Governor. That's the context within which this alleged
24 death threat of two employees that worked for the state
25 government, one worked directly for the Governor and the

1 other one worked indirectly for the Governor, took place.
2 We're also on a Friday afternoon, 12:30 in
3 the afternoon, when the Governor first becomes aware of
4 this to -- to the Sunday meeting or conversation with
5 Milstead on the telephone at noon. That's the context.
6 You have maybe four hours left in a work day before you go
7 home, but not for Evan Mecham, and not for his staff,
8 because they're working as hard as they can to put
9 together an oval office speech by the Governor to show the
10 public that, indeed, the $350,000 loan was disclosed. It
11 was lumped. It was in a $465,000 category.
12 That's what the concentration of the Governor
13 was on, and that's what his staff was looking at. Nothing
14 tips the Governor or any of his staff off of the need to
15 do anything other than what was being done. And while the
16 Governor and Ken Smith and I worked that weekend, we found
17 from the evidence in this trial that the focus that the
18 Governor had was different from the focus that Bob Corbin
19 and Steve Twist and Ralph Milstead had.
20 Ladies and gentlemen, we are some five months
21 after the events of Friday, November 13th, and we're
22 putting that time and those events under a microscope.
23 We're looking at every detail. We're looking for every
24 relevant fact that we can. We're looking at it in less
25 than slow motion. We're looking at work hours where we've

1 drug it out and looked at every aspect and every second.
2 By Monday the allegations had already been made of
3 obstruction of justice and the whole event was over.
4 And I think one of the questions you need to
5 ask yourself is whether or not we all have perfect 20-20
6 hindsight. And when you place this under a microscope and
7 you start looking at what are the elements of this
8 obstruction of justice charge, you find that you've got a
9 90-second conversation on Friday with the Governor, and
10 you have a three- to four-minute conversation, five-minute
11 conversation with Milstead on the 16th. And from those
12 two events, someone wants you to twist and torture it into
13 such a way that it accounts for obstruction of justice.
14 In November 1987 there was one other element
15 that you need to keep in mind on that weekend. There were
16 32 grand jury witnesses. Every one was a grand jury
17 witness that worked on the ninth floor except me, and I
18 guess they didn't get me because I had been out of town.
19 The Governor, Jim Colter, Donna Carlson, Lee Watkins,
20 Ralph Watkins, Sam Steiger, Max Hawkins, everybody was a
21 grand jury witness, and I submit to you that when
22 everybody is a grand jury witness, you can't see the
23 forest for the trees. Donna Carlson doesn't stick out.
24 Sure, Donna Carlson had left this administration
25 disenchanted. She had made statements to the public. She

1 had made statements in the press. And what did they go
2 to? They went to hear criticism of things that were
3 occurring in the administration. I don't think she knew
4 anything about the allegations about the Wolfson loan, and
5 if somebody were going to obstruct Donna Carlson, wouldn't
6 they try to stop her from talking to the grand jury about
7 the Wolfson loan? And I think the spin on the question of
8 what was Lee Watkins talking about, he was talking about
9 this newspaper article and threats made against the
10 Governor, and talking -- I don't know what he said.
11 Whatever he said, it was imprudent. He shouldn't have
12 said anything, but people say things, and they knew each
13 other. So I think there's a big difference between
14 picking Donna Carlson out.
15 Now, she may have been what the prosecution
16 has said as the star witness for Mr. Corbin in a grand
17 jury. I haven't heard anything anywhere which says that
18 she had any particular knowledge that could hurt this
19 administration or that made her a star witness. The
20 newspapers made her a star witness because she was the
21 only one that left and was saying things which might
22 politically embarrass or hurt the Governor, but in terms
23 of bringing him down, in terms of really hurting this
24 administration, what was it? And there's a difference
25 between being cognizant of something at a particular time

1 and being aware of it.

2 I'm sure everybody must have known that there

3 were 32 people called before the grand jury on the Wolfson

4 loan, but it didn't stick out.

5 Assumptions: Boy, we heard a lot during this

6 trial about assumptions. It was repeated over and over

7 again. Dr. Burke, brand new on the job, never having

8 served in state government in his life, first day on the

9 job, hears this and believes and thinks and assumes that

10 standard operating procedures and investigative procedures

11 were going to be followed. We know they weren't.

12 The Governor assumes that Hawkins was the

13 only agency head dealing with the matter. We know that

14 that's not true. That assumption is wrong. Peggy

15 Griffith assumed that when she communicated to Martinez

16 and to Lieutenant Johnson, that Officer Martinez and

17 Lieutenant Johnson would keep that on the ninth floor.

18 This assumption was wrong.

19 Colonel Phelps said that he assumed that

20 Lieutenant Johnson was communicating all of his concerns

21 to both Dr. Burke and to me and to the Governor and that

22 he was effectively communicating his concern that he

23 didn't want the DPS to be involved. Well, that assumption

24 is wrong. He wasn't communicating that. He didn't

25 communicate it to me.

1 And Colonel Chilcoat assumes that someone
2 told the Governor that the Attorney General's office was
3 involved as early as 9:30 on Friday morning. 9:30 on
4 Friday morning, more than two-and-a-half hours before the
5 Governor even knew about the issue, the Attorney General
6 had the information.
7 Lieutenant Johnson was not a great
8 communicator like our President. Lieutenant Johnson does
9 a fine job in running a detail to protect the Governor,
10 but he doesn't do a good job in communicating because he
11 didn't understand what seriousness meant. And let's talk
12 about seriousness.
13 And by the way, we've passed out to you and
14 you should have shortly our trial memorandum, and I ask
15 you and I implore that you give us the same opportunity
16 that you've given the prosecutors. Read our trial
17 memorandum, which point some things out to you. We can't
18 cover it all in the short time that we've been given.
19 The prosecutor makes a big deal out of the
20 seriousness. Everything brought to the Governor is
21 serious. Nobody but nobody can say that that was so
22 serious that it was serious in the context that they're
23 trying to make it out to be. The testimony of Colonel
24 Phelps on the stand, I thought, was very helpful when Mr.
25 Leonard cross-examined him. They were talking about oral

1 threats and why those need to be evaluated more carefully
2 than normal threats, and he laid down a test, actually
3 words said he needed to have, the context that the words
4 were used in, the inflections used, coupled with an
5 investigation.
6 Ladies and gentlemen, those things were not
7 done, and yet Colonel Phelps, about 9:30 or 10 o'clock on
8 Friday morning, already assumed that there was in fact a
9 death threat. Take a look at his trial testimony, Volume
10 15, pages 3316. Read what he says about what should be
11 done with death threats. And again, on Sunday, November
12 15th, when Beau Johnson went to the Attorney General's
13 Office to put in writing what he knew, Beau already knew
14 at that time that Milstead had called the Governor and
15 that the grand jury and tampering elements had been
16 discussed by the Attorney General, but he didn't put them
17 down in his departmental report. These really weren't
18 departmental reports.
19 The most important elements of what he now
20 says he told Dick Burke, the Governor, and me, and Ken
21 Smith, that there was a death threat, a possible felony,
22 tampering with a grand jury witness were not put down in
23 his document. They weren't put down in his document,
24 ladies and gentlemen, because he never used those words.
25 If he had used those words, do you think Fred Craft, who's

1 sitting in looking after the political good will of the
2 Governor, looking after him, by making a comment,
3 Governor, you ought to distance yourself from this, don't
4 you think that somebody would have turned around and they
5 would have said, Governor, it's inappropriate for you to
6 take this issue, which looks like it might have criminal
7 or some kind of police investigative needs, to look at it?
8 Governor, it's inappropriate. Hey, Governor, stop.
9 That's what he's paying Dick Burke for. It's what he's
10 paying Fred Craft for. He's paying for advice. Nobody
11 did that. Look at the events after that, and you'll see
12 that it puts it in context. The meeting takes 90 seconds.
13 We go down and have lunch with the Governor
14 in the cafeteria. It's never discussed again. I don't
15 hear anything about it the rest of that day. Neither does
16 Dick Burke. Peggy Griffith calls subsequently. What
17 she's talking about, it seems like to me, when she's
18 talking to me, is she's concerned with her job and things
19 leaking off that floor. I didn't hear that the grand jury
20 or that the Attorney General or that DPS or anybody else
21 was looking at it.
22 Ladies and gentlemen, it is unrealistic to
23 believe that a police lieutenant is going to come in and
24 give the Governor and his top aides a lecture on what the
25 law is. And what's worse is, if he really thought that

1 something was being done improperly by sending it down to
2 Max Hawkins, he should have said something. But he
3 didn't. In fact, I've got five versions, ladies and
4 gentlemen of this Court of Impeachment, on that
5 conversation, and those important warning words were never
6 used. If they had been, somebody would have objected and
7 said, "Governor, this is inappropriate to handle."
8 The bottom line is that Dr. Burke goes back
9 to Prescott for that weekend. I take off. My wife is
10 here from out of town. We work on the issue of the oval
11 office. We tinker with the speech. Nobody ever does
12 anything that is contrary or that shows a necessity to
13 address this issue, which somebody claims is so serious
14 now. Dr. Burke took it serious, he said, but then nobody,
15 not him and not even me. I did not write up anything for
16 two-and-a-half months on this episode. That was January
17 25th, and that's when Dr. Burke provided something.
18 I'd ask you to look at Beau Johnson's
19 testimony on 3/18/88, at about 4 o'clock in the afternoon,
20 Volume 15, pages 3344. He admits on cross-examination
21 that he fails to put in writing what is really the most
22 important thing that he's testifying to today. He doesn't
23 say that he used "felony." He doesn't use "grand jury
24 witness" and "a long boat ride. It may not happen now, it
25 may happen in the spring." Four out of the five people

1 that were involved say those words were never spoken.
2 Let me remind you that on 3-22-88 we had an
3 issue -- we had an issue that was before this Court of
4 Impeachment, an issue of voting on extending the hours and
5 recollections of whether or not we voted on the issue. Do
6 you remember that? We spent 30 minutes in this body
7 trying to decide on March 22nd whether or not we were
8 going to extend the hours on requiring this trial to
9 operate, and in fact we couldn't remember whether or not
10 we voted on the issue. The Presiding Officer was unsure.
11 We had to check with the testimony in the transcripts to
12 determine whether or not you voted.
13 Now, ladies and gentlemen, this should give
14 you pause to think, compare that 30- or 40-minute
15 conversation when 30 of us don't even remember what we do,
16 and that gives you some understanding of why you have some
17 differences of opinion with regard to what happened in
18 that 90-second conversation.
19 Let me say that to me it is impossible to
20 have an obstruction of justice when all of the information
21 was already at the Attorney General's Office on Sunday.
22 Think of a pipeline. Think of that pipeline connecting at
23 the Governor's office as of 9:30 in the morning on Friday,
24 and the information that Martinez and Johnson and Peggy
25 Griffith had given flowed from that pipeline over to DPS,

1 to Chilcoat, and to Phelps. They in turn communicated it
2 to the Attorney General's Office. That information flowed
3 through the pipeline and was received at the receiving
4 end, the Attorney General's Office, and in fact DPS.
5 There wasn't anything that the Governor did to stop it, to
6 break it, to close the valve off of that pipeline ever.
7 And in fact, on Sunday, what was left? What
8 was left? There wasn't anything that was left. The only
9 thing that Beau Johnson and Martinez did was writing
10 something up. That's the only thing that they had, and
11 that's the only thing that they did, other than the
12 telephone conversation that Milstead had with the
13 Governor. Now, that was new.
14 I think the litmus test of this is that even
15 on Tuesday of the following week the Governor was informed
16 by the Attorney General's Office that, indeed, he was not
17 the target of a grand jury looking at whether or not he
18 had obstructed justice.
19 I think you need to compare Colonel Phelps'
20 testimony, and he kept talking about the seriousness and
21 in trying to get DPS out of it, and he always talked about
22 trying to get somebody in the Governor's office to contact
23 the Attorney General's Office, and I submit to you that he
24 could have worked it two ways. He could have told his
25 friends, the Attorney General, who he contacted and who he

1 talked to, why don't you call the Governor? Why don't you
2 call Dick Burke? Why don't you call Fred Craft? And they
3 didn't do that. When you look at the duty --
4 Mr. Presiding Officer, I have about four more
5 minutes, and I'm going to ask the indulgence of this Court
6 for unanimous consent to proceed for four more minutes so
7 that I can conclude.
8 THE PRESIDING OFFICER: Technically, any extension
9 of time is supposed to have been made before request for
10 oral argument, but I see no problem there, if it were just
11 four minutes.
12 MR. CRAFT: I think we all had duties to the
13 Governor, and perhaps I failed in my duty by bringing the
14 issue to the Governor to begin with. I think we had a
15 duty to keep him informed. I think we have a duty to
16 allow him information on how he can judge his actions, and
17 I think that neither Milstead, Phelps, or the Attorney
18 General, and maybe Dr. Burke, and Fred Craft failed that
19 Governor, but I certainly believe that if the Attorney
20 General told Governor Mecham that it was illegal to allow
21 the Martin Luther King holiday to proceed, and that he
22 would be fined or a suit would be brought to recover the
23 money against him if that was done, that it darn sure was
24 a duty of the Attorney General to inform the Governor that
25 his conduct might have constituted or been construed by

1 DPS or his officers as constituting some kind of a crime.
2 I think that there are two presumptions that
3 you've got to be very careful with, and one of those was
4 that Watkins could bring down this administration and that
5 Donna Carlson had some real damaging information that she
6 could give to the grand jury which would have the same
7 effect. I want you to notice that we've had very good
8 investigative reporters, and this issue has been over at
9 the Attorney General's Office for a long time, and I
10 guarantee you that if there had been some smoking gun,
11 that it would have happened, and it hasn't.
12 Lee Watkins was like a lot of people working
13 in campaigns, and all of you recognize this. He was a
14 doer. He was a volunteer, and everyone who has ever had a
15 campaign realizes that those are the backbones of
16 campaigns, and I have to tell you that that's the
17 relationship that the Governor had with Mr. Watkins,
18 nothing more, nothing less, and there is no evidence of
19 any other relationship between Lee Watkins and Governor
20 Mecham.
21 The Board of Managers would have brought
22 information about some other kind of a relationship if
23 they had had it. I remind you that Mr. Hawkins was the
24 only person to ever interview or investigate this issue.
25 He's the only one that talked to the two parties. He's

1 also the only one that did the job and reported back to
2 the Governor, and that's the information the Governor
3 operated on.
4 The prosecution tries to twist and distort
5 the facts and have you believe that there was an AG's
6 investigation separate from the grand jury. They do so in
7 order to make Martinez, Johnson, and Milstead witnesses.
8 Well, don't fall for it. There was only one potential
9 criminal act, and that was the conversation between Peggy
10 Griffith and Lee Watkins, and that was the only act before
11 the conversation with Milstead, and the witnesses for that
12 were Peggy Griffith and Lee Watkins.
13 The only official proceedings which the
14 Governor could even possibly obstruct in the grand jury
15 proceedings was the investigation dealing with the Wolfson
16 loan. I'm reminded of Fritz Mondale's campaign rhetoric
17 during the last presidential election. All you have as
18 evidence to convict this Governor is one conversation with
19 Mr. Milstead. I'm asking you, where's the beef? Governor
20 Mecham has been fighting city hall. That's why he's got
21 triple threats against him.
22 I want you to search your minds and your
23 hearts and ask yourself why a man who is faced with
24 defending himself in those forms, why he doesn't resign.
25 He doesn't resign because he's not guilty of these

1 charges. He's fighting against overwhelming odds, and he
2 dares to fight city hall, and he's doing it at a great
3 cost to himself and to his purse and to his family, and I
4 submit to you that he's doing it for all of us. You're
5 being asked to politically assassinate Governor Mecham on
6 charges brought by those who would politically gain by his
7 demise. I think in this instance, again, that --
8 THE PRESIDING OFFICER: Counsel, your time is up.
9 Would you bring your arguments to a close.
10 MR. CRAFT: The last impeachment trial was 49 years
11 ago. Democracy, I submit to you, is alive and well in
12 Arizona. More people are involved in the political
13 process than ever before. 15,000 new people registered on
14 the last day of registration in Maricopa County alone.
15 The people of this state want to vote, and I would pray to
16 you that you not deny them the opportunity to vote in a
17 recall election which is only 44 days from now.
18 I thank you very much.
19 THE PRESIDING OFFICER: Mr. Eckstein, five minutes
20 remaining, or Mr. French will finish, then.
21 MR. FRENCH: Mr. Presiding Officer, members of the
22 Court, there had to be a motive for Governor Mecham to do
23 what he did, and I'll tell you what it was.
24 Picking up on some of the comments by Mr.
25 Craft: Keep Watkins' threat under raps and protect Lee

1 Watkins, the man who could bring the administration down.
2 Reward Watkins' loyalty in regard to the Wolfson money.
3 Avoid public embarrassment. Keep information out of the
4 hands of the Attorney General who he believed was out to
5 hang him. Lots of motivation.
6 He asks where the beef is. The beef is when
7 anybody, Governor or otherwise, tries to impede the
8 criminal justice system of this state. That's a lot of
9 beef. I listened very carefully to Mr. Craft's argument.
10 Maybe I missed something. Maybe you wrote it down. What
11 in the world is the defense in this case? Did you hear
12 anything about a defense? I didn't hear anything about a
13 defense at all, for the simple reason, as I told you in
14 the beginning of this thing, there is no defense.
15 I'll get back to that in just a few moments.
16 You didn't hear anything about the words that were spoken
17 in the conversation between the Governor and Colonel
18 Milstead on the 15th. There was no denial that those
19 words were said. Even in closing arguments, there's no
20 denial. The assumption is they were said. And the
21 assumption goes further than that. It gets into the
22 evidence where Dr. Burke said he never would have said any
23 of those things to a law enforcement officer, and this is
24 a man, I think, that believes as we believe as their first
25 witness got in that witness chair and told the truth. And

1 the truth is, he thought it was serious. Another truth
2 is: He thought that Beau Johnson did the right thing when
3 he got the Attorney General involved and did the right
4 thing when he talked to his superior. This is an
5 ex-United States Attorney talking. I think you can put a
6 lot of faith and credence in those words.
7 I think also you can put faith and credence
8 in the words of Beau Johnson. He talked about his DR.
9 Well, his DR, when he wrote it down, was not about his
10 conversation with the Governor. It was about his
11 conversation with Martinez and also with Peggy in
12 connection with the threat. That's why it wasn't in
13 there. That's trying to twist things in the wind a little
14 bit.
15 Regardless, though, it's time for an ending,
16 and it's time for a beginning. Those of us who live in
17 this state and labor in this state care greatly about the
18 future of this state, as you do. The turmoil and chaos in
19 state government during the Mecham administration has done
20 insurmountable harm to the state.
21 I envision you Senators as running the second
22 and final leg of what I'm going to call the Arizona
23 justice relays. The House of Representatives has run the
24 first leg. When 46 of its members voted for impeachment,
25 they handed the baton of state salvation to you, and asked

1 not only that you win it, but that you win it with
2 conviction, and in this case, the conviction is Evan
3 Mecham.
4 I told you in the beginning there was no
5 defense. We found out in closing argument there's no
6 defense. Mr. Craft, in absolute desperation, the Sunday
7 night before we started this trial, took a statement from
8 Christina Johnson, and that became the defense.
9 But you know what the Presiding Officer
10 thought of that one. Maybe it was handed out outside, and
11 maybe it was handed to you all who looked at it, but the
12 evidentiary value is zilch. It never has been a defense
13 and it never will be.
14 I need not tell you that during the period
15 between the 13th of November and the 15th of November,
16 Milstead, Phelps, Chilcoat, Beau Johnson, Frank Martinez,
17 and yes, Peggy Griffith, all voted. They voted for
18 justice and truth as they know it and have placed their
19 future in your hands.
20 I respectfully request that you Senators
21 deliver a clear, nonpartisan statement to all the people
22 of this state from Page to Nogales, from Yuma to Window
23 Rock, that no one tampers with our criminal justice
24 system. No one is above the law that obstructs or impedes
25 or attempts to obstruct or impede our criminal justice

1 system, not Lee Watkins, not Max Hawkins, and indeed, not
2 Evan Mecham, whether he be Governor or not.
3 I respectfully request that you make that
4 statement and that you make it loud and clear so that lest
5 we forget, all future officeholders remember it and
6 remember it well.
7 THE PRESIDING OFFICER: I'd ask the court reporter
8 if he needs to change paper before we start the argument
9 on the second Article?
10 THE COURT REPORTER: I need to change, Your Honor.
11 THE PRESIDING OFFICER: Why don't we take a
12 10-minute recess at this time, ladies and gentlemen.
13 (Recessed at 10:25 a.m.)
14 (Reconvened at 10:52 a.m.)
15 THE PRESIDING OFFICER: Thank you, ladies and
16 gentlemen. The Court of Impeachment is reconvened. Show
17 the presence of a majority of the Board of Managers, their
18 counsel, and counsel for the respondent, and the
19 respondent himself.
20 We'll now proceed to closing arguments on
21 Article III.
22 MR. FRENCH: Mr. Presiding Officer, members of the
23 Court, the facts and the law we have set out in a trial
24 memorandum which you've had, I believe, since last
25 Thursday. It tracks to the record. I'm not going to

1 spend a whole lot of time, hopefully, rehashing what's in
2 there, because we tried to make it compact so it would be
3 easy for you to handle.
4 I also request that you do attempt to have a
5 chance to read the supplemental memorandum that we filed
6 this morning, which again tracks the record primarily in
7 regard to what we think may be parts of testimony that
8 contradict each other.
9 What I plan to do this morning in this short
10 time allotted to me is to review with you some of the
11 evidence for inconsistencies, misstatements, and untruths.
12 And I do that so that you can try to judge the credibility
13 of the respondent, among others, in this case. The trip
14 through the web may be a bit tangled at times, but I think
15 it was appropriate when Sir Walter Scott said: "Oh, what
16 a tangled web we weave when first we practice to deceive."
17 The first issue we want to talk about is
18 whether or not Mecham Pontiac had a cash need in July,
19 July of 1987, for the $80,000 loan. Mr. Mecham's initial
20 testimony was there was no necessity for the loan. This
21 was in the House under oath:
22 "QUESTION: I believe you maintained that
23 Mecham Pontiac had no need for the protocol fund in
24 July; is that correct?
25 "ANSWER: I believe that's correct, m'hum."

1 Now, subsequent evidence on that same issue
2 in here in this Senate, Dennis Mecham, rather succinct:
3 "Yeah, I needed the money."
4 Christman: "In July, 1987, Mecham Pontiac
5 had an immediate need for cash."
6 Sorensan: "Unless those funds had been paid
7 from the protocol loan, Mecham Pontiac would have
8 had an overdraft the following Wednesday in excess
9 of over $60,000."
10 Trial Exhibits 63-C and D, without the
11 $80,000 loan, Mecham Pontiac would have had a negative
12 bank balance of 63,000-plus dollars.
13 Governor Mecham, at the Senate:
14 "QUESTION: So it follows that Mecham
15 Pontiac needed the money when it borrowed the
16 $80,000 from the protocol fund?
17 "ANSWER: Correct."
18 Now, Governor Mecham testified before the
19 House Select Committee that there was no need for the
20 loan. After the CPA, Sorensan, reviewed the books and
21 records and testified, and after Dennis testified, Mr.
22 Mecham did a 180-degree turn and finally admitted that
23 Mecham Pontiac needed the money when it borrowed the
24 $80,000.
25 Next issue, whether or not Mecham Pontiac was

1 looking to borrow money in July of 1987. Mr. Mecham's
2 initial testimony in response to a question posed by a
3 Representative, this is Exhibit 64 in this hearing:
4 "QUESTION: Weren't you or Dennis out
5 looking to borrow any money at that time? Was he?
6 "ANSWER: No, he wasn't.
7 "QUESTION: So, Governor, what you're saying
8 is that Dennis or yourself were not in the position
9 of going out and looking for money at this time?
10 "ANSWER: That's correct."
11 Subsequent evidence. Christman, in this
12 Senate:
13 "Mecham Pontiac needed approximately
14 $497,000 in cash in July of 1987. Evan Mecham was
15 aware that the company needed money at the time of
16 the $150,000 loan in early July from Farmers &
17 Merchants Bank."
18 Governor Mecham testified about that.
19 Governor Mecham arranged for the $250,000 loan from the
20 Paulin Trust because of Dennis Mecham's discussion with
21 him that the business needed $250,000 at that time. The
22 $80,000 protocol loan pulled Mecham Pontiac out of a
23 critical cash flow situation.
24 Christman: "It is interesting to note that
25 although they supposedly were not out looking for

1 money to borrow money at that time, they borrowed
2 at least $480,000 in July of 1987."
3 Couple that, if you would, please, with the
4 fact that when Evan Mecham testified here, he told you,
5 you don't borrow money unless you need it.
6 Next issue, whether or not the loan was for
7 investment purposes. Mr. Mecham's initial testimony:
8 "I suggested to him, Jim Colter, that he
9 should find a better place, as long as it was
10 secured, to get higher interest."
11 Question by a Representative: "Governor
12 Mecham, you testified Monday that you told Jim
13 Colter to put it out of the higher rate of interest
14 as long as it was safe; is that correct?
15 "ANSWER: That's correct."
16 Subsequent evidence, Mr. Colter testified in
17 this Senate:
18 "There was no discussion of why he wanted to
19 borrow it, whether it was for investment or for
20 whatever reason."
21 Colter further testified, question to him:
22 "Do you recall the Governor telling you at
23 that time this money was merely a good investment
24 of the money in the protocol fund until the money
25 was to be utilized?

1 "ANSWER: No, I do not recall such
2 conversation at that meeting."
3 Mr. Mecham on the stand:
4 "QUESTION: You did not tell Mr. Colter at
5 the time of the loan that it was being made merely
6 as a good investment for the protocol fund, did
7 you?
8 "ANSWER: I can't recall saying that, saying
9 that specifically, Mr. French."
10 Next issue, whether or not Governor Mecham
11 set the loan's interest rate. Mr. Mecham's initial
12 testimony, again, Exhibit 64 in this Senate, question by a
13 Representative:
14 "Who selected the nine percent interest rate
15 that would be paid on the protocol fund?"
16 Answer from the Governor: "Perhaps Dennis
17 or Jim. I don't know. I wasn't part of it."
18 Subsequent evidence, Colter: "I asked Governor
19 Mecham what interest rate. He said nine percent."
20 Again later by Colter: "I asked the Governor what
21 is the interest rate. He said nine percent."
22 Question to Governor Mecham: "There was no
23 negotiation over the interest rate by Mecham
24 Pontiac, was there?
25 "ANSWER: I don't think so.

1 "QUESTION: Isn't it true that you merely
2 told Mr. Colter what the interest could be?
3 "ANSWER: I don't recall me stating that,
4 but that could very well be."
5 Next issue, whether or not Mecham -- Governor
6 Mecham presented recordation -- or prevented recordation
7 of the deed. The initial testimony of Governor Mecham,
8 question by a Representative:
9 "Governor, did you direct Mr. Colter or
10 anyone else not to record that deed of trust?
11 "ANSWER: I did not."
12 Subsequent evidence, Colter, question by Mr.
13 Leonard:
14 "When did he tell you not to record them?
15 "ANSWER: Well, the best of my recollection,
16 after I received that back from Dennis, and it
17 would have been a day or two after, I assume after
18 his cover letter."
19 Now, in the next issue, what came to mind was
20 something I had heard a long time ago, and it's
21 attributable to Alfred Lord Tennyson. He said: "A lie
22 which is a half truth is of the blackest of lies."
23 And now we get to the Senate, we get to, I
24 believe, Exhibits 82 and 83, which were the two deeds of
25 trust having to do with Wayne and Willard Mecham. I'm

1 sure you will remember that. But remember this question
2 by Mr. Leonard:
3 "Is it correct, Governor, that in July of
4 1987, at the time the Mecham Inaugural Committee
5 loan was made to Mecham Pontiac, that Wayne Mecham
6 and his wife had no encumberance against the
7 Glendale plot of Mecham Pontiac?"
8 Answer by Governor Mecham: "That is
9 correct."
10 "Question by Mr. Leonard: "Therefore, in
11 July, 1987, Willard Mecham and his wife had no
12 encumberance on the Glendale property at which
13 Mecham Pontiac Corporation is operated?"
14 Answer by Mr. Mecham: "That is correct."
15 There was some subsequent testimony by
16 Christian -- Christman. I'm sorry.
17 "QUESTION: Do you know if Wayne and Willard
18 Mecham had encumberances on the Mecham Pontiac
19 property in July of '87?
20 "ANSWER: Yes, they did.
21 "QUESTION: How do you know?
22 "ANSWER: We made payments on them every
23 month."
24 Trial Exhibits 82 and 83, the deeds of trust
25 of Wayne and Willard Mecham, were:

1 "Re-recorded to reflect loans erroneously on
2 Exhibits C, D and E, erroneously recorded on March
3 2nd, 1987."
4 Now, it became apparent that Governor Mecham
5 at the very least was trying to mislead the Senate when he
6 testified there was no encumberances on the property when
7 he knew that both Willard's and Wayne's encumberances were
8 still on the property.
9 You recall, they went through a little
10 exercise when he was initially on the stand, and he had a
11 pen, and he was writing down some figures, and he was
12 telling you the fact that those liens were no longer on
13 the property, and the money was no longer owed because, if
14 you recall, he took $700,000 and he took it off. He
15 subtracted it off. Then he took the $500,000 to the other
16 brother and he subtracted it off, a million-two he took
17 off of that property, to at the very least give you an
18 indication that no longer were those encumberances on the
19 property.
20 And I think due to the persistence of one of
21 the Senators in this chamber, we finally got the answer to
22 that correctly, that there was always the encumberance.
23 The next issue, whether or not the dealership
24 was out of trust at the time of the loan. The initial
25 testimony in response to a question from one of the

1 Representatives to Governor Mecham:

2 "At the time of the protocol loan, were you

3 out of trust with your flooring line?

4 "ANSWER: No, to my knowledge.

5 "QUESTION: Governor, when the loan was made

6 from the inaugural account, your dealership wasn't

7 out of trust on its line and that wouldn't have

8 been motivation for asking for that $80,000, was

9 it?

10 "ANSWER: No."

11 Subsequent evidence, Sorensan:

12 "QUESTION: In the hearings before the

13 Special House Select Committee on Impeachment,

14 Governor Mecham testified that Mecham Pontiac was

15 not out of trust at the time of the loan from the

16 protocol fund. Based on your review of the bank's

17 records, was Governor Mecham's testimony true?"

18 Answer, Sorensan: "No, sir.

19 "QUESTION: What is your basis for saying

20 Governor Mecham's testimony before the House Select

21 Committee was not true?

22 "ANSWER: In my review of those automobiles

23 that were paid for during that period of time, 23

24 out of 25 had indicated that the time expired such

25 that they were out of trust."

1 Trial Exhibit 85, First Interstate Bank
2 employees met with Mecham Pontiac officials to discuss the
3 dealership's out of trust status. Leila Christman, the
4 controller and office manager, testimony in July, 1987,
5 Mecham Pontiac was out of trust on over 20 cars.
6 Where does this leave us? It leaves us,
7 ladies and gentlemen, with the legal point, Exhibit 96
8 that you have, that was prepared for you by your counsel,
9 instructions, if you will, points of law, if you will, and
10 it states in there as follows:
11 "If you believe that any witness has
12 willfully testified falsely to any material fact or
13 facts in this case, then you are at liberty to
14 disregard the entire testimony of that witness."
15 I think it's apparent that in your hearts and
16 in your minds, you should seriously consider the legal
17 points written by your lawyer when you consider the
18 testimony of Evan Mecham.
19 We can talk about all the facts in this
20 $80,000 loan, and I'm not going to do that, because I'm
21 running out of time. But I think it's important that you
22 evaluate this evidence. I think it's important.
23 Their whole key is Mr. L'Ecuyer. And Mr.
24 L'Ecuyer, among other things, says that the June 26th
25 agreement is not worth the paper it's written on. It's of

1 no effect, of no value. He also says Mr. Long had no
2 authority to enter into negotiations. Let's look at that
3 closely within the context of the evidence.
4 First of all, in connection with the June
5 26th letter agreement signed by Mr. Long, Mr. L'Ecuyer
6 says it's of no effect. Do you recall in this trial when
7 our Presiding Officer cited you to a couple of cases and
8 cited to Mr. Leonard the fact that he was not going to be
9 able to challenge the validity of this agreement? And
10 subsequently, when Mr. Leonard was pursuing a certain area
11 of questioning, Mr. Leonard himself made an avowal to this
12 Court that he was not going to challenge the validity of
13 that June 26th agreement.
14 So, who does challenge it? Mr. L'Ecuyer, in
15 face of the Judge, in face of counsel's statement. Look
16 further at that, if you will. Mr. Long acknowledges it,
17 its validity.
18 Warner Lee, ex-Attorney General of this
19 state, acknowledges its validity, acknowledges the fact
20 that he in fact drafted it, acknowledged the fact that
21 Jack LaSota, another ex-Attorney General of this state,
22 acknowledges the validity of this agreement. But they
23 have to destroy -- they've got to throw away, as one of
24 the Senators did, squash it up, step on it, stomp on it,
25 burn it, something, because it ruins them.

1 And Mr. L'Ecuyer, I submit to you, in all the
2 type of testimony that he gave you, didn't do it. But if
3 you think that that agreement is no good because he says
4 it's no good, then that's a good defense. But I just know
5 you won't do that, not in the face of all the evidence
6 that we have here.
7 The Court of Impeachment must review the
8 conduct by Governor Mecham and decide whether it was, one,
9 positively wrong, two, without lawful authority, three, an
10 abuse of power, four, a neglect of duty, five, a form of
11 corruption, six, an obstruction of justice, seven, a
12 betrayal of public trust, eight, a misapplication of
13 funds, and/or nine, in breach of his trust or fiduciary
14 responsibility when Governor Mecham, A, ignored the
15 warning issued by his Chief of Staff that the loan to the
16 dealership should not be made, that it was foolish, and
17 when that same man felt in his own heart it was dumb and
18 stupid, B, used for personal needs monies provided for him
19 in connection with his official capacity, C, acting in a
20 manner contrary to the settlement agreement with the
21 County Attorney's office, D, concealed from public view,
22 E, tied up the monies for his personal use, thereby
23 preventing their use for legitimate purposes, F, directed
24 that the deed of trust not be recorded, and G, ignored the
25 legal advice from John Mangum that the protocol money

1 should be treated as public money until that issue became
2 resolved by settlement or a lawsuit.
3 In making that decision, the Senate may wish
4 to consider the testimony of the following people very
5 succinctly: Donna Carlson, people could possibly go to
6 jail for something like that. Jim Colter, I considered
7 the loan to be dumb, wrong, and foolish. Jack LaSota, the
8 loan was improper because it was not done for any of the
9 purposes that are specifically allowed under 41-1105.
10 Warner Lee, I was surprised and very disappointed and
11 saddened by the entire situation. Bill Long considered
12 the loan to be absolutely wrong and agreed that in his
13 wildest dreams he would not have taken that money and
14 loaned it to himself.
15 Now, it's interesting that Long further
16 testified in Exhibit 84-B at page 162 that the loan was
17 positively wrong. Now, why is that important? Because if
18 you look at your statement of the law again that your
19 counsel prepared for you, you're going to see wherein
20 malfeasance is defined as doing an act that is positively
21 wrong, and that constitutes malfeasance.
22 Now, I want you to look at something
23 carefully because it might be a mistake, and let's give
24 them the benefit of the doubt. In the respondent's
25 memorandum that he filed this morning, on page 15 of that,

1 line 14, in talking about this area, what the Court must
2 find, number three on page 14 says, "Was an act which is
3 positively unlawful."
4 I submit to you that the statements submitted
5 by your counsel is positively wrong or unlawful, and that
6 makes a big difference, because you have got to be talking
7 about malfeasance when you're talking about these kinds
8 things, among other things.
9 I want you to also note in their supplemental
10 memorandum -- or their memorandum supplied today to us
11 doesn't talk about malfeasance. It's something that we
12 have to talk about. It's something that we have to
13 address. There are lots of other violations that we can
14 talk about, but I think that Mr. Long's testimony that
15 it's positively wrong brings it within the bottom line of
16 an impeachable offense.
17 Let me just bring something else to your
18 attention that I recall, and maybe you recall it
19 differently, but Mr. Mecham, when he's on the stand,
20 testified, among other things, that when they had these
21 funds up there, they had various meetings wherein they
22 would discuss the various possible uses of the funds, and
23 he said this became sort of an ongoing thing, because it's
24 like bees to honey, he said. It attracts people when you
25 have a fund of money.

1 I remember that in that kind of context, but
2 not any more clearly than that. But I would suggest to
3 you that I don't know if the Governor thought he was the
4 king bee or what, but whether the other people in that
5 room knew it or not, he either had or he was going to have
6 an $80,000 swipe off that honeycomb before anybody else
7 got to it and before anybody else knew about it. The
8 $80,000, he knew it -- he knew it was wrong. He shouldn't
9 have done it. That's strike one.
10 Strike two is he tried to cover it up. The
11 deed of trust, not recorded; the check registry for some
12 reason, it doesn't reflect itself in there; and three,
13 strike three, he said the company didn't need the money.
14 All he wanted to get was a little more interest. And in
15 this kind of a forum, three strikes, you should be out.
16 He's violated the law. He has uttered
17 untruths to you. He tried to hide it. This is not happy,
18 not nice to say, but they have to be said. He should be
19 impeached.
20 Thank you.
21 THE PRESIDING OFFICER: You may respond.
22 MR. LEONARD: Mr. Chief Justice and Presiding
23 Officer, members of the Senate and the Court of
24 Impeachment, I'm not going to quote to you from the record
25 today. You've got the transcripts, and you can do your

1 own research and your own reading. And I'm not going to
2 puff and I'm not going to exaggerate and I'm not going to
3 disassemble and I'm not going to quote poetry or Latin and
4 I'm not going to lecture, but I am just going to talk to
5 you about the facts and the law in this case and what I
6 think the important things are that you ought to focus on.
7 And I'm going to ask you to look at the facts
8 and the law, and I'm going to ask you to look at
9 malfeasance and evil, evil, because the Board of Managers
10 can quote those cases, but if you read the instructions
11 that you got from your own lawyers, you're going to find
12 that the key thing is an evil mind, an evil intent.
13 That's why you throw people out of office by impeachment,
14 because they're evil. And that's the finding that you
15 have to make here, and that's the finding that each one of
16 you has to live with for the rest of your life, not that
17 this man uses poor judgment, not that some of his
18 associates say that what he does is dumb or stupid. You
19 have to vote, if you're going to vote to impeach, to
20 convict him, that he's evil, and I put it to you that in
21 neither one of these counts is there sufficient fact or
22 law to find that Evan Mecham is an evil man.
23 Now, I want to comment a little bit about the
24 smoke and mirrors that have been offered by these folks
25 here, the Board of Managers, because I think there's been

1 a lot of smoke and mirrors, and I think it's important
2 that you focus on that for a few minutes.
3 Counsel gets up here and reads extensively
4 from a record trying to show that there's conflicts of
5 testimony. Of course there's going to be some conflicts
6 of testimony. Of course there's going to be some
7 differences of opinion, even your own. If you're over
8 there across the mall on the House side, you don't really
9 know what the charges are. You don't have a right to
10 discovery. Even in this body there's no right to
11 discovery. They put witnesses on the stand that we've
12 never been able to talk to before. They put an accountant
13 on the stand who says he's a CPA, and what he knows about
14 the automobile business is what he got from talking to
15 other CPA's.
16 I'm amazed one of you didn't stand up and say
17 I feel insulted by that. With all the blooming money
18 you've spent for this program, you mean to tell me you
19 can't find one accountant in the entire United States of
20 America who knows something about the automobile business
21 because he's been an accountant for automobile dealers?
22 And he can understand how to draw an exhibit that can help
23 you to determine whether or not the agency is out of
24 trust?
25 A lawyer stands up here and he talks about

1 the Willard and Wayne Mecham loans. Now, I'm not a real
2 estate expert, but I'm not dumb. If somebody puts a lien
3 on my house in which I live sometime prior to December of
4 1986 but the lien is released in February of 1987, I may
5 still owe the person the money, but there isn't a lien on
6 my house. You don't have to be Phi Beta Kapa to
7 understand that. The distortion and the smoke and
8 mirrors. There was no lien on the Mecham Pontiac property
9 running to Willard and Wayne Mecham in July of 1987.
10 That's a fact. It's the truth. And everybody in this
11 courtroom knows it.
12 Was there a deed due to them? Of course.
13 The testimony showed that the Wayne and Willard loans were
14 carried on the books before, before you computed the
15 $4,267,000 net worth. And the little lady they brought in
16 here who couldn't get along with the computer told you, in
17 answer to my question: Did that $4 million represent a
18 fair valuation of the net worth? And I think she said
19 absolutely, or certainly, or something. This is smoke and
20 mirrors. An $80,000 loan against a business that has over
21 $4 million in equity? As the kids would say, get off my
22 back.
23 Now, it may have been stupid, according to
24 some, and it certainly wasn't politically smart, but I ask
25 each and every one of the 30 of you in this room, who

1 served at any length of time in politics and government,
2 whether or not you've ever done anything that wasn't the
3 politically smart thing to do. I'll guarantee you, I did
4 in 12 years in the Legislature. There were lots of votes
5 I wish I could have taken back. The most embarrassing one
6 was the day when I and one other member of the Senate
7 voted against a bill that would extend workmen's
8 compensation to members of the Legislature. And guess who
9 the first claimant under the law was. Me.
10 And I was driving to Madison just a week
11 before the '64 elections to a meeting. I should have gone
12 up the night before because I was in a hurry, but I was
13 Barry Goldwater's campaign manager in Milwaukee, and I was
14 driving up on Monday morning, and I had a serious
15 automobile accident. I took a cattle truck head on. How
16 I lived, I'll never know. That was just a few months
17 after I had voted against the bill to provide for
18 workmen's compensation for legislators, and I was a little
19 embarrassed, but I wasn't too proud to admit it.
20 People learn in this business. We mature in
21 this business. And that's what this is all about. The
22 problem with the Board of Managers is it is they who want
23 to ignore the truth. Let me tell you why. You got to
24 know something about lawyers. Don't get too close to them
25 because it's liable to cost you money, but let me tell you

1 something about them. If they don't have the facts, they
2 want you to listen to the law. And if they don't have the
3 law, they want you to listen to the facts. And if they
4 don't have the facts or the law, they want to assassinate
5 the character of the guy on the other side. They want to
6 inject into the proceedings and the trial something called
7 the sleeze factor. That's a new term.
8 When I was a young lawyer and a legislator, I
9 never heard that term, sleeze factor. In nicer places
10 it's called character assassination, but in gut politics
11 it's called McCarthyism. Beat up on the guy's character,
12 tear him apart, expose him, expose he and his family and
13 his finances. Let's see every wart and carbuncle that's
14 on him.
15 But I'm going to take you for a few minutes
16 through the facts and the law of this case. The facts are
17 simple. Immediately after the election in '86, a
18 committee was formed. It wasn't a campaign committee. It
19 was an inaugural committee, but you, the people who formed
20 it, thought they might have some excess funds, and the
21 Governor had a big debt, and wouldn't it be nice to be
22 able to pay off some of that campaign debt.
23 And indeed, they did the job, and they had
24 $92,000 left, and then the lawyers got involved. Then the
25 lawyers said, well, wait a minute. You can't do that

1 because you didn't file as a campaign committee. They
2 said, well, we weren't trying to affect an election.
3 We're just having the inaugural, and we want to pay off,
4 if there's anything left. We want to use the individual
5 contributions to pay off part of the campaign debt.
6 They said, yeah, but you didn't file, and
7 besides that, you got the money tainted with those
8 corporate contributions, and besides that, you've got
9 Proposition 200, and besides that, you might be guilty of
10 attempting to gawk, so you've got to have the lawyers
11 involved, so the lawyers tell them they can't use the
12 money for that purpose.
13 Ladies and gentlemen of the Senate, the
14 evidence is uncontroverted that on May 27th, or shortly
15 thereafter, the end of May or the first week of June,
16 Joyce Downey, William Long went to the Governor's office.
17 They took the checkbook. They took the signature cards.
18 They took the box full of the records which Joyce Downey
19 was the custodian of, and they gave it all to the Governor
20 while the lawyers were pontificating and trying to figure
21 out what to do. And they suddenly had a brilliant idea.
22 Why, we'll make it subject to the Section 41-1105, the
23 flower fund. That's what we always called it.
24 When I was majority leader, I had a little
25 flower fund. I don't think there was ever more than $200

1 in it, but if somebody of prominence, an ex-member passed
2 away, there wasn't any money in appropriation, which was
3 really just kind of stupid, but that's what it was, was a
4 flower fund. And that's what yours is. It's a flower
5 fund. These people weren't contributing to no flower
6 fund. $92,000 in flowers?
7 The intention of the donors of the money,
8 ladies and gentlemen of the Senate, is what is
9 controlling, not what the Mangums and the Lees and
10 everybody else says it was. The intention of the members
11 of the committee as it was being expressed to the Governor
12 at the meeting held before the January 26th letter was
13 even in existence.
14 Common sense, common sense is going to rule
15 this body, not smoke and mirrors and obfuscation. If I
16 have once done the act, given the money, turned over the
17 committee, turned over the funds, and I have set the
18 specific conditions, how can somebody come along later
19 dealing with only one of the two parties to the
20 transaction and say I now impose upon you additional
21 conditions?
22 Joyce Downey's testimony is uncontroverted.
23 The Governor's testimony, totally consistent with Joyce
24 Downey's testimony, is totally uncontroverted. William
25 Long's testimony in the House and in his affidavit, which

1 you have before you, is totally uncontroverted.
2 In late May or the first week in June, they
3 gave the committee, not just the money, but the committee
4 to the Governor, and said, Governor, there's two things
5 you can't do with the money. You can't use it to reduce
6 your 1986 campaign debt, and you can't use it for personal
7 living expenses.
8 Now, any person with an IQ who measures at
9 least their waistline has got to know that that is not a
10 gift to the State of Arizona. It is not public money.
11 The people who gave it would be lined up at the front door
12 to get it back, or most of them, if they thought that they
13 were giving it to a public fund. They were giving it to
14 Evan Mecham.
15 Bob L'Ecuyer's testimony, ladies and
16 gentlemen of the Senate, is uncontroverted. Now, Mr.
17 LaRoche (sic) and the rest of them -- it's interesting. I
18 mean, it's a way to spend an afternoon if you don't have
19 anything else to do. But it isn't compelling. It isn't
20 binding. It isn't relevant. I don't care about a couple
21 of cases from California, one of them having to do with
22 bail money. What's that got to do with whether or not
23 these were public funds?
24 And the law cited to you in our brief, which
25 is brief, which tracks Bob L'Ecuyer's testimony, I submit

1 to you, is uncontroverted. These were not public monies.
2 They were not private monies held in a public account.
3 They were not the flower fund. That wasn't the intention
4 of the donors or the two officers of the committee. They
5 were money given to Evan Mecham to cover expenses which he
6 couldn't otherwise cover, taking his wife on a trip and
7 paying the air fare, because you all don't appropriate
8 enough money for a Governor of your state going to
9 Washington to take his wife along. Part of it went for a
10 party for the Legislature. I don't think you ought to
11 appropriate money for that, but I mean that's what part of
12 it went for, the kinds of things that people in high
13 public office from time to time have to dig into their own
14 pockets to pay for because there's no public source of
15 money. That's common sense, ladies and gentlemen of the
16 Senate. That's just good old-fashioned common sense.
17 Now, you don't impress that kind of an
18 account with some statutory provision. Common sense tells
19 you otherwise. I know you're going to apply your common
20 sense. Would you have the state auditor audit whether or
21 not the Governor and his wife flew first class or coach,
22 or whether they got the cheapest fare from Phoenix to
23 Washington, or Chicago, or wherever they're going on their
24 next trip? Is that what you want to put the Governor
25 through?

1 Geez, I used to have my fights with the
2 Governor when I was in the Legislature, but
3 I certainly never wanted to visit something like that on
4 him. Does he have to have somebody audit the books to
5 determine whether they bought too much booze for the
6 legislative party or too much food, or whatever it was?
7 That's imposing, ladies and gentlemen of the
8 Senate, conditions on a fund of money that just doesn't
9 make sense. It's not rational. It's not reasonable, and
10 it could only be done for some vindictive purpose, only
11 some vindictive purpose.
12 You will recall that I objected vigorously,
13 couldn't get a one of you to even give me a vote. I
14 objected vigorously when they started to get into the
15 question of the financial affairs of Mecham Pontiac and
16 the Mecham family. That didn't have anything to do with
17 the issue in this trial.
18 The Governor sat up there and testified,
19 admitted to the House that the loan was made. There
20 wasn't any question that the loan was made. What
21 difference did it make what purpose the loan was made for?
22 It was made. Did any of you ever borrow money because you
23 didn't need it? Of course you didn't. Did you ever loan
24 anybody any money who didn't need it? I never did. The
25 only people who ever hit me up for loans were people who

1 needed it real bad.

2 Why was the financial condition of Mecham

3 Pontiac and the Mecham family an issue? It's just another

4 way to try to dirty it up a little bit. Dig and dig and

5 dig and see what you can find.

6 I submit to you that the experts that they

7 put on the stand -- and I didn't know this at the time,

8 and, you know, Governor, I apologize to you, because if I

9 had been a local lawyer, I might have known it. They put

10 the one fellow who's supposed to be a CPA on the stand,

11 and what did he say? He worked for Merabank. If I had

12 known enough to dig deeper into that, I would have

13 inquired as to what the affiliations of Merabank were, but

14 I didn't know enough to do that.

15 That didn't make a lot of difference, because

16 I didn't want to dirty anybody up here. I just wanted to

17 question whether or not they had the capability of giving

18 the opinions that they were giving. And I suggest to you

19 that the accountant and the nice little real estate fellow

20 who you will recall did business with the law firms over

21 there, professionally and personally, and who wasn't

22 getting paid -- maybe he's the only one they could find,

23 because they had all kinds of money, but apparently they

24 couldn't find anybody they could pay.

25 I think that testimony was ludicrous. It

1 wasn't professional. The man was told specifically that
2 the record on the property, the real estate man was told
3 specifically that the record on the property was only up
4 to December of 1986, yet the issue was what the condition
5 of the property was, the liens, et cetera, in July of '87,
6 not December of '86. It wasn't even professional. It
7 should have been embarrassing to the Board of Managers
8 that they put witnesses on like that.
9 And the lady bookkeeper, ladies and gentlemen
10 of the Senate, she got fired. To bring disgruntled
11 employees in to testify against former employers is, in my
12 view, a dangerous and risky business and highly suspect
13 testimony. It always has been. It always should be.
14 Let me suggest to you that if you look at the
15 financial testimony, there's really only one piece of
16 evidence in all of that, and that is that Jim Colter
17 called Dennis Mecham and said, repay the loan, and came by
18 the house that night and got a check for the full amount
19 plus interest.
20 I'm not saying it was right politically, but
21 it certainly wasn't evil. It certainly wasn't evil.
22 Maybe embarrassing, but it wasn't evil.
23 My time is running, and I want to close by
24 suggesting to you that I served under four Governors in 12
25 years in the Legislature. All four of them were lawyers.

1 Two of them had been Attorney General in our state. All
2 four of them had their own legal counsel that they
3 personally hired, paid for out of the Governor's budget,
4 funds approved by the Legislature. Each one of them had
5 an attorney-client relationship with that Governor.
6 They were men -- they were all men -- who
7 focused totally and completely on being legal counsel to
8 the Governor. They didn't have to worry about whether or
9 not he was clipping ribbons someplace today or going over
10 to see the chairman of the finance committee tomorrow.
11 Their sole job was to be legal counsel to the Governor.
12 And I submit to you, ladies and gentlemen of
13 this Senate, that if I had suggested or put in a bill that
14 would have provided that only the Attorney General of the
15 state could provide any kind of legal service to the
16 Governor, somebody would have reserved the padded room at
17 the laughing academy for me.
18 It is preposterous to ask a man who governs
19 or tries to govern a state of over three million people
20 not to allow him to have his own lawyer sitting in the
21 office next to him so he can say, "Hey, lawyer, go
22 research that question for me."
23 The arrogance of the Board of Managers to
24 suggest that because one has a law degree, like Burke or
25 Craft or Colter, that they should be held responsible for

1 giving legal advice is beyond any arrogance I have ever
2 witnessed in 33 years of practicing law. It is a total
3 complete obfuscation of the issue. It is the fault of
4 this Legislature. And it has permeated into both of the
5 Articles that are before you, and it has tainted those
6 Articles beyond any ability of any reasonable person to
7 untangle and comprehend them.
8 For, ladies and gentlemen of the Senator, I
9 submit to you that if the Governor had had good legal
10 counsel, and some lawyers aren't good, in both the
11 instances which are before you, not like a faithless John
12 Dean, but a good lawyer would have said, "Governor, wait a
13 minute. Wait a minute. You got a legal problem here. I
14 know what's going on in this grand jury. There's 32 or
15 64, or whatever it is, but this Carlson woman is one of
16 them." Somebody in his office would have been focusing
17 and thinking like a lawyer, and not like a politician, and
18 that's what the Governor's office didn't have, and it
19 doesn't have now.
20 And if you like this kind of mess, just keep
21 that up. Lawyers need lawyers today. In the 12 years
22 that I was in Madison, Wisconsin, the local newspaper was
23 called the Madison Capitol Times. It was run by a great
24 old Norweigian by the name of William T. Eujue, who
25 harangued the legislature every day. In my earlier

1 earlier years I didn't like him, because I thought he was
2 unfair, but as time went on, I grew to realize that the
3 legislature has to be harangued a little bit. It has to
4 be nagged. And I grew to appreciate William T. Eujue.
5 THE PRESIDING OFFICER: Counsel, your time is
6 expired. Please bring your argument to a close.
7 MR. LEONARD: Mr. Chief Justice, I think I have two
8 more lines.
9 He's dead now. The Capitol Times goes on,
10 but the thing I admired the most about him was the saying,
11 and I don't know whether it was his or attributable to
12 somebody else, that was right under his masthead every
13 single day. "Let the people decide and all will go well."
14 Let the people decide.
15 THE PRESIDING OFFICER: Mr. Eckstein, I think you
16 have ten minutes left.
17 MR. ECKSTEIN: Mr. Presiding Officer, members of
18 the Court of Impeachment, we've heard a lot about
19 harangueing in the last half-hour. I don't intend to
20 harangue you, but to speak some plain truth, some plain
21 truth about what the statements of law say and what they
22 don't say, and some plain truth about what Mr. Leonard
23 represented to this Court during the testimony of Mr.
24 L'Ecuyer. And I intend to go through the evidence that
25 has been put before you and apply that evidence to the

1 statements of law that have been given to you.
2 Mr. Leonard said that the statements of law
3 that were given to you define malfeasance as requiring an
4 evil mind or evil intent. I had read those statements
5 before. I read them during his presentation. And I
6 simply don't find the words "evil intent" or "evil mind."
7 I don't find them, and I don't think you're going to find
8 them, because they aren't there.
9 Malfeasance means doing something that was
10 positively wrong, something that Bill Long said making
11 this loan was, Exhibit 84-B, the bottom of page 161, the
12 top of the page 162. Read it. It's there. It's clear.
13 And all the harangueing and all the fulminations and all
14 the obfuscation and all the smoke and mirrors can't blot
15 it out, can't change it, can't hide it, can't white it
16 out. It's there. It's there for all to see.
17 Now, Mr. Leonard told you before this Court
18 and told the Presiding Officer on March 28, less than a
19 week ago, Volume 21, page 4795: "I don't intend to attack
20 the validity of the agreement."
21 Well, that was a week ago, because today that
22 was the basis of his argument, an attack on the validity
23 of that agreement. But that agreement of June 26th won't
24 go away. It can't be crunched up in a piece of paper and
25 thrown in a waste basket. It can't be thrown in a drawer

1 or put in someone's back pocket. It can't be swept under
2 a rug. It's there, Exhibit 47. It's not just part of the
3 record of this case. It's an indelible part of the record
4 of the history of this state.
5 The letter is a confirmation of an agreement
6 that was made in April, a confirmation of an agreement
7 that Mr. Long knew about from his own testimony and from
8 Mr. Mangum's testimony and from Mr. Lee's testimony. The
9 letter is how the Inaugural Committee kept the money from
10 going into the state fund.
11 You heard Mr. Mangum state that he was
12 concerned that there were violations of A.R.S. 16-919,
13 that corporate money had somehow been used to taint the
14 inaugural fund. You heard Mr. Schwartz say that there was
15 a violation of Proposition 200. You heard both Mr. Lee
16 and Mr. Mangum say that they were concerned, and the one
17 way that they could make sure that the money did not go
18 into the general fund, which was the concern, but at the
19 same time could be used to some extent by the Office of
20 the Governor, was to come up with a conveyance under
21 A.R.S. 41-1105, and that's what they discussed in April,
22 and that's what they accomplished by the June 26 letter.
23 The letter caused the County Attorney to drop
24 his investigation of the Inaugural Committee. You heard
25 Mr. Schwartz say that but for the letter, the

1 investigation and the lawsuit would have gone forward.
2 The letter is an accurate representation of the settlement
3 agreement between the Inaugural Committee and the County
4 Attorney. Mr. Schwartz said so. Mr. Mangum said so. Mr.
5 Lee said so, and Mr. Long said so. The letter confirms
6 how the money got to the Office of the Governor.
7 Now, Mr. Leonard was very careful not to read
8 the letter to you, very careful not to mention its terms.
9 And he was careful because the letter is clear and it is
10 straightforward. It says that the funds were transferred
11 to the Office of the Governor, not to Evan Mecham
12 personally, and they were transferred pursuant to the
13 provisions and spirit of A.R.S. 41-1105, and not for any
14 other purpose.
15 What was the understanding as to how this
16 money was supposed to be used? Mr. Colter understood the
17 agreement. It was explained to him fully by Mr. Lee and
18 Mr. Mangum. According to Colter, the letter is identical,
19 identical to what he was told, Volume 17 of the
20 transcript, page 3880 and 3881.
21 More importantly, the respondent knew the
22 restrictions on the funds. He knew that they were to be
23 used in his capacity as Governor. He knew that the funds
24 were to be used pursuant to A.R.S. 41-1105.
25 Now, at the very least, questions were raised

1 as to whether the money should be used as public or
2 private money. You recall Mr. Mangum on the last day of
3 testimony, the very last witness in this case, saying that
4 he and others, Mr. Lee and Mr. Brophy, had a meeting with
5 Mr. Colter, and they said treat this money as public money
6 until you get a determination as to what it is, and they
7 had a specific discussion in that regard about sending a
8 letter to the Attorney General as to whether scholarship
9 money ought to be viewed in that fashion, and they sent a
10 letter.
11 There was a discussion that Mr. Steiger
12 referred to at a staff meeting that the Governor attended
13 where Mr. Colter again said perhaps we ought to treat this
14 as public money. And Mr. Steiger said, no, it should not
15 be treated as public money, and Colter threw up his hands
16 and said, "I surrender," the lawyer surrendering to the
17 non-lawyer.
18 Now, I know at long last what Mr. Steiger
19 means when he says the first thing let's do, let's kill
20 all the lawyers. He wants to practice law. What kind of
21 sane world is this when the non-lawyers are giving legal
22 advice on the ninth floor with the Governor present?
23 The Long testimony is not inconsistent. The
24 Long testimony is that they didn't want the money to be
25 used in the general fund.

1 Now, the agreement is valid. Mr. Leonard
2 says that it was. It was to be held by the Office of
3 Governor, and if it was to be held by the Office of
4 Governor, by operation of law, as Mr. LaSota testified
5 before this Court, under A.R.S. 35-302, it is public
6 money.
7 But even if it isn't public money, under
8 1105, it could not be used in the fashion it was, and if
9 the agreement was not valid, then fraud was perpetrated on
10 the County Attorney and the money was obtained by false
11 pretenses, and that's what Article III-B is all about.
12 Like so many things, the Governor wants to
13 have it every which way. The money, the Governor says,
14 doesn't belong to the Office of Governor, and therefore,
15 isn't public money, under 35-302. Yet did the Governor
16 pay taxes on it? No. Did the Governor list it on his
17 financial disclosure form as money that he had control
18 over? Not in any way.
19 Respondent has failed to serve the best
20 interests of the state in loaning this money. It was an
21 entirely self-serving act.
22 Ask yourself, Mr. Leonard said, have you ever
23 done anything politically stupid, have you ever loaned
24 money to yourself that you knew was intended for a public
25 purpose?

1 You have heard why you should vote to
2 convict. I will finish by asking you to look at the
3 consequences of a vote for acquittal. In the face of all
4 this evidence, how would you explain a vote to acquit and
5 what would you be telling your children and your
6 grandchildren? That it's okay to secretly borrow money
7 from a fund that is not yours?
8 What would you be telling other elected
9 officials in the state? That it is appropriate to dip
10 into public monies for personal benefit?
11 What would you be telling the respondent?
12 That he can return to office and engage in the same type
13 of outrageous behavior and not worry about what will
14 happen?
15 THE PRESIDING OFFICER: Counsel, your time is up.
16 Would you bring your --
17 MR. ECKSTEIN: Before you vote, I urge you to
18 consider that by allowing the respondent to return to
19 office, to wreak havoc once again upon this state, that
20 you will have redefined in the most shameful way what is
21 acceptable conduct for a professional elected official.
22 For your sake, your children's sake, for the
23 sake of all who love this state, follow your oath and
24 bring down the curtain on this prolonged, embarrassing and
25 bitter tragedy.

1 THE PRESIDING OFFICER: Ladies and gentlemen of the
2 Senate, when next we convene, you will be in your voting
3 modes. I understand some of you may wish additional time
4 to study the supplemental -- the memoranda that has been
5 submitted by counsel for the respondent, but when we do
6 reconvene, that means when you have told me that you're
7 now ready to vote, we will have two and possibly three
8 votes for you to make, and the Constitution requires that.
9 You'll be required to vote to sustain or
10 acquit -- either sustain the Articles of Impeachment, No.
11 I, and No. III, or to acquit the Governor on both of
12 those, or one or the other. If you find that he is -- if
13 you acquit on both counts, acquittal will be entered on
14 the rolls. If you sustain the conviction on either of the
15 Articles of Impeachment, then you will move to the third
16 vote, whether to impose the disqualification clause.
17 So those three votes must be had, two if he's
18 acquitted, but three if he is convicted on any one of the
19 Articles.
20 So, Senator Usdane, do you have a motion at
21 this time?
22 SENATOR USDANE: Mr. Presiding Officer, it's my
23 understanding that some of the members might have
24 questions of legal counsel, so at this time, I'd ask if we
25 could recess the Court of Impeachment until 2:00 p.m., at

which time there may be an opportunity for conference on legal questions to determine anything that the Senators may wish to ask.

THE PRESIDING OFFICER: All right. The motion then is to recess until 2 o'clock. All those in favor signify by saying "aye." All opposed say "no."

The "ayes" appear to have it. They do have it, and it's so ordered.

(Recessed at 11:57 a.m.)

(Pages 5344 - 5349 sealed by order of Presiding Officer.)

(Reconvened at 2:23 p.m.)

THE PRESIDING OFFICER: Thank you, ladies and gentlemen. The Court of Impeachment will reconvene. Show the presence of a majority of the Board of Managers, their counsel, counsel for the respondent.

Senator Usdane.

SENATOR USDANE: Mr. Presiding Officer, I would like to ask for, under Rule 24, for a closed conference of the Senators in order to do two things: One is to see if there are any legal questions of our own counsel, and two is to ask the Senators how much time they need in which to examine documents before they are prepared to vote.

So on that basis I would ask for a recess and a closed conference.

THE PRESIDING OFFICER: That is not debatable. The conference will be granted, and we will stand at recess then until such time as you notify me that you are ready to reconvene.

(Recessed at 2:23 p.m.)

(Reconvened at 2:40 p.m.)

THE PRESIDING OFFICER: The Court of Impeachment is reconvened. Show the presence of a majority of the Board of Managers, their counsel, and counsel for the respondent.

Senator Kunasek, did you have an announcement to make?

SENATOR KUNASEK: Yes, Mr. Presiding Officer. On conferring with the members of the body it was felt that some of the people still have some questions to ask, would like to read and review all of the material one final time, and would request that we be allowed until 4:00 to do that.

If we could offer a motion at this time for a recess until 4:00, the members felt that by that time they would be able to come back and make a decision.

THE PRESIDING OFFICER: Thank you, Senator.

We will then stand at recess until 4:00 this afternoon.

(Recessed at 2:41 p.m.)

(Reconvened at 4:10 p.m.)

THE PRESIDING OFFICER: Thank you, ladies and gentlemen. The Court of Impeachment will reconvene. Show the presence of a majority of the Board of Managers, their counsel, and counsel for the respondent, and the respondent himself is present.

It is now the time to determine the final questions of this impeachment proceeding.

According to Rule 23(a) all Senators must vote on the question of whether to sustain either of the

Articles of Impeachment.

A vote to sustain either Article shall be based on clear and convincing evidence under Rule 23(c) of the Rules of the Court of Impeachment, as well as the Constitution of the State of Arizona.

To convict Evan Mecham of an impeachable offense, two-thirds of the Senators elected must vote to sustain either Article of Impeachment.

The Senate will first vote on Article I. Regardless of the outcome of the vote on that Article, the Senate will then proceed to vote on Article III.

The question that you must decide in each instance is whether any of the facts that you believe were proved by clear and convincing evidence constitute one or more high crimes, misdemeanors, or malfeasance in office.

Although you may decide that any of the acts alleged in the Articles of Impeachment constitute one or more of the criminal violations alleged in the Articles, you need not make that determination.

The ultimate question put to you is: Have any of the facts of the Article been proven by clear and convincing evidence, and if so, do those facts constitute high crimes, misdemeanors, or malfeasance in office.

If the Court votes to convict on either Article I or Article III, you will next vote on the

question of whether Evan Mecham should be permanently disqualified from holding any office of honor, trust or profit in the state.

We will first vote on the allegations contained in Article I of the Articles of Impeachment. If you believe that any of the facts alleged in Article I have been proven by clear and convincing evidence, and that those facts constitute high crimes, misdemeanors or malfeasance in office, you should vote aye.

If you believe that the facts alleged in Article I have not been proven by clear and convincing evidence or that the facts do not constitute high crimes, misdemeanors or malfeasance in office, you should vote no.

If two-thirds of the Senators elected vote aye, Article I will be sustained, and a conviction will result.

Rule 23(a) requires a roll call vote.

Will the clerk please call the role.

THE CLERK: Senator Alston.

SENATOR ALSTON: Mr. Presiding Officer.

THE PRESIDING OFFICER: Yes, Senator Alston.

SENATOR ALSTON: Mr. Presiding Officer, I'd like to explain my vote.

THE PRESIDING OFFICER: You may do so.

SENATOR ALSTON: Mr. Presiding Officer, members of

the Senate. The impeachment and conviction of an elected official, the Governor of the State of Arizona, this prospect, this act, this vote, is one that many members of the Senate have been weighing heavily for many weeks.

It is a decision that was thrust upon us unwillingly. It is a vote that none of us cherish. But it is, I believe, a vote we are fully capable of making, now that we have heard all the evidence that has been presented to this body.

I firmly believe that the members of this Senate have done there very best to make their decisions on the facts of this case. The facts are the basis of my vote.

We have all carefully reviewed the testimony of each witness. We have weighed the credibility and consistency of the testimony to find the true facts in this matter. This has not been easy, because testimony has been in conflict, facts are disputed. But we must sift through all the conflict to find what we believe are the bottom line facts. I am confident that I have done that in making this decision.

Many observers of this trial will view a vote, any vote as an act of courage. It is not. Many people will view our vote as partisan by Republicans, by Democrats, it is not.

Our vote here today is an act of responsibility. We were elected by the citizens of this state to carry out our duties in a responsible manner. We have a responsibility to our constituents, to our laws and our Constitution, and we have a responsibility to ourselves to make decisions that are based in reason and in knowledge.

We will be judged by many, especially our constituents on our decision to acquit or convict the Governor.

That is a judgment I am prepared to face. We are elected to make -- to do this job, and making difficult decisions is the essense of the job.

This is not an easy decision. Perhaps, the most difficult decision I ever made in my life. However, it is one that I am comfortable with; it is a decision for which I take responsibility. It is a decision about which I am certain.

Alexis DeToqueville said: Citizens who are bound to take part in public affairs must turn from private interests and occasionally take a look at something other than themselves.

This is what we must do today. We must take a look at the facts as we find them and render a decision that is not founded in our political or self-serving

interests. Even in the conflicting testimony and presentation of issues, I believe the facts are undeniable.

Therefore, Mr. Presiding Officer, it is my responsibility as a servant of the people to make a judgment on those facts. I have made my judgment.

I cast my vote on Article I as guilty.

THE CLERK: Senator Brewer.

THE PRESIDING OFFICER: Senator Brewer.

SENATOR BREWER: Mr. Presiding Officer, I would like to explain my vote.

Mr. Presiding Officer, the testimony that we have heard on the matter of obstruction of justice is deeply troubling. It shows clearly a pattern of activities in the Office of the Governor of the State of Arizona which I find very shameful, very embarrassing, and very disappointing.

In viewing all the evidence in its entirety, I see a Governor more familiar with the personality aberrations of Lee Watkins than others around him were. He simply dismissed Mr. Watkins' sword threats as meaningless, hot air. The fact that DPS officers took them more seriously while the Governor did not does not necessarily constitute obstruction of justice.

Had no investigation whatsoever been ordered,

or if in fact a complete cover-up had been attempted, I might see it differently. However, the Governor referred the matter to Max Hawkins who had supervisory responsibility and authority over the Capitol Police, who are legally authorized to conduct these kinds of investigations.

I agree with those who find this a prop to a serious matter of a death threat to be grossly inadequate, even seriously incompetent, but I don't find it purposely obstruction of justice.

Nothing has been presented which convinces me that Mr. Hawkins or any other member of the administration, having this matter, handling this matter on behalf of the Governor, determining in their minds that Mr. Watkins' threats against Donna Carlson represented a legitimate intent to harm Miss Carlson, that if in fact they would have taken the appropriate action.

I agree that the situation was handled far too casually; I agree that there was not sufficient attention given to the protection and the safety of Miss Carlson; I agree that the priorities placed by the Governor in his top aides in attempting to control the PR damage in his office rather than responding fully to the threat were shockingly self-centered and far beneath the standards that the people of Arizona have a right to

expect.

I believe that the Governor made a serious error in handling this situation, but I don't find that error is in sufficient magnitude to Constitutionally remove him from his office.

I believe that the charges before us are not arrogance, they are not incompetence, and they are not insensitivity, all of which that I believe his administration is guilty of. The charges are simply the obstruction of justice. I don't find that that particular case has been sufficiently made, and I vote no.

THE CLERK: Senator Corpstein.

SENATOR CORPSTEIN: Aye.

THE CLERK: Senator DeLong.

SENATOR DE LONG: Aye.

THE CLERK: Senator Gabaldon.

SENATOR GABALDON: Mr. Presiding Officer, I would like to explain my vote.

Mr. Presiding Officer and members of the body, I do believe there was a death threat by Lee Watkins. Peggy Griffith was telling the truth. Lee Watkins was not talking. Officer Martinez and Lieutenant Johnson carried out their duties in a professional manner.

Governor Mecham said there was a lot of lying going on. I do believe he attempted to distort the truth,

in particular in his testimony relating to Lieutenant Johnson and the Thad Curtis report. There was no difficulty in identifying who was lying; only one person did not tell the truth, and that was Governor Mecham.

Long before we began our deliberations here, Governor Mecham was described as an ethical pygmy by former President of the Senate Stan Turley, a man whom we all deeply respect.

I think his description of Governor Mecham has been definitely proven here, and I vote aye.

THE CLERK: Senator Gutierrez.

SENATOR GUTIERREZ: Aye.

THE CLERK: Senator Hardt.

SENATOR HARDT: Aye.

THE CLERK: Senator Hays.

SENATOR HAYS: Aye.

THE CLERK: Senator Henderson.

THE PRESIDING OFFICER: Senator Henderson.

SENATOR HENDERSON: Mr. President, I would like to explain my vote. When listening to the testimony on this Article, I paid close attention to the wording of the telephone conversation between Director Milstead and the Governor. I am convinced after listening to both of them that the Governor did tell Ralph Milstead not to cooperate with the Attorney General.

When judging the credibility of witnesses, I was struck by the fact that the Governor had a little -- the Governor had better recall of the facts when he was questioned by his own lawyer than he did not being questioned by the Board of Managers. I believe Governor Mecham was told of the threat, that he knew it was serious, and that he neglected his duty to have it properly investigated.

The Governor abused the power of his office in attempting to prevent an official investigation of the matter. I feel strongly this constitutes malfeasance in office.

I reserved judgment in this matter until I heard closing arguments. And I feel that the respondent has not put forward any defense; I felt that the position they put forth in closing argument had no substance.

The Board of Managers on the other hand had pointed out the facts on which the case turns, and I feel I had no choice but to vote aye on this count. We must think of the Office of the Governor and help to protect it from any disgrace.

I vote aye.

THE CLERK: Senator Higuera.

SENATOR HIGUERA: Mr. Presiding Officer, I would like to explain my vote also.

Mr. Presiding Officer, the purpose of my explanation is not an attempt to sway anyone's vote for impeachment or for acquittal. Each of us has heard the same testimony, and each of us must stand tall after we cast our individual vote. Our votes today state our personal testimony as to our comprehension of what is meant by the following statement, that no man is above the law.

The first charge, obstruction of justice, requires that it be proven that Governor Mecham attempted to abuse his power by attempting to insulate Lee Watkins. The same reckless Lee Watkins who had a previous criminal record, the same Lee Watkins who pushed and shoved his way around, and the same Lee Watkins who became the only witness who invoked the Fifth Amendment and refused to testify before this Court.

The respondent's attorneys are asking us to preserve the system, they are telling us that we are all on trial; folks, they are absolutely correct.

But what is important to me at this time is that the system be preserved as long as it serves all the citizens of this state.

They are absolutely correct by stating that we are all on trial. We have all been held hostage during the last five weeks. It is apparent that some folks will

intimidate witnesses, Senators, or anyone else in order to compel us to exonerate Governor Mecham.

I have personally been threatened, just as other members of this Court have been threatened, and I'll not be part of any effort to secure jobs for lawless characters who might threaten someone else again.

Mr. Presiding Officer, the only defense that we have heard is ignorance of the law. The citizens of this state will not tolerate this evil insensitivity to the Constitution and the laws of this state.

Therefore, I vote as the facts have been presented and stand today, and I vote aye.

THE CLERK: Senator Hill.

SENATOR HILL: No.

THE CLERK: Senator Kay.

SENATOR KAY: Mr. Presiding Officer, I wish to explain my vote.

First, I think that I would like to say that the people of this state owe you a great debt of gratitude for your excellent ability and temperament and judicial restraint that you have exhibited in these very trying, trying times. You are the only Judge in the country who will have ever presided over a gubernatorial impeachment since the last one was 57 years ago, so you have that unique distinction.

I hope that Divine providence will certainly spare this state and the rest of the country a similar terrible situation that we faced here in Arizona.

There have been -- each of us has received hundreds of calls and letters from people from all over the state, and they came in about three categories: The first bunch, and there were many many of them over the first couple of weeks, was a very great unhappiness over the proceedings in the Arizona House of Representatives. They felt that Governor Mecham hadn't had a fair trial.

I would only say that that undoubtedly came from a lack of understanding over the impeachment process, because Governor Mecham wasn't supposed to have a fair trial in the House of Representatives. I think that Representatives Lane and Skelly were unduly maligned; they are very fine people. They did their job as they saw fit to do it, and had I been a member of the House, I, too, would have joined the 46 members in their decision to vote for probable cause on the three Articles of Impeachment.

The second area was that people felt that they were being denied the results of their vote. And I think that, too, stems from perhaps a misunderstanding of the impeachment process, because the very nature of an impeachment does deny the people a vote.

You go back to the Federalist Papers that

have been mentioned on occasion during these proceedings, Alexander Hamilton, John Jay, James Madison and others wrote these papers to explain to the various states what the framers of the Constitution had had in mind. And Federalist Papers No. 65 deals with impeachment and what they did. They went back to the days of ancient Greece, and they envisioned the Senate as a sort of a dispassionate body that wasn't directly affected by the people, because in those days senators were elected by state legislatures, and it wasn't until 1913 that the 17th Amendment was enacted and Senators were elected by the direct vote of people.

Now, at the turn of the century there was a great movement, particularly in the western states, for initiative, referendum, and recall, and Arizona was one of the few states in the country to adopt initiative, referendum, and recall, and now we have a parallel situation where we have a recall at the same time as an impeachment process. Some might argue that perhaps that has superseded the impeachment process, but it certainly hasn't in our Constitution.

The third area, and last general area that many of us kept hearing about and reading about, was that we had made up our minds before coming here. And there might have been a few that had, but I give my colleagues

credit for having had open minds on the subject. I certainly did. I took 54 pages of notes on the first Article, and I tried to keep an open mind. I think there have been changes of opinion all during these proceedings.

We had an excellent example of that only last Wednesday when certain members lacked confidence in the ability of the Governor's counsel to defend him in the Court system; they lacked -- they had concern that he could get a fair trial in our state judicial system or in the federal court system, and therefore eliminated the second Article of Impeachment.

So there have been changes of positions and open minds throughout these proceedings.

Getting to Article I itself, I think that the Board of Managers' counsel has proven by clear and convincing evidence that any law enforcement officer who had heard these facts felt that a possible felony had been committed, and they have also proven that most of the lawyers who may have heard these facts felt that a possible felony had been committed, and perhaps even an ordinary reasonable and prudent man might have come to that conclusion.

But I think as was said in the final argument today that we have to question, keeping our eye on the ball, as to whether the Governor felt that a possible

felony had been committed, because that is what we are dealing with. We are not dealing with whether Lieutenant Johnson felt the felony had been committed, and we are not dealing with Lieutenant Johnson's understanding of the law or our statutes. And there was great disagreement as to what Lieutenant Johnson actually had said, but I don't know whether it's all that material. I think that certainly the Governor was preoccupied; it was a very short conference.

Going to Lee Watkins himself, he is probably the closest thing to a political Typhoid Mary that ever hit Arizona. The only ones that seem to have have had faith in him are Dr. Russell, said he was a do-er, the Governor said he was a do-er, and so was Typhoid Mary, I guess.

The problem that I saw was that the Board of Managers didn't tie in assaultive behavior with homicidal behavior, or the potential for homicidal behavior, or the fact that Lee Watkins might hire people to do Donna Carlson in.

I have known Donna for many years, and I like her very much. I don't know, in this business people start liking and disliking and hating and loving and all that sort of thing, but Donna was a very loyal vice-chairman.

I remember about a decade ago when in the House of Representatives when I subpoenaed DPS Director Vernon Hoy to the committee because he had falsely accused the House of Representatives of having a slush fund. Donna, in order to accommodate her good friend Peggy Griffith, made a stirring speech and stormed out of the committee and didn't want to be on the Judiciary Committee at that time. She almost got her wish.

The fact is, Donna testified over in the House that she was very frightened, that she had a kitchen knife by her bedside, and yet, as she turned down protection from the Department of Public Safety.

The Department of Public Safety was somewhat precipitous in getting in touch with the Attorney General's Office, I think. I think there was an atmosphere there that the Governor didn't like Director Milstead, Director Milstead didn't like the Governor, and I think that kind of filtered down among the troops, and they weren't too kindly disposed towards Governor Mecham.

The evidence showed that this is the first time that Director Milstead had ever called the Governor outside of his office, and I always had the feeling that perhaps he was trying to set him up.

He might just as well have said "Hello Governor, this is Director Milstead. Some of my boys are

going down to the Attorney General's Office to cut out your liver. Have a good day." It's no wonder that the Governor reacted intemperately, and it is no wonder that he said almost anything. It was an unsolicited call. The Governor didn't seek Colonel Milstead to obstruct justice.

And finally, Mr. Watkins, his role is something that will remain a mystery to some extent. I always wanted to hear the tie-in between Mr. Watkins on the second Article, because Sam Lewis said that he threatened to bring down the Mecham administration, and reported it to Sam Steiger, and Sam Steiger said he reported it to the Governor. The Governor didn't remember it.

I'll tell you one thing if I were the Governor and someone threatened to bring down my administration, I wouldn't forget it. But that is the way the testimony was.

One comment finally on the Johnson situation.

I think that was reckless imprecision on the part of the Governor to say that Lieutenant Johnson stole the Curtis report from Jim Colter's desk and took it to DPS. That's very irresponsible. And someone that would do that, certainly in my judgment, would not be that concerned over a Sunday afternoon of another officer, Mr. Martinez.

So I was very upset over some of the testimony that just didn't ring true on the part of the Governor.

Nevertheless, the end result is that the Governor thought that Lee Watkins did not commit a felony; he wasn't thinking of that. And if he didn't think that there was a felony committed, I don't see how he could knowingly obstruct justice.

We have four ways of mental states. We have knowingly, intentionally, recklessly and negligently, and you have to be guilty of one of those mental states. And I have elected to use the mental state of knowingly, and so I don't think that the Governor knowingly obstructed justice, and I don't think the Governor knowingly thought a crime had been committed, and I vote no.

THE CLERK: Senator Kunasek.

SENATOR KUNASEK: No.

THE CLERK: Senator Lunn.

SENATOR LUNN: Aye

THE CLERK: Senator Macdonald.

SENATOR MACDONALD: Aye.

THE CLERK: Senator Mawhinney.

SENATOR MAWHINNEY: Aye.

THE CLERK: Senator Osborn.

THE PRESIDING OFFICER: Senator Osborn.

SENATOR OSBORN: Mr. Presiding Officer, I would like to explain my vote.

THE PRESIDING OFFICER: You may.

SENATOR OSBORN: First of all, Mr. Presiding Officer, I would like to associate myself with the preliminary remarks made by Senator Kay with respect to your service here in this Court. If ever judicial temperament and forebearance and extraordinary ability were put to the test, it surely has been during this five-week ordeal here in the Arizona State Senate. And I know that all Senators join me in thanking you for that service.

THE PRESIDING OFFICER: Senator, you do me honor by your comments. Thank you.

SENATOR OSBORN: With respect to Article I, obstruction of justice, it seems to me this charge rests on the testimony of Colonel Milstead and the telephone call he made to the Governor about noon on Sunday, November 15th.

I find that the Milstead testimony to wit: That the Governor attempted to tamper with a witness as alleged in Subsection C of Article I is supported in two ways: First, Colonel Milstead's testimony has not in my judgment been successfully challenged by the respondent. Indeed, counsel for respondent asserts on page 25 in its

trial memorandum, and I quote, "There isn't a great deal of difference between Milstead's version and the Governor's;" secondly, Governor Mecham's own testimony with reference to the telephone conversation is in itself indicative of that subsection, and I quote, "If you're asking my permission, you can't have it." The Governor admits that he very well could have said to Colonel Milstead "you shouldn't help him either."

The Governor was Colonel Milstead's boss. Thus, I cannot come to any other conclusion but that there was in fact an attempt to tamper with a witness in violation of A.R.S. 13-1001, and A.R.S. 13-2804, one of which is a felony and the other a misdemeanor, under Arizona law.

I have sworn a solemn oath to render my decision according to the law and evidence. I must, therefore, vote aye.

THE CLERK: Senator Pena.

SENATOR PENA: Aye.

THE CLERK: Senator Rios.

THE PRESIDING OFFICER: Senator Rios.

SENATOR RIOS: I would like to briefly explain my vote, if I may.

THE PRESIDING OFFICER: You may.

SENATOR RIOS: Mr. Presiding Officer, members of

the Senate, as we sat through these past few weeks of trial and have deliberated on the information presented. I know that my Senate colleagues and I have carefully, carefully considered the facts.

We today by our vote seek to promote and preserve the well-being of the State of Arizona. We are told by legal staff, legal attorneys, that a public official commits malfeasance in office by doing that which an officer has no authority to do and is positively wrong or unlawful. And I guess the key words for me are that they do something that is positively wrong. And it doesn't say "and unlawful," it says "or unlawful."

Impeachment does not seek to punish the officeholder, but as somebody stated this morning, rather it is to protect the state and its citizenry.

I have not, as Mr. Leonard asserted in his closing arguments this morning, found Governor Evan Mecham to be an evil person, for I indeed do not believe that he is.

However, Mr. Mecham has, by his actions, shown to the State of Arizona that he is poorly equipped to serve as the Governor of our state, and nevertheless it is clear that the Governor's reaction to the allegation of a death threat constituted, at least in my mind, malfeasance, and I therefore find that I have to vote to

sustain this Article of Impeachment, and I vote aye.

THE CLERK: Senator Runyan.

SENATOR RUNYAN: Mr. Presiding Officer, I would like to explain my vote.

THE PRESIDING OFFICER: You may do so, Mr. Runyan.

SENATOR RUNYAN: Mr. Presiding Officer, I have always been in double jeopardy over this last five weeks. I not only was not here a lot of the time, but I had to review the whole thing on videotapes so that I would be able to stand behind my vote.

Mr. Presiding Officer, I have done that through many, many long hours. All weekend for the last five weekends, in addition to evenings and afternoons, when I was not here or at the hospital, trying to get my strength back, and Mr. Presiding Officer, I have searched my conscience and asked myself how would I react in similar situations as some of the people found themselves in on this Article.

And I find that I have no choice but to say that Governor Mecham is guilty at least of malfeasance in this particular Article. Therefore I vote aye.

THE CLERK: Senator Sossaman.

SENATOR SOSSAMAN: Mr. Presiding Officer, I would like to explain my vote.

THE PRESIDING OFFICER: You may do so.

SENATOR SOSSAMAN: I think Senator Alston put it best for me as to the labor and the soul searching that went into this, especially in the last few days. I envy all of you that have come to a decision and you feel comfortable about it. I am not sure I'll ever have that peace of mind.

Each of us have our own blending of ideas together to come to a decision, and these include our understanding of the facts in a case like this, politics involved, what is consistent with our own personal philosophy and how we serve the voters in our district feel on a subject. At the same time we have to evaluate how it affects the state as a whole. I am sure you, here on this floor, have other ideas that you put into this decision-making, and I am sure at times I do also.

I would like to go back to the beginning for just a moment, because I think that reflects on what my decision had to be.

In the beginning of this trial I want to remind you that I was one of six Senators that voted to delay the impeachment process until the Court trial and the recall election had a chance to take place. Those mechanisms were already set in motion, and that vote, at least in my case, was based on four major reasons.

Number one, why should we interrupt a

particularly difficult legislative session for what could be as long as ten or 12 weeks when the other two methods of resolving this issue were taking place, especially when we consider the cost and time and money that would be involved in this impeachment trial.

Second reason, I was convinced that justice could be better served if the Governor was tried in a court of law for the criminal allegations against him rather than an impeachment, which is a political trial.

I have to certainly agree that we had the legal right to hold this trial and understand completely why many of you felt we had an obligation to do so.

But let's be honest. We here on this floor carry a lot of baggage and bias that would not be tolerated in a court of law. This is not to say we haven't been fair, but if I were on trial for a serious criminal offense, I believe I would prefer to take my chances before a jury selected by the court rather than by my fellow Senators.

The third reason that I had been concerned that if we were to convict the Governor prior to the recall election and if he were to be the victor in that election there could be some real legal ramifications that could prevent him from serving, therefore circumventing the will of the people.

In addition, as a Republican, I have been concerned over the possibility of simply handing over the office of Governor to a Democrat, personally though she may be, that is not the way I play politics. And that was a distinct possibility if the person being recalled is no longer in office.

The fourth and final reason was that in my entire time in the legislature, setting this trial in motion has to be one of the most serious political mistakes that the Republican majority has ever made. Setting up a forum before the entire state to uncover all the dirty linen of the Republican Governor and his administration.

I understand some of you, and you remarked that to me, felt a real responsibility to clean our own house, but in my opinion, that point is valid only if you felt there was no other way to accomplish that cleaning.

But there were other ways and they were in progress. If those failed or were not accomplished to our satisfaction, we always had the option of coming back after our regular work was done and taking up the issue of impeachment.

But I realize that is in the past. We can't go back. Senator Mawhinney, my Humpty-Dumpty was broken early on and I didn't get it fixed, but I would like to at

least share with you where I started in this process.

Because now no matter how we vote here today, many of the voters in our district will feel that we have betrayed them. People who have been our friends and political allies will no longer support us. Precinct committeemen will refuse to carry our petitions. This dilemma is pitting neighbor against neighbor and causing major differences in our community. It will be some time before my party can continue. Some of us will not be back, raising a possibility of the majority both the Republicans have enjoyed in the House and Senate. In short, this has been a no-win situation.

Now, in every controversy like this there is a few positives that comes out of it. I think our secretaries have done yeoman's work in all these phone calls. Why they haven't quit is beyond me.

It has already been mentioned that you, Judge Gordon, have done an excellent job. I think we have created a greater awareness by the public of what state government is all about, which should translate into a better participation in future elections. A great number of people know who their legislators are, and they know that we can be contacted, and they know how to contact us. And we here on this floor have a better understanding of what judges and juries are faced with as they perform

their duties.

I been characterized by some newspaper reporters as a staunch, ardent supporter of Governor Mecham. Let me assure you that that is not the case. Reporters like to put everybody in nice, neat little boxes. Sometimes even they make mistakes.

I would be first to stand here on this floor and admit the Governor has made a number of politically embarrassing mistakes; some members of his administration have proven to be incapable of running state government. I certainly do not want to hold his administration up as a model for future governors to follow. It is apparent that there were many lapses of good judgment, not only on his part but on the part of others on his staff.

And although I am uncomfortable with these and other actions of the Governor, I am even more uncomfortable with the idea that I would in any way negate what the voters of this state have done.

The right to vote is a privilege that I hold sacred, and to negate an election by the people requires great reflection on my part. I am still convinced the best and most Democratic way out of this morass is to let the people of this state resolve this issue by their vote May 17.

I can wait 44 days. Therefore I vote no.

THE CLERK: Senator Steiner.

THE PRESIDING OFFICER: Senator Steiner.

SENATOR STEINER: I would like to explain my vote.

Each of us on this floor have received hundreds of calls and letters, many of them in support of the Governor, many of them recommending conviction. On my part, I especially appreciate those calls and those letters that said do what you feel is right, weigh the evidence, and make a conscientious decision.

I certainly appreciate the kind offers of support and sympathy for the process that I have been participating in, and I especially appreciate the prayers that were offered.

Clearly each of these individuals had the clear right to express their opinion. Today as was stated in Justice Gordon's opening comments, under the Constitution each Senator must swear to decide the case based on the law and evidence.

And further, in this proceeding they must rule based on the evidence. We accept that heavy, heavy responsibility.

Regarding Article I, I believe the threat took place basically as reported by Peggy Griffith. I believe the Department of Public Safety acted properly in reporting the alleged threat to the Attorney General's

Office. I believe that sincere repeated efforts were made to communicate between Friday, November 13th, and Sunday, November 15th, but that as each of those sending and receiving messages was in their own box of reality and the messages did not get through.

Based on the evidence I do not believe that the Governor on Sunday, November 15th, 1988 in a five- to seven-minute conversation at noon, I believe the Governor did not have enough information to be guilty of obstruction of justice. I vote no.

THE CLERK: Senator Stephens.

SENATOR STEPHENS: Aye.

THE CLERK: Senator Stump.

THE PRESIDING OFFICER: Senator Stump.

SENATOR STUMP: Mr. Presiding Officer, I believe that this Impeachment Court as constituted by the Constitution of this state is set at law.

My understanding of that is that of common law. I believe that under the common law a person does have to be knowingly guilty; whether they knew they were doing something or not does matter. I don't believe that in common law court it is ever argued that ignorance is no excuse. My understanding of common law is that ignorance definitely is.

Therefore, I vote no.

THE CLERK: Senator Taylor.

SENATOR TAYLOR: Aye.

THE CLERK: Senator Usdane.

SENATOR USDANE: No.

THE CLERK: Senator Walker.

SENATOR WALKER: Aye.

THE CLERK: Senator West.

SENATOR WEST: Aye.

THE CLERK: Senator Wright.

SENATOR WRIGHT: Mr. Presiding Officer, I wish to explain my vote.

Mr. Presiding Officer, it appears the votes are here for impeachment. We find ourselves at the crest of a wave of events which has taken place over a year's time, tested in two of the branches of our government, soiled the reputations of many people, and pitted long-time friends against each other.

Counsel for the Board of Managers has stated that if we do not convict we have redefined in the most shameful way what is acceptable behavior of a public official. None of us could sit for days and failed to take notice of the conflicting testimony given by the Governor, his baseless accusations of Beau Johnson, nor can we ignore the compelling evidence of his shortsighted almost amoral judgment, his demonstrated inability to

perceive both the moral and political consequences of his flawed decisions.

But as we cannot fail to observe these leadership weaknesses, we can be certain the public will hold him accountable for these and other shortcomings.

I cannot support a vote for conviction of a Governor on Article I of impeachment. The evidence of his guilt of a knowing action on his part on the charges against him are not clear and convincing to me.

On a charge of malfeasance there is greater weight. While I have listened to the attorneys and witnesses for both sides, while I have weighed the evidence for and against conviction, the clearest message I have received is frustration of the people, of those who support and those who oppose Governor Mecham.

We are the only method of removal from office, the Senate's conviction. I could be tempted to vote for or vote in support. Of course, we must be mindful of the interests of the people of this state, but more importantly, they must be mindful of those interests. I am certain a more interested, informed, and larger number of voters will appear at the polls in May, and I pray we will be a better state for their interest.

I vote no.

THE PRESIDING OFFICER: By your vote of 21 "ayes"

and nine "noes," Evan Mecham is convicted of high crimes, misdemeanors or malfeasance in office as contained in Article I of the Articles of Impeachment.

Having completed the voting on Article I of the Articles of Impeachment, we will now proceed to Article III of the Articles of Impeachment.

If you believe that any of the facts alleged in Article III have been proven by clear and convincing evidence, and that those facts constitute high crimes, misdemeanors or malfeasance in office, you should vote aye.

If you believe that the facts alleged in Article III have not been proven by clear and convincing evidence or that the facts do not constitute high crimes, misdemeanors or malfeasance in office, you should vote no.

If two-thirds of the Senators elected vote aye, Article III will be sustained and a conviction will result.

Rule 23(a) requires a roll call vote. Will the clerk please call the role.

THE CLERK: Senator Alston.

THE PRESIDING OFFICER: Senator Alston.

SENATOR ALSTON: Mr. Presiding Officer, I desire to explain my vote.

THE PRESIDING OFFICER: You may.

SENATOR ALSTON: Mr. Presiding Officer, Article III in this trial asks us to decide whether the Governor's use of the protocol fund constitutes an impeachable offense.

Members of the Senate, I can come to only one conclusion: Yes, it does.

Did the Governor know what he was doing with these funds: I believe he did.

Did the Governor have every reason to use these monies for public purposes, not for personal use: I believe he did.

Did the Governor have a motive for loaning these funds to his car dealership other than the stated desire to obtain a better rate of return from the investments of these funds: I believe he did.

Did the Governor's own advisors and counselors inform the Governor that this use of funds was, at a minimum, inappropriate: I believe they did.

Did the Governor make an effort to keep his use of the funds from public view: I believe he did.

Was his use of the funds wrong: Clearly it was wrong, not just stupid as some have said, but positively wrong.

As I stated in the explanation of my vote on Article I, it is our responsibility as representatives of the citizens of this state to vote on the facts and not on

any sense of partisanship or self-interest. My vote on Article III is based on my best interpretation of the facts as they have been presented. I believe there is only one correct interpretation of the facts in this Article. It is that the Governor's acts ignored and put aside the laws of Arizona and illegally put these funds to personal use. Justice demands that we find him guilty of this allegation.

Mr. Presiding Officer, I vote aye.

THE CLERK: Senator Brewer.

SENATOR BREWER: No.

THE CLERK: Senator Corpstein.

SENATOR CORPSTEIN: Aye.

THE CLERK: Senator DeLong.

SENATOR DE LONG: Aye

THE CLERK: Senator Gabaldon.

SENATOR GABALDON: Aye.

THE CLERK: Senator Gutierrez.

THE PRESIDING OFFICER: Senator Gutierrez.

SENATOR GUTIERREZ: Mr. Presiding Officer, I would like to explain my vote to this Article.

Before doing that, sir, several weeks ago you gave thanks to a babysitter, and I think it was appropriate. I would like to give you thanks. And I don't want to suggest that there is a parallel or I don't

want to suggest there is similiarities in your role and your babysitter's role during this proceeding, but clearly, Chief Justice, you have done the bench, I think you have done the citizens of this state a great service and you have led this body of 30 members, 30 individual members I may add, through that maze, and I do want to congratulate you and thank you for your work in a job that's been well done.

THE PRESIDING OFFICER: Thank you, Senator.

SENATOR GUTIERREZ: During the last five weeks, beginning of the sixth week, we have clearly been involved in an extraordinary journey, an extraordinary journey that has extraordinary circumstances. And we have been looking for the truth and also what has been best for the State, well-being for the State of Arizona.

Earlier today Mr. Leonard made some comments about smoke and mirrors, he made some comments regarding a flower fund, and made an interesting parallel between the flower fund and loaning $80,000 from that flower fund to a car dealership. Interesting, because frankly to make that parallel was, I thought perhaps, not the best point of this trial.

There is no parallel between the flower fund and loaning Mecham Pontiac $80,000, just as there is no parallel or similarity between buying Kachina dolls,

entertaining dignitaries, or buying momentos for visiting -- for folks visiting the Governor's office. There is no parallel and there is no similarity.

It would be very easy, extremely easy to find this administration guilty of incompetency. It is much harder, Mr. Presiding Officer, and members of this body, to find him -- that he was guilty of malfeasance. However, when looking at the evidence, that is, frankly, the only conclusion that this Senator can arrive at, that there was in fact clearly a large amount, a tremendous amount of malfeasance in that office, and that was Governor Mecham.

In this world of our morality, in this university of morality that we have here, it sometimes is very difficult to reach the truth. But, Mr. Presiding Officer and members of the Senate, in my mind, the truth is that Governor Mecham is in fact guilty of Article III.

Mr. Presiding Officer, accordingly, I vote aye on this Article.

Thank you, sir.

THE CLERK: Senator Hardt.

SENATOR HARDT: Aye.

THE CLERK: Senator Hays.

SENATOR HAYS: Aye.

THE CLERK: Senator Henderson.

THE PRESIDING OFFICER: Senator Henderson.

SENATOR HENDERSON: Mr. Presiding Officer, I desire to explain my vote.

THE PRESIDING OFFICER: You may.

SENATOR HENDERSON: Proposition 200 has many interpretations, but after a settlement agreement was reached in this case the parties has agreed only one interpretation would apply to the monies: That would be public monies held by the Office of the Governor.

The Governor's own people told him that the funds were public, and that it would not be right nor would be wise to loan the money to himself. He disregarded that advice and made a loan to Mecham Pontiac in spite of it.

To me, a public official could not do anything that is more clearly wrong than using public funds for his own private purpose.

I vote aye.

THE CLERK: Senator Higuera.

SENATOR HIGUERA: Mr. Presiding Officer, misuse of funds was an easier task for me in applying proper judgment to the charge.

Mr. Leonard repeated this morning that the key word in this charge was evil intent. Mr. Leonard asked us to dismiss Governor Mecham's poor judgment.

Mr. Leonard asked us to disregard the Governor's associates' accusations that the Governor had acted in a stupid and dumb manner. Mr. Leonard begged us to be rational and to ask ourselves how can an $80,000 loan to a business worth in excess of $4,000,000 make any difference to that business. Let us not forget there was only $92,000 in the account, folks.

Ladies and gentlemen, Governor Mecham has struck out. First strike, he shouldn't have given the money in the first place to his son, since he, Governor Mecham, had a direct interest in ownership in Mecham Pontiac; profit generated by Mecham Pontiac went directly to Governor Mecham's wallet and personal bank account to pay for his personal living expense. This is in direct conflict with Governor Mecham's own assessment of the law.

Second strike: Mr. Mecham directed Jim Colter to withhold the recordings of the deeds of trust, and Jim Colter accidentally, he says, forgot to enter the transaction into the checkbook.

Third strike, and the final blow, became apparent to me when I asked Dennis Mecham under oath who had offered the money. His response, contrary to previous testimony by Evan Mecham, was that the Governor had initiated the loan offer. I continued to ask Dennis Mecham if Mecham Pontiac was in need of the money, and

again, contrary to the previous testimony given by Evan Mecham, Dennis Mecham testified that Mecham Pontiac was always in need of loans.

In closing arguments we were told that the Senate will be held responsible for the actions taken today. You bet. So be it.

But I submit to all the citizens of this great state that I am not responsible for anyone's stupidity or arrogance, and certainly I am not responsible for Governor Mecham's ignorance and deliberate breach of the law.

Everyone else but Governor Mecham admitted these were not his personal funds. The Maricopa County Attorney office knew it, Warner Lee knew it, John Mangum knew it, Jim Colter knew, Donna Carlson knew it, Sam Steiger knew it, everyone but Evan Mecham admitted it. Let us put a stop to this fiasco, and let us embark in a peaceful journey in order to pull our state from this state of siege, darkness and uncertainty.

I vote aye.

THE CLERK: Senator Hill.

SENATOR HILL: No.

THE CLERK: Senator Kay.

SENATOR KAY: Aye.

THE CLERK: Senator Kunasek.

SENATOR KUNASEK: Aye.

THE CLERK: Senator Lunn.

SENATOR LUNN: Aye.

THE CLERK: Senator Macdonald

SENATOR MACDONALD: Aye.

THE CLERK: Senator Mawhinney.

SENATOR MAWHINNEY: Aye.

THE CLERK: Senator Osborn.

SENATOR OSBORN: Aye.

THE CLERK: Senator Pena.

SENATOR PENA: Aye.

THE CLERK: Senator Rios.

THE PRESIDING OFFICER: Senator Rios.

SENATOR RIOS: Brief explanation on my vote.

I guess on this particular Article, Mr. Presiding Officer and members, what I struggled with the most was that it is difficult for me to wholeheartedly believe that the Governor's inaugural funds were public monies; had to wrestle with that one quite a bit.

But then after doing some research and reviewing some of the testimony, I guess what I determined was that at the point that the Maricopa County Attorney's Office on behalf of the State of Arizona and the attorneys representing the Inaugural Committee, and indirectly, I guess, the Governor's office as well, reached an agreement

that those monies would be used as a protocol fund, then at that point I believe they became public monies. And then to make a loan to Mecham Pontiac of $80,000 from that particular fund, I find that, if nothing else, it was an act of malfeasance; therefore, again, I have to vote to sustain this impeachment Article, and I vote aye.

THE CLERK: Senator Runyan.

SENATOR RUNYAN: I would like to explain my vote.

THE PRESIDING OFFICER: You may do so.

SENATOR RUNYAN: Sir, at the point when a determination was made to settle this thing on the money by the attorneys and the County Attorney, and a letter was written delineating how it could be spent. It doesn't make any difference whether it was public or private money; the charge was: Here is this money, and then things you can use it for.

I believe that the loan of $80,000 to Mecham Pontiac not only was bad political judgment, bad judgment all the way around, I really believe that it was a crime that was committed, it was a violation of the statutes, and therefore, I must say aye on Count III.

THE CLERK: Senator Sossaman.

SENATOR SOSSAMAN: Aye.

THE CLERK: Senator Steiner.

THE PRESIDING OFFICER: Senator Steiner.

SENATOR STEINER: Might I explain my vote?

THE PRESIDING OFFICER: You may.

SENATOR STEINER: In struggling to come to a decision on Article III, I remembered reading William Rehnquist's, then an Arizona citizen, comments in his closing arguments in the 1964 impeachment trial. He said, "Your votes will set a standard for other state officers."

Holding office is a public trust. The funds in the inaugural funds were held in trust within the Governor's office with restrictions on their use. Whether in trust as public or private dollars, they were not the Governor's to loan, certainly not to his own business without public disclosure.

Respect for public trust includes responsibility that we not benefit personally from our actions while in the public sector. What is particularly tragic about this issue is that Governor Mecham as an individual, his administration and his supporters have high ideals and many worthwhile goals grounded in strong principal. Somehow it makes it even more important that this loan be judged as to its appropriateness as an ethical matter.

We cannot allow our visions to be clouded by the rationalization that interest was paid and the money returned. Witnesses in this trial stated that it was

politically foolish, even politically stupid.

Tragically, in my eyes, it was ethically wrong. It does matter what ethical standards we set for others holding public office; even more important are the messages that we send to our children and to our grandchildren about ethical obligations.

I vote aye.

THE CLERK: Senator Stephens.

SENATOR STEPHENS: Aye.

THE CLERK: Senator Stump.

SENATOR STUMP: No.

THE CLERK: Senator Taylor.

SENATOR TAYLOR: Aye.

THE CLERK: Senator Todd.

SENATOR TODD: Aye.

THE CLERK: Senator Usdane.

THE PRESIDING OFFICER: Senator Usdane.

SENATOR USDANE: Mr. Presiding Officer, I would like to explain my vote.

THE PRESIDING OFFICER: You may.

SENATOR USDANE: Excuse me. Before doing so, I, too, would like to thank you. It has been a test of courage attempting to stand to one of your stature, and I think you have done an excellent job in helping the Senate through a terribly trying time.

THE PRESIDING OFFICER: Thank you, Senator.

SENATOR USDANE: My making the decision, Mr. Presiding Officer, I spent like 40 hours over the last few days trying to decide what might be appropriate. And I confess to a strong sense of the dreadfulness of the step of removal of this deep wounding that such a step must inflict on the state, and thus, I approached it as one would approach a high risk major surgery to be resorted to only when the rightness of the diagnosis and the treatment was sure.

In the first Article, it was not clear and convincing to me as an individual of the Governor's knowledge and intent.

In this there is no question: It is clearly malfeasance, plainly wrong, a betrayel of the public trust and abuse of an official power, and I vote aye.

THE CLERK: Senator Walker.

SENATOR WALKER: Mr. Presiding Officer, I would like to explain my vote.

THE PRESIDING OFFICER: You may do so.

SENATOR WALKER: If I could deviate for just a moment, I would like to thank all those people who wrote those letters of encouragement over the last five or six weeks. I would even like to thank all those penning nasty letters. It is always nice to know how you are doing.

In explanation of my vote, Mr. Presiding Officer, as I grew up my mother always told me that your word is your bond. And if you can't give your word and if your word can't be believed, you have nothing.

Even when I was elected to the House of Representatives, Art Hamilton also told me: Your word is your bond. When you tell people something, you have to tell them the truth, because if you lie to them, they will never believe you again.

In this Article, the deciding factor for me was the day the Governor walked in and deliberately attempted to mislead this body by telling us that there were no loans to his brothers Wayne and Willard. And in this body if your word is no good, if we can't trust you on one small thing, I can't trust you on anything.

Mr. Presiding Officer, I vote aye.

THE CLERK: Senator West.

THE PRESIDING OFFICER: Senator West.

SENATOR WEST: Mr. Presiding Officer, I would like to explain my vote.

THE PRESIDING OFFICER: You may.

SENATOR WEST: Mr. Presiding Officer, it's with a heavy heart, I think that we all have gone through this process not only today, but for the last literally months, and particularly, heavy for myself and others who consider

ourselves to be conservative Republicans, and to you, Governor Mecham, my words I hope do not come with any malice or with any rancor, but I hope they come as intended from one human being, though was imperfect from one human being who does not as a human being have the right, either through righteous actions or through perfection to cast the first stone, but through one human being who has a Constitutional obligation and an oath of office to make a decision, and to share with you some of my thoughts.

Because it is obvious now, as we leave here this evening, that you will no longer be the Governor of the State of Arizona, and that you have abrogated your responsibilities to the people of the State of Arizona, particularly those who like myself voted for you, who like myself put the care and the custody of the ship of the State of Arizona in your hands.

Many people across this state believe in you and believe in you passionately, and I think it is unfortunate that you have abrogated that responsibility to those who so passionately believe in you. And as you go forward back as a layman, I would like to give you something to look into your soul, as I have had to read this, to look into my own soul. So it is not that I read this and have learned this, through trying to understand

the Mecham administration, although that has been part of the payoff.

It comes from the People of the Lie written by M. Scott Peck. It is hope for healing human evil.

I particularly point out to those historians who may want to review what we have been through, pages 69 through pages 84, and pages 120 through pages 130, which I think have a direct effect.

Starting on one of the paragraphs on page 76, it says:

"Evil originates not in the absence of guilt, but in the effort to escape it. It often happens, then, that the evil may be recognized by its varied disguise. The lie can be perceived before the misdeed it is designed to hide - the coverup before the fact. We see the smile that hides the hatred, the smooth and oily manner that masks the fury, the velvet glove that covers the fist. Because they are such experts at disguise, it is seldom possible to pinpoint the maliciousness of the evil."

Another paragraph from page 77:

"Since they will do almost anything to avoid the particular pain that comes from self-examination, under ordinary circumstances the

evil are the last people who would ever come to psychotherapy. The evil hate the light - the light of goodness that shows them up, the light of scrutiny that exposes them, the light of truth that penetrates their deception."

On page 129 where the author was talking about ambulatory schizophrenia, says:

"In addition to the abrogation of responsibility that characterizes all personality disorders, this one would specifically be distinguished by:

"A: Consistent destructive, scapegoating behavior, which may often be quite subtle.

"B: Excessive, albeit usually covert, intolerance to criticism and other farms of narcissistic injury.

"C: Pronounced concern with a public image and self-image of respectability, contributing to a stability of life-style, but also to pretentiousness and denial of hateful feelings or vengeful motives.

"D: Intellectual deviousness, with an increased likelihood of a mild schizophreniclike disturbance of thinking at times of stress."

Governor Mecham, I don't know what the future

holds for either one of us, but as one human being to another, at the proper time, I extend to you the handshake of reconciliation, if and when you would like to have that.

And it is with a heavy heart that I have found through the testimony and the facts, all the evidence, that your veracity and your ethics, particularly in government, are in a state of bankruptcy; will be up to you to choose whether to take it through Chapter 11 and work your way through it, or Chapter 7 which is permanent.

But I pray that you will use Chapter 11 as a growing experience and work your way through, but the consequences of your behavior have been heavy on all of us. This day, it is unfortunate that we have come to this conclusion, but I, like my colleagues, have found you guilty of Article III and I vote aye.

THE CLERK: Senator Wright.

SENATOR WRIGHT: Mr. Presiding Officer, I wish to explain my vote.

THE PRESIDING OFFICER: You may.

SENATOR WRIGHT: Anticlimactic as it is, we are asked in order to convict the Governor of this crime, first of all, to believe that an agreement made by a third party with someone else in the County Attorney's office was binding on the Governor. We are asked to believe that

funds contributed to his inauguration which were intended and clearly stated on the tickets to be used to pay off his campaign debts, became magically public money.

I cannot find the Governor guilty of that charge, and I vote no.

THE PRESIDING OFFICER: By your vote of 26 aye and four no, Evan Mecham is convicted of high crimes, misdemeanors or malfeasance in office as contained in Article III of the Articles of Impeachment.

I think it is appropriate at this time that we take about a 15-minute recess, and I would like to suggest to counsel --

MR. LEONARD: Mr. Presiding Officer, I object to that.

THE PRESIDING OFFICER: Would you rather proceed?

MR. LEONARD: Absolutely. Let's vote.

THE PRESIDING OFFICER: Fine by me. I thought perhaps you would like to collect yourself in order to be able to make some statements to the Court.

All right. We will proceed then.

There is one remaining vote that the members of this Court must decide, because this Court has voted to sustain Articles I and III of the Articles of Impeachment.

The Constitution of the State of Arizona, the Arizona Revised Statutes, 38-321, and Rule 23(d) of the

rules of procedure of the Court of Impeachment require this Court to decide whether Evan Mecham should be permanently disqualified from holding any office of honor, trust, or profit in this state.

Do counsel wish to argue on this issue?

No requests for argument.

All right. The Court of Impeachment will now decide whether Evan Mecham should be permanently disqualified from holding any office of honor, trust, or profit in this state.

If you believe that Evan Mecham should be permanently disqualified from holding any office of honor, trust or profit in the state, you should vote aye.

If you believe that Evan Mecham should not be permanently disqualified from holding any office of honor, trust, or profit in this state, you should vote no.

Rule 23(d) requires a roll call vote. Will the clerk please call the roll.

THE CLERK: Senator Alston.

SENATOR ALSTON: Aye

THE CLERK: Senator Brewer.

SENATOR BREWER: No.

THE CLERK: Senator Corpstein.

SENATOR CORPSTEIN: No.

THE CLERK: Senator DeLong.

SENATOR DE LONG: Aye.

THE CLERK: Senator Gabaldon.

SENATOR GABALDON: Aye.

THE CLERK: Senator Gutierrez.

SENATOR GUTIERREZ: Aye.

THE CLERK: Senator Hardt.

SENATOR HARDT: Aye.

THE CLERK: Senator Hays.

SENATOR HAYS: Aye.

THE CLERK: Senator Henderson.

SENATOR HENDERSON: Aye.

THE CLERK: Senator Higuera.

SENATOR HIGUERA: Aye.

THE CLERK: Senator Hill.

SENATOR HILL: Aye.

THE CLERK: Senator Kay.

SENATOR KAY: No.

THE CLERK: Senator Kunasek.

SENATOR KUNASEK: No.

THE CLERK: Senator Lunn.

SENATOR LUNN: Aye.

THE CLERK: Senator MacDonald.

SENATOR MACDONALD: Aye.

THE CLERK: Senator Mawhinney.

SENATOR MAWHINNEY: Aye.

THE CLERK: Senator Osborn.

SENATOR OSBORN: Aye.

THE CLERK: Senator Pena.

SENATOR PENA: No.

THE CLERK: Senator Rios.

SENATOR RIOS: Aye.

THE CLERK: Senator Runyan.

SENATOR RUNYAN: Aye.

THE CLERK: Senator Sossaman.

SENATOR SOSSAMAN: No.

THE CLERK: Senator Steiner.

SENATOR STEINER: No.

THE CLERK: Senator Stephens.

SENATOR STEPHENS: No.

THE CLERK: Senator Stump.

SENATOR STUMP: No.

THE CLERK: Senator Taylor.

SENATOR TAYLOR: Aye.

THE CLERK: Senator Todd.

SENATOR TODD: Aye.

THE CLERK: Senator Usdane.

SENATOR USDANE: No.

THE CLERK: Senator Walker.

SENATOR WALKER: Aye.

THE CLERK: Senator West.

SENATOR WEST: Pass.

THE CLERK: Senator Wright.

SENATOR WRIGHT: No.

THE CLERK: Senator Rios.

SENATOR RIOS: No.

THE CLERK: Senator West.

SENATOR WEST: Aye.

THE CLERK: Senator Taylor.

SENATOR TAYLOR: I vote no.

THE PRESIDING OFFICER: By your vote of 17 ayes and 13 noes, Evan Mecham is not permanently disqualified from holding any office of honor, trust, or profit in the state.

Having convicted Evan Mecham of high crimes, misdemeanors, malfeasance in office under both Articles I and III, and having voted not to permanently disqualify Evan Mecham from any office of honor, trust, or profit in the state, Arizona Revised Statutes Section 38-321, requires that this Court pronounce judgment by resolution entered upon the journals of the Court which shall be the judgment of the Senate.

Senator Usdane, do you have such a resolution?

SENATOR USDANE: Mr. Presiding Officer, we will need to wait a moment or to, up to two minutes. We did

not have a pre-resolution drawn since we didn't know what the vote would be. It is being drawn now.

THE PRESIDING OFFICER: I am sorry, I didn't hear.

SENATOR USDANE: It is in the process of being drawn. Since we did not know, we would just like wait a minute or two while we are on floor and as soon as I get it, I'll move.

MR. LEONARD: Mr. Presiding Officer. I would have no objection to a short recess, and would suggest the Presiding Officer that that might be in order.

THE PRESIDING OFFICER: All right. We will stand in recess then for 10 minutes.

(Recessed at 5:30 p.m.)

(Reconvened at 6:20 p.m.)

THE PRESIDING OFFICER: Thank you, ladies and gentlemen. The Court of Impeachment will reconvene. Show the presence of a majority of the Board of Managers, their counsel, and counsel for the respondent.

Senator Usdane, did you have a resolution?

SENATOR USDANE: Mr. Presiding Officer, I believe each member has Senate Resolution 1 on the floor, and I wonder if I might have the clerk read it into the record and then I'll move it.

THE PRESIDING OFFICER: It shall be done.

THE CLERK: Senate Resolution 1: Whereas February

8, 1988, the Board of Managers of the House of Representatives of the State of Arizona presented to the Senate of the State of Arizona three Articles of Impeachment in the matter of the impeachment of Evan Mecham as Governor of the State of Arizona; and

Whereas on February 10, 1988, the Senate of the State of Arizona organized as a Court of Impeachment for the purposes of trying said Articles of Impeachment; and

Whereas on March 9, 1988, the Senate of the State of Arizona sitting as a Court of Impeachment dismissed Subparagraph F of Article I of said Articles of Impeachment by a vote of 17 ayes, 12 noes and one not voting; and

Whereas on March 30, 1988, the Senate of the State of Arizona sitting as a Court of Impeachment dismissed with prejudice Article II of said Articles of Impeachment by a vote of 16 ayes, 12 noes and two not voting; and

Whereas on April 4, 1988, the Senate of the State of Arizona sitting as a Court of Impeachment completed its trial of Article I and Article III of said Articles of Impeachment; and

Whereas on April 4, 1988, the Senate of the State of Arizona sitting as a Court of Impeachment

sustained Article I of said Articles of Impeachment by a vote of 21 ayes and nine noes; and

Whereas on April 4, 1988, the Senate of the State of Arizona sitting as a Court of Impeachment sustained Article III of said Articles of Impeachment by a vote of 26 ayes and four noes; and

Whereas on April 4, 1988, the Senate of the State of Arizona sitting as a Court of Impeachment by its vote of 17 ayes for disqualification and 13 noes, has failed to disqualify Evan Mecham from holding any office of honor, trust or profit in this state;

Therefore be it resolved by the Senate of the State of Arizona, sitting as a Court of Impeachment, that:

1. Evan Mecham is convicted of high crimes, misdemeanors or malfeasance in office and therefore removed from the Office of Governor of the State of Arizona.

2. Evan Mecham is not further disqualified from holding any office of honor, trust or profit in the state.

3. The Presiding Officer is directed to enter a judgment consistent with this resolution.

4. This resolution shall be entered upon the Journal of the Court of Impeachment.

Passed in open session this 4th day of April,

1988, Shirley L. Wheaton, Clerk of the Court.

SENATOR USDANE: Mr. Presiding Officer, I'll move Senate Resolution No. 1.

THE PRESIDING OFFICER: You have heard that resolution. All in favor say "aye." All opposed say "no."

The "ayes" appear to have it, they do have it, and it is so ordered.

Pursuant to your resolution I'll file a judgment with the clerk of the Court of Impeachment who shall retain a copy of the judgment. The marshal shall deliver a copy of the judgment to the office of the Secretary of State.

There may be a few more housekeeping matters which this Court should address before it adjourns. However, I believe it would be best to take those matters, as well as any motions that counsel might wish to make, on April 6th, 1988 at 10:00 a.m.

Senator Usdane.

SENATOR USDANE: Mr. Presiding Officer, I move the Court of Impeachment stand at recess until Wednesday, April 6th, 1988, at 10:00 a.m.

THE PRESIDING OFFICER: You have heard that motion. All in favor say "aye." I all opposed say "no."

The "ayes" appear to have it, they do have

it, and it is so ordered.

(Recessed at 6:23 p.m.)

STATE OF ARIZONA)
) ss.
DISTRICT OF ARIZONA)

I HEREBY CERTIFY that I am a duly appointed, qualified and acting Official Court Reporter before the Senate of the State of Arizona sitting as a Court of Impeachment.

I FURTHER CERTIFY that the foregoing printed pages, numbered 5263 to 5411, inclusive, constitute a full, true, and accurate transcript of all of that portion of the proceedings contained herein, had in the above-entitled cause on the date specified therein, and that said transcript was prepared under my direction.

DATED at Phoenix, Arizona, this 4th day of April, 1988.

David R. Minder

Robert M. Ferrara