

116TH CONGRESS }
2d Session }

SENATE

{ S. Doc.
116-18 }

**PROCEEDINGS OF THE
UNITED STATES SENATE**

IN THE

**IMPEACHMENT TRIAL OF
PRESIDENT DONALD JOHN TRUMP**

VOLUME II: FLOOR TRIAL PROCEEDINGS



VOLUME II OF IV

JANUARY 31, 2020.—Ordered to be printed

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UNANIMOUS CONSENT AGREEMENTS RELATED TO
PRINTING

In the Senate of the United States

January 31, 2020

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the Secretary be authorized to include statements of Senators explaining their votes, either given or submitted during the legislative sessions of the Senate on Monday, February 3; Tuesday, February 4; and Wednesday, February 5; along with the full record of the Senate's proceedings and the filings by the parties in a Senate document printed under the supervision of the Secretary of the Senate that will complete the documentation of the Senate's handling of these impeachment proceedings.

The CHIEF JUSTICE. Without objection, it is so ordered.
[166 Cong. Rec. S769 (daily ed. Jan. 31, 2020)]

February 3, 2020

Mr. McCONNELL. Mr. President, I ask unanimous consent to modify the order of January 31 to allow the Senators to have until Wednesday, February 26, 2020—that would be the Wednesday after we come back—to have printed statements and opinions in the CONGRESSIONAL RECORD, if they choose, explaining their votes and include those in the documentation of the impeachment proceedings; finally, I ask that the two-page rule be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.
[166 Cong. Rec. S805 (daily ed. Feb. 3, 2020)]

February 25, 2020

Mr. McCONNELL. Madam President, I ask unanimous consent to modify the order of January 31 to allow Senators to have until Thursday, February 27, 2020, to have printed statements and opinions in the CONGRESSIONAL RECORD, if they choose, explaining their votes and include those in the documentation of the impeachment proceedings; finally, I ask that the two-page rule be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.
[166 Cong. Rec. S1160 (daily ed. Feb. 25, 2020)]

FOREWORD

By unanimous consent, the United States Senate has directed the creation of this publication, Senate Document 116–18, which contains, in four volumes, the official record of the Senate proceedings in the impeachment trial of President Donald John Trump in the 116th Congress. The purpose of these volumes is to preserve for future reference the formal record of the third presidential impeachment trial in the nation’s history. Together with the 18 volumes contained in Senate Document 116–13, which includes all publicly available material submitted to the Senate by the House of Representatives as their evidentiary record, these volumes represent the complete official record of the impeachment actions against President Trump in the 116th Congress.

The volumes are:

Volume I: Preliminary Proceedings

Volume II: Floor Trial Proceedings

Volume III: Visual Aids From the Trial

Volume IV: Statements of Senators

More than 20 years after the last presidential impeachment trial in the Senate, technology was a major difference in the conduct of these proceedings and how the record was presented. Audio and video recordings, as well as visual aids (slides) were used by both the House managers and counsel for the President throughout the course of their arguments. In Volume I and Volume II of this Document, the text of what was heard on audio and video proceedings is included in the record. However, visual aids are not reproduced in the *Congressional Record*; therefore references have been inserted in this record where such aids were used by the speaker. Those references indicate a slide number and each such slide can be found in Volume III.

VOLUME I: PRELIMINARY PROCEEDINGS

Volume I contains all preliminary impeachment proceedings prior to opening presentations by the House managers and counsel for the President and commencement of the evidentiary portion of the trial.

On December 18, 2019, the House of Representatives adopted two articles of impeachment against President Trump (House Resolution 755, 116th Congress). A subsequent resolution, adopted on January 15, 2020, appointed managers on the part of the House of Representatives (House Resolution 798, 116th Congress).

On January 15, 2020, Majority Leader Mitch McConnell and Democratic Leader Charles E. Schumer addressed the Senate on the issue of impeachment. Following recognition of Senate leaders, the Clerk of the House informed the Senate in open session that

the House of Representatives had passed House Resolution 798, authorizing and appointing managers for the impeachment trial of President Trump. Subsequently, the Senate unanimously agreed to receive the managers, request the attendance of the Chief Justice of the United States, appoint an escort committee for the Chief Justice, and provide necessary access to the Senate Chamber. The Senate notified the House of Representatives that it was ready to receive the managers and begin the trial.

On January 16, 2020, Majority Leader McConnell and Democratic Leader Schumer addressed the Senate on the issue of impeachment. At 12:00 noon on January 16, the managers on the part of the House of Representatives appeared at the bar of the Senate to exhibit the articles of impeachment, set forth in House Resolution 755. Following exhibition of the articles of impeachment, the president pro tempore of the Senate, by unanimous consent, was authorized to appoint a committee consisting of four senators to escort the Chief Justice of the United States to the Senate Chamber. On January 16, the president pro tempore of the Senate appointed Senators Roy Blunt, Patrick Leahy, Lindsey Graham, and Dianne Feinstein to serve as the escort committee.

At 2:00 p.m. on January 16, the Chief Justice, as presiding officer of the presidential impeachment trial, took the prescribed oath and then administered the oath to all senators present. With the Chief Justice presiding, the Senate unanimously agreed that a summons be issued to President Trump, that his answer to the articles of impeachment be filed with the Secretary of the Senate by 6:00 p.m. on January 18, 2020, and that the House of Representatives file its replication to the President's answer with the Secretary by 12:00 noon on January 20, 2020. The Senate also agreed that trial briefs, if desired, should be filed by the House of Representatives with the Secretary by 5:00 p.m. on January 18 and by the President by 12:00 noon on January 20, and any rebuttal brief may be filed by the House by 12:00 noon on January 21, 2020. These agreements also authorized the Secretary to print all of these preliminary matters as a Senate document to be made available to all parties. These documents were published within 24 hours of their filing as Senate Document 116–12, and are also reprinted in this Document in Volume I, both in their original form and as they were published in the *Congressional Record* on January 21, 2020.

On January 21, Majority Leader McConnell and Democratic Leader Schumer again addressed the Senate on the issue of impeachment. After one remaining Senator was sworn in to the impeachment proceedings and additional preliminary matters were addressed, Leader McConnell introduced Senate Resolution 483 (116th Congress) to set forth procedures for consideration of the articles of impeachment against President Trump. Counsel for the President and then the House managers were each given up to one hour to debate the Resolution, presenting the first arguments by each side in these proceedings. After initial debate on the Resolution, Democratic Leader Schumer proposed Amendment Number 1284 to subpoena certain White House documents and records. After up to two more hours divided by the parties, the amendment was tabled (roll call vote number 15). Ten additional amendments

(numbers 1285–1294) were proposed by Democratic Leader Schumer (one on behalf of Senator Van Hollen) dealing with the subpoenaing of documents and records, the calling of witnesses, and the timing of trial proceedings. After further debate on each amendment, each was tabled by a roll call vote. After all amendments had been disposed of, the Senate adopted Resolution 483 by a vote of 53 yeas to 47 nays (roll call vote number 26).

VOLUME II: FLOOR TRIAL PROCEEDINGS

Volume II reproduces the official record of the Senate floor proceedings in the impeachment trial of President Trump, beginning with opening arguments by House managers and counsel for the President, as ordered under Senate Resolution 483. The managers presented their case on behalf of the House of Representatives on January 22, 23, and 24, 2020. Counsel for the President presented their case on January 25, 27, and 28. On January 29 and 30, senators posed questions to House managers and to counsel for the President.

On January 31, 2020, pursuant to Senate Resolution 483, the Senate considered whether it would be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents. The House managers' argument was presented first, followed by counsel for the President. After argument, the Chief Justice put the question to the Senate for its decision, and by a vote of 49 yeas to 51 nays (roll call vote number 27) the Senate determined it would not permit motions to subpoena witnesses or documents. Majority Leader McConnell then introduced Senate Resolution 488, proposing procedures for the remainder of the impeachment trial. Democratic Leader Schumer proposed 4 amendments to the Resolution. No argument was heard on the Resolution or the amendments. Each amendment was tabled (roll call vote numbers 28 through 31), and the Resolution was agreed to by the Senate by a vote of 53 yeas to 47 nays (roll call vote number 32).

No depositions were taken during the Senate proceedings, and no witnesses appeared at the trial. The House managers and counsel for the President presented closing arguments on February 3.

Volume II concludes with the February 5, 2020, vote and judgment of the Senate to acquit President Trump on two articles of impeachment (roll call vote numbers 33 and 34).

VOLUME III: VISUAL AIDS FROM THE TRIAL

Volume III reproduces the complete set of visual aids used by House managers and counsel for the President during the preliminary and trial proceedings. A notation indicating the use of a visual aid is embedded in the transcript of the proceedings (Volumes I and II) with citation information for items included in Volume III.

VOLUME IV: STATEMENTS OF SENATORS

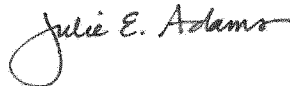
On January 31, 2020, the Senate unanimously agreed to provide each senator an opportunity to place in the *Congressional Record* a statement explaining his or her vote on the articles of impeachment, and to include those statements in the official record of the

Senate's impeachment proceedings. Modified on February 3 and again on February 25, the unanimous consent agreement set a deadline of February 27, 2020, for submission of statements. Those statements are included in Volume IV.

The publication of these volumes, supplemented with Senate Document 116-13, sets forth a complete record of this historic impeachment trial and will provide for a fuller understanding of the way in which the Senate conducted these proceedings.

ACKNOWLEDGEMENTS

I want to thank my staff from the Executive Office, Legislative Offices, Office of the Parliamentarian, Office of Printing and Document Services, Senate Historical Office and Senate Library for their work on both the trial and the execution of this Document.

A handwritten signature in cursive script that reads "Julie E. Adams". The signature is written in dark ink and is positioned above the printed name and title.

JULIE E. ADAMS,
Secretary of the Senate.

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Sen. Barrasso	2193
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Sen. Lankford	2207
Sen. Tillis	2224

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Sen. Reed	2226
Sen. Casey	2273
Sen. Cramer	2285

ⁱ For ease of reference, the documents contained in S. Doc. 116–12, i.e., the pertinent constitutional provisions, the Senate Impeachment Rules, the Articles of Impeachment, the Answer of President Trump, and the Replication of the House of Representatives, are reprinted in this publication.

ⁱⁱ Slide images are only printed in Volume III. CONGRESSIONAL RECORD pages have been listed for ease of reference.

[From the CONGRESSIONAL RECORD, January 22, 2020]

The Senate met at 1 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will lead us in prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

Sovereign God, author of liberty, we gather in this historic Chamber for the solemn responsibility of these impeachment proceedings. Give wisdom to the distinguished Chief Justice, John Roberts, as he presides.

Lord, You are all-powerful and know our thoughts before we form them. As our lawmakers have become jurors, remind them of Your admonition in 1 Corinthians 10:31, that whatever they do should be done for Your glory. Help them remember that patriots reside on both sides of the aisle, that words have consequences, and that how something is said can be as important as what is said. Give them a civility built upon integrity that brings consistency in their beliefs and actions.

We pray in Your powerful Name. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. Senators, will you please be seated.

If there is no objection, the Journal of the proceedings of the trial are approved to date.

Without objection, it is so ordered.

The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, for the information of all of our colleagues, no motions—no motions—were filed this morning, so we will proceed to the House managers' presentation. We will go for approximately 2 hours and take a short recess when there is an appropriate break time between presenters.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 483, the managers for the House of Representatives have 24 hours to make the presentation of their case.

The Senate will now hear you.

OPENING STATEMENT

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, counsel for the President, and my fellow House managers: I want to begin by thanking you, Chief Justice, for a very long day, for the way you have presided over these proceedings. I want to thank the Senators also. We went well into the morning, as you know, until I believe around 2 in the morning. You paid attention to every word and argument you heard from both sides in this impeachment trial, and I know we are both deeply grateful for that.

It was an exhausting day for us, certainly, but we have adrenaline going through our veins. For those who are required to sit and listen, it is a much more difficult task. Of course, we know our positions. You have the added difficulty of having to weigh the facts and the law. So I want to begin today by thanking you for the conduct of the proceedings yesterday and inviting your patience as we go forward. We have some very long days yet to come.

So let us begin.

"When a man unprincipled in private life, desperate in his fortune, bold in his temper, [Slide 143] possessed of considerable talents, having the advantage of military habits, despotic in his ordinary demeanor, known to have scoffed in private at the principles of liberty—when such a man is seen to mount the hobby horse of popularity, to join in the cry of danger to liberty, to take every opportunity of embarrassing the general government and bringing it under suspicion, to flatter and fall in with all the nonsense of the zealots of the day, it may justly be suspected that his object is to throw things into confusion that he may ride the storm and direct the whirlwind."

Those words were written by Alexander Hamilton in a letter to President George Washington at the height of the panic of 1792, a financial credit crisis that shook our young Nation. Hamilton was responding to sentiments relayed to Washington as he traveled the country that America, in the face of that crisis, might descend from a republican form of government, plunging instead into that of monarchy.

The Framers of the Constitution worried then, as we worry today, that a leader might come to power not to carry out the will of the people he was elected to represent but to pursue his own interests. They feared that a President would subvert our democracy by abusing the awesome power of his office for his own personal

or political gain. And so they devised a remedy as powerful as the evil it was meant to combat: impeachment.

As centuries have passed, our Founders achieved an almost mythical character. We are aware of their flaws, certainly some very painful and pronounced indeed. Yet, when it came to the drafting of the new system of government never seen before and with no guarantee it would succeed, we cannot help but be in awe of their genius, their prescience even, vindicated time and again.

Still, maybe because of their brilliance and the brilliance of their words, we find year after year it more difficult to imagine them as human beings. This is no less true of Alexander Hamilton, notwithstanding his recent return to celebrity. But they were human beings. They understood human frailties, even as they exhibited them. They could appreciate, just as we can, how power can corrupt. Even as we struggle to understand how the Framers might have responded to Presidential misconduct of the kind and character that we are here to try, we should not imagine for one moment that they lacked basic common sense or refuse to apply it ourselves.

They knew what it was like to live under a despot, and they risked their lives to be free of it. They knew they were creating an enormously powerful executive, and they knew they needed to constrain it. They did not intend for the power of impeachment to be used frequently or over mere matters of policy, but they put it in the Constitution for a reason: for a man who would subvert the interests of the Nation to pursue his own interests; for a man who would seek to perpetuate himself in office by inviting foreign interference and cheating in an election; for a man who would be disdainful of constitutional limit, ignoring or defeating the other branches of government and their coequal powers; for a man who believed that the Constitution gave him the right to do anything he wanted and practiced in the art of deception; for a man who believed that he was above the law and beholden to no one; for a man, in short, who would be a King.

We are here today in this hallowed Chamber undertaking this solemn action for only the third time in history because Donald J. Trump, the 45th President of the United States, has acted precisely as Hamilton and his contemporaries feared. President Trump solicited foreign interference in our democratic elections, abusing the power of his office, to seek help from abroad to improve his reelection prospects at home. When he was caught, he used the powers of that office to obstruct the investigation into his own misconduct.

To implement this corrupt scheme, President Trump pressured the President of Ukraine to publicly announce investigations into two discredited allegations that would benefit President Trump's 2020 Presidential campaign. When the Ukrainian President did not immediately assent, President Trump withheld two official acts to induce the Ukrainian leader to comply: a head-of-state meeting in the Oval Office and military funding. Both were of great consequence to Ukraine and to our national interests in security, but one looms largest. President Trump withheld hundreds of millions of dollars in military aid to a strategic partner at war with Russia to secure foreign help with his reelection—in other words, to cheat.

In this way, the President used official state powers available only to him and unavailable to any political opponent to advantage himself in a democratic election. His scheme was undertaken for a simple but corrupt reason—to help him win reelection in 2020. But the effect of the scheme was to undermine our free and fair elections and to put our national security at risk.

It was not even necessary that Ukraine undertake the political investigations the President was seeking. They merely had to announce them. This is significant, for President Trump had no interest in fighting corruption, as he would claim after he was caught. Rather, his interest was in furthering corruption by the announcement of investigations that were completely without merit.

The first sham investigation that President Trump desired was into former Vice President Joe Biden, who had sought the removal of a corrupt Ukrainian prosecutor during the previous U.S. administration.

The Vice President acted in accordance with U.S. official policy at the time and was supported unanimously by our European allies and key global financial institutions, such as the International Monetary Fund, which shared the concern over corruption.

Despite this fact, in the course of this scheme, President Trump and his agents pressed the Ukrainian President to announce an investigation into the false claim that Vice President Biden wanted the corrupt prosecutor removed from power in order to stop an investigation into Burisma Holdings, a company on whose board Biden's son Hunter sat.

This allegation is simply untrue. It has been widely debunked by Ukrainian and American experts alike. That reality mattered not to President Trump. To him, the value in promoting a negative tale about former Vice President Biden—true or false—was its usefulness to his reelection campaign. It was a smear tactic against a political opponent that President Trump apparently feared.

Remarkably but predictably, Russia, too, has sought to support this effort to smear Mr. Biden, reportedly hacking into the Ukraine energy company at the center of the President's disinformation campaign only last week.

Russia almost certainly was looking for information related to the former Vice President's son so that the Kremlin could also weaponize it against Mr. Biden, just like it did against Hillary Clinton in 2016, when Russia hacked and released emails from her Presidential campaign.

President Trump has made it abundantly clear that he would like nothing more than to make use of such dirt against Mr. Biden, just as he made use of Secretary Clinton's hacked and released emails in his previous Presidential campaign.

That brings us to the other sham investigation that President Trump demanded the Ukrainian leader announce. This investigation was related to a debunked conspiracy theory, alleging that Ukraine, not Russia, interfered in the 2016 Presidential election. This narrative, propagated by the Russian intelligence services, contends that Ukraine sought to help Hillary Clinton and harm then-Candidate Trump and that a computer server providing this fiction is hidden somewhere in Ukraine.

That is the so-called CrowdStrike conspiracy theory. This tale is also patently false, and, remarkably, it is precisely the inverse of what the U.S. intelligence community's unanimous assessment was that Russia interfered in the 2016 election in sweeping and systemic fashion in order to hurt Hillary Clinton and help Donald Trump.

Nevertheless, the President evidently believed that a public announcement lending credence to these allegations by the Ukrainian President could assist his reelection by putting to rest any doubts Americans may have had over the legitimacy of his first election, even as he invited foreign interference in the next.

To the degree that most Americans have followed the President's efforts to involve another foreign power in our election, they may be most familiar with his entreaty to the Ukrainian President on the now infamous July 25 call to "do us a favor, though" and investigate Biden and the 2016 conspiracy theory.

That call was not the beginning of the story of the President's corrupt scheme, nor was it the end. Rather, it was merely part—although, a significant part—of a months' long effort by President Trump and his allies and associates who applied significant and increasing pressure on Ukraine to announce these two politically motivated investigations.

Key figures in the Trump administration were aware or directly involved or participated in the scheme. As we saw yesterday, one witness—a million-dollar donor to the President's inaugural committee—put it this way: Everyone was in the loop.

After twice inviting Ukraine's new President to the White House without providing a specific date for the proposed visit, President Trump conditioned this coveted Head-of-State meeting on the announcement of these sham investigations. For Ukraine's new and untested leader, an official meeting with the President of the United States in the Oval Office was critical. It would help bestow on him important domestic and international legitimacy, as he sought to implement an ambitious anti-corruption platform.

Actual and apparent support from the President of the United States would also strengthen his position as he sought to negotiate a peace agreement with Russia's President Vladimir Putin, seeking an end to Russia's illegal annexation and continued military occupation of parts of Ukraine.

But most pernicious, President Trump conditioned hundreds of millions of dollars in congressionally appropriated taxpayer-funded military assistance for the same purpose to apply more pressure on Ukraine's leader to announce the investigations. This military aid, which has long enjoyed bipartisan support, was designed to help Ukraine defend itself from the Kremlin's aggression.

More than 15,000 Ukrainians have died fighting Russian forces and their proxies—15,000. The military aid was for such essentials as sniper rifles, rocket-propelled grenade launchers, radar night-vision goggles, and other vital support for the war effort.

Most critically, the military aid we provide Ukraine helps to protect and advance American national security interests in the region and beyond. America has an abiding interest in stemming Russian expansionism and resisting any nations' efforts to remake the map

of Europe by dint of military force, even as we have tens of thousands of troops stationed there.

Moreover, as one witness put it during our impeachment inquiry, the United States aids Ukraine and her people so that we can fight Russia over there and we don't have to fight Russia here.

When the President's scheme was exposed and the House of Representatives properly performed its constitutional responsibility to investigate the matter, President Trump used the same unrivaled authority at his disposal as Commander in Chief to cover up his wrongdoing.

In unprecedented fashion, the President ordered the entire executive branch of the United States of America to categorically refuse and completely obstruct the House's impeachment investigation. Such a wholesale obstruction of congressional impeachment has never before occurred in our democracy. It represents one of the most blatant efforts of a coverup in history.

If not remedied by his conviction in the Senate and removal from office, President Trump's abuse of his office and obstruction of Congress will permanently alter the balance of power among the branches of government, inviting future Presidents to operate as if they are also beyond the reach of accountability, congressional oversight, and the law.

On the basis of this egregious misconduct, the House of Representatives returned two Articles of Impeachment against the President: first, charging that President Trump corruptly abused the powers of the Presidency to solicit foreign interference in the upcoming Presidential election for his personal political benefit; and, second, that President Trump obstructed an impeachment inquiry into that abuse of power in order to cover up his misconduct.

The House did not take this extraordinary step lightly. As we will discuss, impeachment exists for cases in which the conduct of the President rises beyond mere policy disputes to be decided otherwise and without urgency at the ballot box.

Instead, we are here today to consider a much more grave matter, and that is an attempt to use the powers of the Presidency to cheat in an election. For precisely this reason, the President's misconduct cannot be decided at the ballot box, for we cannot be assured that the vote will be fairly won.

In corruptly using his office to gain a political advantage, in abusing the powers of that office in such a way to jeopardize our national security and the integrity of our elections, in obstructing the investigation into his own wrongdoing, the President has shown that he believes that he is above the law and scornful of constraint.

As we saw yesterday on the screen, under article II he can do anything he wants. Moreover, given the seriousness of the conduct at issue and its persistence, this matter cannot and must not be decided by the courts, which apart from the presence of the Chief Justice here today, are given no role in impeachments in either the House or the Senate.

Being drawn into litigation, taking many months or years to complete, would provide the President with an opportunity to continue his misconduct. He would remain secure in the knowledge that he may tie up the Congress and the courts indefinitely, as he

has with Don McGahn, rendering the impeachment power effectively meaningless.

We also took the step with the knowledge that this was not the first time the President solicited foreign interference in our elections. In 2016, then-candidate Trump implored Russia to hack his opponent's email account, something that the Russian military agency did only hours later—only hours later.

When the President said, “hey, Russia, if you’re listening,” they were listening. Only hours later they hacked his opponent's campaign.

The President has made it clear this would also not be the last time, asking China only recently to join Ukraine in investigating his political opponent.

Over the coming days, we will present to you and to the American people the extensive evidence collected during the House's impeachment inquiry into the President's abuse of power—overwhelming evidence, notwithstanding his unprecedented and wholesale obstruction of the investigation into that misconduct.

You will hear and read testimony from courageous public servants who upheld their oath to the Constitution and their legal obligations to comply with congressional action, despite a categorical order by President Trump not to cooperate with the impeachment inquiry.

These are courageous Americans who were told by the President of the United States not to cooperate, not to appear, not to testify, but who had the sense of duty to do so. But more than that, you will hear from witnesses who have not yet testified, such as John Bolton and Mick Mulvaney, Mr. Blair and Mr. Duffey. And if you can believe the President's words last month, you will also hear from Secretary Pompeo. You will hear their testimony at the same time as the American people; that is, if you allow it, if we have a fair trial.

During our presentation, you will see documentary records, those the President was unable to suppress, that exposed the President's scheme in detail. You will learn of further evidence that has been revealed in the days since the House voted to impeach President Trump, even as the President and his agents have persisted in their efforts to cover up their wrongdoing from Congress and the public.

You will see dozens of new documents providing new and critical evidence of the President's guilt that remain at this time in the President's hands and in the hands of the Department of Defense and the Department of State and the Office of Management and Budget, even the White House. You will see them and so will the American people if you allow it—if, in the name of a fair trial, you will demand it.

These are politically charged times. Tempers can run high, particularly where this President is concerned, but these are not unique times. Deep divisions and disagreements were hardly alien concepts to the Framers so they designed impeachment power in such a way as to insulate it as best they could from the crush of partisan politics. The Framers placed the question of removal before the Senate, a body able to rise above the fray, to soberly judge

the President's conduct or misconduct for what it was, nothing more and nothing less.

In Federalist No. 65, Hamilton wrote: [Slide 144]

Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence enough in its own situation, to preserve, unawed and uninfluenced, the necessary impartiality between an individual accused, and the representatives of the people, his accusers?

It is up to you to be the tribunal that Hamilton envisioned. It is up to you to show the American people and yourselves that his confidence and that of the other Founders was rightly placed. The Constitution entrusts you to the responsibility of acting as impartial jurors, to hold a fair and thorough trial, and to weigh the evidence before you no matter what your party affiliation or your vote in the previous election or the next. Our duty is to the Constitution and to the rule of law.

I recognize there will be times during the trial that you may long to return to the business of the Senate. The American people look forward to the same but not before you decide what kind of democracy that you believe we ought to be and what the American people have a right to expect in the conduct of their President.

The House believes that an impartial juror, upon hearing the evidence that the managers will lay out in the coming days, will find that the Constitution demands the removal of Donald J. Trump from his office as President of the United States. But that will be for you to decide. With the weight of history upon you, and as President Kennedy once said: "With a good conscience our only sure reward. . . ."

In drafting our Constitution, the Framers designed a new and untested form of government. [Slide 145] It would be based on free and fair elections to ensure that our political leaders would be chosen democratically and by citizens of our country alone. Having broken free from a King with unbridled authority who often placed his own interests above that of the people, the Framers established a structure that would guarantee that the Chief Executive's power flowed only from his obligation to the people rather than from a sovereign whose power was confirmed on him by divine right.

In this new architecture, no branch of government or individual would predominate over another. In this way, the Founders ensured that their elected leaders and their President would use the powers of office only to undertake that which the people desired and not for their personal aggrandizement or enrichment.

What did those who rebelled and fought a revolution desire? Nothing different than what we, the generations that have followed, desire: that no person, including and especially the President, would be above the law. Nothing could be more dangerous to a democracy than a Commander in Chief who believed that he could operate with impunity, free from accountability—nothing, that is, except a Congress that is willing to let it be so.

To ensure that no such threat can take root and subvert our fledgling democracy, the Framers divided power among three co-equal branches of government—the executive, the legislative, and the judicial branches—so that ambition may be made to counter ambition. They provided for Presidential elections every 4 years,

and the Framers required that the President swear an oath to faithfully execute the law and to preserve, protect, and defend the Constitution of the United States.

Even with these guardrails in place, the Framers understood an individual could come to power who defied that solemn oath, who pursued his own interests rather than those of the country he led. For that reason, the Framers adopted a tool used by the British Parliament to restrain its officials: the power of impeachment. Rather than a mechanism to overturn an election, impeachment would be a remedy of last resort, and, unlike in England, the Framers applied this ultimate check to the highest office in the land, to the President of the United States. Impeachment removal of a duly elected President was not intended for policy disputes or poor administration of the State. Instead, the Framers had in mind the most serious of offenses: those against the public itself.

Hamilton explained that impeachment was not designed to cover only statutory common law crimes but instead crimes against the body politic. Hamilton wrote: [Slide 146]

The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may, with peculiar propriety, be denominated political, as they relate chiefly to injuries done immediately to the society itself.

In other words, impeachment would be confined to abuses of people's trust and to the society itself. This is precisely the abuse that has been undertaken by our current President when he withheld money in support for an ally at war to secure a political benefit. The punishment for those crimes would fit the political nature of the offense. As James Wilson—a delegate of the Constitutional Convention and a future Associate Justice of the Supreme Court—reasoned that impeachment “was confined to political characters, to political crimes and misdemeanors, and to political punishments.” The Framers determined that punishment would be neither prison nor fines but, instead, limited to removal from office and disqualification from holding future office.

The Framers chose to undertake impeachment for treason, bribery, or other high crimes [Slide 147] and misdemeanors to underscore the requirement of an offense against society. In this phrase, “high” modifies both the crimes and the misdemeanors in that both relate to a high injustice, a transgression committed against the people and to the public trust. The Framers had two broad categories in mind: those actions that are facially permissible under the President's authority but are based on corrupt motives, such as seeking to obtain a personal benefit through public office, and those that far exceed the President's constitutional authority or violate the legal limits on that authority.

In article I, we deal with the first evil which the Framers wished to guard against; that is, cases in which a President corruptly misused the power otherwise bestowed on him to secure a personal reward. Guarding against a President who undertakes official acts with a corrupt motive of helping himself is at the heart of the impeachment power. As one scholar explained, the President's duty to faithfully execute the law requires that he undertakes actions only when motivated in the public interest rather than in their private self-interest. Efforts to withhold official acts for personal gain coun-

term and the President's sacred oath and, therefore, constitute impeachable behavior as it was conceived by the Framers.

In article II, we also deal with the second evil contemplated by the Founders, who made it clear that the President ought not operate beyond the limits placed on him by legislative and judicial branches. Impeachment was warranted for a President who usurped the power of the Constitution that was not granted to him, such as to defy Congress the right to determine the propriety, the scope, and the nature of an impeachment inquiry into his own misconduct.

The Framers fashioned a powerful Chief Executive but not one beyond accountability of law. When a President wields power in ways that are inappropriate and seeks to extinguish the rights of Congress, he exceeds the power of constitutional authority and violates the limits placed on his conduct. Obstruction of a separate and coequal branch of government for the purposes of covering up an abuse of power not only implies a corrupt intent but also demonstrates a remarkable antipathy toward the balance of power contemplated and enshrined in our Constitution. It is a betrayal of the President's sacred oath of office and of his duty to put the country before himself.

On September 24, 2019, [Slide 148] Speaker of the House NANCY PELOSI announced that the House of Representatives would move forward with an official impeachment inquiry into President Donald J. Trump. The announcement followed public reporting in the United States and Ukraine that the President and his agents sought Ukraine's help in his reelection effort and revelations that the White House was blocking from Congress an intelligence community whistleblower complaint possibly related to this grave offense.

The next day, on September 25, under extraordinary pressure, the White House released publicly the record of the July 25 call between President Trump and Ukrainian President Volodymyr Zelensky. The call record revealed that President Trump explicitly requested that the new leader undertake investigations beneficial to President Trump's reelection campaign. Upon release of the record of the call, President Trump claimed that the call was "perfect." Far from perfect, the call record revealed a President who used his high office to personally and directly press the leader of a foreign country to do his political dirty work. Asking for a favor, President Trump insisted that President Zelensky investigate a formidable potential political opponent, former Vice President Joe Biden, as well as the baseless conspiracy theory that Ukraine, not Russia, interfered in the 2016 election to assist then-Candidate Trump's opponent.

Witnesses who listened to the call as it transpired testified that they immediately recognized these requests did not represent official U.S. policy and, instead, were politically charged appeals, not appropriate for a President to make. Key witnesses emphasized it was not necessary that Ukraine actually undertake the investigations, only that the Ukrainian President denounce them.

President Trump's objective was not to encourage a foreign government to investigate legitimate allegations of misconduct or wrongdoing abroad, made clear, as well, by the fact that the inves-

tigations he wanted announced have been discredited entirely. Rather, the President simply wanted to reap a political benefit by tarnishing a political rival and in attempting to erase from history his previous election misconduct. To compel the Ukrainian President to do his political dirty work, President Trump withheld from President Zelensky two official acts of great importance: that coveted White House meeting to which President Zelensky had already been invited and \$391 million in military assistance for the Ukrainians to fight the Russians.

For a strategic partner of the United States in a hot war with Russian-backed forces inside its own borders, this symbolic support conferred on it by an Oval Office visit with the President of the United States and the lifesaving support of our military aid was essential. As the House's presentation will make clear, in directly soliciting foreign interference and withholding those official acts in exchange for the announcement of political investigations beneficial to his election, the President put his own interest above the national interest.

President Trump undermined the integrity of our free and fair elections by pressing a foreign power to influence our most sacred right as citizens, our right to freely choose our leaders, and he threatened our national security by withholding critical aid from a partner on the frontlines of war with Russia, an aggressor that has threatened peace and stability on an entire continent. In so doing, the President sacrificed not only the security of our European allies but also our Nation's core national security interests. President Trump undertook this pressure campaign through handpicked agents inside and outside of government who circumvented traditional policy channels. President Trump intentionally bypassed many U.S. Government career officials with responsibility over Ukraine and advanced his scheme primarily through the effort of his personal attorney Rudy Giuliani. President Trump carried out this scheme with the knowledge of senior administration officials, including the President's Acting Chief of Staff Mick Mulvaney, Secretary of State Mike Pompeo, Vice President MIKE PENCE, National Security Council Legal Advisor John Eisenberg, and White House Counsel Pat Cipollone.

When the President became aware that the scheme would be uncovered, he undertook an unprecedented effort to obstruct the House of Representatives' impeachment inquiry to hide it from the public and from Congress, including all evidence related to his misconduct. That coverup continues today as the administration has not provided a single document pursuant to lawful subpoenas by the House.

The administration also continues to prevent witnesses from cooperating, further obstructing the House's efforts—efforts the President is, no doubt, proud of but which threaten the integrity of this institution and this Congress as a coequal branch of power—and our ability not only to do oversight but to hold a President who is unindictable accountable.

Despite these efforts to obstruct our inquiry, the House of Representatives uncovered overwhelming evidence related to the President's misconduct through interviews with 17 witnesses who appeared before the Intelligence, Oversight and Reform, and Foreign

Affairs Committees. Many of these witnesses bravely defied White House orders not to comply with duly authorized congressional subpoenas. Were it not for them—were it not for Ambassador Marie Yovanovitch, who was the first through the breach—we may never have known of the President's scheme.

I want you to imagine, just for a minute, what kind of courage that took for Ambassador Yovanovitch—the subject of that vicious smear campaign—to risk her reputation and her career to stand up to the President of the United States, who was instructing her through his agents: You will not cooperate. You will not testify. You will tell them nothing.

Or Bill Taylor, a West Point graduate and a Vietnam veteran with a Bronze Star and something he was even more proud of—the Combat Infantryman Badge. He knows what courage is. He showed a different kind of courage in Vietnam, but he also showed courage, as did others, in coming forward and defying the President's order that he obstruct to tell the American people what he knew.

But for the courage of people like them and Lieutenant Colonel Vindman, a Purple Heart recipient, we would know nothing of the President's misconduct—nothing. When the President directs his ire toward these people, this is why—because they showed the courage to come forward.

Now, in the Intelligence Committee, we held 7 open hearings with 12 fact witnesses. Separately, the Judiciary Committee held public hearings with constitutional law experts and counsel from the House Intelligence Committee as it sought to determine whether to draft and consider Articles of Impeachment. The House also collected text messages related to the President's scheme from a witness who provided limited personal communications.

Since the conclusion of our inquiry, new evidence has continued to come to light, through court-ordered releases of administration documents and public reporting, underscoring that there is significantly more evidence of the President's guilt which he continues to block from Congress, including the Senate. Nevertheless, the documents and testimony that we were able to collect paint an overwhelming and damning picture of the President's efforts to use the powers of his office to corruptly solicit foreign help in his reelection campaign and withhold official acts and military aid to compel that support.

Over the coming days, you will hear remarkably consistent evidence of President Trump's corrupt scheme and coverup. When you focus on the evidence uncovered during the investigation, you will appreciate there is no serious dispute about the facts underlying the President's conduct, and this is why you will hear the President's lawyers make the astounding claim: You can't impeach a President for abusing the powers of his office. It is because they can't seriously contest that that is exactly—exactly—what he did, and so they must go find a lawyer somewhere.

Apparently, they could not go to their own Attorney General. It was just reported in a memo he wrote, as part of the audition for Attorney General which opined that the President can be impeached for abusing the public trust. He couldn't go to Bill Barr for that opinion. He couldn't even go to Jonathan Turley, their expert

in the House, for an opinion. No, they had to go outside of these experts, outside of constitutional law, to a criminal defense lawyer and professor. And why? Because they can't contest the facts. The President was the key player in the scheme. Everyone was in the loop. He directed the actions of his team. He personally asked a foreign government to investigate his opponent. These facts are not in dispute.

Ultimately, the question for you is whether the President's undisputed actions require the removal of the 45th President of the United States from office because he abused his office and the public trust by using his power for personal gain by seeking illicit foreign assistance in his reelection and covering it up.

Other than voting on whether to send our men and women to war, there is, I think, no greater responsibility than the one before you now. The oath that you have taken to impartially weigh the facts and evidence requires serious and objective consideration—decisions that are about country, not party; about the Constitution, not politics; about what is right and what is wrong.

After you consider the evidence and weigh your oath to render a fair and impartial verdict, I suggest to you today that the only conclusion consistent with the facts and law—not just the law but the Constitution—is clear as described by constitutional law experts' testimony before the House: If this conduct is not impeachable, then nothing is.

Let me take a moment to describe to you how we intend to present the case over the coming days.

You will hear today the details of the President's corrupt scheme in narrative form, illustrating the timeline of the effort through the testimony of the numerous witnesses who came before the House as well as through documents and materials we collected as evidence during the investigation. After you hear the factual chronology, we will then discuss the constitutional framework of impeachment as it was envisioned by the Founders.

Before we analyze how the facts of the President's misconduct and coverup lead to the conclusion that the President undertook the sort of corrupt course of conduct that impeachment was intended to remedy, let me start with a preview of the President's scheme, the details of which you will hear during the course of this day.

President Trump's monthslong scheme to extract help with his 2020 reelection [Slide 149] campaign from the new Ukrainian President involved an effort to solicit and then compel the new leader to announce political investigations. The announcement would reference two specific investigations. One was intended to undermine the unanimous consensus of our intelligence agencies, Congress, and Special Counsel Robert Mueller that Russia interfered in the 2016 election to help then-Candidate Trump and another to hurt the Presidency of former Vice President Joe Biden.

The Kremlin itself has been responsible for first propagating one of the two false narratives that the President desired. In February 2017, less than a month after the U.S. intelligence community released its assessment that Russia alone was responsible for a covert influence campaign designed to help President Trump win the 2016 election, President Putin said: [Slide 150]

As we all know, during the Presidential campaign in the United States, the Ukrainian government adopted a unilateral position in favor of one candidate. More than that, certain oligarchs—certainly with the approval of political leadership—funded this candidate—or a female candidate to be more precise.

Those were Putin's words on February 2, 2017.

Of course, this is false, and it is part of a Russian counternarrative that President Trump and some of his allies have adopted.

Fiona Hill, the Senior Director for Europe and Russia at the National Security Council, described Russia's effort to promote this baseless theory.

(Text of Videotape presentation:)

Dr. HILL. Based on questions and statements I have heard, some of you on this committee appear to believe that Russia and its Security Services did not conduct a campaign against our country and that, perhaps, somehow, for some reason, Ukraine did. This is a fictional narrative that has been perpetrated and propagated by the Russian Security Services themselves. The unfortunate truth is that Russia was the foreign power that systematically attacked our democratic institutions in 2016. This is the public conclusion of our intelligence agencies, confirmed by bipartisan congressional reports. It is beyond dispute even if some of the underlying details must remain classified.

Mr. Manager SCHIFF. This, of course, was not the first time that President Trump embraced Russian activity and disinformation.

On July 24 of last year, Special Counsel Robert Mueller testified before Congress that Russia interfered in the 2016 election in a "sweeping and systemic fashion" to benefit Donald Trump's political campaign. Mueller and his team found "the Russian Government perceived that it would benefit from a Trump Presidency and worked to secure that outcome." They also found that the Trump campaign expected it would benefit electorally from information stolen and released through Russian efforts.

Just as he solicited help from Ukraine in 2019, in 2016 then-Candidate Trump also solicited help from Russia in his election effort. As you will recall, at a rally in Florida, he said the following:

(Text of Videotape presentation:)

Mr. TRUMP. Russia, if you are listening, I hope you're able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press. Let's see if that happens.

Mr. Manager SCHIFF. Following Special Counsel Mueller's testimony, during which he warned against future interference in our elections, did the President recognize the threat posed to our democracy and renounce Russian interference in our democracy? Did he choose to stand with his own intelligence agencies, both Houses of Congress, and the special counsel's investigation in affirming that Russia interfered in our last election?

He did not.

Instead, only 1 day after Special Counsel Mueller testified before Congress, empowered in the belief that he had evaded accountability for making use of foreign support in our last election, President Trump was on the phone with the President of Ukraine, pressing him to intervene on President Trump's behalf in the next election.

Let's take a moment to let that sink in.

On July 24, [Slide 151] Bob Mueller concludes a lengthy investigation. He comes before the Congress. He testifies that Russia

systemically interfered in our election to help elect Donald Trump, that the campaign understood that, and that they willfully made use of that help. On July 24, that is what happens.

On the very next day—the very next day—President Trump is on the phone with a different foreign power, this time Ukraine, trying to get Ukraine to interfere in the next election—the next day.

That should tell us something. He did not feel chained by what the special counsel found. He did not feel deterred by what the special counsel found. He felt emboldened by escaping accountability, for the very, very next day, he is on the phone, soliciting foreign interference again.

Now, that July 25 phone call between President Trump and President Zelensky was a key part of President Trump's direct and corrupt solicitation of foreign help in the 2020 election.

The request likely sounded familiar to President Zelensky, who had been swept into office in a landslide victory on a campaign of rooting out just the type of corruption he was being asked to undertake on this call with our President.

Zelensky campaigned as a reformer, as someone outside of politics who would come up and clean up corruption, who would end the political prosecutions, end the political investigations. And what is his most important and powerful patron asking him to do? To do exactly what he campaigned against. No wonder he resisted this pressure campaign.

Now, President Trump had been provided talking points for discussion by the National Security Council staff beforehand, including recommendations to encourage President Zelensky to continue to promote anti-corruption reforms in Ukraine. So the National Security staff understood what was in the U.S. national security interests, and that was rooting out corruption, and they encouraged the President to talk about it.

But as you see from the record of the call—and I join the President in saying “read the call”—that topic was never addressed. The word “corruption” never escapes his lips.

Instead, President Trump openly pressed President Zelensky to pursue the two investigations that would benefit him personally.

In response to President Zelensky's gratitude for the significant military support the United States had provided to Ukraine, President Trump said: [Slide 152]

I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it. I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike . . . I guess you have one of your wealthy people . . . The server, they say Ukraine has it.

That is that crazy conspiracy theory I talked about earlier that there is this server somewhere in Ukraine that shows that, in fact, it was Ukraine that hacked the DNC, not the Russians. That is a Russian propaganda conspiracy theory, and here it is being promulgated by the President of the United States. And more than promulgated, he is pressuring an ally to further this Russian propaganda because he was referring to this extensively discredited conspiracy theory that Ukraine was the one that really hacked the DNC—the Democratic National Committee—servers in 2016.

And that reference to CrowdStrike—well, that is an American cyber security firm. And the theory—this kooky conspiracy the-

ory—is that CrowdStrike moved the DNC servers to Ukraine to prevent U.S. law enforcement from getting it.

If Ukraine announced an investigation into this fabrication, President Trump could remove what he perceived to be a cloud over his legitimacy—legitimacy of his last election, Russia’s assistance with his campaign—and suggest that it was the Democratic Party that was the real beneficiary of help.

On the call, President Trump told Zelensky: “Whatever you can do, it’s very important that you do it if that’s possible.”

President Zelensky agreed that he would do the investigation saying: “Yes it is very important for me and everything that you just mentioned earlier.”

President Trump then turned to his second request, asking President Zelensky to look into the sham allegation into former Vice President Biden. President Trump said to President Zelensky: [Slide 153]

The other thing, There’s a lot of talk about Biden’s son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it . . . It sounds horrible to me.

There is no question what President Trump intended in pressing the Ukrainian leader to “look into” his political rival. Even after the impeachment inquiry began, he confirmed his desire on the south lawn of the White House, declaring not only that Ukraine should investigate Biden but that China should do the same.

Let’s see what he said.

(Text of Videotape presentation:)

REPORTER. What exactly did you hope Zelensky would do about the Bidens after your phone call? Exactly.

President TRUMP. Well, I would think that, if they were honest about it, they’d start a major investigation into the Bidens. It’s a very simple answer.

They should investigate the Bidens, because how does a company that is newly formed—and all these companies, if you look at—

And, by the way, likewise, China should start an investigation into the Bidens, because what happened in China is just about as bad as what happened with—Ukraine.

Mr. Manager SCHIFF. The day after that July 25 phone call, President Trump sought confirmation that President Zelensky understood his request to announce the politically motivated investigations and that he would follow through.

After meeting with Ukrainian officials, including President Zelensky and his top aide, the President’s handpicked Ambassador to the European Union, Gordon Sondland, called President Trump from an outdoor restaurant in Kyiv to report back. This was the second conversation between the two about Ukraine in as many days.

David Holmes, an American diplomat dining with Sondland, overheard the call, including the President’s voice through the cell phone. I described part of that call last night.

Holmes testified that President Trump asked Sondland: “So he’s going to do the investigation?” Sondland replied that he is going to do it, adding that President Zelensky will do “anything you ask him to do.”

After the phone call, Holmes “took the opportunity to ask Ambassador Sondland for his candid impression of the President’s views on Ukraine.” According to Holmes:

(Text of Videotape presentation:)

Mr. HOLMES. In particular, I asked Ambassador Sondland if it was true that the President did not give a [expletive] about Ukraine. Ambassador Sondland agreed the President did not give a [expletive] about Ukraine. I asked, why not, and Ambassador Sondland stated, the President only cares about . . . “big stuff.” I noted there was . . . “big stuff” going on in Ukraine, like a war with Russia. And Ambassador Sondland replied that he meant . . . “big stuff” that benefits the President, like the . . . “Biden investigation” that Mr. Giuliani was pushing. The conversation then moved on to other topics.

Mr. Manager SCHIFF. Those three days in July—the 24th, the 25th, and the 26th—reveal a lot about President Trump’s effort to solicit help from a foreign country in assisting his own reelection.

On the 24th, Special Counsel Mueller testifies that Russia interfered in our 2016 election to assist the Trump campaign, which knew about the interference, welcomed it, and utilized it. That is the 24th.

The 25th is the day of the call, when President Trump, believing he had escaped accountability for Russian meddling in the first election and is welcoming of it, asked the Ukrainian President to help him undermine the special counsel’s conclusion and help him smear a political opponent, former Vice President Biden.

And then, the third day in a row in July, President Trump sought to ensure that Ukraine had received his request and understood it and would take the necessary steps to announce the investigations that he wanted.

Three days in July. In many ways those 3 days in July tell so much of this story. This course of conduct alone should astound all of us who value the sanctity of our elections and who understand that the vast powers of the Presidency are reserved only for actions which benefit the country as a whole, rather than the political fortunes of any one individual.

President Trump’s effort to use an official head-of-state phone call to solicit the announcement of investigations helpful to his reelection is not only conduct unbecoming a President, but it is conduct of one who believes that the powers of his high office are political tools to be wielded against his opponents, including by asking a foreign government to investigate a United States citizen, and for a corrupt purpose. That alone is grounds for removal from office of the 45th President.

But these 3 days in July were neither the beginning nor the end of this scheme. President Trump, acting through agents inside and outside of the U.S. Government, including his personal attorney, Rudy Giuliani, sought to compel Ukraine to announce the investigations by withholding the head-of-state meeting in the Oval Office until the President of Ukraine complied.

Hosting an Oval Office meeting for a foreign leader is an official act available only to one person—the President of the United States. And it is an official act that President Trump had already offered to President Zelensky during their first phone call on April 21 and in a subsequent letter to the Ukrainian leader.

Multiple witnesses testified about the importance of a White House meeting for Ukraine. For example, Deputy Assistant Sec-

retary George Kent explained that a White House meeting was “very important” for Ukrainians to demonstrate the strength of their relationship with “Ukraine’s strongest supporter.”

Dr. Fiona Hill of the National Security Council explained that a White House meeting would supply the new Ukrainian Government with “the legitimacy that it needed, especially vis-a-vis the Russians” and that the Ukrainians viewed a White House meeting as “a recognition of their legitimacy as a sovereign state.”

This White House meeting would also prove to be important for three handpicked agents whom President Trump placed in charge of U.S.-Ukraine issues: Ambassador Sondland, Ambassador Volker, and Energy Secretary Rick Perry, the so-called three amigos. They hoped to convince President Trump to hold an Oval Office meeting with Zelensky.

During a meeting of the three amigos on May 23, President Trump told them that Ukraine had tried to “take [him] down” in 2016. He then directed them to “talk to Rudy” Giuliani about Ukraine.

It was immediately clear that Giuliani, who was pursuing the discredited investigations in Ukraine on the President’s behalf, was the key to unlocking an Oval Office meeting for President Zelensky.

Giuliani by then had said publicly that he was actively pursuing investigations President Trump corruptly desired and planning a trip to Ukraine. Giuliani admitted: “We’re not meddling in an election, we’re meddling in an investigation.”

On May 10, however, Giuliani canceled the trip to Ukraine to dig up dirt on former Vice President Biden and the 2016 conspiracy theory, just as President Zelensky won elections for the Presidency and Parliament.

Faced with a choice between working with Giuliani to pursue an Oval Office meeting—understanding it meant taking part in a corrupt effort to secure the political investigations—or abandoning efforts to support our Ukrainian ally, the President’s agents fell into line. They would pursue the White House meeting and explain to Ukraine that announcement of the investigations was the price of admission.

As Ambassador Sondland made clear:
(Text of Videotape presentation:)

Ambassador SONDLAND. I know that members of this committee frequently frame these complicated issues in the form of a simple question: Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes.

Mr. Manager SCHIFF. This quid pro quo was negotiated between the President’s agents, Rudy Giuliani, and Ukrainian officials throughout the summer of 2019 in numerous telephone calls, text messages, and meetings, including during a meeting hosted by then-National Security Advisor John Bolton on July 10.

Near the end of that July 10 meeting, after the Ukrainians again raised the issue of a White House visit, Ambassador Sondland blurted out that there would be agreement for a White House meeting once the investigations began. At that point Bolton “immediately stiffened” and abruptly ended the meeting.

During a subsequent discussion that day, Sondland was even more explicit. Lieutenant Colonel Alex Vindman, a director for Eu-

rope and Ukraine on the National Security Council, testified that Sondland began to discuss the “deliverable” required to get the White House meeting. What Sondland specifically mentioned was “investigation of the Bidens.” This is, again, in that meeting in the White House with a Ukrainian delegation and an American delegation. Sondland explained in that meeting that he had an agreement with Acting Chief of Staff Mick Mulvaney whereby President Zelensky would be granted the Oval Office meeting if he went forward with the investigations.

After the meeting, Vindman’s supervisor, Dr. Hill, reported back to Bolton, who told her to tell John Eisenberg, the National Security Council legal advisor, that he was not “part of whatever drug deal Sondland and Mulvaney are cooking up on this.” She reported their concerns, as did Vindman.

It remains unclear what action, if any, Bolton or Eisenberg took once they were made aware of Mulvaney and Sondland’s drug deal. Both refused to testify in our inquiry. However, Dr. Hill testified that she understood that Mr. Eisenberg informed Mr. Cipollone of her concerns about the drug deal.

If this body is serious about a fair trial—one that is fair to the President and to the American people—we again urge you to allow the House to call both Eisenberg and Bolton, as well as other key witnesses with firsthand knowledge who refused to testify before the House on the orders of the President.

Additional testimony and documents are particularly important because, according to Sondland, “Everyone was in the loop” when it came to the President’s self-serving effort. In part relying on email excerpts, Sondland explained that the President’s senior aides and Cabinet officials knew that the White House meeting was predicated on Ukraine’s announcement of the investigations beneficial to the President’s political campaign.

Hill characterized the quid pro quo succinctly:
(Text of Videotape presentation:)

Dr. HILL. But it struck me when yesterday, when you put up on the screen Ambassador Sondland’s emails and who was on these emails, and he said, These are the people who need to know, that he was absolutely right. Because he was being involved in a domestic political errand, and we were being involved in national security foreign policy, and those two things had just diverged.

Mr. Manager SCHIFF. In effect, President Zelensky was being drawn into this domestic political area. He grew wary of becoming involved in another country’s election and domestic affairs.

Bill Taylor, the Acting U.S. Ambassador for Ukraine at the time, described a conversation he had with a senior aide to the Ukrainian leader. He said:

(Text of Videotape presentation:)

Ambassador TAYLOR. [Also] on July 20, I had a phone conversation with Oleksandr Danylyuk, President Zelensky’s national security advisor, who emphasized that President Zelensky did not want to be used as an instrument in a U.S. reelection campaign.

Mr. Manager SCHIFF. Remember that conversation when you hear counsel say that the Ukrainians felt no pressure to be involved in a U.S. reelection campaign. But that concern did not deter President Trump. In his conversation with Sondland shortly before the July 25 call, the President made clear that he not only

wanted Ukraine to do the investigations or announce them, but also a White House meeting would be scheduled only if President Zelensky confirmed these investigations, as Volker communicated to President Zelensky's top aide by text less than 30 minutes before the phone call between Trump and Zelensky.

Again, we are talking about July 25, in a text 30 minutes before the Trump-Zelensky phone call. Here is what it says—with Volker texting Andriy Yermak, a top aide to President Zelensky. [Slide 154]

Good lunch—thanks. Heard from White House—assuming President Z convinces trump he will investigate/'get to the bottom of what happened' in 2016, we will nail down day for visit to Washington. Good luck! See you tomorrow—kurt.

Mr. Manager SCHIFF. Well, those words couldn't be much clearer: "assuming President Z convinces trump he will investigate/'get to the bottom of what happened' in 2016, we will nail down [the] . . . visit to Washington." That is a text 30 minutes before that call.

Counsel for the President would like you to think this is just about that call. You don't get to look outside the four corners of that call. They don't want you to look at the months that went into preparing for that call or the months of pressure that followed. But you can just look at, right now, what happened 30 minutes before that call in this text message: "Heard from White House—assuming President Z convinces trump he will investigate/'get to the bottom of what happened' in 2016."

If you were wondering whether President Zelensky was aware of what he was going to be asked on that call, this is how you can tell. He was prepped. Of course he was prepped. In fact, the missing reference in the call record to Burisma was a signal Colonel Vindman recognized that clearly he had been prepped for that call. Why else would the name of this particular energy company come up in that conversation?

Well, President Zelensky clearly got the message. Toward the end of the call with President Trump, President Zelensky said: [Slide 155]

I also wanted to thank you for your invitation to visit the United States, specifically Washington, DC. On the other hand, I also wanted to ensure you that we will be very serious about the case and will work on the investigation.

Thank you for the invitation. On the other hand, I want to assure you that we will be very serious about the case, and we will work on the investigation.

President Zelensky clearly understood the quid pro quo for the White House meeting on July 25, but his reticence to be used as a political pawn kept President Trump from moving forward with a promise to schedule the meeting, and so the President and his agents pressed on.

In August, Giuliani met with a top Ukrainian aide and made it clear that Ukraine must issue a public statement and announce investigations in order to get a White House meeting. Fearful of getting involved in U.S. domestic politics and having entered office with a promise to clean up government and corruption, President Zelensky and his aides preferred a generic statement about investigations, but Giuliani insisted. No, the statement must include two specific investigations that would benefit President Trump.

Let's look at a comparison between the statement the Ukrainians preferred and the one that Giuliani required.

On the left [Slide 156]—and I will read it in case you can't see the screens—the Yermak draft, the Ukrainian draft, says: “We intend to initiate and complete a transparent and unbiased investigation of all available facts and episodes, which in turn will prevent the recurrence of this problem in the future.” That is pretty generic.

But here is the Giuliani-Volker-Sondland response. This is what had to be included: “We intend to initiate and complete a transparent and unbiased investigation of all available facts and episodes.” Up to that point, it is exactly the same, until you get to “including those involving Burisma and the 2016 US elections,” and then it goes back to the Ukrainian draft: “which in turn will prevent the recurrence of this problem in the future.”

You can see in this such graphic evidence that the Ukrainians did not want to do this. They didn't even want to mention this. Giuliani had to insist: No, no, no; we are not going to be satisfied with some generic statement. After all, I think we can see this isn't about corruption—no, this is about announcing investigations to damage Biden and to promote this fiction about the last election.

So here in these texts, you see that Giuliani, Volker, and Sondland have added these references to Burisma—a thinly-veiled reference to former Vice President Biden—and the 2016 election. They wished to ensure that the Ukrainians mentioned the sham investigation President Trump required.

The Ukrainians recoiled at the new statement, recognizing that releasing it would run directly counter to the anti-corruption platform that Zelensky campaigned on and would embroil them in U.S. election politics. As a result, Zelensky didn't get his White House meeting. He still hasn't gotten his White House meeting.

Senators, witness testimony, text messages, emails, and the call record itself confirm a corrupt quid pro quo for the White House meeting—an official act available only to the President of the United States—in exchange for the announcement of political investigations. The President and his allies have offered no explanation for this effort—except that the President can abuse his office all he likes, and there is nothing you can do about it. You can't indict him. You can't impeach him. That is because they cannot seriously dispute that President Trump corruptly used an official White House visit for a foreign leader to compel the Ukrainian President into helping him cheat in the next election.

The White House meeting, of course, was not the only official act that President Trump conditioned on the announcement of investigations into Biden and the conspiracy theory meant to exonerate President Trump on Russia's interference on his behalf in the last election. In a far more draconian step, as we discussed, the President withheld \$391 million of military aid.

Several weeks before this phone call with President Zelensky but after Giuliani was already pressing Ukrainian officials to conduct the investigations his client sought, President Trump ordered the hold on Ukraine's military aid. Significantly, this was after Congress had already been notified that most of it was prepared to be spent. Ukraine had met all of the critical conditions for anti-corruption.

tion and defense reforms in order to receive the funds. We conditioned the funds. They met the conditions. The funds were ready to go.

At the time and even today, witnesses uniformly testified that the order to hold the funding came without explanation to the foreign policy and national security officials responsible for Ukraine. The only message from the Office of Management and Budget was that the hold was implemented at the direction of the President.

Since Russia's illegal incursion into Ukraine in 2014, the United States has maintained a bipartisan policy of delivering hundreds of millions of dollars of military aid to Ukraine each year, which several Senators here have personally invested significant time and effort to ensure. It was President Trump himself who originally authorized additional financial support for military assistance to Ukraine in 2017 and 2018 without reservation, making his abrupt decision to withhold assistance in 2019 without explanation all the more surprising to those responsible for Ukraine policy.

That confusion, however, would soon disappear. The President used the hold on military aid as leverage to pressure Ukraine to announce these investigations that he hoped would help his reelection campaign. The only difference between the prior years when the President approved the aid without question and the inexplicable hold on aid in 2019 was the emergence of Joe Biden as a potentially formidable obstacle to the President's reelection.

These funds that the President withheld—these funds—they don't just benefit Ukraine; they benefit the security of the United States by ensuring that Ukraine is equipped to defend its own borders against Russian aggression.

As Ambassador Taylor noted in his deposition, the United States provides Ukraine with "radar and weapons and sniper rifles, communications that save lives. It makes Ukrainians more effective. It might even shorten the war. That is what our hope is, to show the Ukrainians can defend themselves—and the Russians, in the end, will say: OK, we are going to stop." That is in our interest. This isn't just about Ukraine or its national security; it is about our national security. This isn't charity; it is about our defense as much as Ukraine's.

Ambassador Taylor also said that the American aid was "a concrete demonstration of the United States' commitment to resist aggression and defend freedom." This is what this country is supposed to be about, right? Resisting aggression, defending freedom, not exporting corrupt ideas—that is what we are supposed to be about, right?

It was against this backdrop that American officials responsible for Ukraine policy sat in astonishment, according to Ambassador Taylor, when they learned about the hold. Officials immediately expressed concerns about the legality of President Trump's hold on the assistance to Ukraine. Their concerns were well warranted, as the Government Accountability Office, which was just last night pooh-poohed by the President's counsel—well, that is just some institution of Congress. Like they are just going to be inherently biased, right? Well, they are a nonpartisan organization that both parties have come to rely upon. But I am not surprised that they don't like the conclusion of the GAO, because the Defense Depart-

ment warned them that this was going to be the conclusion, and that conclusion was that the hold on aid was not only wrong, it was not only immoral, it was also illegal. It violated the law—a law that we passed so that Presidents could not refuse to spend money that we allocated for the defense of others and for ourselves.

The Impoundment Control Act prevents the President and other government officials from unilaterally making funding decisions when Congress has made its intent clear. In fact, the act exists precisely because of previous Presidential abuses of Congress's power of the purse during the Nixon era. The nonpartisan GAO ruled that the hold on military aid was not only illegal but that holding underscores the President's efforts to go to any lengths to ensure his own personal benefit rather than take care that the laws be faithfully executed as he swore he would do when he took his oath of office.

Now, because of recent Freedom of Information Act responses in media reports, we now know additional details about how senior officials expressed serious reservations about the legality of the hold at the time. This is not like some big surprise. This is not like something that just came out of the blue—whoa, an independent watchdog agency found this was illegal. No, they knew this was illegal at the time. These concerns were raised at the time.

Certain individuals who may have further information about the hold who refused to testify at the President's direction—including his Chief of Staff, Mick Mulvaney; Robert Blair; OMB official Michael Duffey, all of them—all of them defied congressional subpoenas but were included in important email communications that have been made public only recently.

As you know, these and many other categories of documents from the White House, the Defense Department, and OMB were subpoenaed by the House and none was produced—none—at the President's direction and through Mr. Cipollone's intervention. Although the investigation developed an overwhelming body of evidence that clearly proves that the President implemented this hold to pressure Ukraine to announce investigations, the full story behind the hold—the full and complete story—is within your power to request.

As you consider the evidence we present to you, ask yourselves whether the documents of witnesses that have been denied by the President's complete and unprecedented obstruction could shed more light on this critical topic. You may agree with the House managers that the evidence of the President's withholding of military aid to coerce Ukraine is already supported by overwhelming evidence and no further insight is necessary to convict the President, but if the President's lawyers attempt to contest these or other factual matters, you are left with no choice but to demand to hear from each witness with firsthand knowledge. A fair trial requires nothing less.

Let's look at some of the evidence that we gathered, notwithstanding this obstruction.

First, the President withheld the aid without explanation and against the advice of his own agencies, Cabinet officials, national security experts, including Secretary Pompeo, Secretary Esper, Ambassador Bolton, and others. Only Mick Mulvaney, a central figure in this effort, reportedly supported the hold, and he told us why.

During a press briefing, Mulvaney personally acknowledged that the hold was ordered as part of a quid pro quo designed to get Ukraine to undertake the investigation President Trump signed.

Second, the reason for the security assistance hold was undoubtedly on the President's mind during the telephone call with President Zelensky on July 25. Near the beginning of their conversation, President Zelensky expressed his gratitude for U.S. military assistance, noting the United States' "great support in the area of defense." Immediately after President Zelensky's reference to defense and military support, [Slide 157] President Trump responded by saying: "I would like you to do us a favor, though, because our country has been through a lot, and Ukraine knows a lot about it." President Trump then proceeded to openly press Ukraine to conduct these investigations.

Third, numerous officials were aware that President Trump was withholding the White House meeting until the Ukrainian President announced the investigations. That the President would ratchet up pressure on Ukraine to compel its action stunned Ukraine experts like Ambassador Taylor but followed logically for those engaged in the President's corrupt scheme.

Fourth, by the end of August, there was still no explanation for the hold, despite ongoing efforts from numerous officials to persuade the President to release the money. The leverage of the White House meeting had not succeeded in coercing Ukraine to announce the investigations, providing the President and his agents every reason to use the most aggressive lever of influence, hundreds of millions of dollars in military support, to compel Ukraine to act. If they didn't feel pressure, they would have done it. They would have done it, but of course they did.

Imagine if this country were dependent on a more powerful country for our defense; imagine if we were at war; imagine if we were waiting for weapons to defend ourselves, something our Framers could have understood; imagine that we found ourselves in those circumstances, and much to our astonishment, we couldn't even get a meeting with our ally, much to our astonishment, they were withholding aid from us. Would you think we would feel pressure? Of course we would. The Framers had common sense, and so must we.

Are we to accept: Well, the President said there was no quid pro quo; I guess that closes the case? In every courtroom in America, jurors—and I know you are not just jurors. I led the Clinton trial. You are jurors and judges. Jurors all over America are told: You don't leave your common sense at the door. Well, we don't have to leave our common sense at the door here too. Two plus two equals four.

The aid was withheld. You are asking for it. We are asking for it. His own aides are asking for it, and no one can get an explanation. The Ukrainians can't get an explanation. All the Ukrainians get is: We want you to do these investigations. They are promised a White House meeting. They want a White House meeting. They need a White House meeting. They are going to be going into negotiations with Putin. They want to show strength, and they can't get in the door. They see the Russian Foreign Minister get in the door of the White House. We see the photos of the President

and the Russian Foreign Minister, or the Ambassador, what a great time they are having, but, no, the President of Ukraine, our ally, can't get in the door. They are not stupid. They know what is going on here. They are not stupid. Remember that conversation I referenced yesterday when the Ukrainians threw it right back in our face—when Ambassador Volker said to his Ukrainian counterpart: You shouldn't investigate the former President. You shouldn't engage in those political investigations. The Ukrainian response was: You mean like the one you want us to do on the Bidens and the Clintons? They are not stupid.

By the end of August, there was still no explanation for the hold, despite efforts by numerous people to seek the release of the funding. The leverage hadn't succeeded in getting the President to—in coercing Ukraine to announce the investigations, and so the aid was withheld. Two witnesses privy to this scheme testified that the only logical conclusion to reach about the President's continued hold on the aid was that it was intended to put more pressure on Ukraine to announce the investigations. As I said, they testified it was as simple as two plus two equals four.

We can do math, and, more importantly, so can the Ukrainians, and maybe even more importantly than that, so can the Russians. Multiple senior officials, including President Trump himself, have confirmed this logical conclusion. On September 7, Ambassador Sondland spoke directly to President Trump, who by that point was aware that a whistleblower complaint was circulating that alleged the contours of his scheme and that Congress and the public were beginning to ask probing questions about the hold on aid, including whether the withholding of the aid was in exchange for reelection help.

During that call of September 7—so in July you have got Mueller's testimony. You have got the call itself. You have got a followup call the next day, where the President is speaking to Sondland and wants to make sure they are going to do the investigations. You have got August, where they are trying to hammer out a statement, and the Ukrainians are still resisting.

Then you have September. On September 7, Ambassador Sondland is on the phone with President Trump. At that point, he is aware that a whistleblower has filed a complaint alleging the contours of this scheme and Congress and the public are beginning to ask questions about the hold on aid, including whether this was to get help in his reelection.

During this call between the President and Ambassador Sondland, without a prompt, President Trump told Sondland: There is no quid pro quo. Now, why would he do that? That is not something that comes up in normal conversation, right? Hello, Mr. President, how are you today? No quid pro quo.

That is the kind of thing that comes up in a conversation if you are trying to put your alibi out there. If you heard about a whistleblower complaint, if you had seen allegations, if you know Congress is starting to sniff around, no quid pro quo. But—and I know this is astonishing—so much of the last 3 years has been a combination of shock and yet no surprise. Yet, even while the President is saying no quid pro quo, what does he say? Zelensky must publicly an-

nounce the two political investigations, and he should want to do it. No quid pro quo, except this quid pro quo.

Sondland immediately relayed the message to President Zelensky, informing him that without the announcement of the political investigations, they would be at a stalemate. Sondland made clear that this reference to a stalemate meant the release of the security assistance.

President Zelensky, after hesitating for weeks to join the President's corrupt scheme, finally relented. President Zelensky informed Sondland that he agreed to do a CNN interview, and Sondland understood that he would use that occasion to mention these items, meaning the two investigations at the heart of the scheme.

Candidate Zelensky, who was swept into office with a landslide victory on a promise of fighting corruption, would be forced to undertake just the same kind of corrupt act he had been elected to clean up. Upon learning this, Ambassador Taylor called Sondland to register his deep concern, telling him that it was crazy—crazy. Taylor later texted Sondland to reinforce the point: “As I said on the phone, I think it’s crazy to withhold security assistance for help [Slide 158] with a political campaign.”

“As I said on the phone”—clearly, they had discussed it. “As I said on the phone.”

Taylor testified about the message and the events leading up to it. Taylor said [Slide 159] that security assistance was so important for Ukraine, as well as our own national interest. To withhold that assistance for no good reason other than help with the political campaign made no sense. It was counterproductive to all of what we had been trying to do. It was illogical. It could not be explained. It was crazy.

What is more, Ambassador Taylor also came to learn that President Trump wanted Zelensky in a public box.

He testified—[Slide 160] Mr. Goldman was asking the question: “Now, you reference a television interview and a desire for President Trump to put Zelensky in a public box, which you also have in quotes.”

Now, this is in reference, I think, to his written testimony.

“Was that reference to ‘in a public box’ in his notes?”

You remember he kept detailed notes.

Taylor’s answer: “It was in my notes.”

“And what did you understand that to mean, to put Zelensky in a public box”?

And Taylor responds: “I understood that to mean that President Trump, through Ambassador Sondland, was asking for President Zelensky to publicly commit to these investigations, that it was not sufficient to do this in private, that this needed to be a very public statement.”

So we saw earlier, the side-by-side comparison, right, of what the Ukrainians wanted to say. They wanted to make no mention of these specific investigations, and now Giuliani insisted: No, no, no. This isn’t going to be credible unless you mention these specific investigations. This is what it is going to take. And now you see that Ambassador Sondland has acknowledged to Ambassador Taylor that it is not enough to use even the right language, apparently.

It has to be done in public. We are not going to take any private commitment. It has got to be done in public.

As we would later come to understand, this is because President Trump didn't care about the investigations being done. He just wanted them announced. He wanted Zelensky in a public box. He wanted it announced publicly.

Ambassador Taylor also testified that he understood from Sondland that because Trump was a businessman, he would expect to get something in return before signing a check.

(Text of Videotape presentation.)

Ambassador TAYLOR. During our meeting, during our call on September 8, Ambassador Sondland tried to explain to me that President Trump is a businessman. When a businessman is about to sign a check to someone who owes him something, the businessman asks that person to pay up before signing the check. Ambassador Volker used the same language several days later while we were together at the Yalta European strategy conference. I argued to both that the explanation made no sense. Ukrainians did not owe President Trump anything.

Mr. Manager SCHIFF. This is very telling. Ambassador Taylor, a Vietnam veteran, a West Point graduate, said that Ukrainians didn't owe us anything. Clearly, Donald Trump felt Ukrainians owed him, right?

This is not about Ukraine's national security. It is not about our national security. It is not about corruption. No, it is about what is in it for me. Those Ukrainians owe me before I sign a check.

And, by the way, that is not his money. That is your money. That is the American people's money for their defense.

But here we see Ambassador Sondland explain: No, President Trump is a businessman. Before he even signs a check, he wants to get something, and, of course, that something he was going to sign that check for or he was going to make that payment for, with our tax dollars—that thing that he was going to buy with those tax dollars—was a smear of his opponent and an effort to lift whatever cloud he felt was over his Presidency because of the Russian interference on his behalf in the last election.

The President has offered an assortment of shifting explanations after the fact for the hold on aid, including that he withheld the money because of corruption in Ukraine or concerns about burden-sharing with other European countries. But those arguments are completely without merit.

First, the President's own administration had determined by the time of the hold that Ukraine had undertaken all necessary anti-corruption and defense reforms in order to receive the funds. The Defense Department and State Department officials repeatedly made this clear as the hold remained and threatened the ability of the agency to spend the money before the end of the fiscal year.

Second, the evidence revealed that the President only asked about the foreign contributions to Ukraine in September, nearly 2 months after the President implemented the hold and as it became clear that the public, Congress, and a whistleblower were becoming aware of the President's scheme.

The after-the-fact effort to come up with a justification also belies the truth. The European countries provide far more financial support to Ukraine than the United States. Their support is largely economic. Ours also includes a lot of military support, but Europe is a substantial financial backer of Ukraine.

There is something else remarkable about this that I was struck by yesterday as we were going through the importance of the witness testimony and looking at some of those redacted emails in which the administration sought to hide its misconduct.

In those redactions, when we got to see what was beneath them, there was an indication that this is very close-hold. This is a need-to-know basis only. Do you remember that? We will show you that again, but it is one of those emails that only came to light, I believe, recently, and it is not because the administration wanted you to see this information. We see there is a desire not to let people know about this hold.

If the President were fighting corruption, if he wanted Europeans to pay more, why would he hide it from us? Why would he hide it from the Ukrainians? Why would he hide it from the rest of the world? If this were a desire for Europe to pay more, why wouldn't he charge Sondland to go ask Europe for more? Why wouldn't he be proud to tell the Congress of the United States: I am holding up this aid, and I am holding it up because I am holding up corruption?

Why wouldn't he? Because, of course, it wasn't true. There is no evidence of that.

And, once more, the White House admitted why the President held up the money. The President's own Chief of Staff explained precisely why during the October 17 press conference. Let's see, again, what he had to say.

(Text of Videotape presentation.)

Mr. MULVANEY. That was—those were the driving factors. Did he also mention to me in the past that the corruption related to the DNC server? Absolutely. No question about that. But that's it. That's why we held up the money. Now, there was a report—

REPORTER. So the demand for an investigation into the Democrats was part of the reason that he went on to withhold funding to Ukraine?

Mr. MULVANEY. The look-back to what happened in 2016 certainly was part of the thing that he was worried about in corruption with that nation and absolutely appropriate.

Mr. Manager SCHIFF. But Mulvaney didn't just admit that the President withheld the crucial aid appropriated by Congress to apply pressure on Ukraine to do the President's political dirty work. He also said that we should just "get over it." Let's watch.

(Text of Videotape presentation.)

REPORTER. Let's be clear. What you just described is a quid pro quo. It is funding will not flow unless the investigation into the Democratic server happened as well.

Mr. MULVANEY. We do that all the time with foreign policy. If you read the news reports and you believe them—what did McKinney say yesterday? Well, McKinney said yesterday that he was really upset with the political influence in foreign policy. That was one of the reasons he was so upset about this. And I have news for everybody: Get over it. There's going to be political influence in foreign policy.

Mr. Manager SCHIFF. Should the Congress just get over it? Should the American people just come to expect that our Presidents will corruptly abuse their office to seek the help of a foreign power to cheat in our election? Should we just get over it? Is that what we have come to? I hope and pray that the answer is no.

We cannot allow a President to withhold military aid from an ally or to elicit help in a reelection campaign. I hope that we don't

have to just get over that. I hope that we just don't have to get accustomed to that.

Is that what we want to tell our constituents, that, yes, the President withheld aid from an ally? Yes, it damaged our national security. And, yes, he wouldn't meet with the foreign leaders important to us unless he got help in the next election. And, yes, it is wrong to try to get a foreign power to help.

It is kind of cheating, really, if we are going to be honest about it and blatant about it. It is cheating. Americans are supposed to decide American elections, but, you know, I guess we just need to get over it. I guess that is just what we should now expect of a President of the United States.

I guess there is really no remedy for that anymore. The impeachment, maybe that was a good idea 200 years ago, but I guess we just need to get over it. I guess maybe the President really is above the law because they say you can't indict the President.

The President says you can't even investigate the President. The President is in court saying, you can not only not indict the President, you can't even investigate the President. The Attorney General's position is that you can't even investigate the President.

Are we really prepared to say that? The only answer to the President's misconduct is that we need to get over it? What are we to say to the next President? What are we to say to the President who is from a different party, who refuses the same kind of subpoenas, and the President says to you or his Chief of Staff says to you or her Chief of Staff says to you: Just get over it. I am not doing anything different than Donald Trump did. Just get over it. He asked for help in the next election: I am asking for help in the next election. Just get over it. We do this kind of thing all the time.

People are cynical enough as it is about politics, about people's commitment to their good, cynical enough without having us confirm it for them.

I think it is more than crazy. Those were Ambassador Taylor's words. I think it is more than crazy. I think it is a gross abuse of power.

And I don't think that impeachment power is a relic. If it is a relic, I wonder how much longer our Republic can succeed.

For months, President Trump and his agents had pressured Ukraine to announce investigations, and President Zelensky finally yielded. As previously noted, he scheduled a CNN interview and planned to publicly announce the politically motivated investigations.

He informed Sondland of this plan during a September 7 phone call. In the same call, Sondland related to President Zelensky that Trump required that the Ukrainian leader make the public announcement in order to get the critical military aid.

President Trump's corruption had finally worn down President Zelensky, overcoming his effort to remain true to his anti-corruption platform—until events intervened.

Before Zelensky could do the interview, President Trump learned that his scheme had been exposed. Facing public and congressional pressure on September 11, the President finally released the hold on aid to Ukraine. Just like the implementation of the hold, he pro-

vided no reason for the release, but the reason is quite simple. The President got caught.

In late August, President Trump learned about a whistleblower complaint that was winding its way through the intelligence agencies on its way to Congress.

On September 9, three House committees announced an investigation into President Trump's Ukraine misconduct and that of his proxy, Rudy Giuliani. Later that day, again, September 9, the intelligence community inspector general notified the Senate and House Intelligence Committees of the existence of the complaint and the fact that it was being withheld from Congress, contrary to law and in an unprecedented fashion.

Facing significant public pressure on September 11, the President gave up and released the money to Ukraine. One week later, President Zelensky canceled the CNN interview.

And rather than demonstrate attrition or acknowledged wrongdoing, the President instead has continued his effort, even after the impeachment investigation began. He not only continued to call on Ukraine to investigate his political opponent, he called on China to do the same.

This should concern all of us. It is a confirmation not only of the scheme to pressure Ukraine to help his political campaign but a clear sign that the President believes that these corrupt acts are acceptable.

A President this unapologetic, this unbound to the Constitution and the oath of office, must be removed from that office lest he continue to use the vast prejudicial powers at his disposal to seek advantage in the next election.

President Trump's abuse of powers of his office undermined the integrity of our free and fair elections and compromised America's national security. [Slide 161]

If we don't stand up to this peril today, we will write the history of our decline with our own hand. If President Trump is not held to account, we send a message to future Presidents, future Congresses, and generations of Americans that the personal interests of the President can fairly take precedent over those of the Nation. The domestic effects of this descent from democracy will be a weakened trust in the integrity of our elections and the rule of law and a steady decline of the spread of democratic values throughout the world.

For how can any country trust the United States as a model of governance if it is one that sanctions precisely the political corruption and invitation to foreign meddling that we have long sought to help eradicate in burgeoning democracies around the world? To protect against foreign interference in our elections, we have guardrails built into our democratic system. We have campaign finance laws to ensure that political assistance can come only from domestic actors, and we take seriously the need to shore up the integrity of our voting systems so that a foreign government or actor cannot change vote tallies. The promise of one person, one vote is only effective if each vote is cast free of foreign interference. Americans decide American elections—at least they should.

Now, what if electoral corruption is even more insidious? What happens when the invitation comes from within? Our Framers un-

derstood that threat too. George Mason noted at the Constitutional Convention that impeachment was a necessary tool because “the man who has practiced corruption and by that means procured his appointment in the first instance” could seek to repeat his guilt.

In June of last year, President Trump was clear that, if a foreign government offered dirt on his political opponent, he would take it, a statement deeply at odds with the guidance provided at the time by his own FBI Director, the former Federal Election Commission Chair, and our Constitution, written some 233 years ago. In no uncertain terms, it admonishes against any person holding office of profit or trust accepting any present from a foreign state.

But President Trump did more than take the foreign help in 2019, as he had done in 2016. This time, he had not only asked for it in the July 25 call, but when he didn’t get the help from the Ukrainian President in the form of announced investigations, he withheld hundreds of millions of dollars in taxpayer-funded military aid and a coveted White House meeting to increase the pressure on Ukraine to comply. Later, he demonstrated no remorse and continued to encourage Ukraine to conduct the political investigations he wanted, even asking other countries to do so.

The consequences of these actions alone have shaken our democratic system. What message will we send if we choose not to hold this President accountable for his abuse of power to solicit reelection interference in our upcoming election? The misconduct undertaken by this President may lead future Presidents to believe that they, too, can use the substantial power conferred on them by the Constitution in order to undermine it. Nothing could weaken the integrity of our elections more, and no campaign finance law or statement by a future FBI Director could stand up to the precedent of electoral misconduct set by the President of the United States if we do not say clearly that this behavior is unacceptable and, more than unacceptable, impeachable.

We also undermine our global standing. As a country long viewed as a model for democratic ideals worth emulating, we have, for generations, been the “shining city upon a hill” that President Reagan described. America is not just a country but also an idea. But of what worth is that idea if, when tried, we do not affirm the values that underpin it?

What will those nascent democracies around the world conclude; that democracy is not only difficult but maybe that it is too difficult? Maybe that it is impossible? And who will come to fill the void we leave when the light from that shining city upon a hill is extinguished? The autocrats with whom we compete, who value not freedom and fair elections but the unending rule of a repressive executive; autocrats who value not freedom of the press and open debate but disinformation, propaganda, and state-sanctioned lies.

Vladimir Putin would like nothing better. The Russians have little democracy left, thanks to Vladimir Putin. It is an autocracy; it is a thugocracy. The Russian story line, the Russian narrative, the Russian propaganda, the Russian view they would like people around the world to believe is that every country is just the same, just the same corrupt system: There is no difference. It is not a competition between autocracy and democracy. No, it is just between autocrats and hypocrites.

They make no bones about their loss of democracy. They just want the rest of the world to believe you can't fight it anywhere. Why take to the streets of Moscow to demand something better if there is nothing better anywhere else. That is the Russian story. That is the Russian story. That is who prospers by the defeat of democracy. That is who wins by the defeat of our democratic ideals. It is not other democracies; it is the autocrats who are on the rise all over the world.

I think all of us in this room have grown up in a generation where each successive generation lived with more freedom than the one that came before. We each had more freedom of speech and associations, the freedom to practice our faith. This was true at home. It was true all over the world. I think we came to believe this was some immutable law of nature, only to find it isn't, only to come to the terrible realization that this year fewer people have freedom than last, and there is no guarantee that next year people will live in more freedom than today. And the prospect for our children is even more in doubt.

It turns out, there is nothing immutable about this. Every generation has to fight for it. We are fighting for it right now. There is no guarantee that this democracy that has served us so well will continue to prosper. We will struggle to protect this idea, and even as we do, we will struggle to protect our security in more tangible ways. Support for an independent and democratic Ukraine, which is the literal bulwark against Russian expansionism in Europe, is essential to our security. Russia showed that when it invaded Ukraine in 2014 and sought to redraw the map of Europe.

Was our commitment to Ukraine's independence and sovereignty just an empty promise or are we prepared to support its efforts to keep Russia contained so they and we may all eventually enjoy a long peace?

Russia is not a threat—I don't need to tell you—to Eastern Europe alone. Ukraine has become the de facto proving ground for just the types of hybrid warfare that the 21st century will become defined by: cyber attacks, disinformation campaigns, efforts to undermine the legitimacy of state institutions, whether that is voting systems or financial markets. The Kremlin showed boldly in 2016 that, with the malign skills it honed in Ukraine, they would not stay in Ukraine. Instead, Russia employed them here to attack our institutions, and they will do so again. Indeed, they have never stopped. Will we allow the primary country now fighting Russia to be weakened, placing our troops in Europe at greater risk and opening the door to greater interference in our affairs at home?

If we allow the President of the United States to pursue his political and personal interests rather than the national interests, we send a message to our European allies that our commitment to a Europe free and whole is for sale to the highest bidder. The strength of our global alliances relies on a shared understanding of what that alliance stands for: one built on the rule of law, on free and fair elections, and on a shared struggle against aggression from autocratic regimes.

We are countries built on a commitment to our people, not unyielding loyalty to a President who would be King.

A President has a right to hold a call with a foreign leader, yes. And he has a right to decide the time and location of a meeting with that leader, yes. And he has a right to withhold funding to that leader should the law be followed and the purpose be just.

But he does not, under our laws and under our Constitution, have a right to use the powers of his office to corruptly solicit foreign aid—prohibited foreign aid—in his reelection. He does not. He does not have the right to withhold official Presidential acts to secure that assistance, and he certainly does not have the right to undermine our elections and place our security at risk for his own personal benefit. No President, Republican or Democratic, can be permitted to do that.

Now let me turn to the second Article of Impeachment, which charges the President with misusing the powers of his office to obstruct [Slide 162] and interfere with the impeachment inquiry.

The evidence you will hear during the House presentation is equally undeniable and damning. President Trump issued a blanket order directing the entire executive branch not to cooperate with the impeachment inquiry and to withhold all documents and testimony. His order was categorical. It was indiscriminate and historically unprecedented. No President before President Trump has ever ordered the complete defiance of an impeachment inquiry or sought to obstruct and impede so comprehensively the ability of the House of Representatives to investigate high crimes and misdemeanors.

The President was able to block agencies across the executive branch from producing any records or documents to the House investigative committees, despite duly authorized subpoenas. The White House continues to refuse to produce a single document or record in response to a House subpoena that remains in full force and effect. The Department of State and Office of Management and Budget, Department of Energy, and the Department of Defense continue to refuse to provide a single document or record in response to House subpoenas that remain in full force and effect.

It is worth underscoring this point. The House has yet to receive a single document from the executive branch agencies pursuant to its subpoenas. Not a single piece of paper, email, or other record has been turned over—not one.

While I pause to get a drink of water, let me let you know for your timing that I have about 10 minutes left in my presentation. So the end is in sight.

President Trump has also successfully blocked witnesses—nine of them—under subpoena from testifying, witnesses with firsthand knowledge of the President's actions, including his closest aides, some of whom were directly involved in executing the President's improper orders. These witnesses include Mick Mulvaney and Robert Blair; Russell Vought, the acting head of the Office of Management and Budget; Michael Duffey, a senior official; and the President's chief legal advisor on the National Security Council, John Eisenberg, among others.

The managers will present in detail what these officials knew about their role in executing different parts of the President's scheme. There is no dispute, nor could there be, that President Trump's order substantially obstructed the House impeachment in-

quiry. That obstruction continues unabated today, even as we stand here at the start of the President's trial.

The President has been able to do so only because of the uniquely powerful position he holds as our Commander in Chief. No other American could seek to obstruct an investigation into his own wrongdoing this way. No other American could use the vast powers and levers of his government to conduct a corrupt scheme to benefit themselves and then use those same powers to suppress evidence and bar any cooperation with the authorities investigating them—not a police chief, not a mayor, not a Governor, not any elected official in the country, and certainly not any unelected official in the country.

For those folks watching us from around the country, you know what would happen to them if they defied a lawful subpoena.

They got a subpoena commanding them to appear. You know what would happen to them because they are not above the law: They would be arrested; they would be detained; they would be incarcerated; they would be forced to comply. They are not above the law, and neither are we, and neither is the President.

And, yet, despite the fact that he is not above the law, despite the President's extensive and persistent efforts, the House heard from courageous witnesses who obeyed lawful subpoenas, and we gathered overwhelming evidence. The House built a formidable case that forms the basis of these articles.

The second article for obstruction of Congress is not simply about President Trump's decision to obstruct a congressional investigation or even an impeachment inquiry. It should not be misunderstood as some routine dispute between two branches of government, nor should it be reduced to the notion that the President was simply protecting himself or fighting back against a partisan or overzealous Congress. The charges in the second article are much more serious and urgent than that.

First, the President's attempt to obstruct the inquiry so categorically and comprehensively is part and parcel of the President's furious effort to conceal, suppress, and cover up his own misconduct. From the very first moment his actions were at the risk of coming to light, President Trump has sought to hide and cover up key evidence, even as his scheme to pressure Ukraine was still underway.

As the House's presentation will make clear, the President's coverup started even before the House began to investigate the President's Ukraine-related activity. The President learned early on of the existence of a lawful whistleblower complaint from within the intelligence community that would ring the first alarm. He deployed the White House and Justice Department to intervene in an unprecedented fashion to conceal and then withhold from Congress—for the first time ever—a credible and urgent whistleblower complaint, even though the law requires that it be provided to the congressional intelligence committees.

Once the impeachment inquiry was underway in late September, the President used the immense and unique power at his disposal to direct and maintain at every turn the categorical defiance of congressional scrutiny, even as he attacked the inquiry itself and its witnesses. The President offered multiple and shifting justifications for obstructing the House's inquiry, each of them deficient, while

his actions and statements powerfully reflect his own consciousness of guilt.

Second, the ramifications of the President's obstruction go beyond the sinister motives of simply covering up his actions. His obstruction strikes at the heart of our Constitution. It threatens the last line of defense our Founders purposefully enshrined in our system to protect our democracy.

If Presidents can obstruct an impeachment inquiry undertaken by the House and evade accountability in the Senate for doing so, they usurp an essential power granted exclusively to the Congress—and for a reason. Presidents could seize for themselves the power to neutralize and nullify the impeachment clause in order to shield themselves from any accountability. And if Congress is unable to investigate and impeach a President for abuse of their office, our democracy's essential check on a rogue President would fail. It would no longer protect the American people from a corrupt President who presents an ongoing threat. This is the outcome every American should be concerned about and one that the Founders warned us about.

Through the impeachment clause, the Framers of the Constitution empowered Congress to thoroughly investigate Presidential malfeasance—and to respond, if necessary, by removing the President from office. This entire framework depends upon Congress's ability to discover, and then to thoroughly and effectively investigate, Presidential misconduct. Without the ability of Congress to do that, the impeachment power is a nullity. If you can't investigate it, you can't enforce it and can't apply it.

What we confront here, in the second Article of Impeachment, is therefore an impeachable offense aimed at destroying the impeachment power itself. When a President abuses the power of his office to so completely defy House investigators, and does so without lawful cause or excuse, he attacks the Constitution itself. He confirms that he sees himself as above the law. His actions destabilize the separation of powers, which defines our democracy and preserves our freedom, and establish an exceedingly dangerous precedent. And he proves that he is willing to destroy a vital safeguard against tyranny—a safeguard meant to protect the American people—just to advance his own personal interests in covering up evidence.

The House's presentation of the second article will therefore focus on three core areas that confirm the President's obstruction and require his removal from office: first, the singular importance and role of the impeachment clause for our democracy and why an effort by a President to obstruct an impeachment inquiry is, in and of itself, an impeachable offense; second, why the President's extensive effort to cover up evidence of his misconduct is unprecedented in American history and without lawful cause or justification; and, finally, why the President's obstruction poses a direct threat to our system of self-governance, with consequences for all Americans—today and in the future—and for both Chambers of Congress.

Over the coming days, you will hear from the House managers details of this scheme and the effort to hide it from Congress. The Articles of Impeachment that the House presented go to the heart of those efforts, and let me share a few takeaways.

The House of Representatives has found that, using the powers of his high office, President Trump solicited the interference of a foreign government, Ukraine, in the 2020 U.S. Presidential election. He did so through a scheme or course of conduct that included soliciting the government of Ukraine to publicly [Slide 163] announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 U.S. Presidential election improperly and to his advantage.

President Trump also sought to pressure the Government of Ukraine to take these steps by conditioning official U.S. Government acts of significant value to Ukraine on Ukraine's public announcement of these investigations. He engaged in this scheme or course of conduct for corrupt purposes in pursuit of his personal political benefit.

In doing so, President Trump used the powers of the Presidency in a manner that compromised the national security of the United States and undermined the integrity of the U.S. democratic process. He thus ignored and injured the interests of the Nation.

As part of the House's impeachment inquiry, the committees undertaking the investigation served [Slide 164] subpoenas seeking documents and testimony deemed vital to the inquiry from various executive branch agencies and offices and current and former officials.

In response, and without lawful cause or excuse, President Trump directed executive branch agencies, offices, and officials not to comply with those subpoenas. President Trump thus interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives and assumed to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

As George Washington and his troops retreated across the Delaware River in early December 1776, they were read the words of Thomas Paine, published that month in his pamphlet, "The American Crisis":

These are the times that try men's souls. The summer soldier and the sunshine patriot will, in the crisis, shrink from the service of their country; but he that stands by it now, deserves the love and thanks of man and woman.

Seventeen days later, George Washington crossed the Delaware, leading to a decisive victory for those who would come to shape our promising young country.

As much as our Founders feared an unchecked Chief Executive able to pursue his own will over the will of the people, they also feared the poison of excessive factionalism that could divert us from a difficult service to our country. As George Washington warned in his farewell address, "the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it."

Our political parties and affiliations are central to our democracy, ensuring that good and bad political philosophies alike are considered in the marketplace of ideas. Here, the American people can choose between the policies of one party or another and make decisions about their political leaders up to and including the President of the United States based on the degree to which that person

represents their interests and values. That is not factionalism; that is the foundation of our democracy.

But when a leader takes the reins of the highest office in our land and uses that awesome power to solicit the help of a foreign country to gain an unfair advantage in our free and fair elections, we all—Democrats and Republicans alike—must ask ourselves whether our loyalty is to our party or whether it is to our Constitution. If we say that we will align ourselves with that leader, allowing our sense of duty to be usurped by an absolute Executive, that is not democracy; it is not even factionalism. It is a step on the road to tyranny.

The damage that this President has done to our relationship with a key strategic partner will be remedied over time, and Ukraine continues to enjoy strong bipartisan support in Congress. But if we fail to act, the damage to our democratic elections, to our national security, to our system of checks and balances will be long-lasting and potentially irreversible.

As you will hear in the coming days, President Trump has acted in a manner grossly incompatible with self-governance. His conduct has violated his oath of office and his constitutional duty to faithfully execute the law. He has shown no willingness to be constrained by the rule of law and has demonstrated that he will continue to abuse his power and obstruct investigations into himself, causing further damage to the pillars of our democracy if he is not held accountable.

He cannot be charged with a crime, so says the Department of Justice. There is no remedy for such a threat but removal from office of the President of the United States.

If impeachment and removal cannot hold him accountable, then he truly is above the law.

We are nearly 2½ centuries into this beautiful experiment of American democracy, but our future is not assured.

As Benjamin Franklin departed the Constitutional Convention, he was asked: "What have we got? A Republic or a Monarchy?" He responded simply: "A Republic, if you can keep it."

A fair trial, impartial consideration of all of the evidence against the President is how we keep our Republic.

That concludes our introduction.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. Chief Justice, colleagues, I suggest we have a recess until 10 minutes to 4, at which moment we will reconvene, subject to the call of the Chair.

The CHIEF JUSTICE. Without objection, it is so ordered.

There being no objection, at 3:28 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:56 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The House managers may resume if they are ready.

Mr. Manager NADLER. Mr. Chief Justice, Members of the Senate, before I begin, I would like to thank the Chief Justice and the Senators for their temperate listening and their patience last night as we went into the long hours.

I truly thank you.

The House managers will now undertake to tell you the story of the President's Ukraine scheme. As we tell the story, it is important to note that the facts before us are not in dispute. There are no close calls. The evidence shows that President Trump unlawfully withheld military assistance, appropriated by Congress to aid our ally, in order to extort that government into helping him win his reelection, then tried to cover it up when he got caught.

This is the story of a corrupt, governmentwide effort that drew in Ambassadors, Cabinet officials, executive branch agencies, and the Office of the President. This effort threatened the security of Ukraine in its military struggle with Russia and compromised our own national security interests because the President cared only about his personal political interests.

In the spring of 2019, the people of Ukraine elected a new leader, Volodymyr Zelensky, who campaigned on a platform of rooting out corruption in his country. This pledge was welcomed by the United States and its allies, but the new government also threatened the work of President Trump's chief agent in Ukraine, Rudy Giuliani.

As President Zelensky was taking power, Mr. Giuliani was already engaged in an effort to convince Ukrainian officials to announce two sham investigations. The first was an effort to smear former Vice President Joe Biden. The second was designed to undermine the intelligence community's unanimous assessment that Russia interfered in the 2016 election.

One obstacle to Mr. Giuliani's work was Ambassador Marie Yovanovitch. A 33-year veteran of the Foreign Service, Ambassador Yovanovitch had partnered with Ukraine to root out the kind of corruption that would have allowed Mr. Giuliani's lies to flourish.

In order to complete his mission, Mr. Giuliani first needed Ambassador Yovanovitch out of the way. So in early 2019, Mr. Giuliani launched a public smear campaign against the Ambassador, an effort that involved Mr. Giuliani's allies in Ukraine, the President's allies in the United States, and, eventually, President Trump himself.

Please remember that the object of the President's Ukraine scheme was to obtain a corrupt advantage for his reelection campaign. As we will show, the President went to extraordinary lengths to cheat in the next election. That scheme begins with the attempt to get Ambassador Yovanovitch "out of the way."

By all accounts, Ambassador Yovanovitch was a highly respected and effective Ambassador. Witnesses uniformly praised her 33-year career as a nonpartisan public servant and told us that she particularly excelled in fighting corruption abroad. President George Bush named her as an Ambassador twice, and President Obama nominated her as Ambassador to Ukraine, where she represented the United States from 2016 to 2019.

Eradicating corruption in Ukraine has been a key policy priority of the U.S. Government for years. During the House inquiry, the Ambassador explained why implementing this anticorruption policy was so important.

(Text of Videotape presentation:)

Ambassador YOVANOVITCH. As critical as the war against Russia is, Ukraine's struggling democracy has an equally important challenge: Battling the Soviet legacy of corruption which has pervaded Ukraine's government.

Corruption makes Ukraine's leaders ever vulnerable to Russia, and the Ukrainian people understand that. That's why they launched the Revolution of Dignity in 2014, demanding to be a part of Europe, demanding the transformation of the system, demanding to live under the rule of law.

Ukrainians wanted the law to apply equally to all people, whether the individual in question is the President or any other citizen. It was a question of fairness, of dignity.

Here again, there is a coincidence of interests. Corrupt leaders are inherently less trustworthy while an honest and accountable Ukrainian leadership makes a U.S.-Ukrainian partnership more reliable and more valuable to the United States.

Mr. Manager NADLER. On the evening of April 24, 2019, Ambassador Yovanovitch was hosting an event at the U.S. Embassy, honoring the memory of an anticorruption fighter who had been killed when acid was thrown in her face the previous year. At about 10 that night, the Embassy event was interrupted by a telephone call from Washington. Ambassador Yovanovitch described this conversation with the head of the State Department's human resources department.

(Text of Videotape presentation:)

Ambassador YOVANOVITCH. She said that there was great concern on the seventh floor of the State Department. That's where the leadership at the State Department sits. There was great concern. They were worried. She just wanted to give me a heads up about this. And, you know, things seemed to be going on, and so she just wanted to give me a heads up.

Mr. Manager NADLER. Confused, the Ambassador asked for more information from Washington. Three hours later they spoke again. Ambassador Yovanovitch learned that there were concerns about her "up the street"; that is, at the White House. The Ambassador was told to get on the first plane home.

Why was this respected career diplomat abruptly removed from her post? Why was she, in fact, urged by the State Department to catch the first plane home, that she was in danger, she shouldn't wait?

At the time, the White House would not say, but today we know the truth. The truth is that Ambassador Yovanovitch was the victim of a smear campaign organized by Rudy Giuliani, amplified by President Trump's allies, and designed to give President Trump the pretext he needed to recall her without warning. Mr. Giuliani has admitted as much to the press.

In order to understand Mr. Giuliani's smear campaign against Ambassador Yovanovitch, you need to know about a few additional characters who Mr. Giuliani drew into his scheme.

The first of these characters is Viktor Shokin, the disgraced former prosecutor general of Ukraine, who was fired by the Ukrainian Government for gross corruption. In 2016, at the urging of the European Union, the International Monetary Fund, and the U.S. Government, the Parliament of Ukraine voted to remove Mr. Shokin as prosecutor general because he was corrupt and refused to prosecute corruption cases. The United States, the European Union, and the International Monetary Fund all urged the Ukraine Government to dismiss Mr. Shokin.

The second character is Yuriy Lutsenko, who succeeded Mr. Shokin as prosecutor general. Mr. Lutsenko also proved reluctant

to prosecute corruption cases, and several witnesses testified that he also had a reputation for dishonesty and corruption. Ambassador Yovanovitch and Deputy Assistant Secretary George Kent both testified that the U.S. Embassy in Kyiv eventually stopped working with Mr. Lutsenko altogether.

Shokin, Lutsenko, and Giuliani—the goals of all three characters were aligned. Shokin had it out for Vice President Biden because of the role that the Vice President played in his 2016 firing. The Vice President, carrying out U.S. policy, urged the Ukrainian Government to dismiss the corrupt Shokin.

I note that the Vice President—the former Vice President—has been criticized for urging that he be fired.

Lutsenko found his career trajectory fading and wanted President Trump's support to boost his political prospects in Ukraine. Giuliani needed partners in Ukraine willing to announce two sham investigations meant to boost President Trump's own campaign. All three wanted Ambassador Yovanovitch out of the way.

So in early 2019, the smear campaign began. Mr. Lutsenko became the primary vector for false allegations against Ambassador Yovanovitch. Deputy Assistant Secretary George Kent testified that Lutsenko's allegations against Ambassador Yovanovitch were motivated by revenge.

(Text of Videotape presentation:)

Mr. KENT. Over the course of 2018 and 2019, I became increasingly aware of an effort by Rudy Giuliani and others, including his associates Lev Parnas and Igor Fruman, to run a campaign to smear Ambassador Yovanovitch and other officials at the U.S. Embassy in Kyiv. The chief agitators on the Ukrainian side of this effort were some of those same corrupt former prosecutors I had encountered, particularly Yuriy Lutsenko and Viktor Shokin. They were now peddling false information in order to extract revenge against those who had exposed their misconduct, including U.S. diplomats, Ukrainian anticorruption officials, and reform-minded civil society groups in Ukraine.

Mr. Manager NADLER. As Mr. Kent indicated, the smear campaign against Ambassador Yovanovitch was orchestrated by a core group of corrupt Ukrainian officials working at Mr. Giuliani's direction. This group included two additional characters who have been in the news of late—Lev Parnas and Igor Fruman. Mr. Parnas and Mr. Fruman were of course indicted last year on several charges, including charges related to large donations they made to support President Trump.

Simply put, in doing her job well, Ambassador Yovanovitch drew Mr. Lutsenko's ire, and, as Mr. Kent observed, "You can't promote principled anti-corruption efforts without pissing off corrupt people."

As it turned out, this statement applied to Yuriy Lutsenko and to Rudy Giuliani, who feared that the Ambassador would stand in the way of his corrupt efforts to coerce Ukraine into conducting investigations that would benefit the political interests of his client, President Trump.

Giuliani's coordinated smear campaign against Ambassador Yovanovitch became public in the United States in late March 2019, with the publication of a series of opinion pieces in *The Hill*, based on interviews with Lutsenko. On March 20, 2019, in one piece in *The Hill*, Lutsenko falsely alleged that Ambassador Yovanovitch had given him a so-called "do-not-prosecute list." Not

only was the allegation false, but after having helped originate the claim, Lutsenko himself would later go on to retract it.

The same piece also falsely stated that Ambassador Yovanovitch had “made disparaging statements about President Trump.” A statement issued by the State Department declared the allegations to be a total fabrication.

President Trump promoted Solomon’s article in a tweet, which intensified the public attacks against Ambassador Yovanovitch. Then, on March 24, [Slide 165] Donald Trump, Jr., called Ambassador Yovanovitch a “joker” on Twitter and called for her removal.

You can see the slides of the two tweets.

These unfounded smears by the President and his son reverberated in Ukraine. Deputy Assistant Secretary George Kent testified that “starting in mid-March,” Rudy Giuliani was “almost unmissable” in this “campaign of slander.” And according to Mr. Kent, Mr. Lutsenko’s press spokeswoman retweeted Donald Trump, Jr.’s tweet attacking the Ambassador, further undermining her standing in Ukraine—her standing, the U.S. Ambassador’s standing. Mr. Giuliani was not content to stay behind the scenes, either. He promoted the same attacks on the Ambassador on Twitter, FOX News, and elsewhere.

At the end of March, the attacks intensified. Ambassador Yovanovitch sent Under Secretary of State for Political Affairs David Hale an email detailing her concerns and asking for a strong statement of support from the State Department. In reply, the State Department told her that they were unwilling to help her—their own Ambassador—because if they issued a public statement supporting her, “it could be undermined,” by the President and their concern that “the rug would be pulled out from underneath the State Department.”

The State Department cannot express support for an American Ambassador threatened abroad because they are concerned that if they express support for that American Ambassador, the rug will be pulled out from under them by the President. What it must have taken to convince our State Department to refuse support for its Ambassador.

Phone records show that Giuliani also kept the White House apprised of these developments, as you can see from these slides. [Slide 166]

Again, it is worth remembering that smearing Ambassador Yovanovitch was a means to an end. Removing her would allow the President’s allies the freedom to pressure Ukraine to announce their sham investigations.

So we should talk for a few minutes about the investigations that Rudy Giuliani and his henchmen were promoting on behalf of the President.

Let’s focus first on the allegation that Ukraine, not Russia, interfered in our last Presidential election. In February 2017, shortly after the intelligence community—the CIA, the FBI, all the intelligence agencies of the United States—unanimously assessed that Russia interfered in the election to help Donald Trump, this alternative theory gained some attention when Russian President Putin promoted it at a press conference.

“Second,” [Slide 167] he said—I am quoting from him. It is in the Russian on these slides, I think.

Second, as we all know, during the presidential campaign in the United States, the Ukrainian government adopted a unilateral position in favor of one candidate.

More than that, certain oligarchs, certainly with the approval of the political leadership funded this candidate, or female candidate, to be more precise.

That is President Putin talking, shifting the blame to Ukraine.

Dr. Fiona Hill best explained how the Ukraine narrative is a fictional narrative being propagated by the Russian security services.

(Text of Videotape presentation:)

Dr. HILL. Based on questions and statements I have heard, some of you on this committee appear to believe that Russia and its security services did not conduct a campaign against our country and that perhaps, somehow for some reason, Ukraine did. This is a fictional narrative being perpetrated and propagated by the Russian security services themselves.

The unfortunate truth is that Russia was the foreign power that systematically attacked our democratic institutions in 2016. This is the public conclusion of our intelligence agencies confirmed in bipartisan and congressional reports. It is beyond dispute, even if some of the underlying details must remain classified.

The impacts of the successful 2016 Russian campaign remain evident today. Our Nation is being torn apart. The truth is questioned. Our highly professional, expert career Foreign Service is being undermined. U.S. support for Ukraine which continues to face armed Russian aggression is being politicized. The Russian Government's goal is to weaken our country, to diminish America's global role, and to neutralize a perceived U.S. threat to Russian interests.

Mr. Manager NADLER. President Trump knew this too. His former Homeland Security Advisor, Tom Bossert, said that the idea that Ukraine hacked the DNC server was “not only a conspiracy theory, it is completely debunked,” and he and other U.S. officials spent hours with the President explaining why.

The second false allegation that the President wanted the Ukrainians to announce was that Vice President Biden used his power to protect a company on whose board his son sat by forcing the removal of Viktor Shokin, the corrupt former prosecutor general.

It is true that Vice President Biden helped remove Mr. Shokin, who was widely believed to be corrupt. As I said a few minutes ago, it was official policy of the United States, the European community, and others, in order to fight corruption in Ukraine, to ask that Shokin and Lutsenko be removed. So the Vice President, Vice President Biden, in fulfilling U.S. policy, pressured Ukraine to remove Shokin—not to secure some personal benefit but to advance the official policy of the United States and its allies. Even Lutsenko, who initially seeded the allegations against Mr. Biden in American media, later admitted that the allegations against the Vice President were false. And Rudy Giuliani told Kurt Volker, the Special Representative for Ukrainian Negotiations, who had a prominent role in the scheme, that he also knew the attacks on Joe Biden were a lie.

With Ambassador Yovanovitch out of the way, the first chapter of the Ukraine scheme was complete. Mr. Giuliani and his agents could now apply direct pressure to the Ukrainian Government to spread these two falsehoods.

Who benefited from this scheme? Who sent Mr. Giuliani to Ukraine in the first place? Of course we could rephrase that question as the former Republican leader of the Senate, Howard Baker,

asked it in 1973: What did the President know, and when he did he know it?

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, President's counsel: President Trump and President Zelensky's relationship started out well. President Trump wanted the two investigations from Zelensky, and he had no reason to believe he would not get what he wanted.

On April 21, 2019, Zelensky, who was new to politics, won a landslide victory in Ukraine's Presidential election. That evening, President Trump called Zelensky to congratulate him. On that first call—the first call—Zelensky invited President Trump to visit Ukraine for the upcoming inauguration. President Trump, in turn, promised that his administration would send someone at “a very, very high level.”

During that same April call, President Trump invited President Zelensky to the White House, saying: [Slide 168]

When you're settled in and ready, I'd like to invite you to the White House. We'll have a lot of things to talk about, but we're with you all the way.

Zelensky immediately accepted the President's invitation, adding that the “whole team and I are looking forward to that visit.”

Numerous witnesses testified about the significance of a White House meeting for the political newcomer. A White House meeting would show Ukrainians that America supported Zelensky's anti-corruption platform. The clear backing of the President of the United States—Ukraine's most important patron—would also send a powerful message to Russia that we had Ukraine's back.

During that April 21 call, President Trump never even uttered the word “corruption,” but the official White House call recap falsely stated that the two Presidents had discussed Ukraine's anti-corruption efforts.

Shortly after the phone call, Jennifer Williams, adviser to Vice President PENCE, learned that President Trump asked Vice President PENCE to attend Zelensky's inauguration.

Williams and her colleagues began planning PENCE's trip to Kyiv. At the same time, Giuliani was trying to get Ukraine to investigate the Bidens and alleged 2016 election interference. On April 24, Giuliani went on “FOX & Friends” and had this to say: (Text of Videotape presentation:)

Mr. GIULIANI. Keep your eye on Ukraine, because in Ukraine a lot of dirty work was done. I'm digging up the information. American officials were used. Ukrainian officials were used. That is like collusion with the Ukrainians and—or actually, in this case, conspiracy with the Ukrainians. I think you'd get some interesting information about Joe Biden from Ukraine. About his son, Hunter Biden. About a company he was on the board of for years, which may be one of the most crooked companies in Ukraine.

Ms. Manager GARCIA of Texas. For this campaign to be truly beneficial to his boss President Trump, Giuliani needed access to the new government in Ukraine. He dispatched his associates Lev Parnas and Igor Fruman to try to make inroads with Zelensky's team.

On April 25, former Vice President Biden publicly announced his bid for Presidency, and immediately he was at the top of the polls.

That same day, David Holmes, an American diplomat at our Embassy in Ukraine, learned that Giuliani had reached out to the

head of President Zelensky's campaign. As Mr. Holmes explained, the new Ukrainian Government began to think that Giuliani "was a significant person in terms of managing their relationship with the United States."

As Giuliani and his associates worked behind the scenes to get access to the new leadership in Ukraine, President Trump was publicly signaling his interest in the investigations. On May 2, the President appeared on FOX News. When asked, "Should the former vice president explain himself on his feeling in Ukraine and whether there was a conflict . . . with his son's business interests?" President Trump replied as follows:

(Text of Videotape presentation:)

President TRUMP. I'm hearing it's a major scandal, major problem. Very bad things happened, and we'll see what that is. They even have him on tape, talking about it. They have Joe Biden on tape talking about the prosecutor. And I've seen that tape. A lot of people are talking about that tape, but that's up to them. They have to solve that problem.

Ms. Manager GARCIA of Texas. The tape President Trump referenced is a video from January 2018 in which Vice President Biden explained that he placed an ultimatum to the Ukrainian President to remove the corrupt prosecutor general to ensure that taxpayer money would be used appropriately. The Vice President's actions were consistent with official U.S. policy as well as the opinions of the international community.

On May 9, the New York Times published an article about Giuliani's plan to visit Ukraine. In the article, Giuliani confirmed that he planned to meet with Zelensky. At that meeting, he wanted to press the Ukrainian Government to pursue the investigations that President Trump promoted only days earlier. Giuliani said: [Slide 169] "We're not meddling in an election, we are meddling in an investigation, which we have a right to do."

Giuliani even went so far as to acknowledge that his actions could benefit President Trump personally. He said: [Slide 170] "[T]his isn't foreign policy—I'm asking them to do an investigation that they're doing already and that other people are telling them to stop. And I am going to give them reasons why they shouldn't stop it because that information will be very, very helpful to my client, and may turn out to be helpful to my government."

That is it right there—Giuliani admitting he was asking Ukraine to work an investigation that would be "very, very helpful" to the President. He was not doing foreign policy. He was not doing this on behalf of the government. He was doing this for the personal interests of his client, Donald J. Trump.

The next morning, on May 10, amid coverage of his planned trip to Ukraine, Giuliani tweeted further about Biden and then had a flurry of calls with Parnas, who was helping in planning his trip to Ukraine.

That same day, Giuliani also spoke with Ambassador Volker on the phone for more than 30 minutes. Ambassador Volker had learned that Giuliani had intended to travel to Ukraine and had called to warn Giuliani that Prosecutor General Lutsenko "is not credible. Don't listen to what he is saying."

Later that day, Giuliani had a 17-minute call with a masked White House number before speaking again with Parnas for 12 minutes.

That same day, on May 10, Politico asked President Trump about Giuliani's upcoming trip, and he replied, "I have not spoken to him at any great length, but I will. . . . I will speak to him about it before he leaves." But that evening, on FOX News, Giuliani announced: "I'm not going to go" to Ukraine "because I think I'm walking into a group of people that are enemies of the President." Separately, in a text message to "Politico," Giuliani alleged that the original offer for a meeting with Zelensky was a "set-up." He said it was a set-up orchestrated by "several vocal critics" of President Trump who were advising Zelensky. Giuliani declared that "Zelensky is in [the] hands of avowed enemies of President Trump."

But Giuliani had not stopped trying. He had Parnas send a letter to Zelensky's senior aide on May 11 asking for a meeting. That letter made it clear that Giuliani was representing President Trump as "a private citizen" and that he was working with President Trump's "knowledge and consent."

The letter is on the slide. It reads: [Slide 171]

In my capacity as personal counsel to President Trump and with his knowledge and consent, I request a meeting with you on this upcoming Monday, May 13, or Tuesday, May 14. I will need no more than a half-hour of your time and I will be accompanied by my colleague Victoria Toensing, a distinguished American attorney who is very familiar with the matter.

But it did not appear that Giuliani and Parnas's attempts to get the meeting were working. That same day, Giuliani sent a text message to Parnas asking, "This guy is canceling meeting, I think?" Approximately 3 hours later, Giuliani sent Parnas drafts of a public statement that "people advising the Pres Elect are no friends of the President."

Three days later, President Trump instructed Vice President PENCE not to attend the inauguration in Ukraine—just 3 days later. Vice Presidential staffer Jennifer Williams received a surprising call from PENCE's Chief of Staff. She described it during her public testimony.

(Text of Videotape presentation:)

Ms. WILLIAMS. On May 13th, an assistant to the Vice President's chief of staff called and informed me that President Trump had decided that the Vice President would not attend the inauguration in Ukraine. She did not provide any further explanation. I relayed that instruction to others involved in planning the potential trip. I also informed the NSC that the Vice President would not be attending, so that it could identify a head of delegation to represent the United States at President-elect Zelensky's inauguration.

Ms. Manager GARCIA of Texas. Notably, Williams confirmed that the inauguration date had not yet been scheduled at the time of that phone call. So the reason for President Trump's decision was certainly not due to a scheduling conflict.

Secretary of Energy Rick Perry ultimately led the delegation to the inaugural. Accompanying Secretary Perry were Ambassador to the European Union, Gordon Sondland; Ambassador Volker; NSC Director for Ukraine, Lieutenant Colonel Alexander Vindman; and Senator RON JOHNSON also attended many of the inaugural events with the delegation. When asked if this delegation was a good

group, Holmes replied that it “was not as senior a delegation as we might have expected.”

After the inauguration, Ambassadors Volker and Sondland left Kyiv with a very favorable impression of President Zelensky. Ambassador Volker said they believed it was important that President Trump personally engage with the President of Ukraine in order to demonstrate full U.S. support for him.

When the inauguration team returned to the United States, they had a meeting with President Trump on May 23. The May 23 meeting with President Trump proved to be important for two good reasons. First, with Ambassador Yovanovitch out of the way, President Trump authorized Ambassador Sondland, Secretary Perry, and Ambassador Volker to lead engagement with the new administration in Ukraine; and two, President Trump instructed them to satisfy Giuliani’s concerns in order to move forward on Ukraine matters.

These officials were all political appointees, and Ambassador Sondland had donated \$1 million to the President’s inauguration. The President saw these three political appointees as officials who would fulfill his requests.

Ambassador Volker testified that he, Ambassador Sondland, Secretary Perry, and Senator JOHNSON took turns making their case that this is a new crowd. It is a new President in Ukraine. He is committed to doing the right things, including fighting corruption. They recommended that President Trump follow through on his invitation for President Zelensky to meet with him in the Oval Office, but President Trump did not receive the recommendation well.

At his public hearing, Ambassador Volker described the May 23 Oval Office meeting with President Trump. Let’s listen.

(Text of Videotape presentation:)

Ambassador VOLKER. We stressed our finding that President Zelensky represented the best chance for getting Ukraine out of the mire of corruption it had been in for over 20 years. We urged him [President Trump] to invite President Zelensky to the White House. The President was very skeptical. Given Ukraine’s history of corruption, that’s understandable. He said that “Ukraine was a corrupt country, full of terrible people.” He said, “They tried to take me down.” In the course of that conversation, he referenced conversations with Mayor Giuliani. It was clear to me that despite the positive news and recommendations being conveyed by this official delegation about the new President, President Trump had a deeply rooted negative view on Ukraine rooted in the past. He was receiving other information from other sources, including Mayor Giuliani, that was more negative, causing him to retain this negative view.

Ms. Manager GARCIA of Texas. Witnesses said the reference to “taking me down” was to unfounded allegations that Ukraine had interfered in the 2016 election. This was what President Trump considered to be corruption in Ukraine.

The President’s words echoed Giuliani’s public statements about Ukraine in early May. Rather than committing to an Oval Office meeting with the Ukrainian leader, President Trump directed the delegation to talk to Giuliani. Here is how Ambassador Sondland described that instruction from the President.

(Text of Videotape presentation:)

Ambassador SONDLAND. If we wanted to get anything done with Ukraine, it was apparent to us we needed to talk to Rudy.

Mr. GOLDMAN. Right. You understood that Mr. Giuliani spoke for the President, correct?

Ambassador SONDLAND. That's correct.

Ms. Manager GARCIA of Texas. Ambassador Sondland saw the writing on the wall. Sondland concluded that if we did not talk to Rudy, nothing would move forward on Ukraine.

The three amigos, as they called themselves, did as the President ordered and began talking to Giuliani. Dr. Hill testified Volker, Sondland, and Perry "gave us every impression that they were meeting with Rudy Giuliani at this point, and Rudy Giuliani was also saying on the television, and indeed had said subsequently, that he was closely coordinating with the State Department."

Like Dr. Hill, Ambassador Bolton closely tracked Giuliani's Ukraine-related activities. Hill testified about a conversation she had with Bolton in May of 2019. That conversation was revealing, so let's listen.

(Text of Videotape presentation:)

Dr. HILL. . . . And I had already brought to Ambassador Bolton's attention the attacks, the smear campaign against Ambassador Yovanovitch and expressed great regret about how this was unfolding and, in fact, the shameful way in which Ambassador Yovanovitch was being smeared and attacked.

And I had asked him if there was anything we could do about it, and Ambassador Bolton had looked pained, basically indicated with body language that there was nothing much we could do about it. And he then in the course of that discussion said that Rudy Giuliani was a hand grenade that was going to blow everyone up.

Mr. GOLDMAN. Did you understand what he meant by that?

Dr. HILL. I did, actually.

Mr. GOLDMAN. What did he mean?

Dr. HILL. Well, I think he meant that obviously what Mr. Giuliani was saying was pretty explosive, in any case. He was frequently on television making quite incendiary remarks about everyone involved in this and that he was clearly pushing forward issues and ideas that would, you know, probably come back to haunt us. And, in fact, I think that that's where we are today.

Ms. Manager GARCIA of Texas. According to Dr. Hill's description, Bolton said that Giuliani's influence could be an obstacle to increased White House engagement with Ukraine. He instructed his staff not to meet with Giuliani.

In June, Volker and Sondland relayed to Ambassador Taylor that President Trump wanted to hear from Zelensky before scheduling the meeting in the Oval Office. Ambassador Taylor testified that he did not understand at the time what that meant.

Around this time, the President publicly expressed that he thought it would be OK to accept foreign interference to assist his campaign if it was in the form of opposition research on his opponent. Let's listen to that shocking interview.

(Text of Videotape presentation:)

REPORTER. Your campaign this time around, if foreigners, if Russia, if China, if someone else offers you information on opponents, should they accept it or should they call the FBI?

President TRUMP. I think maybe you do both. I think you might want to listen, there's nothing wrong with listening. If somebody called from a country, Norway, "we have information on your opponent." Oh, I think I'd want to hear it.

REPORTER. You want that kind of interference in our elections?

President TRUMP. It's not an interference, they have information. I think I'd take it.

Ms. Manager GARCIA of Texas. Shocking video. Meanwhile, Giuliani continued to press Ukraine to do the President's political dirty work. On June 21, for instance, Giuliani tweeted the following: [Slide 172]

New Pres of Ukraine still silent on investigation of Ukrainian interference in 2016 election and alleged Biden bribery of Pres Poroshenko. Time for leadership and investigate both if you want to purge how Ukraine was abused by Hillary and Obama people.

The quid pro quo scheme was taking shape. Giuliani was publicly advocating for Ukraine to conduct politically motivated investigations while President Trump refused to schedule an Oval Office meeting for Ukraine's new President. As Ambassador Sondland testified, the scheme to pressure Ukraine to conduct these investigations would only get more insidious with time.

Mr. Manager CROW. Mr. Chief Justice, the majority leader expressed a preference for a break about 2 hours in. So it is the House managers' request that I present, and then we take the break, if that is acceptable for everybody.

The CHIEF JUSTICE. Any objection? Move forward.

Mr. Manager CROW. Mr. Chief Justice, Members of the Senate, counsel for the President, and the American people, where were you on July 25, 2019? It was a Thursday. Members of the U.S. Senate were here in this Chamber. On July 25, across the Atlantic, our 68,000 troops stationed throughout Europe were doing what they do every day—training and preparing to support our allies and defend against Russia.

The professionalism and sacrifice of our men and women in uniform is a source of great strength, but America is also strong and America is also secure because we have friends. On July 25, 2019, one of those friends was a man named Oleksandr Markiv. In a story told by Sabra Ayers of the Los Angeles Times, Oleksandr was a soldier in the Ukrainian Army defending his country and Europe against Russian-backed forces on Ukraine's eastern front. He was in a trench. He was 38 years old. Oleksandr would later die defending his country during a mortar attack on his fighting position, giving his life, just like over 13,000 of his fellow Ukrainians, on the frontlines of the fight for liberty in Europe.

That same Los Angeles Times article painted a picture of what the Ukrainians were going through during this time.

Tens of thousands of Ukrainians, like Markiv, volunteered to help fight the Russian-backed separatists in the east. Many of them were sent to the front line wearing sneakers and without flak jackets and helmets, let alone rifles and ammunition. Ukrainians across the country organized in an unprecedented united civil movement not seen since World War II to raise money to supply their ragtag military with everything from soldiers' boots to bullets.

And while our friends were at war with Russia wearing sneakers, some without helmets, something else was happening. On July 25, President Trump made a phone call. He spoke with Ukrainian President Zelensky and asked for a favor. On that same day, just hours after his call, his administration was quietly placing an illegal hold on critical military aid to support our friends.

So why should any American care about what is happening in Ukraine? Timothy Morrison, former senior director for Europe and Russia at the NSC put it bluntly:

(Text of Videotape presentation:)

Mr. MORRISON. I continue to believe Ukraine is on the front lines of a strategic competition between the West and Vladimir Putin's revanchist Russia. Russia is a failing power, but it is still a dangerous one. The United States aids Ukraine and

her people so that they can fight Russia over there, and we don't have to fight Russia here. Support for Ukraine's territorial integrity and sovereignty has been a bipartisan objective since Russia's military invasion in 2014. It must continue to be.

Mr. Manager CROW. We help our partner fight Russia over there so we don't have to fight Russia here—our friends on the frontlines, in trenches, and with sneakers.

Following Russia's invasion of Ukraine in 2014, the United States has stood by Ukraine. Our diplomats and military commanders have long said that supporting Ukraine makes us safer. But you don't need me to tell you that; you all know it very well. When the funding for the security assistance came up for a vote under this roof, 87 of you voted for the aid.

Many of you have been staunch advocates for Ukraine, working in a nonpartisan way to support our friends. That support makes a lot of sense because politics should not play a part in ensuring that Ukraine can battle Russian aggression and ensure that freedom wins in Europe. This body has, in so many ways, set that example.

Protecting Europe from Russia is not a political game. Let me provide some background. In early 2014, in what became known as the Revolution of Dignity, Ukrainian citizens demanded democratic reforms and an end to corruption, ousting the pro-Russian President. Within days, Russian military forces and their proxies invaded Ukraine, annexing Crimea and occupying portions of eastern Ukraine.

Since 2014, more than 13,000 Ukrainians have been killed because of the conflict and over 1.4 million have been forced from their homes.

[Slide 173] Russia's invasion of Ukraine is the first attempt to redraw Europe's border since World War II.

In 2017, [Slide 174] then-Secretary of Defense James Mattis summed it up well. He said: "Despite Russia's denials, we know they are seeking to redraw international borders by force, undermining the sovereign and free nations of Europe."

And as Ambassador Taylor put it, Russian aggression in Ukraine "dismissed all the principles that have kept the peace and contributed to prosperity in Europe since World War II."

It is clear that Russia is not just a threat in Europe but for democracy and freedom around the world. Our friends and allies have also responded, imposing sanctions on Russia and providing billions of dollars in economic, humanitarian, and security assistance to Ukraine. This has been an international effort.

Today, the European Union is the single largest contributor of foreign assistance to Ukraine, having provided roughly \$12 billion in grants and loans since 2014. The United States has provided over \$3 billion in assistance in that time, because we all know that we can't separate our own security from the security of our friends and allies. That is why the United States has provided economic security and humanitarian assistance in the form of equipment and training.

Ambassador Taylor testified that American aid is a concrete demonstration of our "commitment to resist aggression and defend freedom." He also detailed the many benefits of our assistance for Ukraine's forces.

(Text of Videotape presentation:)

Ambassador TAYLOR. Mr. Chairman, the security assistance that we provide takes many forms. One of the components of that assistance is counter-battery radar. Another component are sniper weapons.

These weapons and this assistance allows the Ukrainian military to deter further incursions by the Russians against their own—against Ukrainian territory. If that further incursion, further aggression, were to take place, more Ukrainians would die. So it is a deterrent effect that these weapons provide.

It's also the ability—it gives the Ukrainians the ability to negotiate from a position of a little more strength when they negotiate an end to the war in Donbas, negotiating with the Russians. This also is a way that would reduce the number of Ukrainians who would die.

Mr. Manager CROW. I would like to make a finer point of how this type of aid helps because I know something about counter-battery radar.

In 2005, I was an Army Ranger serving in a special operations task force in Afghanistan. We were at a remote operating base along the Afghan-Pakistan border. Frequently, the insurgency that we were fighting would launch rockets and missiles onto our small base. But, luckily, we were provided with counter-battery radar. So 20, 30, 40 seconds before those rockets and mortars rained down on us, an alarm would sound. We would run out from our tents and jump into our concrete bunkers and wait for the attack to end. This is not a theoretical exercise, and the Ukrainians know it, for Ukraine aid from the United States actually constitutes about 10 percent of their military budget. It is safe to say that they can't fight effectively without it.

So there is no doubt. U.S. military assistance in Ukraine makes a real difference in the fight against Russia.

In 2019, Congress provided \$391 million in security assistance. This included \$250 million through the Department of Defense's Ukraine Security Assistance Initiative, USAI, and \$141 million through the State Department's Foreign Military Financing Program, FMF.

President Trump signed the bill to authorize this aid in August 2018 and signed another bill to fund it the following month. The aid was underway. The train was leaving the station and following the same track it had followed every single year. But all of this was about to change.

In July of 2019, President Trump ordered the Office of Management and Budget, OMB, to put a hold on all of the aid. The President personally made this decision even after his own appointed advisers warned him that it wasn't in our country's interest to withhold the aid—after overwhelming support in this Senate—and against longstanding policy, even in his own administration.

But what is most interesting to me about this is that he was only interested in the Ukraine aid, nobody else. The United States provides aid to dozens of countries around the world, lots of partners and allies. He didn't ask about any of them—just Ukraine.

The most important question here is why would he do that? What was his motivation? Well, we now know why.

This hold shocked people across our own government. The Department of Defense, along with the State Department, had already certified to Congress that Ukraine had implemented sufficient anti-corruption reforms to get the funds, and the Defense De-

partment had already notified Congress of its intent to deliver the assistance.

So let's recap all of this. Congress had already funded it. Our own government had already certified that it met all of the standards that it met every other year, and Congress had already been notified, just like every other year.

In a series of meetings of the National Security Agency, everyone except the OMB supported the provision of the assistance. OMB, as we know, is headed by Mick Mulvaney, the President's Chief of Staff.

Ukraine experts at DOD, the State Department, and the White House emphasized that it was in the national security interest of the United States to continue to support Ukraine in its fight. But it wasn't just the national security concern, because many people thought that the hold was just outright illegal. And they were right. It was.

The President's hold did violate the law, because just last week, Congress's independent, nonpartisan watchdog, the Government Accountability Office, released an opinion finding that the hold was illegal.

President Trump held the military aid money for so long that the administration ran out of time to spend the money. Ultimately, even after the President lifted the hold on September 11—again, with no clear explanation why—we, the Congress, had to pass another law to extend the deadline, delaying the delivery of the aid.

In the same L.A. Times article that told the story about our friend Mr. Markiv, a Ukrainian defense spokesperson said that even though the hold had been lifted—this was in September—it “has not reached us yet.” That spokesperson went on to say: “It is not just money from the bank. It is arms, equipment and hardware.”

And to this day, millions of dollars still haven't been spent.

Although our government neither informed Ukraine of the hold nor publicly announced it, Ukraine quickly learned about it.

On July 25, the same day as President Trump's call with President Zelensky, officials at Ukraine's Embassy here in Washington emailed DOD to ask about the status of the funding. By mid-August, officials at DOD, the State Department, and the NSC received numerous questions from Ukrainian officials about the hold. Everyone was worried. It is not just because of the urgent need for the equipment on the frontlines but also because of the message that it sent. You see, President Zelensky had just been sworn in. They were very vulnerable. And, as we all know, Vladimir Putin looks for vulnerability. He looks for hesitation. He looks for delay. And any public sign of a hold on that aid could be a sign of weakness that could show him it was time to pounce.

President Trump's hold on Ukraine assistance was eventually publicly reported on August 28. As we will explain, Ukraine fully understood that the hold was connected to the investigations that President Trump wanted.

On February 28, DOD notified Congress that it intended to deliver \$125 million of assistance appropriated in September, including “more than \$50 million of assistance to deliver counter-artillery

radars and defense lethal assistance.” Congress cleared the notification, which enabled DOD to begin spending the funds.

For Ukraine to receive the remaining \$125 million, Congress required that the Secretary of Defense, in coordination with the Secretary of State, certify that the Government of Ukraine had taken substantial anti-corruption reforms.

Deputy Assistant Secretary of Defense Laura Cooper and senior officials across our government conducted a review to evaluate whether Ukraine had met the required benchmarks.

Ms. Cooper explained that the review involved “pulling in all the views of the key experts on Ukraine defense, and coming up with a consensus view,” which was then run “up the chain in the Defense Department, to ensure we have approval.”

By May 23, the anti-corruption review was complete, and DOD certified to Congress that Ukraine had complied with all of the conditions and that the remaining half of the aid should be released. But, again, you don’t have to take my word for it. On May 23, in a letter to Congress, one of President Trump’s senior political appointees, the Under Secretary of Defense for Policy, wrote: [Slide 175] “On behalf of the Secretary of Defense, and in coordination with the Secretary of State, I have certified that the Government of Ukraine has taken substantial actions to make defense institutional reforms for the purposes of decreasing corruption, increasing accountability, and sustaining improvements of combat capability enabled by U.S. assistance.”

Congress then cleared the funding, which should have allowed Ukraine to receive the aid. But we know that is not what happened.

On June 18, as DOD was preparing to send the aid, they issued a press release—as they normally do—announcing that it would provide \$250 million in security assistance to Ukraine for “additional training, equipment, and advisory efforts to build the capacity of Ukraine’s armed forces.” This included sniper rifles, rocket-propelled grenades, counter-artillery radars, command and control, electronic warfare, secure communications, vehicles, night vision, and medical equipment. However, according to the New York Times, 1 day after the Defense Department issued this press release—1 day—Assistant to the President Robert Blair, who works for Mick Mulvaney, called OMB Acting Director Russell Vought to tell him: “We need to hold it up.” The “it” was the assistance.

That same day, June 19, President Trump gave an interview on FOX News where he raised the so-called CrowdStrike conspiracy theory that Ukraine, not Russia, had interfered in the 2016 election, a line he would echo during his July 25 call with President Zelensky. This theory, by the way, has been advanced by Russian propaganda to try to take attention away from Russian interference and shift it onto Ukraine. It is a theory that has been universally debunked by U.S. intelligence and law enforcement.

Nonetheless, the President, spurred by the June 18 press release and with the false theory about the Ukraine interference, supposedly, in the 2016 election, started asking about the Ukraine assistance. On June 19, OMB Associate Director for National Security Michael Duffey emailed Elaine McCusker, the DOD comptroller. He said the President had questions about the press report

and that he was seeking additional information. This was a reference to an article in the Washington Examiner, shown here on the slide in front of you. [Slide 176]

The White House withheld this email from the House, of course. We first learned of it from Duffey's deputy, Mark Sandy, who testified that he was copied on it. Subsequently, as a result of a lawsuit under the Freedom of Information Act, the public and, therefore, Congress received a copy of that email, but the White House still refuses to comply with the subpoenas for this and other documents.

On June 20, McCusker responded to President Trump's inquiry by providing Sandy information on the security assistance program. Sandy shared the information with Duffey, but he did not know whether Duffey shared the information with the White House. Laura Cooper also recalled receiving an email inquiry about Ukraine's security assistance "a few days after DOD's June 18 press release." She noted that it was "relatively unusual" to receive questions from the President. In response, DOD provided materials explaining that the \$250 million funding package was for additional training, equipment, and advisory efforts to build the capacity of Ukraine's Armed Forces. DOD emphasized that "almost all of the dozens of vendors are U.S. companies," meaning that this funding also benefited U.S. businesses and workers.

Nonetheless, President Trump put the wheels in motion to freeze the funds shortly after learning about DOD's plan to release the funds. According to a New York Times article on June 27, Chief of Staff Mulvaney emailed Blair: [Slide 177]

I am just trying to tie up some loose ends. Did we ever find out about the money from Ukraine and whether we can hold it back?

Blair reportedly responded that it would be possible but not pretty. He added: "Expect Congress to become unhinged." I suppose he said that for all the reasons we have talked about earlier, because this Chamber and our Chamber on the other side of the Capitol resoundingly supports it.

And that was just the Defense Department assistance to Ukraine. For 2019, Congress also appropriated \$141 million to Ukraine through the State Department. Unlike the Defense Department funding, which was approved by Congress and ready to be spent, OMB blocked the State Department from even seeking Congress's approval to release the funds.

I am going to pause here to, once again, stress that we have learned a lot about the circumstances around the initial hold only from the public release of and reporting about these emails in the past few weeks. The White House has refused to provide these emails in response to a subpoena.

Mick Mulvaney and Rob Blair refused to comply with the subpoena to testify. These emails are just a few of the many thousands that likely exist on this topic but which have been concealed from Congress and the American people because of ongoing obstruction. In fact, last night, as we were here late into the night, sometime around midnight, a new tranche of documents were released under a Freedom of Information Act request by an independent watchdog that had been asking for them—they were released last night—between Mr. Duffey and Elaine McCusker, and others, on the things that I am talking about right now. Unfortunately, as you can see,

there isn't a lot to read here because it is all blacked out. So, if the President's lawyers contest any of the facts that I am talking about, you should demand to see the full record. The American people deserve to see the full truth when it comes to Presidential actions.

Back to the timeline, from July to September of 2019, the President and his advisers at the White House and OMB implemented the hold on Ukraine assistance through an unusual and unlawful process. First, on July 3, the State Department notified DOD and NSC staff that OMB was blocking its notification to Congress. According to Jennifer Williams, Vice President PENCE's aide, the hold on this assistance "came out of the blue" because it had not been previously discussed by OMB or NSC.

Around July 12, President Trump directed that a hold be placed on the DOD security assistance as well. That day, Mr. Blair sent an email to Duffey at OMB informing him "that the President is directing a hold on military support funding for Ukraine."

Around July 15, Tim Morrison learned from Deputy National Security Advisor Charles Kupperman "that it was the President's direction to hold the assistance." Several days later, Duffey and Blair again exchanged emails about Ukraine's security assistance, and Sandy testified that, in these emails, Duffey asked Blair about the reason for the hold. Blair provided no explanation. Instead, he said: "We need to let the hold take place" and then "revisit" the issue with the President.

Between July 18 and July 31, the NSC staff convened several interagency meetings at which the hold on security assistance was discussed. Remember those dates: July 18 to July 31. According to Mark Sandy and other witnesses, several facts emerged. First, the agencies learned that the President himself had directed the hold through OMB. Second, no justification or explanation was provided for the hold, despite repeated questions. Third, except for OMB, all agencies were supporting military aid because it was in the national security interests of the United States. And fourth, many were concerned that the hold was outright illegal.

Ambassador Taylor learned of the hold on July 18. He said the "directive had come from the President to the Chief of Staff to OMB" and that he "sat in astonishment" because "one of the key pillars of our strong support for Ukraine was threatened."

David Holmes, a diplomat at the U.S. Embassy in Kyiv, testified that he was shocked by the hold. Although there was initially some question as to whether the hold applied to DOD funds, which was already cleared by Congress, it soon became clear that the hold applied to all \$391 million.

Tim Morrison testified that DOD officials raised concerns at a meeting on July 23 about whether it was "actually legally permissible for the President to not allow for the disbursement of the funding." These concerns related to possible violations of the Impoundment Control Act, the law that gives a President the authority to delay or withhold funds only if Congress is notified of those intentions and approves the proposed action. Of course, neither of those things had been done. The issue was escalated quickly, and at a senior-level meeting on July 26, OMB remained the lone voice for holding the aid. According to Tim Morrison, OMB said that

President Trump was concerned about corruption in Ukraine. Cooper, from DOD, also attended the July meeting. She received no further understanding of what was meant by “corruption.” There was never a principals meeting convened on this issue, but there was a fourth and final interagency meeting on July 31. Remember that date? A fourth and final one.

There is a process for making sure that U.S. aid money makes it to the right place, to the right people.

Mr. Chief Justice, I do see a lot of Members moving and taking a break. Would you like to take a break at this time? I have another, probably, 15 minutes.

The CHIEF JUSTICE. I think we can continue.

Mr. McCONNELL. Mr. Chief Justice, if I may, what I was going to suggest was that at 6:30 we take a 30-minute break for dinner, if that would work.

The CHIEF JUSTICE. So break at 6:30?

Mr. McCONNELL. Yes. What I was going to suggest is a break for dinner at 6:30 for about 30 minutes, if that works.

The CHIEF JUSTICE. That is a good idea.

Mr. Manager CROW. So we know there was a hold, but there was no lawful way to implement that hold. So the OMB had to use creative methods. There is a process for making sure that U.S. aid money makes it to the right place, to the right people—a process that had been followed every year since the Congress approved security assistance to Ukraine. The administration needed to find a creative way of getting around that process. Later in the evening of July 25, the OMB found that way, even though DOD had already notified Congress that the funds would be released.

Here is how it worked. First, OMB issued guidance asserting that there was an ongoing review of assistance, even though none of the witnesses who testified were aware of any review of assistance. Second, OMB also attempted to hide the hold in a series of technical footnotes in funding documents. And third, OMB’s leadership also transferred responsibility for approving funding obligations from career civil servant Mark Sandy to a political appointee, Mark Duffey, someone with no relevant experience in this funding.

Based on recent public reporting and documents DOD released under the Freedom of Information Act, we learned that on July 25, approximately 90 minutes after President Trump’s phone call with President Zelensky, Mr. Duffey put this three-pronged plan into motion when he sent an email to senior DOD officials, copying Sandy. The email [Slide 178] is in front of you. In this email, Duffey stated: Based on guidance I have received and in light of the administration’s plan to review assistance to Ukraine, please hold off on any additional DOD obligations of these funds, pending direction from that process. Duffey also underscored: “Given the sensitive nature of the request, I appreciate your keeping that information closely held to those who need to know to execute the direction.” In other words, don’t tell anybody about it.

Later that day, Sandy approved and signed the first July 25 funding document, which delayed funding until August 5. Sandy testified that the purpose of this and subsequent footnotes “was to preclude obligation for a limited period of time but enable planning and casework to continue.” Sandy also testified that his use of foot-

notes was unusual and that, in his 12 years of OMB experience he could “not recall another event like it.”

On July 29, Duffey told Sandy he would no longer be responsible for approving the release of DOD Ukraine funding. This was only weeks after Sandy had raised questions about the legality of the President’s hold. Duffey also revoked the authority for approving the release of the State Department funding from Sandy’s colleague at OMB. In short, Duffey assumed approval authority for all \$391 million of the assistance.

Over the next several weeks, with Duffey in charge, OMB continued to issue funding documents that kept kicking the can down the road, supposedly to allow for an interagency process—and, remember, an interagency process that had already wrapped up back in July—while inserting the whole time footnotes throughout the apportionment documents stating that the delay wouldn’t affect the program. Yet concerns continued to be relayed within DOD that it had.

In total, OMB issued nine of these documents between July 25 and September 10. Even as OMB was implementing the President’s hold, officials inside OMB advocated for the release of the funds. On August 7, OMB staff sent a memo to Director Vought recommending removing the hold because the assistance was consistent with the national security strategy in terms of, one, supporting a stable, peaceful Europe; two, the fact that the aid countered Russian aggression; and, three, that there was bipartisan support for the program. This meant that experts at every single relevant agency involved opposed the hold.

By mid-August, DOD raised concerns that it might not be able to fully spend the DOD funds before the end of the fiscal year. Laura Cooper testified that DOD estimated that \$100 million of aid was at risk of not getting to Ukraine. DOD concluded that it could no longer support OMB’s claim, in the footnotes, that “this brief pause in obligations will not preclude DOD’s timely execution of the final policy direction.” Sandy testified that this sentence in the footnotes was “at the heart of that issue about ensuring that we don’t run afoul of the Impoundment Control Act.”

Records produced in response to a FOIA lawsuit show that Mr. Duffey and Ms. McCusker exchanged emails on August 20, and on that date, OMB modified the footnote. These emails are almost entirely redacted; however, all the subsequent footnotes issued by OMB during the pendency of the hold removed this sentence regarding DOD’s ability to fully obligate the funds by the end of the fiscal year. Nevertheless, OMB continued to implement the hold at the President’s direction. We know from emails released last night that as of September 5, OMB was continuing to instruct DOD to hold the aid. OMB gave these emails to a private organization just because of a FOIA lawsuit.

On September 5, Duffey emailed McCusker the following:

No movement on Ukraine. Footnote forthcoming to continue hold through Friday.

We know that McCusker responded to OMB with a lengthy email detailing DOD’s serious concerns, but OMB redacted almost the whole thing.

As I explained last night, OMB has key documents that President Trump has refused to turn over to Congress—key documents that go to the heart of one of the ways in which the President abused his power.

Concerns about whether the administration was bending, if not breaking, the law contributed to at least two OMB officials resigning, including an attorney in OMB. According to Sandy, one colleague specifically disagreed with OMB General Counsel about the application of the Impoundment Control Act. As I mentioned earlier, the independent and nonpartisan Government Accountability Office has already said that the hold was illegal. But you remember the OMB correspondence referencing the “Interagency Process.” As we now know, there was no interagency process. It had ended months before. They made it up. They had to make it up because they couldn’t say the real reason for the hold.

Sometime prior to August 16, Ambassador Bolton had a one-on-one meeting with President Trump. According to Tim Morrison, at that meeting, the President “was not yet ready to approve the release of the assistance.” Ambassador Bolton instructed Morrison to look for other opportunities to get the President’s Cabinet together “to have the direct, in-person conversation with the President about this topic.” Everyone was worried, including the President’s National Security Advisor.

In mid-August, Lieutenant Colonel Vindman drafted a Presidential decision memorandum for Ambassador Bolton to present to President Trump for a decision on Ukraine security assistance. The memorandum recommended that the hold be lifted. Morrison testified that the memorandum was never provided to the President because of other competing issues. Morrison testified that a meeting with the President was never arranged in August, reportedly because of scheduling problems.

According to recent press reports, on August 30, Secretary of Defense Esper and Secretary of State Pompeo met with President Trump and implored him to release the security assistance because doing so was in the interest of the United States. However, President Trump continued to ignore everybody. Later that day, Duffey emailed Under Secretary of Defense Elaine McCusker and wrote: “Clear direction from POTUS to hold.”

The Ukrainian Government knew of President Trump’s hold on security assistance well before it was publicly reported on August 28. This was not surprising. U.S. diplomat Catherine Croft testified it was “inevitable that it was eventually going to come out.”

She said that two individuals from the Ukrainian Embassy here in Washington approached her approximately a week apart “quietly and in confidence to ask me about an OMB hold on Ukraine security assistance.” She could not precisely recall the dates of these conversations but testified that she was “very surprised at the effectiveness of my Ukrainian counterparts.” Everyone was worried. Why would these diplomats quietly make this inquiry? It is because if it had gone public, it would show that weakness against Russia which was so concerning to everybody involved. She said: [Slide 179] “I think that if this were public in Ukraine, it would be seen as a reversal of our policy . . . it would be a really big deal

in Ukraine, and an expression of declining U.S. support for Ukraine.”

Meanwhile, Laura Cooper testified that DOD heard from the Ukrainian Embassy on July 25—the same day as President Trump’s call to President Zelensky.

(Text of Videotape presentation:)

Ms. COOPER. On July 25th, a member of my staff got a question from a Ukraine Embassy contact asking what was going on with Ukraine security assistance, because at that time, we did not know what the guidance was on USAI. The OMB notice of apportionment arrived that day, but this staff member did not find out about it until later. I was informed that the staff member told the Ukrainian official that we were moving forward on USAI, but recommended that the Ukraine Embassy check in with State regarding the FMF.”

Mr. Manager CROW. “USAI” referred to the \$250 million that OMB blocked DOD from sending to Ukraine. “FMF” referred to the \$141 million they blocked from the State Department.

On July 25, Cooper’s staff also received two emails from the State Department revealing that the Ukrainian Embassy was “asking about security assistance” and that “the Hill knows about the FMF . . . situation to an extent, and so does the Ukrainian embassy.” One of Cooper’s staff members reported additional contacts with Ukrainian officials about the hold in August.

Finally, we know the Ukrainians knew about the hold because the New York Times published an interview with the former Deputy Foreign Minister of Ukraine, Olena Zerkal. She stated that she and President Zelensky’s office received a cable in late July informing them of the hold.

In short, by the time of POLITICO’s report on August 28, the Ukrainians were well aware that the aid was not the only important official act the White House was withholding from them. The long-sought White House visit for President Zelensky was also in limbo.

As all of this transpired, Ukrainian troops were still on the frontlines in eastern Ukraine, facing off against Russian-backed forces, dying in defense of their country.

Ambassador Bill Taylor visited those Ukrainian troops on July 26. He recalled seeing “the armed and hostile Russian-led force on the other side of the damaged bridge across the line of the contact.” When asked to reflect on that visit, here is what Ambassador Taylor had to say:

(Text of Videotape presentation:)

Mr. MALONEY. Let’s talk about July 26, a lot of years later. You go to the front, you go to Donbas with Ambassador Volker, I believe. And you’re on the bridge, and you’re looking over on the front line at the Russian soldiers. Is that what you recalled?

Ambassador TAYLOR. Yes, sir.

Mr. MALONEY. And you said the commander there, the Ukrainian commander, thanked you for the American military assistance that you knew was being withheld at that moment.

Ambassador TAYLOR. That’s correct.

Mr. MALONEY. How’d that make you feel, sir?

Ambassador TAYLOR. Badly.

Mr. MALONEY. Why?

Ambassador TAYLOR. Because it was clear that that commander counted on us. It was clear that that commander had confidence in us. It was clear that that commander had what—was appreciative of the capabilities that he was given by that assistance but also the reassurance that we were supporting him.

Mr. Manager CROW. Like me, Ambassador Taylor is a combat veteran. In fact, he was awarded a Bronze Star. Ambassador Taylor knew how vital our military aid was to those Ukrainian troops because he knows what it feels like to have people counting on you.

Members of the U.S. Senate, I know you believe that aid is important, too, because 87 Members of this body voted to support it. President Trump did not think the aid was important last year. He ignored you and the direction of Congress. He betrayed the confidence of our Ukrainian partners and U.S. national security when he corruptly withheld that aid. He did so because he simply wanted to help his own political campaign. Our men and women in uniform deserve better. Our friends and allies deserve better. The American people deserve better.

Mrs. Manager DEMINGS. Chief Justice Roberts, Senators, and counsel for the President, I want to talk to you about the White House meeting that President Trump offered to President Zelensky during their first phone call in April. But, as you know, that meeting has not been scheduled. It was never scheduled.

Ambassador Sondland testified that after the May 23 meeting with President Trump, it became clear that President Zelensky would not be invited to the Oval Office until he announced the opening of investigations that would benefit President Trump's reelection. During his testimony, Ambassador Sondland stressed that it was a clear quid pro quo. Let's listen.

(Text of Videotape presentation:)

Ambassador SONDLAND. I know that members of this committee frequently frame these complicated issues in the form of a simple question: Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes. Mr. Giuliani conveyed to Secretary Perry, Ambassador Volker, and others that President Trump wanted a public statement from President Zelensky committing to investigations of Burisma and the 2016 election. Mr. Giuliani expressed those requests directly to the Ukrainians, and Mr. Giuliani also expressed those requests directly to us. We all understood that these prerequisites for the White House call and the White House meeting reflected President Trump's desires and requirements.

Mrs. Manager DEMINGS. Ambassador Sondland also testified that the scheme to pressure Ukraine into fulfilling the President's requirements for an Oval Office meeting became progressively more specific and problematic—what he described as a “continuum of insidiousness.” He explained the evolution from generic requests to investigate corruption to calls to pursue specific allegations against President Trump's political opponents.

Here is Ambassador Sondland again.

(Text of Videotape presentation:)

Ambassador SONDLAND. Well, Mr. Chairman, when we left the Oval Office, I believe on May 23, the request was very generic for an investigation of corruption in a very vanilla sense and dealing with some of the oligarch problems in Ukraine, which were longstanding problems. And then as time went on, more specific items got added to the menu, including the Burisma and 2016 election meddling, specifically the DNC server specifically. And over this continuum it became more and more difficult to secure the White House meeting because more conditions were being placed on the White House meeting.

Mrs. Manager DEMINGS. In short, Ambassadors Volker and Sondland understood that to get the meeting scheduled, they needed to get Mr. Giuliani's agreement first.

On June 27, Ambassador Sondland explained to Ambassador Taylor that President Trump needed to hear from the Ukrainian leader before he would consent to a White House meeting. Here is how Ambassador Taylor explained it.

(Text of Videotape presentation:)

Ambassador TAYLOR. On June 27th, Ambassador Sondland told me during a phone conversation that President Zelensky needed to make clear to President Trump that he, President Zelensky, was not standing in the way of investigations.

Mrs. Manager DEMINGS. Diplomat David Holmes testified that he understood, early on, the investigations to mean the Burisma-Biden investigations that Mr. Giuliani and his associates had been speaking about publicly. Mr. Holmes noted that while President Trump was withholding an Oval Office meeting with Ukraine's newly elected leader, he agreed to meet with Ukraine's chief foe, Vladimir Putin.

Mr. Holmes had this to say:

(Text of Videotape presentation:)

Mr. HOLMES. Also on June 28th, while President Trump was still not moving forward on a meeting with President Zelensky, we met with—he met with Russian President Putin at the G20 Summit in Osaka, Japan, sending a further signal of lack of support to Ukraine.

Mrs. Manager DEMINGS. Ambassador Volker did not dispute other witnesses' testimony that President Trump conditioned an Oval Office meeting on President Zelensky's willingness to announce investigations. Indeed, Ambassador Volker helped matters along. Ambassador Volker testified that at a conference in early July, he suggested that President Zelensky speak to President Trump on the phone to discuss the investigations.

During his testimony, Ambassador Volker described that encounter.

Mr. GOLDMAN. Uh-huh. And in the July 2nd or 3rd meeting in Toronto that you had with President Zelensky, you also mentioned investigations to him, right?

Ambassador VOLKER. Yes.

Mr. GOLDMAN. And, again, you were referring to the Burisma and the 2016 election.

Ambassador VOLKER. I was thinking of Burisma and 2016.

Mr. GOLDMAN. Okay. And you understood that is what the Ukrainians interpreted references to investigations to be, related to Burisma and the 2016 election?

Ambassador VOLKER. I don't know specifically at that time if we had talked that, specifically, Burisma/2016 with President Zelensky. That was my assumption, though, that they would've been thinking about doing that, too.

Mrs. Manager DEMINGS. Mr. Giuliani became an inescapable presence to both Ukrainian officials and American diplomats. To the Ukrainians, Rudy Giuliani was seen as both a potential channel to President Trump and an obstacle to a productive U.S.-Ukraine relationship.

A top aide to President Zelensky texted to Volker that [Slide 180] "I feel that the key for many things is Rudi and I [am] ready to talk with him at any time."

But everyone understood that Mr. Giuliani was no rogue agent. He was acting at the direction of the President. Ambassador Sondland clearly described Mr. Giuliani's role in regard to the President. Let's listen.

(Text of Videotape presentation:)

Ambassador SONDLAND. Mr. Giuliani's requests were a quid pro quo for arranging a White House visit for President Zelensky. Mr. Giuliani demanded that Ukraine make a public statement announcing the investigations of the 2016 election, DNC server, and Burisma. Mr. Giuliani was expressing the desires of the President of the United States, and we knew these investigations were important to the President.

Mrs. Manager DEMINGS. Concern about Mr. Giuliani's influence began to grow. On July 10, at a meeting between Ambassador Taylor and two Ukrainian officials in Kyiv, Ukrainian officials said they were "very concerned" because Mr. Giuliani had told the corrupt prosecutor general, Lutsenko, that President Trump would not meet with the Ukrainian leader.

Back in Washington, two important encounters at the White House further revealed the existence of a corrupt quid pro quo. Ambassador Sondland first broached the investigation in a meeting in Ambassador Bolton's office with Bolton's Ukrainian counterpart and President Zelensky's top aide. Also present were Secretary Perry, Ambassador Volker, and NSC officials Dr. Hill and Lieutenant Colonel Vindman. Toward the end of the meeting, the Ukrainians raised the topic of an Oval Office meeting between President Trump and President Zelensky. Ambassador Bolton started to respond when Ambassador Sondland interjected and raised the demands of the investigation.

Here is how Lieutenant Colonel Vindman recalled the conversation:

(Text of Videotape presentation:)

LTC VINDMAN. To the best of my recollection, Ambassador Sondland said that in order to get a White House meeting, the Ukrainians would have to provide a deliverable, which is investigations, specific investigations.

Mrs. Manager DEMINGS. Ambassador Volker separately confirmed this recollection during his testimony.

(Text of Videotape presentation:)

Ambassador VOLKER. I participated in the July 10 meeting between National Security Advisor Bolton and then-Ukrainian Chairman of the National Security and Defense Council, Alex Danyliuk. As I remember, the meeting was essentially over when Ambassador Sondland made a general comment about investigations. I think all of us thought it was inappropriate.

Mrs. Manager DEMINGS. Ambassador Bolton also found Ambassador Sondland's reference to be inappropriate, and he abruptly ended the meeting. However, Ambassador Sondland was not deterred. He convened a second meeting where he discussed what needed to happen before an Oval Office meeting. Apparently, Ambassador Sondland had received his marching orders from the President, and he was determined to carry them out.

Bolton sent Dr. Hill to join that meeting and report back. This is what Dr. Hill had to say:

(Text of Videotape presentation:)

Dr. HILL. And so when I came in, Gordon Sondland was basically saying, well, look, we have a deal here that there will be a meeting—I have a deal here with Chief of Staff Mulvaney. There will be a meeting if the Ukrainians open up or announce these investigations into 2016 and Burisma. And I cut it off immediately there. Because by this point, having heard Mr. Giuliani over and over again on the television and all of the issues that he was asserting, by this point it was clear that Burisma was code for the Bidens because Giuliani was laying it out there.

Mrs. Manager DEMINGS. After the meeting, Dr. Hill followed up with Ambassador Bolton and relayed what transpired. Bolton was alarmed. In other words, Ambassador Bolton didn't want any part of it. He directed Dr. Hill to brief the NSC's top attorney, John Eisenberg, as she explained during her hearing.

(Text of Videotape presentation:)

Mr. GOLDMAN. What was that specific instruction?

Dr. HILL. The specific instruction was that I have to go to the lawyers, to John Eisenberg, our senior counsel for the National Security Council, to basically say, you tell Eisenberg, Ambassador Bolton told me, that I am not part of this whatever drug deal that Mulvaney and Sondland are cooking up.

Mr. GOLDMAN. What did you understand him to mean by the drug deal that Mulvaney and Sondland were cooking up?

Dr. HILL. I took it to mean investigations for a meeting.

Mr. GOLDMAN. Did you go speak to the lawyers?

Dr. HILL. I certainly did.

Mrs. Manager DEMINGS. As a former chief of police, I think it is quite interesting that Ambassador Bolton categorized the corrupt scheme—the pressure campaign—as a “drug deal.” I think Ambassador Bolton was trying to send us a very powerful message that not only would the lawyers, the top lawyer understand, but that every person would understand—every Member of the House, every Member of the Senate, every member of our great country, every citizen.

And Ambassador Bolton also wanted to make clear, especially to the top attorney, that he did not want to have anything to do with the drug deal in progress. But we do know now, of course, that Ambassador Bolton can testify directly about this. He can testify directly for himself about this meeting if he appears before this body, as he has indicated that he is prepared to do if this body is willing to issue a subpoena. We need to hear from Ambassador Bolton, and I know the American people want to hear from Ambassador Bolton as well.

Dr. Hill testified that she spoke to Mr. Eisenberg twice. Dr. Hill also indicated that Mr. Eisenberg took notes of their meeting, which we, to no surprise now, do not have. We have not received them because of the President's obstruction.

It is clear that Ambassador Sondland was not operating a rogue operation. He testified that everyone was in the loop. Let's listen once again.

(Text of Videotape presentation:)

Ambassador SONDLAND. Everyone was in the loop. It was no secret. Everyone was informed via email on July 19th, days before the Presidential call. As I communicated to the team, I told President Zelensky in advance that assurances to run a fully transparent investigation and turn over every stone were necessary in his call with President Trump.

Mrs. Manager DEMINGS. In the email reference, Ambassador Sondland wrote the following to Secretary Pompeo, Secretary Perry, and Mr. Mulvaney regarding President Zelensky. [Slide 181]

He is prepared to receive POTUS' call. Will assure him that he intends to run a fully transparent investigation and will “turn over every stone.”

Both Mulvaney and Perry responded to the email noting that the head-of-state call would be scheduled right away. Now, you may be asking: What did Mulvaney know about these investigations, and did he have any conversations with President Trump about them?

Senators, this body is entitled to see all of the evidence, and do you know what? The American people are entitled to hear all of the evidence. And while the nature of the “drug deal” we have talked about was uncontested, it is important for the country to know that everyone was involved because we have heard that everyone was in the loop.

Now, later this day, July 19, Ambassador Sondland texted Ambassadors Volker and Taylor about the upcoming head-of-state telephone call, and the text said: [Slide 182]

Looks like Potus call tomorrow. I [spoke] directly to Zelensky and gave him a full briefing. He's got it.

Ambassador Volker replied to Sondland's text: [Slide 183] “Most [important] is for Zelensky to say that he will help investigations.”

The evidence shows that the Ukrainians understood what they needed to do to earn a White House meeting with the President.

On July 20, the day after Ambassador Sondland's phone call with President Zelensky, Ambassador Taylor spoke with the Ukrainian national security advisor. Ukraine's national security advisor conveyed that the Ukrainian President did not want to become an instrument in U.S. politics.

Here is how Ambassador Taylor explained that concern:
(Text of Videotape presentation:)

Mr. GOLDMAN. What did you understand it to mean when—that Zelensky had concerns about being an instrument in Washington domestic reelection politics?

Ambassador TAYLOR. Mr. Danyliuk understood that these investigations were pursuant to Mr. Giuliani's request to develop information, to find information about Burisma and the Bidens. This was very well known in public. Mr. Giuliani made his point clear in several instances in the beginning—in the springtime.

And Mr. Danyliuk was aware that that was a problem.

Mr. GOLDMAN. And would you agree that, because President Zelensky is worried about this, they understood, at least, that there was some pressure for them to pursue these investigations? Is that fair?

Ambassador TAYLOR. Mr. Danyliuk indicated that President Zelensky certainly understood it, that he did not want to get involved in these types of activities.

Mrs. Manager DEMINGS. The next day, Ambassador Taylor relayed the Ukrainian leader's concerns to Volker and Sondland, but Ambassador Sondland did not back down.

Specifically, Ambassador Sondland texted in response to Ambassador Taylor's worry: [Slide 184] “Absolutely, but we need to get the conversation started and the relationship built, irrespective of the pretext.”

Again, Ambassador Sondland had his marching orders, and he was determined to carry them out.

A call between President Trump and President Zelensky was scheduled for July 25.

Before the call, President Trump spoke to Sondland and reiterated his expectation that the Ukrainian leader would commit to the investigations.

Ambassador Sondland subsequently contacted Ambassador Volker and relayed the message to him.

Volker then texted Zelensky's top aide with [Slide 185] President Trump's instruction: “[A]ssuming President Z convinces trump he will investigate / ‘get to the bottom of what happened’ in 2016, we will nail down the date for a visit to Washington.”

Senators, in other words, even before the July 25 phone call with President Zelensky, before it ever took place, Ukraine understood that it needed to initiate the investigation into the debunked conspiracy theory about the 2016 election as a condition for President Zelensky, the newly elected Ukrainian President, to visit the White House.

Ambassador Sondland testified that acting on President Trump's direct orders, he and Ambassador Volker prepped President Zelensky for the telephone call.

(Text of Videotape presentation:)

Mr. GOLDMAN. And you would agree that the message in this—that is expressed here is that President Zelensky needs to convince Trump that he will do the investigations in order to nail down the date for a visit to Washington, D.C. Is that correct?

Ambassador SONDLAND. That's correct.

Mrs. Manager DEMINGS. By this time, nonpartisan career officials involved with Ukraine policy had become aware of this quid pro quo.

Here is what three of them said during their testimony: [Slide 186]

Ambassador Taylor: “. . . the meeting President Zelensky wanted was conditioned on investigations of Burisma and alleged Ukrainian influence in the 2016 elections . . .”

Ambassador David Holmes: “. . . it was made clear that some action on a Burisma/Biden investigation was a precondition for an Oval Office visit.”

Dr. Hill: “There seems to be an awful lot of people involved in, you know, basically turning a White House meeting into some kind of asset” that was “dangled out to the Ukrainian Government.”

A White House visit—a visit to the Oval Office—dangled out to the Ukrainian Government.

Senators, I ask you to think about those words as we decide—as you decide—what action you will take. Think about those words. There was no doubt the direction came from the President of the United States. The President was at the center of this scheme.

Ambassador Sondland testified: [Slide 187] “Mr. Giuliani was expressing the desires of the President of the United States, and we knew these investigations were important to the President.”

Ambassador Sondland added that Mr. Giuliani “followed the direction of the President” and “we followed the President's orders.”

However, as Ambassador Taylor testified, [Slide 188] “Ambassador Bolton was not interested in having—did not want to have the call because he thought it was going to be a disaster.” He thought that there could be some talk of investigations or even worse than that, he thought.

I ask you today, Senators: What was Ambassador Bolton so afraid that President Trump would say to the newly elected Ukrainian President? What was the National Security Advisor so afraid that President Trump would say to President Zelensky?

This is another topic we would like to ask Ambassador Bolton about if and when he appears before this body.

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, I thank you, once again, for your indulgence

and for your courtesy as we all undertake our solemn constitutional responsibilities during this Senate trial.

George Washington once observed in his Farewell Address to the Nation that the Constitution was sacredly obligatory upon all. That means everyone. In fact, that is what makes our great country so distinct from authoritarian regimes and enemies of democracy. Vladimir Putin is above the law in Russia; Erdogan is above the law in Turkey; Kim Jong Un is above the law in North Korea, but in the United States of America, no one is above the law, not even the President of the United States. That is what this moment is all about.

As we all know, Congress is a separate and coequal branch of government. We don't work for this President or any President. We, of course, work for the American people. We have a constitutional responsibility to serve as a check and balance on an out-of-control executive branch. That is not from the Democratic Party's playbook, and that is not from the Republican Party's playbook. That is from the playbook of a democratic republic.

James Madison once observed in Federalist No. 51 that the Congress should serve as a rival to the executive branch.

In my humble opinion, why would Madison use the word "rival"?

It is that the Framers of the Constitution, I think, did not want a King; they did not want a dictator; they did not want a Monarch. They wanted a democracy. The Constitution is sacredly obligatory upon all. It is through that lens that we proceed today.

[Slide 189] For the next few moments, I would like to discuss President Trump's July 25 phone call with Ukraine's newly elected leader.

The President claims that his call was perfect. Nothing can be further from the truth. The call is direct evidence of President Trump's solicitation of foreign interference in the 2020 election as part of a corrupt scheme. It is important, of course, to remember the context of this call.

New Ukrainian President Volodymyr Zelensky was in a vulnerable position and viewed American and diplomatic military support as critical to his standing and to Ukraine's fragile future as a democracy. Equally significant, as outlined by my colleagues, America has a strong national security interest in supporting Ukraine against Russia's continued aggression.

William Taylor, a West Point graduate, a Vietnam war hero, and Ambassador to Ukraine, appointed by Donald Trump, testified: "Ukraine is a strategic partner of the United States—important for the security of our country as well as Europe."

Lieutenant Colonel Alexander Vindman, a National Security Council officer, a Trump appointee, a Purple Heart recipient, an Iraq war veteran, testified: "A strong and independent Ukraine is critical to our national security interests."

Ukraine remains under attack by Russian-backed separatists in Crimea. It is an ongoing hot war. Ukraine is a friend. Russia is a foe. Ukraine is a democracy. Russia is a dictatorship. The United States may very well be one of the other things standing between Russia and Ukraine's being completely overrun. As part of that, Vladimir Putin continued aggression against the free world. That is why this Congress allocated \$391 million in military and security

aid to a vulnerable Ukraine on a bipartisan basis. It is that it is in America's national security interests.

On the July 25 call, Mr. Trump could have endeavored to strengthen the relationship with this new Ukrainian leader. Instead, President Trump focused on securing a personal favor. He wanted Ukraine to conduct phony investigations, designed to enhance his political standing and solicit foreign interference in the 2020 election.

On the July 25 call, President Trump maligned a highly respected American Ambassador, known as an anti-corruption crusader. At the same time, he praised a corrupt former Ukrainian prosecutor, and on multiple occasions, President Trump directed Ukraine's new leader to speak with his personal lawyer, Rudolph Giuliani, on an official call.

Mr. Giuliani is not a member of the Trump administration. For these and other reasons, the July 25 call warrants our close scrutiny. It presents significant and shocking evidence of President Trump's corrupt intent. The call lays bare the President's willingness to do whatever it takes to get what he wants even if his behavior undermines the national security interests of the United States of America.

At the beginning of the call, President Zelensky mentioned U.S. military aid, and he states: "I would also like to thank you for your great support in the area of defense." [Slide 190] The great support in the area of defense includes the security assistance passed by this Congress, on a bipartisan basis, that Donald Trump held up in violation of the law.

Immediately after President Zelensky raised the issue of defense support, President Trump responded: [Slide 191] "I would like you to do us a favor, though."

These words will live in infamy.

First, President Trump said to President Zelensky, as part of the two demands that he requested:

I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike . . . I guess you have one of your wealthy people. . . . The server, they say, Ukraine has it."

President Trump continued: [Slide 192]

I would like to have the Attorney General call you or your people, and I would like you to get to the bottom of it. As you saw yesterday, that whole nonsense ended with a very poor performance by a man named Robert Mueller—

A Vietnam war hero, by the way—

a very poor performance by a man named Robert Mueller, an incompetent performance, but they say a lot of it started with Ukraine. Whatever you can do, it's very important that you do it if that's possible.

Who is the "they" referred to by President Trump putting forth the baseless conspiracy theory that the Ukrainians, not the Russians, were behind the hack of the Democratic National Committee server in 2016?

"They" means Russia. "They" means Putin. "They" are enemies of the United States.

Not a single witness who testified before the House knew of any factual basis for President Trump's belief in the CrowdStrike Ukraine fairytale. To the contrary, the U.S. intelligence community

and this Senate Intelligence Committee assessed that Russia interfered in the 2016 election.

As Dr. Fiona Hill testified, the theory that Ukraine interfered in the 2016 election “is a fictional narrative that has been perpetrated and propagated by the Russian security services.”

The conspiracy theory that President Trump advanced on the July 25 phone call is stone-cold Russian propaganda.

As early as February 2017, Vladimir Putin began to promote this lie during a press conference saying: [Slide 167]

The Ukrainian Government adopted a unilateral position in favor of one candidate. More than that, certain oligarchs, certainly with the approval of the political leadership, funded this candidate, or female candidate, to be more precise.

Those are the words of Vladimir Putin—a script apparently adopted by President Donald John Trump.

If there was any doubt about who benefits from this unfounded, Russian-inspired conspiracy theory advanced by Donald Trump, Vladimir Putin made it clear when he said in November of 2019: [Slide 193]

Thank God no one is accusing us anymore of interfering in U.S. elections. Now they’re accusing Ukrainians.

Unfortunately, this is not the first time President Trump tried to capitalize on Russian propaganda and misinformation for his own political benefit.

On July 24, just one day before this call, Special Counsel Robert Mueller testified before Congress that the “Russian government interfered in the 2016 election in sweeping and systematic fashion” in order to support the Trump campaign and divide America.

Mr. Mueller also found that the Trump campaign welcomed Russian interference in the 2016 election and utilized it as part of its campaign messaging.

Despite the clear and overwhelming conclusion of U.S. intelligence agencies, as well as the distinguished Senate Intelligence Committee, that Russia, not Ukraine interfered in the 2016 election, President Trump continued to press the new Ukrainian leader to announce an investigation into the CrowdStrike Ukraine conspiracy theory.

Why? President Trump sought a political favor—that is why—as part of a scheme to solicit foreign interference in the 2020 election.

The second demand made by President Trump on the July 25 call related to the campaign of Vice President Joe Biden, who announced his intention to run for the Office of the Presidency last April. Throughout the spring and early summer of last year, public polling consistently showed that Biden would decisively defeat President Trump. In fact, on June 16 of last year—June 16—a FOX News poll showed that President Trump would lose to Joe Biden by 10 points.

The concern with Joe Biden’s candidacy provides motive for President Trump’s demand that the Ukrainian Government investigate the former Vice President and his son Hunter.

Here is what President Trump said on that call: [Slide 194]

The other thing, there’s a lot of talk about Biden’s son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it . . . It sounds horrible to me.

Now, the Trump administration officials who participated in the impeachment inquiry unanimously testified that there was no factual support for the allegation that Vice President Biden did anything wrong or misused his authority when he pressed for the removal of Ukraine's corrupt former prosecutor general. Joe Biden did nothing wrong. The witnesses testified that Vice President Biden was in fact carrying out official U.S. policy to clean up the prosecutor general's office in Ukraine.

This policy, of course, aligned with the perspective of many in this very distinguished body, as well as our European allies throughout the world, as well as the International Monetary Fund.

Vice President Biden did not remove Yuriy Lutsenko, the corrupt prosecutor. The Ukrainian Government did with the support of the free world.

Nonetheless, on October 3, 2019, when a reporter asked President Trump, "What exactly did you hope Zelensky would do about the Bidens after your phone call," President Trump responded as follows.

(Text of Videotape presentation:)

REPORTER. What exactly did you hope Zelensky would do about the Bidens after your phone? Exactly?

President TRUMP. Well, I would think that, if they were honest about it, they'd start a major investigation into the Bidens. It's a very simple answer.

Mr. Manager JEFFRIES. Start a major investigation into the Bidens. The evidence of wrongdoing by President Trump is hiding in plain sight.

During the July 25 call, President Trump also repeatedly pressed the Ukrainian President to coordinate with his personal attorney, Rudolph Giuliani.

Why was Rudolph Giuliani's name mentioned multiple times during the July 25 phone call? Giuliani is not the Secretary of State. He is not an ambassador. He is not a member of the diplomatic corps.

Rudolph Giuliani is a cold-blooded political operative for President Trump's reelection campaign. That is why he was referenced multiple times on that July 25 phone call, and it is evidence of corrupt intent by President Trump.

By the time the call took place, President Zelensky understood Giuliani's connection to the shakedown scheme. He recognized Giuliani's role as the President's political operative on matters related to Ukraine.

Zelensky informed President Trump that one of his aides spoke with Mr. Giuliani "just recently" and [Slide 195] "we are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes."

The Ukrainian leader knew Giuliani represented President Trump's political interests in his country and could help unlock the long-sought-after Oval Office meeting that President Zelensky desired.

The phony investigations sought by President Trump on the July 25 call were not designed to bolster the national security interests of the United States of America—quite the contrary. President Trump sought to benefit himself and his own reelection prospects.

On the July 25 call, President Trump also suggested that President Zelensky speak with the Attorney General William Barr about the two fake investigations that the President sought.

[Slide 196] This is important to keep in mind. At no time during this entire sordid scheme was there an ongoing American law enforcement investigation into the phony slander related to Joe Biden or the conspiracy theory related to Ukrainian interference in the 2016 election. At no time was there an ongoing American law enforcement investigation.

America is the leader of the free world. We do not urge other sovereign countries to target American citizens absent any legitimate basis whatsoever, absent any scintilla of evidence.

Apparently, President Trump does not play by those rules. During the July 25 call, President Trump didn't raise legitimate corruption concerns as it relates to the Ukraine. President Trump did not mention the word "corruption" once. The President did, however, viciously malign former U.S. Ambassador to Ukraine Marie Yovanovitch, a distinguished anticorruption advocate whom he abruptly removed because she was seen as an obstacle to his geopolitical shakedown.

Ambassador Yovanovitch joined the diplomatic corps under President Ronald Reagan and subsequently served three other Republican Presidents. She is a highly respected diplomat and Foreign Service professional. Yet President Trump told the new Ukrainian leader the former Ambassador from the United States, [Slide 197] "the woman," was bad news, and the people she was dealing with in the Ukraine were bad news. "So I just want to let you know that."

He didn't stop there. Later in the call, President Trump ominously added, "Well, she's going to go through some things." These are the words of the President of the United States of America.

Ambassador Yovanovitch did not know of President Trump's disparaging remarks at the time. She didn't learn them until the call record became public in September. Asked whether she felt "threatened" by President Trump's statement that "she's going to go through some things," Ambassador Yovanovitch answered that she did. Here is what she said.

(Text of Videotape presentation:)

Mr. GOLDMAN. The next excerpt when the President references you is a short one, but he said: "Well, she's going to go through some things." What did you think when President Trump told President Zelensky and you read that you were going to go through some things?

Ambassador YOVANOVITCH. I didn't know what to think, but I was very concerned.

Mr. GOLDMAN. What were you concerned about?

Ambassador YOVANOVITCH. She's going to go through some things. It didn't sound good. It sounded like a threat.

Mr. GOLDMAN. Did you feel threatened?

Ambassador YOVANOVITCH. I did.

Mr. Manager JEFFRIES. During that same call, President Trump also took the opportunity to praise Yuriy Lutsenko—Mr. Lutsenko, who is the former Ukrainian prosecutor general who was widely regarded by the entire free world, including our European allies and the International Monetary Fund, to be corrupt and in-

competent, but Donald John Trump, our President, praised him on that call.

He told President Zelensky: [Slide 198]

I heard you had a prosecutor who was very good and he was shut down and that's really unfair. A lot of people are talking about that, the way they shut your very good prosecutor down and you had some very bad people involved.

Think about this contrast. The President bashed a career American diplomat and an anti-corruption champion whom he unceremoniously removed because she was viewed as an obstacle to his efforts to solicit foreign interference in the 2020 election and then at the same time praised someone who he thought could be an asset—a corrupt Ukrainian prosecutor whom the free world views as an obstacle to the rule of law. The idea that President Trump cares about corruption is laughable. It is laughable.

A plain reading of the rough transcript of the July 25 call also sheds light on the quid pro quo involving the Oval Office meeting that had been sought.

President Zelensky said on the call: [Slide 199]

I also wanted to thank you for your invitation to visit the United States, specifically Washington, DC. On the other hand, I also wanted to ensure you that we will be very serious about the case and will work on the investigation.

As all of you know here in this distinguished body, quid pro quo is a Latin term. It means “this for that.” The statement that I just read shows that President Zelensky fully understood at the time of this July 25 call that if he yielded to President Trump’s demand for phony investigations, he would get the White House meeting in the Oval Office that he desperately sought. This for that.

President Trump has repeatedly insisted that his July 25 conversation with President Zelensky was “a perfect call.” His staff at the White House apparently believed otherwise. The press office issued a short and incomplete summary of the July 25 call. Let me read it for your hearing: [Slide 200]

Today, President Donald J. Trump spoke by telephone with President Volodymyr Zelensky of Ukraine—

(Disturbance in the Galleries.)

Mr. Manager JEFFRIES. And the scripture says: “For the Lord loves justice and will not abandon His faithful ones.”

This is the White House call readout of July 25, 2019:

Today, President Donald J. Trump spoke by telephone with President Volodymyr Zelensky of Ukraine to congratulate him on his recent election. President Trump and President Zelensky discussed ways to strengthen the relationship between the United States and Ukraine, including energy and economic cooperation. Both leaders also expressed that they look forward to the opportunity to meet.

That is the official White House readout of the call dated July 25, 2019. The official readout provided to the American people omitted key elements of the President’s conversation. Let’s review.

The official readout did not mention the phony investigations requested by President Trump. The official readout did not mention the Oval Office meeting sought by President Zelensky. The official readout did not mention President Trump’s elevation of a debunked conspiracy theory promoted by Vladimir Putin about 2016 election interference. The official readout did not mention President Trump’s demand that Ukraine investigate his domestic political

rival, Joe Biden. The official readout did not mention that President Trump maligned and threatened Ambassador Yovanovitch. The official readout did not mention that President Trump praised a corrupt former Ukrainian prosecutor.

The complete conversation, however, between President Trump and President Zelensky that we just outlined offers powerful evidence that President Trump abused his power and solicited foreign interference in the 2020 election.

Several members of the President's staff listening in on the call immediately grew concerned.

As he sat in the White House Situation Room listening to the conversation, Lieutenant Colonel Alexander Vindman realized that the President's demands of the Ukrainian leader were "inappropriate" and "improper." He quickly recognized that as the President began referencing the Bidens, Burisma, and CrowdStrike, the call was diverging from the official National Security Council talking points that he helped prepare.

Lieutenant Colonel Vindman, a 20-year Iraq war veteran, Purple Heart recipient, and American patriot, testified in the context of the call that due to the unequal bargaining position of the two leaders and Ukraine's dependence on the United States, the "favor" that President Trump sought would have been perceived by President Zelensky as a demand. Lieutenant Colonel Vindman worried that the call would undermine U.S. national security interests, and he knew immediately that he had a duty to report the contents of the call to White House lawyers.

(Text of Videotape presentation:)

LTC VINDMAN. I was concerned by the call. What I heard was inappropriate, and I reported my concerns to Mr. Eisenberg.

It is improper for the President of the United States to demand a foreign government investigate a U.S. citizen and a political opponent. I was also clear that if Ukraine pursued an investigation—it was also clear that if Ukraine pursued an investigation into the 2016 elections, the Bidens and Burisma, it would be interpreted as a partisan play. This would undoubtedly result in Ukraine losing bipartisan support, undermining U.S. national security, and advancing Russia's strategic objectives in the region.

Mr. Manager JEFFRIES. Recounting the content of the call based on his detailed handwritten notes, Lieutenant Colonel Vindman told the lawyers that he believed it was "wrong" for President Trump to ask President Zelensky to investigate Vice President Biden.

Other witnesses were also troubled by what they heard. Vice President PENCE's adviser, Jennifer Williams, expressed concern that President Trump raised a "domestic political matter" on an official call with a foreign leader. [Slide 201] She testified that the mention of investigations struck her as unusual and more political in nature. She said: "I guess for me it shed some light on possible other motives behind a security assistance hold."

Timothy Morrison, a former Republican congressional staffer who replaced Dr. Fiona Hill in July of 2019, also reported the call to National Security Council lawyers.

After the call, President Trump continued to push the scheme forward.

On July 26, the very next day, Ambassador Sondland and Ambassador Taylor met with President Zelensky and other Ukrainian officials in Kyiv.

According to David Holmes, the Ukraine-based U.S. diplomat who served as the notetaker, the Ukrainian leader mentioned that President Trump had brought up some “very sensitive issues” during the July 25 call—“very sensitive issues.”

Ambassador Sondland then had a private meeting with Andriy Yermak, President Zelensky’s top aide. The two men insisted that the meeting be one-on-one with no notetaker—perhaps due to the “very sensitive issues” that might come up. Ambassador Sondland testified that he and President Zelensky’s aide “probably” discussed “the issue of investigations.”

After these key meetings in Ukraine, Ambassador Sondland went to lunch with David Holmes and two other American officials. Mr. Holmes sat directly across from Ambassador Sondland—close enough to hear the details of an extraordinary telephone call between Mr. Sondland and President Trump. As Mr. Holmes related during his sworn testimony under oath, Ambassador Sondland pulled out his unsecured cell phone and “said that he was going to call President Trump to give him an update.” What happened next was shocking.

(Text of Videotape presentation:)

Mr. HOLMES. While Ambassador Sondland’s phone was not on speakerphone, I could hear the President’s voice through the earpiece of the phone. The President’s voice was loud and recognizable, and Ambassador Sondland held the phone away from his ear for a period of time, presumably because of the loud volume. I heard Ambassador Sondland greet the President and explain he was calling from Kyiv. I heard President Trump then clarify that Ambassador Sondland was in Ukraine. Ambassador Sondland replied, yes, he was in Ukraine, and went on to state that President Zelensky “loves your ass.”

I then heard President Trump ask, “So he’s going to do the investigation?”

Ambassador Sondland replied that he is going to do it, adding that President Zelensky will do “anything you ask him to do.”

Mr. Manager JEFFRIES. “He is going to do it.” He will do “anything you ask him to do.”

Immediately after this call with President Trump, Mr. Holmes followed up with Ambassador Sondland.

(Text of Videotape presentation:)

Mr. HOLMES. After the call ended, Ambassador Sondland remarked that the President was in a bad mood, as Ambassador Sondland stated was often the case early in the morning.

I then took the opportunity to ask Ambassador Sondland for his candid impression of the President’s views on Ukraine. In particular, I asked Ambassador Sondland if it was true that the President did not give a [expletive] about Ukraine. Ambassador Sondland agreed that the President did not give a [expletive] about Ukraine. I asked, why not, and Ambassador Sondland stated that the President only cares about . . . “big stuff.” I noted that there was . . . “big stuff” going on in Ukraine, like a war with Russia. Ambassador Sondland replied that he meant . . . “big stuff” that benefits the President, like the . . . “Biden investigation” that Mr. Giuliani was pushing. The conversation then moved on to other topics.

Mr. Manager JEFFRIES. During the July 25 call, President Trump asked for the favor of these two phony political investigations immediately after the Ukrainian President brought up defense assistance for Ukraine.

The following day, Ambassador Sondland confirmed to President Trump that Ukraine would indeed initiate the investigations dis-

cussed on the call, which was the only thing the President cared about with respect to Ukraine. He didn't care that Russia was forcefully occupying eastern Ukraine. President Trump didn't care that thousands of Ukrainians apparently have died fighting for their democracy. He didn't seem to care that supporting Ukraine bolsters America's national security, but he cared about himself as it relates to the prospects of his reelection in 2020.

In November, President Trump denied that he spoke to Ambassador Sondland on July 26, telling reporters: "I know nothing about that." But in his public testimony, Ambassador Sondland contradicted that assertion with official records he obtained from the White House.

Ambassador Sondland further explained that Holmes' testimony refreshed his recollection about the July 26 call, which Ambassador Sondland had not originally described when he first appeared at a deposition before the House.

(Text of Videotape presentation:)

Ambassador SONDLAND. Also, on July 26th, shortly after our Kyiv meetings, I spoke by phone with President Trump. The White House, which has finally, finally shared certain call dates and times with my attorneys confirms this. The call lasted 5 minutes.

I remember I was at a restaurant in Kyiv, and I have no reason to doubt that this conversation included the subject of investigations. Again, given Mr. Giuliani's demand that President Zelensky make a public statement about investigations, I knew that investigations were important to President Trump.

Mr. Manager JEFFRIES. President Trump said that his July 25 conversation was a perfect call. It was far from perfect.

In a perfect call, the President would not demand a political favor from a vulnerable Ukraine under attack by a Russian foe. In a perfect call, the President would not demand that a foreign leader investigate a Russian-inspired conspiracy about the 2016 election. In a perfect call, the President would not pressure a foreign government to target an American citizen for political, personal gain.

In a perfect call, the President would not solicit foreign interference in the 2020 election. In a perfect call, the President would not threaten the well-being of a highly respected American Ambassador and say she was going to "go through some things." In a perfect call, the President would not praise a disgraced former prosecutor whom the free world viewed as corrupt and incompetent, and in a perfect call, the President would not have directed a foreign leader to follow up with Rudolph Giuliani, a human hand grenade.

This was not a perfect call. It is direct evidence that President Donald John Trump corruptly abused his power and solicited foreign interference in the 2020 election.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, colleagues, we will now take a 30-minute break for dinner and reconvene at 5 minutes after 7:00.

I ask unanimous consent that the Senate stand in recess until that time.

There being no objection, at 6:35 p.m., the Senate, sitting as a Court of Impeachment, recessed until 7:20 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senate will come to order.

Mr. SCHIFF.

Mr. Manager SCHIFF. Mr. Chief Justice, just so Senators have an idea of the evening, we expect to go about 2 to 2½ hours. I will make a presentation. Representative LOFGREN from California will make a presentation. I will make a final presentation, and then we will be done for the evening. As an encouraging voice told me: Keep it up, but don't keep it up too long. So we will do our best not to keep it up too long.

I am going to turn now to the part of the chronology that picks up right after that July 25 call and walk through the increasingly explicit pressure campaign waged on Ukraine in order to get President Trump's deliverable—the investigations meant to tarnish his opponent and help his reelection.

Now remember, by the end of July, Ukraine was aware of President Trump's requests for investigation to help his political efforts and had come to know that President Trump put a freeze on security assistance. So this is by the end of July. They also clearly understood that President Trump was withholding an Oval Office meeting until those investigations were announced. Both were very critical to Ukraine as a sign of U.S. support and as a matter of their national security, and their national security, of course, implicates our national security.

In the weeks after the July 25 call, President Trump's hand-picked representatives escalated their efforts to get the public announcement of the investigations from Ukraine.

So let's go through this step by step, because the 3 weeks following the July 25 call tell so much about this pressure scheme.

Let's start with July 26. On July 26—so this is the day after the call—Ambassador Volker sends a text message to Giuliani, and that text message says: [Slide 202]

Hi, Mr. Mayor. You may have heard, the President had a great call with the Ukrainian President yesterday. Exactly the right messages as we discussed. Please send dates when you will be in Madrid. I am seeing Yermak tomorrow morning. He will come to you in Madrid. Thanks for your help. Kurt.

So here we are the day after that call, as my colleague demonstrates—this same day, so July 26, and the date of that second infamous call between President Trump this time and Gordon Sondland that you heard the diplomat, David Holmes, describe. So that is the same day, July 26, that we are talking about right now, where there is this text message.

Now, of course, in that July 25 call, the President wants to connect Rudy Giuliani with the President of Ukraine and his people. So this is a followup where Ambassador Volker is saying to Giuliani: [Slide 202]

[It was] a great call with the Ukraine President. Exactly the right messages as we discussed.

And we know, of course, those messages were the need to do this political investigation.

Please send dates when you will be in Madrid. I am seeing Yermak tomorrow morning. He will come to you in Madrid.

So here is Ambassador Volker, one of the three amigos, following up, arranging this meeting between Giuliani and the Ukrainians. Giuliani replied, setting a meeting in Europe with President Zelensky's top aide for the very next week:

"I will arrive on August 1 and until 5," he wrote. Now remember, on July 22—so a few days before this and before the call—Ambassador Volker had connected Giuliani originally with Yermak, and they agreed to meet. So this is a followup. You have that arrangement being made by Volker and Giuliani before the call. Then, you have the call, and now you have the followup to arrange the meeting in Madrid.

So they do meet in Madrid. This is August 2. Andriy Yermak, Zelensky's top aide, flew to Madrid. He meets with Rudy Giuliani, who they know represented the President's interests. Both Giuliani and Yermak walk away from this meeting in Madrid clearly understanding that a White House meeting is linked to Zelensky's announcement of the investigations.

In separate conversations with Giuliani and Yermak after this Madrid meeting, Volker said he learned that Giuliani wanted the Ukrainians to issue a statement including specific mentions of the two investigations that the President wanted. According to Ambassador Volker's testimony, Yermak told him that his meeting with Giuliani was very good and immediately added that the Ukrainians asked for a White House meeting during the week of September 16.

Yermak presses Volker on the White House meeting date, saying that he was waiting for confirmation: "Maybe you know the date." This is a recurrent theme that we have seen through the text messages and other documents, and that is the recurrent requests for this meeting, the pressing for this meeting by the Ukrainians because it was so important to them. Giuliani's objective was clear to Ambassadors Volker and Sondland, who took over the communications with Yermak.

Here is Ambassador Sondland.

(Text of Videotape presentation:)

Ambassador SONDLAND. I first communicated with Mr. Giuliani in early August, several months later. Mr. Giuliani emphasized that the President wanted a public statement from President Zelensky committing Ukraine to look into the corruption issues. Mr. Giuliani specifically mentioned the 2016 election, including the DNC server, and Burisma as two topics of importance to the President.

Mr. Manager SCHIFF. Giuliani exerted significant influence in this process. In fact, when on August 4 Yermak inquired again about the Presidential meeting, Ambassador Volker turned not to the National Security Council staff or to the State Department to arrange it and follow up. He turned to Giuliani again. Volker told Yermak that he would speak with Giuliani later that day and would call the Ukrainian President's aide afterward.

Volker then texts Giuliani to ask about the Madrid meeting and to set up the call that he had mentioned to Yermak. Giuliani replies that the meeting with Yermak was excellent and that he would call later. Phone records obtained by the committees show a 16-minute call on August 5 between Ambassador Volker and Giuliani. Ambassador Volker then texts Yermak:

Hi, Andriy. Had a good, long talk with Rudy. Call anytime. Kurt.

Separately, Volker told Ambassador Sondland: “Giuliani was happy with that meeting and it looks like things are turning around”—a reference to Volker’s hope that satisfying Giuliani would break down President Trump’s reservations concerning Ukraine.

But things had not turned around by the end of that first week of August, by August 7. The aid was still on hold, and there had been no movement on setting a date for the White House meeting.

Ambassador Volker then reaches out to Giuliani to try to get things moving. Ambassador Volker texts Giuliani to recommend that he report to “the boss,” meaning President Trump, about his meeting with Yermak in Madrid. Specifically, he wrote—this is Volker writing to Giuliani: [Slide 203]

Hi, Rudy. Hope you made it back safely. Let’s meet if you are coming to DC. It would be good if you could convey results of your meeting in Madrid to the boss so we can get a firm date for the visit.

So this is Ambassador Volker following up with Giuliani. Giuliani has met with the top aide to the President of Ukraine in Madrid. He wants Giuliani to convey to the boss—to Trump—how good that meeting in Madrid was about the investigations so they can get the President of Ukraine in the door at the White House.

Now, think about how unusual this is. This is the President’s personal lawyer, who is on this personal mission on behalf of his client to get these investigations in Ukraine. The President of Ukraine can’t get in the door of the Oval Office. And who are they going to? Are they going to the Security Council? No. Are they going to the State Department? No. They tried all that. They are going to the President’s personal lawyer. Does that sound like an official policy to try to fight corruption?

Why would you go outside of the normal channel to do that? You wouldn’t. You would go to your personal attorney, who is on a personal mission that he admits is not foreign policy, when your objective has nothing to do with policy, when your objective is a corrupt one.

What does that mean, to have a corrupt objective? It means an illicit one. It means an impermissible one. It means one that furthers your own interests at the cost of the national interests—the willingness to break the law, like the Impoundment Control Act, by withholding aid is indicative of that corrupt purpose, the lengths the President would go, not in furtherance of U.S. policy but against U.S. policy, not even a difference on policy at all.

The mere pursuit of personal interest, the pursuit of an illegal effort to get foreign interference, is the very embodiment of a corrupt intent.

Here we are, August 7. Volker is saying: Rudy, if you are coming to DC, let’s get together. [Slide 203] It would be good if you can talk to the boss because we can’t get a meeting another way.

Around that time, Ambassador Volker received a text message from Yermak, who asked him—and this is Yermak asking Volker: [Slide 204]

Hi Kurt. How are you? Do you have some news about White House meeting date?

Volker responds:

Not yet—I texted Rudy earlier to make sure he weighs in following your meeting. Gordon—

Meaning Sondland.

should be speaking with the president on Friday. We are pressing this.

There is Gordon Sondland, who is “pressing this.” This is the man you have heard from already—Gordon Sondland, the man who says: It was absolutely a quid pro quo. You have asked about a quid pro quo. There was a quid pro quo about this White House meeting.

This is what they are talking about right here. Gordon will be “speaking with the president on Friday. We are pressing this.”

Ambassador Volker’s contact with Giuliani spurred a flurry of communications. The patterns of calls from August 8 strongly suggest Giuliani was attempting to call the White House to speak to a senior White House official, left a message, then had a 4-minute call with that official later that night.

We don’t know from the call records who that White House official was, but recall that Giuliani has publicly stated that when he spoke to the White House, he usually spoke to President Trump, his client.

Also, on August 8, Yermak texts Volker that he had some news. Ambassador Volker replies that he can talk then, and Ambassador Volker updates Giuliani in a text the next day. [Slide 205]

Volker says to Giuliani in the text:

Hi Mr. Mayor! Had a good chat with Yermak last night. He was pleased with your phone call. Mentioned—

He is referring to President Zelensky here.

making a statement. Can we all get on the phone to make sure I advise—

Here he is referring to President Zelensky.

correctly as to what he should be saying? Want to make sure we get this done right.

Here, August 9, there is an effort by Volker to make sure to get this statement right about the investigations. If they can’t get the statement right, you aren’t going to get in the door of the Oval Office.

It also makes clear who is exactly in charge of this, and that is Rudy Giuliani. Ambassador Volker is checking with Rudy Giuliani about what he should advise President Zelensky. We know that Giuliani is taking his orders from President Trump.

Text messages and call records obtained by the committees show that Ambassador Volker and Giuliani connected by phone twice around noon on August 9 for several minutes each.

Following the calls with Giuliani, Ambassador Volker created a three-way group chat using WhatsApp and included himself, Ambassador Sondland, and Yermak. Ambassador Volker initiated the chat around 2:20 that day. This is Volker chatting with Sondland and Yermak. It is a three-way chat. [Slide 206]

Volker says:

Hi, Andrey—

Meaning Yermak.

We have all consulted here, including with Rudy. Can you do a call later today or tomorrow your afternoon time?

Sondland says:

I have a call [scheduled] at 3 pm Eastern for the three of us. Ops will call.

Call records obtained by the committees show that on August 9 Ambassador Sondland twice connected with phone lines associated with the White House—once in the early afternoon for about 18 minutes and once in the late afternoon for about 2 minutes. We know that Ambassador Sondland had direct access to President Trump.

After all this activity, Ambassador Sondland and Volker thought they had a breakthrough—finally, a breakthrough. Minutes after this call, which was likely with Tim Morrison about a possible date for the White House meeting, Ambassador Volker and Sondland discussed the agreement they believed they had reached and started with Sondland in this text message: [Slide 207]

Morrison ready to get dates as soon as Yermak confirms.

Volker says:

Excellent!! How did you sway him?

Sondland says:

Not sure I did. I think potus really wants the deliverable.

We know what that “deliverable” is. It is the political investigations.

Volker says:

But does he know that?

And Sondland says:

Yep. Clearly lots of convos—

Meaning conversations.

going on.

Volker says:

OK—then that’s good it’s coming from two separate sources.

Ambassador Sondland told the committees that the deliverable required by President Trump was a press statement from President Zelensky committing to do the investigations into the Bidens and the allegation of Ukraine election interference that President Trump mentioned on July 25. But Tim Morrison testified that he didn’t know anything about the deliverable; he was just involved in trying to schedule the White House meeting, which everyone wanted to schedule as a sign of support for President Zelensky and our ally Ukraine. But Trump’s agents wouldn’t just accept Ukraine’s word for it.

Ambassador Sondland then recommended to Ambassador Volker that Yermak share a draft of the press statement to ensure that the statement would comport with the President’s expectations.

Here, on August 9—we are still less than 2 weeks after the July 25 call; I guess we are about 2 weeks—Sondland says in this message: [Slide 208]

To avoid misunderstandings, might be helpful to ask Andrey for a draft statement (embargoed) so that we can see exactly what they propose to cover. Even though Ze—

Referring to Zelensky.

does a [live] presser they can still summarize in a brief statement. Thoughts?

And Volker says:

Agree!

At his deposition, Ambassador Sondland said that he suggested reviewing a written summary of the statement because he was concerned that President Zelensky would say whatever he would say on live television, and it still wouldn't be good enough for Rudy/the President.

Yermak, in turn, was concerned that the announcement would still not result in the coveted White House meeting. On August 10, Yermak texted Volker, attempting to schedule a White House meeting before the Ukrainian President made a public statement in support of the investigations into Burisma and the 2016 election.

[Slide 209] You can see what is going on here. The President and his agent, Giuliani, want this public statement of the investigations before they will give a date. And the Ukrainians want a date before they have to commit to making public they are going to do the investigations.

So you have had this standoff where each is trying to get the deliverable first, but there is no debate about what the deliverable is on either side. There is no debate about the quid pro quo here: You give me this; I will give you that. You give me the White House meeting; I will give you the public announcement of the investigation into your political rival.

No, no, no. You give me the announcement of the investigation into my rival, and then I will give you the meeting.

The only debate here is about which comes first.

August 10, Yermak texts Volker: [Slide 209]

I think it's possible to make this declaration and mention all these things. Which we discussed yesterday. But it will be logic to do after we receive a confirmation of date. We inform about date of visit about our expectations and our guarantees for future visit. Let discuss it.

Ambassador Volker responded that he agreed but that first they would have to iron out a statement and use that to get a date, after which President Zelensky would give the statement. The two decided to have a call the next day and to include Ambassador Sondland.

Yermak texts Ambassador Volker: [Slide 210]

Excellent.

Once we have a date, will call for a press briefing, announcing upcoming visit and outlining vision for the reboot of the US-UKRAINE relationship, including, among other things, Burisma and election meddling in investigations.

Yermak was also in direct contact with Ambassador Sondland regarding this revised approach. In fact, he sent Ambassador Sondland the same text message.

Ambassador Sondland kept the leadership of the State Department in the loop. On August 10, he told Ambassador Volker that he had reported to T. Ulrich Breckbull, Counselor of the Department of State, who, Sondland testified, frequently consulted with Secretary Pompeo.

Sondland wrote to Volker: I briefed Ulrich. All good. So Ulrich is in the loop.

Sondland and Volker continued to pursue the statement from Zelensky on the investigations. The next day, Ambassador Sondland emails Breckbull and Lisa Kenna, the State Department's Executive Secretary, about efforts to secure a public statement and a big presser from President Zelensky.

Sondland hoped it might "make the boss happy enough to authorize an invitation."

After first being evasive on the topic, Secretary Pompeo has subsequently acknowledged that he listened in on the July 25 call.

Since he was on the call, Pompeo must have understood what would make the boss—that is, the President—happy enough to schedule a White House meeting.

Again, everyone was in the loop. On August 11, Ambassador Volker sent Giuliani a text message. This is Volker to Giuliani: [Slide 211]

Hi Rudy—we have heard bCk [sic] from Andrey again—they are writing the statement now and will send it to us. Can you talk for 5 min before noon today?

And Giuliani says:

Yes just call.

That is August 11.

On the next day, August 12, Yermak sent Ambassador Volker an initial version of the draft statement by text. Notably, as we saw earlier, this statement from the Ukrainians doesn't explicitly mention Burisma, Biden, or 2016—election investigations that the President has been seeking.

You can see what is going on here now. There was this game of chicken.

You go first.

No, we'll go first. You give us the date, and we will give you the statement.

No, you give us the statement, and we will give you the date.

And now, realizing, OK, they have to give the statement first, Ukraine tries to give them a generic statement that doesn't really go into specifics about these investigations. And why? You can imagine why. Ukrainians don't want to have to go out in public and say they are going to do these investigations, because they are not stupid, because they understood this would pull them right into U.S. Presidential politics. It was intended to, which isn't in Ukraine's interests. It is not in our interests either, and Ukraine understood that. And so they resisted.

First they resisted having to do the public statement, and then they wanted to make sure they got the deliverable, and then, when they had to make a statement, they didn't want to be specific—for one thing. For another thing, this was what Zelensky campaigned on. He was going to fight corruption. He was going to end political investigations, so he didn't want to be specific.

He sends this statement that doesn't have the specific references. Ambassador Volker explained during his testimony that was not what Giuliani was requesting, and it would not satisfy Giuliani or Donald Trump.

Presumably, if the President was interested in corruption, that statement would have been enough. But all he was interested in

was an investigation or an announcement of an investigation into his rival and this debunked theory about 2016.

The conversation that Volker referred to in his earlier testimony took place on the morning of August 13, when Giuliani made clear that the specific investigations related to Burisma—code for Bidens—and the 2016 election had to be included in order to get the White House meeting.

The Americans sent back to the Ukrainian top aide a revised draft that includes now the two investigations. You have seen the side-by-side. This was then the essence of the quid pro quo regarding the meeting. This direction came from President Trump. Here is how Ambassador Sondland put it.

(Text of Videotape presentation:)

Ambassador SONDLAND. Mr. Giuliani's requests were a quid pro quo for arranging a White House visit for President Zelensky. Mr. Giuliani demanded that Ukraine make a public statement announcing the investigations of the 2016 election DNC server and Burisma. Mr. Giuliani was expressing the desires of the President of the United States, and we knew these investigations were important to the President.

Mr. Manager SCHIFF. According to witness testimony, as you might imagine, Ukrainian officials were very uncomfortable with a draft that Giuliani, Volker, and Sondland were negotiating. They understood that the statement was the deliverable that President Trump wanted, but yielding to President Trump's demands would, in essence, force President Zelensky to break his promise to the Ukrainian people to root out corruption because politically motivated investigations are the hallmark of the kind of corruption that Ukraine has been plagued with in the past.

Mr. Yermak tried to get some confirmation that the requested investigations were legitimate. In response to the draft statement Yermak asked Volker "whether any request had ever been made by the U.S. to investigate election interference in 2016"; in other words, whether any request had been made by any official U.S. law enforcement agency through formal channels as you would expect if it were a legitimate request.

Ambassador Volker, trying to find a satisfactory answer, on August 15, Volker's assistant asked Deputy Assistant Secretary George Kent whether there was any precedent for such a request for investigations. At his deposition, Kent testified that [Slide 212] "if you're asking me, have we ever gone to the Ukrainians and asked them to investigate or prosecute individuals for political reasons, the answer is, I hope we haven't, and we shouldn't because that goes against everything that we are trying to promote in the post Soviet states for the last 28 years, which is promotion of the rule of law."

We are now on the next day, August 16. In a conversation with Ambassador Bill Taylor, the U.S. Ambassador in Kyiv—Ambassador Taylor stepped in when Ambassador Yovanovitch was pushed out—Taylor "amplified the same theme" and told Kent that "Yermak was very uncomfortable" with the idea of investigations and suggested it should be done officially and put in writing.

As a result, it became clear to Kent in mid-August that Ukraine was being pressured to conduct politically motivated investigations.

Kent told Ambassador Taylor: “That’s wrong, and we shouldn’t be doing that as a matter of U.S. policy.”

Ambassador Volker claimed that he stopped pursuing the statement from the Ukrainians around this time because of the concerns raised by Zelensky’s aide. At his deposition and despite all his efforts to secure a statement announcing these very specific political investigations desired by the President, Ambassador Volker testified that he agreed with Yermak’s concerns and advised him that making those specific references was not a good idea because making those statements might look like it would play into our domestic politics.

Without specific references to the politically damaging investigations that Trump demanded, the agreement just wouldn’t work. Ukraine did not release the statement and, in turn, the White House meeting was not scheduled. As it turns out, Ambassadors Sondland and Volker did not achieve the breakthrough after all.

Let’s go into what finally breaks the logjam because that involves the military aid. With efforts to trade a White House meeting for a press statement announcing the investigations temporarily scuttled, Sondland and Volker go back to the drawing board. On August 19, Ambassador Sondland told Volker that he drove the larger issue home with Yermak, President Zelensky’s top aide, particularly that this was now bigger than a White House meeting—bigger than just the White House meeting and was about the relationship per se. It is not just about the meeting anymore; it is about everything.

By this time in late August, the hold on security assistance had been in place more than a month, and there was still no credible explanation offered by the White House despite some, like Ambassador Sondland, repeatedly asking. There were no interagency meetings since July 31, and the Defense Department had withdrawn its assurances that it could even comply with the law, which, indeed, it couldn’t. Every agency in the administration opposed the hold. As the Government Accountability Office confirmed, concerned DOD and OMB officials had been right that the President’s holding of the aid was an unlawful act, but President Trump was not budging.

At the same time, despite the persistent efforts of numerous people, President Trump refused to schedule the coveted White House visit with President Zelensky until the investigations were announced that would benefit his campaign.

Here is what Ambassador Sondland said about the hold on funds and its link to the politically motivated investigations in Ukraine. (Text of Videotape presentation:)

Ambassador SONDLAND. In the absence of any credible explanation for the suspension of aid, I later came to believe that the resumption of security aid would not occur until there was a public statement from Ukraine committing to the investigations of the 2016 elections and Burisma, as Mr. Giuliani had demanded.

Mr. Manager SCHIFF. From the Embassy in Kyiv, David Holmes reached the same conclusion—a conclusion as simple as two plus two equals four.

(Text of Videotape presentation:)

Mr. GOLDMAN. Mr. Holmes, you have testified that by late August, you had a clear impression that the security assistance hold was somehow connected to the in-

vestigations that President Trump wanted. How did you conclude—how did you make—reach that clear conclusion?

Mr. HOLMES. Sir, we've been hearing about the investigation since March—months before—and President Zelensky had received a congratulatory letter from the president saying he would be pleased to meet him following his inauguration in May.

And we had been unable to get that meeting. And then the security hold came up with no explanation.

And I'd be surprised if any of the Ukrainians—we discussed earlier, you know, they're sophisticated people—when they received no explanation for why that hold was in place, they would have drawn that conclusion.

Mr. GOLDMAN. Because the investigations were still being pursued?

Mr. HOLMES. Correct.

Mr. GOLDMAN. And the hold was still remaining without explanation?

Mr. HOLMES. Correct.

Mr. GOLDMAN. So this to you was the only logical conclusion that you could reach?

Mr. HOLMES. Correct.

Mr. GOLDMAN. Sort of like 2 plus 2 equals 4?

Mr. HOLMES. Exactly.

Mr. Manager SCHIFF. Sondland explained the predicament he believed he faced with a hold on aid to Ukraine.

(Text of Videotape presentation:)

Ambassador SONDLAND. As my other State Department colleagues have testified, this security aid was critical to Ukraine's defense and should not have been delayed. I expressed this view to many during this period, but my goal at the time was to do what was necessary to get the aid released, to break the logjam. I believed that the public statement we have been discussing for weeks was essential to advancing that goal.

You know, I really regret that the Ukrainians were placed in that predicament, but I do not regret doing what I could to try to break the logjam and to solve the problem.

Mr. Manager SCHIFF. On August 22, Ambassador Sondland tried to break that logjam, as he put it, regarding both the security assistance hold and the White House meeting. Ambassador Sondland described those efforts in his public testimony. Let's listen to him again.

(Text of Videotape presentation:)

Ambassador SONDLAND. In preparation for the September 1 Warsaw meeting, I asked Secretary Pompeo whether a face-to-face conversation between Trump and Zelensky would help to break the logjam. This was when President Trump was still intending the travel to Warsaw.

Specifically, on August 22nd, I emailed Secretary Pompeo directly, copying Secretariat Kenna. I wrote—and this is my email to Secretary Pompeo. Should we block time in Warsaw for a short pull-aside for POTUS to meet Zelensky? I would ask Zelensky to look him in the eye and tell him that once Ukraine's new justice folks are in place in mid-September, that Zelensky—he, Zelensky, should be able to move forward publicly and with confidence on those issues of importance to POTUS in the U.S. Hopefully, that will help break the logjam.

The secretary replied, yes.

Mr. Manager SCHIFF. Sondland also explained that both he and Secretary Pompeo understood that issues of importance to the President were the two sham investigations the President wanted to help his reelection efforts. And that reference to the logjam meant both the security assistance and the White House meeting.

At the end of August, National Security Advisor John Bolton arrived in Ukraine for an official visit. David Holmes took notes in Bolton's meeting and testified about Ambassador Bolton's message to the Ukrainians.

(Text of Videotape presentation:)

Mr. HOLMES. Shortly thereafter, on August 27th, Ambassador Bolton visits Ukraine and brought welcome news that President Trump had agreed to meet President Zelensky on September 1st in Warsaw.

Ambassador Bolton further indicated that the hold on security assistance would not be lifted prior to the Warsaw meeting, where it would hang on whether President Zelensky was able to “favorably impress President Trump.”

Mr. Manager SCHIFF. Let’s think about that for a minute—unless you have something further to say. Let’s think about that for a minute. Bolton further indicated that the hold on security assistance would not be lifted prior to the Warsaw meeting where it would hang on whether President Zelensky was able to “favorably impress” President Trump.

What do you think would favorably impress President Trump? What were the only two things that President Trump asked of President Zelensky? What were the two things that Rudy Giuliani was asking of President Zelensky and his top aides? What would favorably impress Donald Trump?

Would Donald Trump be favorably impressed if President Zelensky were to tell him about this new corruption court or new legislation in the Rada or how negotiations with the Russians were going or how they are bringing about defense reform?

Had any of those things ever come up in any of these text messages, any of these emails, any of these phone calls, any of these conversations? Of course not. Of course not. There was only one thing that was going to favorably impress President Trump in Warsaw, and that is if Zelensky told him to his face: I am going to do these political investigations. I don’t want to do them. You know I don’t want to do them. I resisted doing them, but I am at war with Russia, and I can’t wait anymore. I can’t wait anymore. I am sure that would have impressed Donald Trump.

But the meeting between the two Presidents never happened in Warsaw. President Trump canceled the trip at the last moment. Before Bolton left Kyiv, Ambassador Taylor asked for a private meeting. Ambassador Taylor explained that he was extremely concerned about the hold on security assistance. He described the meeting to us during his testimony.

(Text of Videotape presentation:)

Ambassador TAYLOR. Near the end of Ambassador Bolton’s visit, I asked to meet him privately, during which I expressed to him my serious concern about the withholding of military assistance to Ukraine while the Ukrainians were defending their country from Russian aggression. Ambassador Bolton recommended that I send the first-person cable to Secretary Pompeo directly, relaying my concerns.

Mr. Manager SCHIFF. Now, in the State Department, sending a first-person cable is an extraordinary step. State Department cables are ordinarily written in the third person, as Ambassador Taylor testified at his deposition. Sending a first-person cable gets attention because there are not many first-person cables that come in. In fact, in his decades of diplomatic service, he had never written a single one until now.

Taylor sent that cable on August 29. Would you like me to read that to you right now? I would like to read it to you right now, except I don’t have it because the State Department wouldn’t provide it, but if you would like me to read it to you, we can do something about that. We can insist on getting that from the State Department. If you would like to know what John Bolton had in mind

when he thought that Zelensky could favorably impress the President in Warsaw, we can find that out, too, just for the asking in a document called a subpoena.

Taylor sends that cable on August 29. The State Department did not provide that cable to us in response to a subpoena, but witnesses who reviewed it described it as a powerful message that described the folly—the folly—of withholding military aid from Ukraine at a time when it was facing incursion from Russian forces in eastern Ukraine. That cable also sought to explain that U.S. assistance to Ukraine was vital to U.S. national security as well.

Now, why don't they want you to see that cable? Maybe they don't want you to see that cable because that cable from a Vietnam veteran describes just how essential that military assistance was not just to Ukraine; maybe they don't want you to see that cable because it describes just how important that military assistance is to us—to us.

The President's counsel would love you to believe that this is just about Ukraine. You don't need to care about Ukraine. Who cares about Ukraine? How many people can find Ukraine on a map? Why should we care about Ukraine? Well, we should care about Ukraine. They are an ally of ours. If it matters to us, we should care about the fact that, in 1994, we asked them to give up their nuclear weapons that they had inherited from the Soviet Union, and they didn't want to give them up, and we were worried about proliferation.

We said: Hey, if you give them up, which you don't want to do because you are worried the Russians might invade if you give them up, we will help assure your territorial integrity.

We made that commitment. I hope we care about that. I hope we care about that because they did give them up.

And do you know what? Just what they feared took place—the Russians moved across their border, and they remain an occupied party in Ukraine. That is the word of America we gave, and we are breaking that word. Why? For help on a political campaign?

Ambassador Taylor was exactly right. That is crazy. It is worse than crazy. It is repulsive. It is repugnant. It breaks our word. To do it in the name of these corrupt investigations is also contrary to everything we espouse around the world.

I used to be part of a commission in the House on democracy assistance, where we would meet with parliamentarians, and I know my Senate colleagues do much the same thing. We would urge our colleagues to observe the rule of law, not to engage in political investigations and prosecutions. I don't know how we make that argument now. I don't know how we look our allies or these burgeoning democracies in the face or our fellow parliamentarians and make that argument now. I wouldn't make that argument now.

Testimony indicated that Secretary Pompeo eventually carried that cable into the White House, but there is no evidence that those national security concerns that they don't want you to see were able to outweigh the President's personal interest in his getting foreign help in his reelection campaign. There is no evidence at all.

Now we get to August 28.

POLITICO was the first to publicly report that President Trump had implemented a hold on nearly \$400 million of U.S. military assistance to Ukraine that had been appropriated by Congress. Now that the worst kept secret was public, Ukrainian officials immediately expressed their alarm and concern to their American counterparts.

As witnesses explained, the Ukrainians had two serious concerns.

One, of course, was the aid itself, which was vital to their ability to fight off Russia. In addition, they were worried about the symbolism of the hold; that it signaled to Russia and Vladimir Putin that the United States was wavering in its support for Ukraine. Witnesses testified that this was a division that Russia could and would exploit to drive a further wedge between the United States and Ukraine to its advantage.

The second concern was likely why Ukrainian officials had wanted the hold to remain a secret in the first place—because it would add to the negative impact to Ukraine if the hold itself became public. It is bad enough that the President of the United States put a hold on their aid. It was going to be far worse if it became public as, indeed, it did.

Andriy Yermak, the same Zelensky aide, sent Ambassador Volker a link to the POLITICO story and then texted: “Need to talk with you.”

Other Ukrainian officials also expressed concerns to Ambassador Volker that the Ukrainian Government was being singled out and penalized for some reason.

Well, what do we think that reason was? Why were they being singled out? Why was that country being singled out? That was the one country that this President could lever for help against an opponent he feared. That is why Ukraine was being singled out.

On August 29, Yermak also contacted Ambassador Taylor. Yermak said the Ukrainians were very concerned about the hold on military assistance. He said that he and other Ukrainian officials would be willing to travel to Washington to explain to its officials the importance of this assistance.

Ambassador Taylor, who was on the ground in Ukraine, explained the Ukrainian viewpoint and, frankly, their desperation.

(Text of Videotape presentation:)

Ambassador TAYLOR. In September, the Minister of Defense, for example, came to me—I would use the word—“desperate” to figure out why the assistance was being held. He thought that perhaps, if he went to Washington to talk to you—to talk to the Secretary of Defense, to talk to the President—he would be able to find out and reassure—provide whatever answer was necessary to have that assistance released.

Mr. Manager SCHIFF. Without any official explanation for the hold, American officials could provide little reassurance to their Ukrainian counterparts. It has been publicly reported that President Trump, Secretary Esper, and Secretary Pompeo met in late August and that they all implored the President to release the aid, but President Trump continued to refuse to release the aid.

As of August 30, the President was clearly directing the OMB to continue the hold on security assistance. In documents reviewed by just security but withheld from the Congress by the OMB on the

President's instructions, OMB official Michael Duffey emailed DOD Comptroller Elaine McCusker that there is "clear direction from POTUS to continue the hold."

So here we are on August 30. A month after that July 25 call, aid is still being withheld. Ukrainians are still holding on, still not willing to capitulate, not willing to violate Zelensky's whole campaign pledge about not engaging in corrupt investigations.

On that same day, August 30, Republican Senator RON JOHNSON spoke with Ambassador Sondland to express his concern about President Trump's decision to withhold military assistance to Ukraine. Senator JOHNSON described that call in an interview with the Wall Street Journal.

According to Senator JOHNSON, Ambassador Sondland told him that if Ukraine would commit to "get to the bottom of what happened in 2016—if President Trump has that confidence—then he will release the military spending."

Senator JOHNSON added:

At that suggestion, I winced. My reaction was, "Oh, God. I don't want to see those two things combined."

The next day, August 31, Senator JOHNSON spoke by phone with President Trump regarding the decision to withhold aid to Ukraine. According to the Wall Street Journal, President Trump denied the quid pro quo that Senator JOHNSON had learned of from Ambassador Sondland. At the same time, however, President Trump refused to authorize Senator JOHNSON to tell Ukrainian officials on his upcoming trip to Kyiv that the aid would be forthcoming.

The message that Ambassador Sondland communicated to Senator JOHNSON mirrored that used by President Trump during the July 25 call with President Zelensky in which President Trump twice asked the Ukrainian leader to get to the bottom of it, including in connection to an investigation into the debunked conspiracy theory of Ukrainian interference in the 2016 election. It also mirrored the language of the text message that Ambassador Volker sent to President Zelensky's aide just before the July 25 call.

Indeed, despite the President's self-serving denials, the message was clear: President Trump wanted the investigations, and he would withhold not one but two acts vested in him by the power of his office in order to get them.

Now begins September, September 1.

The President was supposed to go to Warsaw, as we know, but he does not go to Warsaw. MIKE PENCE goes to Warsaw. Jennifer Williams, the special adviser to the Vice President for Europe and Russia, learned of the change in the President's travel plans on August 29. The Vice President's National Security Advisor asked, at the request of Vice President PENCE, for an update on the status of the security assistance that had just been publicly revealed in POLITICO and would be a critical issue during the bilateral meeting between the Vice President and President Zelensky in Warsaw.

The delegation arrived in Warsaw and gathered in a hotel room to brief Vice President PENCE before he met with the Ukrainian President. National Security Advisor Bolton led the meeting.

As Williams described it, advisers in the room "agreed on the need to get a final decision on security assistance as soon as possible so that it could be implemented before the end of the year,

but Vice President PENCE did not have authority from the President to release the aid.”

Ambassador Sondland also attended that briefing. At the end of it, he expressed concern directly to Vice President PENCE about the security assistance being held until the Ukrainians announced the very same politically motivated investigations at the heart of this scheme.

(Text of Videotape presentation:)

Chairman SCHIFF. You mentioned that you also had a conversation with Vice President PENCE before his meeting with President Zelensky in Warsaw and that you raised a concern you had, as well, that the security assistance was being withheld because of the President’s desire to get a commitment from Zelensky to pursue these political investigations. What did you say to the Vice President?

Ambassador SONDLAND. I was in a briefing with several people, and I just spoke up, and I said: It appears that everything is stalled until this statement gets made. It was something—words to that effect. That’s what I believe to be the case based on, you know, the work that the three of us had been doing—Volker, Perry, and myself—and the Vice President nodded like, you know, he heard what I said, and that was pretty much it as I recall.

Mr. Manager SCHIFF. Everyone was in the loop. Ambassador Sondland testified that Vice President PENCE was neither surprised nor dismayed by the description of this quid pro quo.

At the beginning of the bilateral meeting between President Zelensky and Vice President PENCE, as expected, the first question from President Zelensky related to the status of the security assistance.

As Vice President PENCE’s aide Jennifer Williams testified, President Zelensky explained that just equally with the financial and fiscal value of the assistance, that it was the symbolic nature of that assistance that really was the show of U.S. support for Ukraine and for Ukraine’s sovereignty and territorial integrity.

Later that day, Vice President PENCE spoke to the President about his meeting with President Zelensky, but the hold on security assistance remained in place well after Vice President PENCE returned from Warsaw.

After the Warsaw meeting with Vice President PENCE, Ambassador Sondland quickly pulled aside Andriy Yermak, Zelensky’s top aide, and informed him that the aid would not be forthcoming until Ukraine publicly announced the two investigations that President Trump wanted.

So here we are, after the meeting—right after the meeting. They are still in Warsaw, and Zelensky pulls aside his Ukrainian counterpart, Yermak, and explains the aid is not coming until the investigations are announced.

(Text of Videotape presentation:)

Ambassador SONDLAND. Based on my previous communication with Secretary Pompeo, I felt comfortable sharing my concerns with Mr. Yermak. It was a very, very brief, pulled aside conversation that happened within a few seconds. I told Mr. Yermak that I believed that the resumption of U.S. aid would likely not occur until Ukraine took some kind of action on the public statement that we have been discussing for many weeks.

Mr. Manager SCHIFF. Let’s let that sink in for a minute too.

You have heard my colleagues at the other table say: Ukrainians felt no pressure. There is no evidence they felt any pressure.

Of course, we have already had testimony about how they did feel pressure, and they didn’t want to be drawn into this political

campaign. You saw over and over in these text messages and emails: No, you go first. You announce. No, you go first. Yet we are supposed to believe they felt no pressure? There it is. It breaks out into the open. The military aid is being withheld, and there is a connection between the holding of the military aid and these investigations.

The first thing they are asking about—and they send the copy of the article—is: What is happening with this aid? They are ready to come to DC to plead for the aid. They go to Warsaw. They meet with the Vice President. The first question is the aid.

And what happens after that meeting? Now, that was a big meeting, by the way, with the Vice President and the Ukrainian delegation. It is not likely, in front of all of those people, the Vice President is going to bring it up.

So Sondland goes up to his counterpart right after that, on the sidelines of that meeting, and he says basically: Ya ain't getting the money until you do the investigations.

And we are to believe they felt no pressure? Folks, they are at war. They are at war, and they are being told: You are not getting \$400 million in aid you need unless you do what the President wants, and what the President wants are these two investigations.

If you don't believe that is pressure, that is \$400 million worth of pressure, I got a bridge I want to sell you.

It is hard for to us put ourselves in the Ukrainians' position. I mean, imagine if the eastern third of our country were occupied by an enemy force, and we are beholden to another country for military aid, and they are saying: You are not going to get it until you do what we want. Do you think we would feel pressure? I think we would feel pressure, and that is exactly the situation the Ukrainians were in.

You heard the other counsel say before: Well, but they say they don't feel pressure—like they are going to admit they were being shaken down by the President of the United States. You think they feel pressure now, you should see what kind of pressure they would feel if they admitted that.

Tim Morrison, the NSC official, witnessed the conversation between Sondland and Yermak from across the room and immediately thereafter received the summary from Ambassador Sondland. He reported the substance of that conversation to his boss, Ambassador Bolton. He told Morrison to “consult with the lawyers.” Go talk to the lawyers.

You know, if you keep getting told you got to go talk to the lawyers, there is a problem. If things are perfect, you don't get told “go talk to the lawyers” time and again.

Morrison confirmed that he did talk to the lawyers, in part to ensure there was a record of what Ambassador Sondland was doing. That record exists within the White House. Would you like me to read you that record? I would be happy to read you that record. It is there for your asking. Of course the President has refused to provide that record.

Precisely why did Ambassador Bolton direct Morrison to tell the lawyers, talk to the lawyers? Would you like Ambassador Bolton to tell you why he said that? He would be happy to tell you why he said that. He is there for your asking.

What did Bolton know about the freeze in aid prior to this meeting in Warsaw? What did he mean that he can press Zelensky—it is going to depend on whether you can press Zelensky? Would you like to know what that meant? I would like to know what he meant by that. I think we know what he meant by that.

Tim Morrison also conveyed the substance of the Sondland-Yermak pull-aside to his colleague Ambassador Taylor. So this is now Tim Morrison told by Bolton “go talk to the lawyers,” and he talks to, also, Ambassador Taylor, our Ambassador in Ukraine.

(Text of Videotape presentation:)

Ambassador TAYLOR. On the evening of September 1st, I received a readout of the Pence-Zelensky meeting over the phone from Mr. Morrison during which he told me that President Zelensky had opened the meeting by immediately asking the Vice President about the security cooperation. The Vice President did not respond substantively but said that he would talk to President Trump that night. The Vice President did say that President Trump wanted the Europeans to do more to support Ukraine and that he wanted the Ukrainians to do more to fight corruption.

During the same phone call with Mr. Morrison, he described the conversation Ambassador Sondland had with Mr. Yermak in Warsaw. Ambassador Sondland told Mr. Yermak that the security assistance money would not come until President Zelensky committed to pursue the Burisma investigation.

I was alarmed by what Mr. Morrison told me about the Sondland-Yermak conversation.

Mr. Manager SCHIFF. Ambassador Taylor then explained why he was so alarmed by this turn. Let’s hear that as well.

(Text of Videotape presentation:)

Mr. GOLDMAN. You said previously that you were alarmed to learn this. Why were you alarmed?

Ambassador TAYLOR. It is one thing to try to leverage a meeting in the White House; it is another thing, I thought, to leverage security assistance—security assistance to a country at war dependent on both the security assistance and the demonstration of support. It was—it was much more alarming. The White House meeting was one thing, security assistance was much more alarming.

Mr. Manager SCHIFF. Upon learning from Mr. Morrison that the military aid may be conditioned on Ukraine publicly announcing these two investigations, Ambassador Taylor sends an urgent text message to Ambassador Sondland asking: [Slide 213] “Are we now saying that security assistance and White House meeting are conditioned on investigations?” And the response by Ambassador Sondland: “Call me.”

Well, you know what that means, right? You get a text message that is putting it in black and white:

Are we saying security assistance and the White House meeting are conditioned on investigations?

Call me.

In other words, don’t put this in writing; call me.

Ambassador Taylor did, in fact, call Sondland. Informed by notes he took at the time of the call, he summarized that conversation as follows.

(Text of Videotape presentation:)

Ambassador TAYLOR. During that phone call Ambassador Sondland told me that President Trump had told him that he wants President Zelensky to state publicly that Ukraine will investigate Burisma and alleged Ukrainian interference in the 2016 election.

Ambassador Sondland also told me that he now recognized that he had made a mistake by earlier telling Ukrainian officials that only a White House meeting with President Zelensky was dependent on a public announcement of the investigation.

In fact, Ambassador Sondland said, “Everything was dependent on such an announcement, including security assistance.”

He said that President Trump wanted President Zelensky in a public box when making a public statement about ordering such investigations.

Mr. Manager SCHIFF. Ambassador Taylor testified that his contemporaneous notes of the call reflect that Sondland used the phrase “public box” to describe President Trump’s desire to ensure that the initiation of his desired investigations was announced publicly. A private commitment was not good enough.

The State Department has Ambassador Taylor’s extensive notes, and of course we would like to show them to you to corroborate his testimony, but pursuant to the President’s instructions, the State Department will not turn them over.

You might recall from the tape yesterday that Ambassador Taylor said: They’ll be shortly coming, I’m told.

Well, somebody countermanded that instruction. Who do we think that was? But you should see them. If you have any question about what Sondland told Ambassador Taylor, if the President’s counsel tries to create any confusion about what Sondland told Taylor about his conversation with the President—and, look, Sondland had one recollection in his deposition and another recollection in the first hearing and another recollection in the declaration. You want to know exactly what happened in that conversation when it was fresh in Sondland’s mind and he told Taylor about it and Taylor wrote it in his notes, you are going to want Taylor’s notes.

In any courtroom in America holding a fair trial, you would want to see contemporaneous notes. This Senate should be no different. Demand those notes. Demand to see the truth. We are not afraid of those notes. We haven’t seen them. We haven’t seen them. Maybe those notes say something completely different. Maybe those notes say no quid pro quo. Maybe those notes say it was a perfect call. I would like to see them. I am willing to trust Ambassador Taylor’s testimony and his recollection. I would like to see them. I would like to show them to you. They are yours for the asking.

On September 25, the Washington Post editorial board reported concerns that President Trump was withholding military assistance for Ukraine and a White House meeting in order to force President Zelensky to announce investigations of Vice President Biden and purported Ukrainian interference in the U.S. election.

The Post editorial board wrote: [Slide 214]

But we’re reliably told that the president has a second and more venal agenda: He is attempting to force Mr. Zelensky to intervene in the 2020 U.S. presidential election by launching an investigation of the leading Democratic candidate, Joe Biden. Mr. Trump is not just soliciting Ukraine’s help with his Presidential campaign; he is using U.S. military aid the country desperately needs in an attempt to extort it.

So that is September 5. The President on notice: Scheme discovered. September 5.

September 7, the evidence shows, President Trump has a call with Ambassador Sondland where the President made the corrupt argument for military aid and the White House meeting even more explicit.

On September 7, Ambassador Sondland spoke to President Trump on the telephone. After that conversation, Ambassador Sondland called Tim Morrison to update him on that conversation. Unlike Sondland, who testified that he never took notes, Morrison took notes of the conversation and recalled it during his public testimony. Let's listen.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, a few days later, on September 7, you spoke again to Ambassador Sondland, who told you that he had just gotten off the phone with President Trump. Isn't that right?

Mr. MORRISON. That sounds correct, yes.

Mr. GOLDMAN. What did Ambassador Sondland tell you that President Trump said to him?

Mr. MORRISON. If I recall this conversation correctly, this was where Ambassador Sondland related that there was no quid pro quo but President Zelensky had to make the statement and that he had to want to do it.

Mr. GOLDMAN. And by that point, did you understand that the statement related to Biden and the 2016 investigations?

Mr. MORRISON. I think I did, yes.

Mr. GOLDMAN. And that that was essentially a condition for the security assistance to be released?

Mr. MORRISON. I understood that that's what Ambassador Sondland believed.

Mr. GOLDMAN. After speaking with President Trump?

Mr. MORRISON. That's what he represented.

Mr. Manager SCHIFF. I ask you to bear in mind that when Mr. Morrison said that is what he represented, that we asked Mr. Morrison about the President's calls with Ambassador Sondland, and he testified that every time he checked to see did Ambassador Sondland in fact talk to the President when he said that he did, that, yes, in fact, he talked with the President. Every time he checked, he was able to confirm it.

Now, let's let this sink in for a minute. According to Mr. Morrison's testimony—former Republican staffer on the Armed Services Committee—he speaks with Sondland on September 7, and Sondland says he has just gotten off the phone with Trump, OK? So this is contemporaneous. Just got off the phone with him. Call is fresh in everybody's mind. And what was said? Morrison says Ambassador Sondland related there was no quid pro quo but President Zelensky had to make the statement and he had to want to do it. No quid pro quo, but there is a quid pro quo.

Now, there are notes that show this. There is a written record of this. There is a written record of what President Trump told Ambassador Sondland right after that call. Would you like to see that written record? It is called Mr. Morrison's notes. It is right there for the asking.

These fine lawyers over here want to persuade you that call didn't happen or it wasn't said or all he said was no quid pro quo; he never said, but you have to go to the mic and you have to want to do it. Well, there is a good way to find out what happened on that call because it is in writing.

Is there any question why they are withholding this from Congress? Is there any question about that? Did it claim—well, Mr. Morrison didn't claim absolute immunity. Mr. Sondland didn't claim absolute immunity. There is no absolute immunity over these notes, no executive privilege over these notes. The notes have already been described. The conversation has already been released. There is no even plausible, arguable, invented, even, excuse for

withholding these notes. Would you like to see them? I will tell you, in any courtroom in America you would get to see them. This should be no different. It wouldn't be any different in a fair trial anywhere in America.

Morrison again informed Ambassador Bolton of this September 7 conversation, and guess what Ambassador Bolton said? I think you can probably figure this out by now: Go talk to the lawyers. Go talk to the lawyers. And yet again, for the third time, Morrison went to talk to the lawyers about this conversation with Ambassador Sondland.

Morrison also called Ambassador Taylor to inform him about the conversation, and we have the testimony from Ambassador Taylor about their conversation, which is also based on his contemporaneous notes.

Let's look at the conversation now between Mr. Morrison and Ambassador Taylor.

(Text of Videotape presentation:)

Ambassador TAYLOR. According to Mr. Morrison, President Trump told Ambassador Sondland he was not asking for a quid pro quo. President Trump did insist that President Zelensky go to a microphone and say he is opening investigations of Biden and 2016 election interference and that President Zelensky should want to do this himself.

Mr. Manager SCHIFF. OK, so here we have two witnesses taking contemporaneous notes, both reflecting the same conversation—a conversation between Sondland and the President in which the President says, “No quid pro quo,” but quid pro quo. There are documents that prove this—documents that prove this that are yours for the asking. [Slide 215]

The following day, September 8, Sondland texts Taylor and Volker to bring them up to speed on the conversations with President Trump and, subsequently, President Zelensky, whom he spoke to after President Trump: “Guys, multiple conversations with Z,” meaning Zelensky. “POTUS. Let's talk.”

Sondland spoke to Taylor shortly after this text, according to Ambassador Taylor. He testified again on his real time notes. Let's hear what he said.

(Text of Videotape presentation:)

Ambassador TAYLOR. The following day on September 8, Ambassador Sondland and I spoke on the phone, and he confirmed he had talked with President Trump, as I suggested a week earlier, but President Trump was adamant that President Zelensky himself had to clean things up and do it in public. President Trump said it was not a quid pro quo.

Mr. Manager SCHIFF. It is all very consistent here, what the President said. No quid pro quo, but Zelensky must announce the investigations publicly, was what he was telling Sondland—no quid pro quo except for the quid pro quo.

The President's attorneys would like you to remember the first half of that sentence and would like to forget the second half ever happened, but we don't have to leave our common sense at the door, and we don't have to rely on an incomplete description of that call. We have instead the detailed notes of Mr. Morrison and Ambassador Taylor.

We also know what President Trump told Sondland because Sondland relayed that message to President Zelensky. During the

same September 8 conversation with Taylor, Sondland described his conversation with President Zelensky.

Here is Ambassador Taylor's account of it.

(Text of Videotape presentation:)

Ambassador TAYLOR. Ambassador Sondland also said that he had talked with President Zelensky and Mr. Yermak and had told them that although this was not a quid pro quo, if President Zelensky did not clear things up in public, we would be at a stalemate. I understood a stalemate to mean that Ukraine would not receive the much-needed military assistance.

Ambassador Sondland said that this conversation concluded with President Zelensky agreeing to make a public statement in an interview on CNN.

Mr. Manager SCHIFF. So not only did Ambassador Sondland relate this conversation to Mr. Morrison and Mr. Taylor, not only did Ambassador Taylor and Mr. Morrison talk about it, but Sondland said he relayed this conversation to Zelensky himself. Everyone was now in the loop on the military aid being withheld for the political investigations.

Taylor continued recalling the startling analogy Ambassador Sondland used to describe President Trump's approach to Ukraine:

(Text of Videotape presentation:)

Ambassador TAYLOR. During our meeting—during our call on September 8, Ambassador Sondland tried to explain to me that President Trump was a businessman, and when a businessman is about to sign a check to someone who owes him something, the business man asks that person to pay up before signing the check. Ambassador Volker used the same language several days later while we were together at the Yalta European strategy conference. I argued to both that the explanation made no sense. Ukrainians did not owe President Trump anything.

Mr. Manager SCHIFF. Ambassador Taylor testified that at the end of the Sondland-Zelensky conversation, President Zelensky said that he had relented and had agreed to do a CNN interview to announce the investigations.

So there was a breakthrough after all. The promised meeting wasn't enough. The withheld security assistance broke the logjam. Zelensky was going to go on CNN and announce the investigations.

Taylor, though, remained concerned that even if the Ukrainian leader did as President Trump required, President Trump might continue to withhold the vital U.S. security assistance in any event. Ambassador Taylor texted his concerns to Ambassador Volker and Sondland stating: [Slide 216]

The nightmare is they give the interview and don't get the security assistance. The Russians love it. (And I quit.)

That is quite telling, too.

What is Ambassador Taylor worried about? He is worried the Ukrainians are finally going to agree to do it. They are going to make the announcement, and they are still going to get stiffed on the aid.

In his deposition, Ambassador Taylor elaborated: [Slide 217]

"The nightmare" is the scenario where President Zelensky goes out in public, makes an announcement that he's going to investigate Burisma and the interference in the 2016 election, maybe among other things. He might put that in some series of investigations. But . . . the nightmare was he would mention those two, take all the heat from that, get himself in big trouble in this country—

Meaning the United States—

and probably in his country as well, and the security assistance would not be released. That was the nightmare.

If it were to happen, Taylor has testified, he would quit.

Early in the morning in Europe on September 9, which was 12:47 a.m. in Washington, DC, Ambassador Taylor reiterated his concerns about the President's quid pro quo for security assistance in another series of text messages with Ambassadors Volker and Sondland.

Here are the September 9 text messages. Taylor texts to Sondland: [Slide 218]

The messages from the Ukrainians (and Russians) we send with the decision on security assistance is key. With the hold, we have already shaken their faith in us. Thus my nightmare scenario.

Taylor goes on and says:

Counting on you to be right about this interview, Gordon.

Meaning, if they do it, you darn well better come through with the military aid.

And Sondland says:

Bill, I never said I was "right." I said we are where we are and believe we have identified the best pathway forward. Let's hope it works.

Taylor said:

As I said on the phone, I think it is crazy to withhold security assistance for help with a political campaign.

Ambassador Taylor testified what he meant. He said that to withhold that assistance for no good reason other than to help with a political campaign made no sense. It was counterproductive to all of what we were trying to do. It was illogical. It could not be explained. It was crazy.

In response to Ambassador Taylor's text message, Sondland replies at about 5 a.m. in Washington. So the message from Taylor goes out at 12:47 a.m. The message back from Sondland comes at 5 a.m. So it looks like it might be 5 hours later.

So Taylor has texted at 12:47 a.m.: [Slide 219]

As I said on the phone, I think it is crazy to hold security assistance for help with a political campaign.

There he is again, putting it in writing, for crying out loud. Hadn't Sondland said to call him about this stuff?

So 5 hours later, you get this really interesting message from Sondland:

Bill, I believe you are incorrect about President Trump's intentions. The President has been crystal clear: no quid pro quo's of any kind. The President is trying to evaluate whether Ukraine is truly going to adopt transparency reforms that President Zelensky promised during his campaign. I suggest we stop the back and forth by text.

In other words, can you please stop putting this in writing? Congress may read this one day.

If you still have concerns, I recommend you give Lisa Kenna or S a call to discuss them directly. Thanks.

As you can see Ambassador Sondland's subsequent testimony reveals that this text and other denials of a quid pro quo were intentionally false and simply designed to provide a written record of a false explanation that could later be used to conceal wrongdoing.

The text message said there were no quid pro quos of any kind, but you have seen his testimony. He swore under oath. He was

crystal clear when he said there was a quid pro quo for the White House meeting, and he subsequently testified there was a quid pro quo for the security assistance, as well, as confirmed by President Trump's direction to him on September 7.

Sondland's recollection of this conversation with President Trump, as I mentioned, has evolved over time. Initially, in his deposition, he testified that the conversation with the President occurred between Taylor's text of September 9th at 12:47, Washington time, and his response at 5 a.m. He recalled very little of the conversation at that time other than his belief that his text message reflected President Trump's response.

Subsequently, though—and again, this is one of the reasons why you do depositions in closed session. Subsequently, after the opening statements of the testimony of Ambassador Taylor and Mr. Morrison were released, which described in overlapping and painful detail Sondland's conversation with President Trump on September 7, Ambassador Sondland submitted an addendum to his deposition testimony, which in relevant part said this: [Slide 220]

Finally, as of this writing, I cannot specifically recall if I had one or two phone calls with President Trump in the September 6–9 time frame. Despite repeated requests to the White House and the State Department, I have not been granted access to all the phone records, and I would like to review those phone records along with any other notes and other documents that may exist to determine if I can provide a more complete testimony to assist Congress. However, although I have no specific recollection of phone calls during this period with Ambassador Taylor and Mr. Morrison, I have no reason to question the substance of their recollections about my September 1 conversation with Mr. Yermak.

During his public testimony, Ambassador Sondland purported to remember more of his conversation with President Trump, although he still maintained he couldn't remember if it was on September 7 or September 9.

According to his testimony, President Trump did not specifically say there was a quid pro quo. But when Sondland simply asked the President what he wanted from Ukraine, President Trump immediately brought up a quid pro quo. According to Sondland, President Trump said: [Slide 221]

I want nothing. I want no quid pro quo. I want Zelensky to do the right thing.
And I said: What does that mean?
And he said: I want him to do what he ran on.

In his subsequent testimony, Ambassador Sondland explained that Trump's reference to what he ran on was a nod to rooting out corruption. Here, however, corruption, like Burisma, has become code for the investigations that President Trump has sought.

So you have got Ambassador Sondland's emerging recollection. What you have got is actually written notes taken at the time that he does not contest, written notes of Ambassador Taylor and Mr. Morrison, notes which I believe will reflect quite clearly the understanding of "dirt for dollars" that was confirmed by this telephone call to President Trump.

(Text of Videotape presentation:)

Mr. GOLDMAN. Well, you weren't dissuaded then, right? Because you still thought that the aid was conditioned on the public announcement of the investigation after speaking to President Trump.

Ambassador SONDLAND. By September 8, I was absolutely convinced it was.

Mr. GOLDMAN. And President Trump did not dissuade you of that in the conversation that you noted you had with him?

Ambassador SONDLAND. I don't recall, because that would have changed my calculus. If President Trump had told me directly—

Mr. GOLDMAN. No, I'm not asking that. I am just saying, you still believed the security assistance was conditioned on the investigation, after you spoke to President Trump; yes or no?

Ambassador SONDLAND. From a timeframe standpoint, yes.

Mr. Manager SCHIFF. OK, so here we have Sondland saying that whatever his recollection may be about that call, he was still very clear what the President wanted and he was very clear there was a quid pro quo. That is consistent, obviously, with what Mr. Morrison had to say and Ambassador Taylor. In other words, he didn't believe President Trump's denial of a quid pro quo, and neither should you.

Sondland's understanding was further confirmed by President Trump's own Chief of Staff. On October 17, in a press briefing at the White House, Mick Mulvaney admitted that President Trump withheld essential military aid to Ukraine as leverage to pressure Ukraine to investigate the conspiracy theory that Ukraine had interfered in the 2016 election.

(Text of Videotape presentation:)

Mr. MULVANEY. Those were the driving factors. But he also mentioned to me that the corruption related to the DNC server. Absolutely, no question about it. But that is it. That is why we held up the money.

Mr. Manager SCHIFF. When pressed that he had just convinced them of the very quid pro quo that President Trump had been denying, Mulvaney doubled down. Let's listen to that.

(Text of Videotape presentation:)

REPORTER. But to be clear, what you just described is a quid pro quo. It is: Funding will not flow unless the investigation into the Democratic server happens as well.

Mr. MULVANEY. We do that all the time with foreign policy.

Mr. Manager SCHIFF. This evidence demonstrates that President Trump withheld the security assistance and the White House meeting with President Zelensky until Ukraine made a public statement announcing the two investigations targeted to help his political reelection efforts. But as you will learn next, he got caught, and a coverup ensued.

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, thank you for your patience. This is a lot of information, but you have a very important obligation, and that is, ultimately, to decide whether the President committed impeachable offenses. In order to make that judgment, you have to have all of the facts.

We are going through this chronology. We are close to being done, but it is important to know that while all of this material was going on and these deals were being made, there were other forces at work. Even before the President's freeze on U.S. military assistance to Ukraine became public on August 28, Members of both Houses of Congress began to express concern.

[Slide 222] On August 9, the Democratic leadership of the House and Senate Appropriations Committee wrote to the OMB and the White House, warning that a hold on assistance might constitute an illegal impoundment of funds. They urged the Trump administration to follow the law and obligate the funds.

When the news of the frozen aid broke on August 28, congressional scrutiny of President Trump's decision increased. On Sep-

tember 3, a group of Senators, both Republicans and Democrats, including Senator JEANNE SHAHEEN, Senator ROB PORTMAN, Senator DICK DURBIN, Senator RON JOHNSON, and Senator RICHARD BLUMENTHAL sent a letter to Acting White House Chief of Staff Mick Mulvaney, expressing “deep concerns . . . that the Administration is considering not obligating the Ukraine Security Initiative funds for 2019.” [Slide 223]

Two days later, as has been mentioned, on September 5, a Washington Post editorial expressed concern that President Trump was withholding military assistance to Ukraine in order to pressure President Zelensky to announce these investigations. That was the first public report linking the frozen security aid to the investigations that Mr. Giuliani had been publicly pressing for and that President Trump, as we have heard, had privately urged President Zelensky to conduct on the July 25 call.

That same day, Senators MURPHY and JOHNSON met with President Zelensky in Kyiv. Ambassador Taylor went with them, and he testified—Mr. Taylor testified that President Zelensky’s “first question to the senators was about the withheld security assistance.” Ambassador Taylor testified that both Senators “stressed that bipartisan support for Ukraine in Washington was Ukraine’s most important strategic asset and that President Zelensky should not jeopardize that bipartisan support by getting drawn into U.S. domestic politics.”

Senator JOHNSON and Senator MURPHY later submitted letters in which they explained that they sought to reassure President Zelensky that there was bipartisan support in Congress for providing Ukraine with military assistance and that they would continue to urge President Trump to lift the hold. Here is what they said in that letter. [Slide 224]

Senator MURPHY said: “Senator JOHNSON and I assured Zelensky that Congress wanted to continue this funding, and would press Trump to release it immediately.”

And Senator JOHNSON in the letter said: “I explained that I had tried to persuade the President to authorize me to announce the hold was released but that I was unsuccessful.”

As news of the President’s hold on military assistance to Ukraine became public at the end of August, Congress, the press, and the public started to pay more attention to President Trump’s activities with Ukraine. This risked exposing the scheme that you have heard so much about today.

By now, the White House had learned that the inspector general of the intelligence community had found that a whistleblower complaint related to the same Ukraine matter was “credible” and “an urgent concern” and that they were therefore required to send that complaint to Congress.

On September 9, three House investigating committees sent a letter to White House Counsel Pat Cipollone, stating that President Trump and Giuliani “appeared to have acted outside legitimate law enforcement and diplomatic channels to coerce the Ukrainian government into pursuing two politically-motivated investigations under the guise of anti-corruption activity.”

The letter also said this: “If the President is trying to pressure Ukraine into choosing between defending itself from Russian ag-

gression without U.S. assistance or leveraging its judicial system to serve the ends of the Trump campaign, this would represent a staggering abuse of power, a boon to Moscow, and a betrayal of the public trust.”

The Chairs requested that the White House preserve all relevant records and produce them by September 16. This included the transcript—or actually the call record of the July 25 call between President Trump and President Zelensky.

Based on witness testimony, it looks like the White House Counsel’s Office circulated the committee’s document request around the White House. Tim Morrison, a senior director at the National Security Council, remembered seeing a copy of this letter. He also recalled that the three committees’ Ukraine investigation was discussed at a meeting of senior level NSC staff soon after it was publicly announced. Lieutenant Colonel Vindman recalled discussions among the NSC staff members that the investigation—and here is a quote—“might have the effect of releasing the hold on Ukraine military assistance because it would be potentially politically challenging for the Administration to justify that hold to Congress.”

Later that same day, on September 9, the inspector general informed the House and Senate Intelligence Committees he had determined that the whistleblower complaint that had been submitted on August 12 appeared to be credible, met the definition of urgent concern under the statute, and yet he reported that for first time ever, the Acting Director of National Intelligence was withholding this whistleblower complaint from Congress. That violated the law, which required him to send it in 7 days. The Acting Director later testified that his office initially withheld the complaint based on advice from the White House in an unprecedented intervention by the Department of Justice.

According to public reporting and testimony from the Acting DNI at a hearing before the House Intelligence Committee on September 26, the White House had been aware of the whistleblower complaint for weeks prior to the IG September 9 letter to the Intelligence Committee.

Acting DNI Maguire testified that when he received the whistleblower complaint from the inspector general, his office contacted the White House Counsel’s Office for guidance. Consistent with Acting DNI Maguire’s testimony, the New York Times has reported that, in late August, the President’s current defense counsel, Mr. Cipollone, and NSC lawyer, John Eisenberg, personally briefed President Trump about the complaint’s existence and told the President they believed the complaint could be withheld from Congress on executive privilege grounds.

On September 10, the next day, Ambassador Bolton resigned from his position as National Security Advisor. On that same day, September 10, Chairman SCHIFF of the House Intelligence Committee wrote a letter to the Acting Director, demanding that he provide the complaint as the law required. The next day, on September 11, President Trump lifted the hold on the security assistance to Ukraine.

Numerous witnesses have testified that they weren’t aware of any reason why the hold was lifted, just that there was no explanation for the hold being implemented. There was no additional re-

view, no additional European contribution, nothing to justify the President's change in his position, except he got caught. Just as there was no official explanation for why the hold on Ukrainian assistance was implemented, numerous witnesses testified that they were not provided with any reason for why the hold was lifted on September 11.

For example, Jennifer Williams, who was a special adviser to Vice President PENCE, testified that she was never given a reason for that decision; neither was Lieutenant Colonel Vindman. Here is what he told us during the hearing.

(Text of Videotape presentation:)

Mr. GOLDMAN. Are you also aware that the security assistance hold was not lifted for another 10 days after this meeting?

Ms. WILLIAMS. That is correct.

Mr. GOLDMAN. And am I correct that you never did learn the reason why the hold was lifted?

Ms. WILLIAMS. That is correct.

Mr. GOLDMAN. Colonel Vindman, you didn't learn a reason why the hold was lifted either; is that right?

LTC VINDMAN. Right.

Mr. GOLDMAN. Colonel Vindman, are you aware that the committees launched an investigation into the Ukrainian matters on September 9, 2 days before the hold was lifted?

LTC VINDMAN. I am aware, and I was aware.

Ms. Manager LOFGREN. Ambassador Taylor, the person in charge at the U.S. Embassy in Kyiv who communicated the decision to the Ukrainians, also never got an explanation. Here is what he said.

(Text of Videotape presentation:)

Mr. GOLDMAN. Are you also aware, however, that the security assistance hold was not lifted for another 10 days after this?

Ambassador TAYLOR. Finally, on September 11, I learned that the hold had been lifted and the security assistance would be provided. I was not told the reason why the hold was lifted.

Ms. Manager LOFGREN. Mark Sandy, a career officer at OMB, testified he only learned of the possible rationale for the hold in early September after the Acting DNI had informed the White House about the whistleblower complaint.

Sandy testified that sometime in early September he received an email from his boss, Michael Duffey. Approximately 2 months after the hold had been placed, the email "attributed the hold to the President's concern about other countries not contributing more to Ukraine" and requested "information about what additional countries were contributing to Ukraine." This was a different explanation than OMB had provided at the July 26 interagency meeting that referenced concerns about corruption.

The Lieutenant Colonel testified that none of the facts on the ground about Ukrainian efforts to combat corruption or other countries' contributions to Ukraine had changed before President Trump lifted the hold.

According to a press report, after Congress began investigating President Trump's scheme, the White House Counsel's Office opened an internal investigation relating to the July 25 call. The following slides provide excerpts from a report in the Washington Post.

As part of that internal investigation, [Slide 225] White House lawyers reportedly gathered and reviewed hundreds of documents that revealed extensive efforts to generate an after-the-fact justification for the hold on military assistance for Ukraine that had been ordered by the President.

These documents reportedly include “early August email exchanges between Acting Chief of Staff Mick Mulvaney and White House budget officials seeking to provide an explanation for withholding the funds after the President had already ordered a hold in mid-July on the nearly \$400 million in security assistance.”

The Washington Post article also reported, and this is a quote: “Emails show OMB Director Vought and OMB staffers arguing that withholding the aid was legal, while officials at the National Security Council and State Department protested. OMB lawyers said that it was legal to withhold the aid, as long as they deemed it a temporary hold.” You should be able to see these documents, but the White House has withheld them from Congress. The House can’t verify the news report, but you could. You could do that if you could see these documents. You should subpoena them, and there is no reason not to see all of the relevant documents.

The lengthy delay created by President Trump’s hold prevented the Department of Defense from spending all congressionally appropriated funds by the end of the fiscal year, as we have mentioned before. That meant the funds were going to expire on September 30 because, as we know, unused funds do not roll over to the next fiscal year. This confirmed the fears expressed by Cooper, Sandy, and others—concerns that were discussed within the relevant agencies in late July and throughout August.

Ultimately, approximately \$35 million of Ukraine military assistance—that is 14 percent of the DOD funds—remained unspent by the end of the fiscal year. In order to make sure that Ukraine did not permanently lose the \$35 million of critical military assistance that had been frozen by the White House, Congress had to pass a provision on September 27—3 days before the funds were to expire—to ensure that the remaining \$35 million could be sent to Ukraine.

George Kent is an anti-corruption and rule-of-law expert. He told us that American anti-corruption efforts prioritized building institutional capacity, support for the rule of law, not the pursuit of individual investigations, particularly of political rivals. Here is how he explained their approach.

(Text of Videotape presentation:)

Mr. KENT. U.S. efforts to counter corruption in Ukraine focus on building institutional capacity so that the Ukrainian Government has the ability to go after corruption and effectively investigate, prosecute, and judge alleged criminal activities using appropriate institutional mechanisms; that is, to create and follow the rule of law. That means that if there are criminal nexuses for activity in the United States, U.S. law enforcement should pursue the case. If we think there’s been a criminal act overseas that violates U.S. law, we have the institutional mechanisms to address that. It could be through the Justice Department and FBI agents assigned overseas or through treaty mechanisms, such as the mutual legal assistance treaty.

As a general principle, I do not believe the United States should ask other countries to engage in selective politically associated investigations or prosecutions against opponents of those in power because such selective actions undermine the rule of law, regardless of the country.

Ms. Manager LOFGREN. David Holmes concurred during his testimony. Holmes also compared the official approach that we believe in, that we promulgated across the world, with what the President and Mr. Giuliani actually were doing.

(Text of Videotape presentation:)

Mr. HOLMES. Our long-standing policy is to encourage them to establish, build rule of law institutions that are capable, that can pursue allegations. That's our policy. We've been doing that for some time with some success. Focusing on particular cases, particularly where there is interest of the President, just not part of what we've done. It's hard to explain why we would do that.

Ms. Manager LOFGREN. Unfortunately, we do know the explanation. We know why President Trump wanted President Zelensky to announce investigations—because it would help him in his election.

On September 18, approximately a week before he was supposed to meet with President Trump at the United Nations General Assembly in New York, President Zelensky spoke by telephone with Vice President PENCE.

During her deposition, Jennifer Williams testified. She was Vice President PENCE's assistant. She had testified that Vice President PENCE basically reiterated that the hold on aid had been lifted and asked a bit more about how Zelensky's efforts were going.

Following her deposition and while preparing for her testimony at the open hearing on November 19, Williams reviewed the documents—they had not been produced to us by the White House—and those documents refreshed her recollection of Vice President PENCE's call with President Zelensky. The White House blocked Williams from testifying about her refreshed recollections of the Vice President's call when she appeared at the open public hearing. They claim that certain portions of the September 18 call, including the information that Williams wanted to tell us about, were classified.

On November 26, she submitted a classified addition to her hearing testimony where she provided additional information about the Vice President's September 18 telephone call with President Zelensky. The Intelligence Committee provided this classified addition to the Judiciary Committee. It has been sent to the Senate for your review. Now, I have read that testimony. I will just say that a coverup is not a proper reason to classify a document.

Vice President PENCE has repeatedly said publicly that he has no objection to the White House releasing the actual transcript of his calls with President Zelensky. Yet his office has refused many requests by the committee to declassify Williams' addendum so the American people could also see the additional evidence about this call.

We urge the Senators to review it, and we again ask that the White House declassify them. As the House wrote in two separate letters, there is no basis to keep it classified. Again, in case the White House needs a reminder, it is improper to keep something classified just to avoid embarrassment or to conceal wrongdoing.

We have been through a lot of facts today. We have seen the President's scheme. A shakedown of Ukraine for his personal benefit was, I believe, an obvious abuse of his power. But this misconduct and scheme became exposed. Congress asked questions.

The press reported. Nonpolitical officers in the government expressed concern. The whistleblower laws were activated.

As this happened, there was an effort to create an after-the-fact, misleading record to avoid responsibility for what the President had actually been doing. These were not the only efforts to hide misconduct, and misconduct continued. Congressman SCHIFF will review some of those items.

Mr. Manager SCHIFF. We have about 20 minutes left in the presentation tonight.

I would like to now go through with you the President's efforts to hide this corrupt scheme even as it continued well into the fall of last year.

On August 12, a whistleblower in the intelligence community submitted a complaint addressed to the congressional Intelligence Committees. This explosive document stated that President Trump had solicited foreign interference from Ukraine to assist his 2020 reelection bid.

The complaint alleged a scheme by President Trump to "us[e] the power of his office to solicit interference from a foreign country in the 2020 U.S. election." The complaint stated that the President had applied pressure on Ukraine to investigate one of the President's main domestic political rivals and detailed the involvement of the President's personal lawyer, Rudy Giuliani. The complaint also stated that the whistleblower believed the President's activities "posed risks to U.S. national security and undermine the U.S. Government's efforts to deter and counter foreign interference in the U.S. elections."

Under the law, the whistleblower was required to file the complaint with the inspector general of the intelligence community, which was then required to vet and assess the complaint and determine if it warranted reporting to the Intelligence Committees. The law gives the inspector general 14 days to conduct an initial review and then inform the Director of National Intelligence about his findings.

On August 26, the inspector general sent the whistleblower complaint and the inspector general's preliminary determination to the Acting Director of National Intelligence. The inspector general wrote that based on his review of the complaint, its allegations constituted an "urgent concern" and appeared "credible" under the statute. The inspector general confirmed that the whistleblower acted lawfully in bringing the complaint and credibly raised a legitimate concern that should be communicated to the Intelligence Committees of Congress.

The Director of National Intelligence quickly informed the White House about the complaint.

Under the law, the Acting Director of National Intelligence was required to forward the complaint and the inspector general's determination to the congressional Intelligence Committees no later than 7 days after he received them. The legal requirement is extremely clear. Upon receipt of the transmittal from the ICIG—that is the inspector general of the intelligence community—the Director shall, within 7 calendar days of such receipt, forward such transmittal to the congressional Intelligence Committees, together with any comments the Director considers appropriate. Yet, despite

the clear letter of the law, the White House mobilized to keep the information in the whistleblower complaint from Congress, including by inviting the Department of Justice to render an opinion as to whether the complaint could be withheld from Congress.

The statutory deadline of September 2, when the Director of National Intelligence was required to turn them over to Congress, came and went, and the complaint remained hidden from Congress.

Finally, on September 9, a full week after the complaint was required to be sent to Congress—and once again, an urgent concern—the inspector general wrote to the leaders of the Intelligence Committees to inform them that the Director of National Intelligence was withholding a whistleblower complaint, in direct contravention of past practice and the law.

On September 24, Speaker of the House NANCY PELOSI announced that “the House of Representatives is moving forward with an official impeachment inquiry.”

The next day, the House of Representatives passed a resolution calling on the Trump administration to provide the whistleblower’s complaint immediately to the congressional Intelligence Committees.

Later that day, the White House publicly released the summary of the July 25 call between President Trump and President Zelensky and permitted the Acting Director of National Intelligence to provide the whistleblower’s complaint and related documents to the congressional Intelligence Committees.

The President himself was happy to discuss the motivations for the scheme in public. That day, in a joint press availability with President Zelensky at the United Nations General Assembly, President Trump reiterated that he wanted Ukraine to investigate the Bidens.

(Text of Videotape presentation:)

President TRUMP. No, I want him to do whatever he can. This was not his fault. He wasn’t there. He’s just been here recently. But whatever he can do in terms of corruption because the corruption is massive. Now, when Biden’s son walks away with millions of dollars from Ukraine, and he knows nothing, and they’re paying him millions of dollars, that’s corruption.

Mr. Manager SCHIFF. Finally, the day after President Trump explained to the public that he wanted Ukraine to investigate former Vice President Biden, on the morning of September 26, the Intelligence Committee publicly released declassified redactions of two documents: the whistleblower’s August 12 complaint and the inspector general’s August 26 transmittal to the Acting Director of National Intelligence.

Even after the impeachment inquiry into the Ukraine matter began, President Trump and his proxy, Rudy Giuliani, had continued to publicly urge President Zelensky to launch an investigation of Vice President Biden and alleged 2016 election interference by Ukraine.

On September 30, during his remarks at the swearing-in of the new Labor Secretary, President Trump stated this.

(Text of Videotape presentation:)

President TRUMP. Now, the new President of Ukraine ran on the basis of no corruption. That’s how he got elected. And I believe that he really means it. But there was a lot of corruption having to do with the 2016 election against us. And we want to get to the bottom of it, and it is very important we do. Thank you, everyone.

Mr. Manager SCHIFF. So here he is. He is meeting at the United Nations, September 30, and he is still pursuing this bogus CrowdStrike conspiracy theory with the President of Ukraine.

On October 2, in a public press availability, President Trump discussed the July 25 call with President Zelensky and stated that “the conversation was perfect; it couldn’t have been nicer.” He then linked his notion of corruption with the Biden investigation.

On October 3, in remarks before he departed on Marine One, President Trump expressed his hope that Ukraine would investigate Vice President Biden and his son. President Trump actually escalated his rhetoric, urging not only Ukraine to investigate the Bidens but China too.

(Text of Videotape presentation:)

REPORTER. Mr. President, what exactly did you hope Zelensky would do about the Bidens after your phone call?

President TRUMP. Well, I would think that, if they were honest about it, they would start a major investigation into the Bidens. It’s a very simple answer. They should investigate the Bidens, because how does a company that’s newly formed—and all these companies, if you look at—and, by the way, likewise, China should start an investigation into the Bidens, because what happened in China is just about as bad as what happened with—with Ukraine. So I would say that President Zelensky—if it were me, I would recommend that they start an investigation into the Bidens.

Mr. Manager SCHIFF. The same day, President Trump tweeted that he has an absolute right to investigate corruption. That really means he feels he has an absolute right to investigate or get foreign countries to investigate his political opponents. The President sent a similar tweet the next day, once again linking corruption with the Biden investigation: [Slide 226]

As President, I have an obligation to end corruption, even if that means requesting the help of a foreign country or countries. It is done all the time. This has nothing to do with politics or a political campaign against the Bidens. This does have to do with their corruption.

Give him credit for being so obvious. “This has nothing to do with politics or a political campaign against the Bidens,” but you have got to investigate the Bidens. I guess that is just a coincidence.

President Trump continued to demonstrate his eagerness to solicit foreign assistance related to his personal interests: “Here’s what’s okay,” he said. “If we feel there’s corruption like I feel there was in the 2016 campaign—there was tremendous corruption against me. If we feel there’s corruption, we have a right to go to a foreign country.”

President Trump added that asking President Xi of China to investigate the Bidens “is certainly something we can start thinking about.”

Even last month—even last month—the President and Giuliani’s scheme continued. During the first week of December, Giuliani traveled to Budapest, Kyiv, and Vienna to meet with former Ukrainian Government officials as part of a continuing effort to dig up dirt, political dirt, on Vice President Biden and advance the theory that Ukraine interfered in the 2016 election.

Asked about his interviews of former Ukrainian prosecutors, Giuliani told the New York Times that he was acting on behalf of his client, President Trump: [Slide 227] “Like a good lawyer, I am

gathering evidence to defend my client against the false charges being leveled against him.” Indeed, evidence obtained by the House from Giuliani’s associate confirms that he had been representing himself in as early as May 2019 as President Trump’s personal lawyer, doing Donald J. Trump’s personal bidding in his dealings with Ukraine.

This letter of May 10, 2019, from Giuliani to Zelensky says, among other things: [Slide 228]

However, I have a more specific request. In my capacity as personal counsel to President Trump and with his knowledge and consent, I request a meeting with you on this upcoming Monday, May 13, or Tuesday, May 14. I will need no more than a half-hour of your time, and I will be accompanied by my colleague Victoria Toensing, a distinguished American attorney who is very familiar with this matter.

Please have your office let me know what time or times are convenient for you, and Victoria and I will be there.

This is evidence recently obtained showing his effort to get that meeting in May with Zelensky. Giuliani told the Wall Street Journal that, when he returned to New York from his most recent trip on December 7, President Trump called him as his plane was still taxiing down the runway: “What did you get?” he said President Trump asked. “More than you can imagine,” Giuliani replied. Giuliani claimed that he was putting his findings into a 20-page report and that the President had asked him to brief the Attorney General and the Republicans in Congress. Shortly thereafter, on the same day, President Trump told reporters before departing on Marine One that he was aware of Giuliani’s efforts in Ukraine and that Giuliani was going to report his purported findings to the Attorney General and Congress.

(Text of Videotape presentation:)

President TRUMP. Well, I just know he came back from someplace, and he’s going to make a report, I think to the Attorney General and to Congress. He says he has a lot of good information. I have not spoken to him about that information. But Rudy, as you know, has been one of the great crime fighters of the last 50 years. And he did get back from Europe just recently, and I know—he has not told me what he found, but I think he wants to go before Congress and say—and also to the Attorney General and the Department of Justice. I hear he’s found plenty.

Mr. Manager SCHIFF. Three days after those remarks on December 10, Giuliani confirmed to the Washington Post that President Trump had asked him to brief the Justice Department and Republican Senators on his “findings” from his trip to Ukraine.

Giuliani stated:

He wants me to do it. I’m working on pulling it together and hope to have it done by the end of the week.

That Friday, December 13, Giuliani reportedly met with President Trump at the White House, and on December 17 Giuliani confirmed to CNN that President Trump has been very supportive of his efforts to dig up dirt on Vice President Biden and Ukraine and that they are on the same page.

The following day, on December 18, 2019, the House of Representatives approved the two Articles of Impeachment you are considering in this trial. Since the House voted on these articles, evidence has continued to come to light related to the President’s corrupt scheme. Among other things, Freedom of Information Act lawsuits, press reporting, and documents provided to Congress

from Rudy Giuliani associate Lev Parnas further corroborate what we already know about the President's scheme.

As Giuliani again said on December 17, President Trump has been "very supportive" of his efforts to dig up dirt on Vice President Biden and they are "on the same page."

Parnas further corroborated what we already know about President Trump's scheme; that he was responsible for withholding military aid and sustaining that hold and that his personal attorney, Mr. Giuliani, was working at the direction of President Trump himself.

On December 20, new emails were released showing that, 91 minutes after President Trump's call with Ukrainian President Zelensky, a top Office of Management and Budget aide asked the Department of Defense to hold off on sending military aid to Ukraine. So those were new documents that came on December 20.

On December 29, revelations emerged from OMB Director and Acting Chief of Staff Mick Mulvaney's role about them—about that role in the delay of aid and efforts by lawyers at OMB, the Department of Justice, and the White House to justify the delay and the alarm that the delay caused within the administration. Those records just became available on December 29.

On January 2, newly unredacted Pentagon emails which raised serious concerns by Trump administration officials about the legality of the President's hold on aid became available.

On January 6, former Trump National Security Advisor John Bolton announced that he would comply with a Senate subpoena compelling his testimony. His lawyers stated that he has new relevant information.

On January 13, reports emerged that the Russian Government hacked the Ukrainian gas company Burisma, almost certainly in an effort to find information about Vice President Joe Biden's son in order to weaponize that information against Mr. Biden and in favor of Mr. Trump, just as Russia did against Secretary Clinton in favor of then-candidate Trump in 2016.

That brings us up to January 13 of this year. Last week, House committees received new evidence from Lev Parnas that further demonstrates that the President was a central player in this scheme to pressure Ukraine for his political gain. Also last week, the Government Accountability Office found that President Trump violated the law when he withheld that aid.

Last night we had further development when more redacted emails from the Office of Management and Budget were produced. I think Representative CROW showed you these. These are among the documents that were just released. I am sure that, if we could read under those redactions, it would be a very perfect email, but you have to ask: What is being redacted here? What is so important to keep confidential during the course of an impeachment inquiry?

As you can see, right up until last night, evidence continues to be produced. The truth is going to come out. Indeed, the truth has already come out, but more and more of it will. More emails are going to come out. More witnesses are going to come forward. They are going to have more relevant information to share.

The only question is, Do you want to hear it now? Do you want to know the full truth now? Do you want to know just who was in the loop? It sounds like everyone was in the loop. Do you want to know how broad this scheme was?

We have the evidence to prove that President Trump ordered the aid withheld. He did so to coerce Ukraine to help his reelection campaign. He withheld a White House meeting to coerce the same sham investigations. We can and will prove President Trump guilty of this conduct and of obstructing the investigation into his misconduct, but you and the American people should know who else was involved in this scheme. You should want the whole truth to come out. You should want to know about every player in this sordid business. It is within your power to do so, and I would urge you, even if you are prepared to vote to convict and impeach and remove this President, to find out the full truth about how far this corruption goes because I think the public has a right to know.

Now, today—well, yesterday we made the case for why you should hear this additional evidence and testimony. This morning, I introduced you to the broad sweep of the President's conduct, and then, during the course of today, we walked you through a factual chronology in realtime about how this plot unfolded. During that factual chronology today, you saw that, in March of this year, Giuliani began that smear campaign against Ambassador Yovanovitch in order to get her fired by President Trump, something he would later admit was necessary to get her out of the way because she was going to be in the way of these two investigations.

This is the supposed anticorruption effort by the President: to get rid of a woman who has dedicated her career to representing the United States, often in dangerous parts of the world, to fighting corruption, and to promoting the rule of law. This plot begins with getting her out of the way, with the President saying that "she is going to go through some things." This anticorruption reformer, this U.S. patriot—this plot begins with getting her out of the way.

This says so much about the administration. Tellingly, it wasn't enough just to recall her or fire her. The President could have done that anytime. No. They wanted to destroy her because she had the audacity to stand in their way.

So we heard in March about the effort to get rid of her, and it succeeded. And guess what message that sent to the Ukrainians about the power the President's lawyer has. The Ukrainians were watching this whole saga. They were hearing his interviews. They were seeing the smears he was putting out. And this attorney for the President, working hand in hand with these corrupt Ukrainians, was able to get a U.N. ambassador yanked out of her job. Proof positive—you want a window to this President, you want entre to this President, you want to make things happen with this President, you go through his lawyer. Never mind the State Department, never mind the National Security Council, never mind the Defense Department—you go through his employer. That is March.

In April, Zelensky has this huge victory in the Presidential election. He gets a congratulatory call from the President. The President assigns Vice President PENCE to go to the inauguration.

In May, Giuliani is rebuffed by Zelensky, cancels the trip to Ukraine—the one where he wanted to go, remember, and meddle in the investigation because, Giuliani says, enemies of Trump surround Zelensky. I guess that means he didn't get the meeting, and they must be enemies of the President. Of course, the Ukrainians know why he wants that meeting.

In May, Trump disinvites PENCE to the inauguration. PENCE is going, Giuliani is rebuffed, PENCE isn't going. That is May.

Instead, May 23, we have this meeting at the White House, and there is a new party in town: the three amigos. They are going to be handling the Ukraine portfolio. They are told: Work with Rudy, work with Rudy. Ambassador Sondland, Ambassador Volker, Secretary Perry, work with Rudy.

As you saw in June, Giuliani is pushing for these investigations, and they are trying to arrange these meetings and trying to make this happen. Also in June, the Defense Department announces they are going to release the military aid. The President reads about this, and then he stops it. He stops the aid.

In July—July 10—you heard in the chronology, there is a meeting at the White House, the meeting in which Sondland blurts out in this meeting between the Ukrainians and Americans: Hey, they have a deal. They are trying to get this meeting, and there is a debate whether the meeting is going to happen and when it is going to happen. Sondland says: Hey, we have a deal with Mulvaney here. We are going to get this meeting, and you are going to do those investigations.

Bolton stiffens and abruptly ends the meeting. That was the first meeting that day. Then Sondland brings the delegation to a different part of the White House, and they have the followup meeting where he makes it even more explicit—this drug deal is made even more explicit. Dr. Hill is told by Ambassador Bolton: You need to go talk to the lawyers; I don't want any part of this drug deal they are cooking up. That is July.

July is the month where that email goes from Sondland to Pompeo and others, and everybody is in the loop. July is the month where the hold is implemented with no explanation. July is the month where Mueller testifies about Russia's systemic interference in our affairs. July is the month after Mueller testifies that the President believes he has escaped accountability.

The next day in July is, of course, the July 25 call in which the President asks for his favor. July 26 is the date of the call between President Trump and Ambassador Sondland. You know the one: "Zelensky loves your ass," and he will do anything you want.

Is he going to do the investigation? Yeah, he is going to do the investigation.

July is the month of that conversation between Sondland and David Holmes, where Holmes says: Can you tell me candidly here what the President thinks of Ukraine? Does he give a "blank" about Ukraine? No, he doesn't give a "blank" about Ukraine. He only cares about the big stuff.

Well, it is kind of big stuff here in Ukraine, like a war with the Russians.

No, no, no. Big stuff that affects him personally, like the Biden investigation that Giuliani wants. That is the month of July.

In August, we have that meeting between Giuliani and Yermak in Madrid. In August, we have the back and forth about the statement: No, you go first, and you commit and publicly announce investigations, and then we will give you a date.

No, you go first. You give us the date, and then we will announce the investigations.

Well, we will give you a statement that doesn't mention the specifics.

No, no, you give us a statement that mentions the investigations. That is the month of August.

August is also the month where it becomes clear that it is not just the meeting anymore. It is everything. Everything is conditioned on these investigations—the relationship, the money, the meeting. Sondland and Holmes testify it is as simple as two plus two equals four. That is all.

In September, Sondland says to Yermak: Everything is conditioned on public announcements.

Message delivered, no ambiguity: The Ukrainians are told quid pro quo.

Taylor texts: This is crazy to withhold aid.

September is the month—September 7 in particular, Trump and Sondland talk on the phone, and the President has that conversation where he says: No quid pro quo—except, here is the quid pro quo.

Zelensky has to go to the mike, and what is more, he should want to do it.

September is also the month where the investigations begin in Congress. September is the month where, after those investigations begin, after the President knows he has been caught, the aid is finally released. September is the month where PENCE and Zelensky are on the phone and Jennifer Williams has classified information to share with you that I hope you will take a look at because it is relevant to these issues.

That is September.

In October, Trump admits: Yes, if it wasn't obvious enough, he wants Ukraine to investigate his political opponent. October is the month where he invites another nation, China, to investigate his opponent.

This is the broad outline of the chronology that we went through today.

Tomorrow, we will go through the law, the Constitution, and the facts as they apply to article I. That is the plan for tomorrow.

We have introduced the case. We have gone through the chronology, and tomorrow, we will apply the facts to the law as it pertains to the President's abuse of power.

Let me just conclude this evening by remarking again on what brought us here. What brought us here is that some courageous people came forward, courageous people that risked their entire careers. One of the things that has been striking to me about that, as I watch these witnesses like Maria Yovanovitch and Ambassador Taylor and David Holmes and others—Dr. Hill—is how much these dedicated officials were willing to risk their career, the beginning of their career, the middle of their career, or late in their career, when they had everything to lose, but people senior to them,

who have every advantage, who sit in positions of power, lack that same basic commitment, lack that same basic willingness to put their country first and expose wrongdoing.

Why is it that Colonel Vindman, who worked for Fiona Hill, who worked for John Bolton and Dr. Kupperman, why is it they were willing to stick their neck out and answer lawful subpoenas when their bosses wouldn't? I don't know that I can answer that question, but I just can tell you, I have such admiration for the fact they did.

I think this is some form of cosmic justice that this Ambassador that was so ruthlessly smeared is now a hero for her courage. There is justice in that. But what would really vindicate that leap of faith that she took is if we show the same courage. They risked everything—their careers—and, yes, I know what you are asked to decide may risk yours too, but if they could show the courage, so can we.

I yield back.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 243 of the 100th Congress, a single, one-page classified document identified by the House managers for filing with the Secretary of the Senate, that will be received on January 22, 2020, shall not be made part of the public record and shall not be printed, but shall be made available pursuant to the Standing Order for the 100th Congress.

The majority leader is recognized.

RECOGNIZING THE PAGES

Mr. McCONNELL. Mr. Chief Justice, colleagues, we are almost through for the evening. We will convene again at 1 o'clock tomorrow. Before we adjourn, I would like to acknowledge that tomorrow is the official last day for this term's Senate pages.

(Applause, Senators rising.)

In addition to witnessing this unusual event that we are all experiencing, they are studying for their final exams as well, and we wish them well, as they head off back to boring, normal high school.

Mr. SCHUMER. Mr. Leader, let me just add my thanks and gratitude from all of us. It is rare, particularly these days, when 100 Senators from both sides of the aisle, of every political persuasion, get up and give someone a standing ovation, but you deserve it.

Thank you for your good work. We hope you have beautiful and successful lives.

(Applause, Senators rising.)

UNANIMOUS CONSENT AGREEMENT—SENATE BUSINESS

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that on Tuesday, January 28, from 10 a.m. until 11 a.m., while the Senate is sitting in the Court of Impeachment and that notwithstanding the Senate's adjournment, the Senate can receive House messages and executive matters, committees be authorized to report legislative and executive matters, and Senators be allowed to submit statements for the RECORD, bills and resolutions and cosponsor requests and, where applicable, the Secretary of the Senate

on behalf of the Presiding Officer be permitted to refer such matters.

The CHIEF JUSTICE. Without objection, it is so ordered.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. McCONNELL. Mr. Chief Justice, finally, I ask unanimous consent that the trial adjourn until 1 p.m. Thursday, January 23, and this also constitute the adjournment of the Senate.

There being no objection, at 9:42 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Thursday, January 23, 2020, at 1 p.m.

[From the CONGRESSIONAL RECORD, January 23, 2020]

The Senate met at 1:02 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

Almighty God, our rock of ages, be omnipresent during this impeachment trial, providing our Senators with the assuring awareness of Your powerful involvement. May they strive to have a clear conscience in whatever they do for You and country. Lord, help them remember that listening is often more than hearing. It can be an empathetic attentiveness that builds bridges and unites. May our Senators not permit fatigue or cynicism to jeopardize friendships that have existed for years. At every decision point throughout this trial, may they ask, which choice will bring God the greater glory?

We pray in Your mighty Name. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. Senators will please be seated.

If there is no objection, the Journal of proceedings of the trial are approved to date.

The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, it is my understanding the schedule today will be similar to yesterday's proceedings. We will plan to take short breaks every 2 or 3 hours and will accommodate a 30-minute recess for dinner, assuming that is needed.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 483, the managers of the House of Representatives have 16 hours and 42 minutes remaining to make the presentation of their case.

The Senate will now hear you.

The Presiding Officer recognizes Mr. Manager SCHIFF to continue the presentation of the case for the House of Representatives.

OPENING STATEMENT—CONTINUED

Mr. Manager SCHIFF. Mr. Chief Justice, I thank you, and I thank the Senators for 2 now very long days. We are greatly appreciative of Chief Justice, knowing that, prior to your arrival in the Chamber each day, you have a lot of work at the Court, necessitating our beginning in the afternoon and going into the evening.

I also want to, again, take this opportunity to thank the Senators for their long and considerable attention over the course of the last 2 days. I am not sure the Chief Justice is fully aware of just how rare it is, how extraordinary it is, for the House Members to be able to command the attention of Senators sitting silently for hours—or even for minutes, for that matter. Of course, it doesn't hurt that the morning starts out every day with the Sergeant at Arms warning you that, if you don't, you will be imprisoned. It is our hope that, when the trial concludes and you have heard us and you have heard the President's counsel over a series of long days, that you don't choose imprisonment instead of anything further.

Two days ago we made the case for documents and for witnesses in the trial. Yesterday we walked through the chronology, the factual chronology, at some length.

Today we will go through article I, the constitutional underpinnings of abuse of power, and apply the facts of the President's scheme to the law and Constitution. Here I must ask you for some forbearance. Of necessity, there will be some repetition of information from yesterday's chronology, and I want to explain the reason for it.

You have now heard hundreds of hours of deposition and live testimony from the House condensed into an abbreviated narrative of the facts. We will now show you these facts and many others and how they are interwoven. You will see some of these facts and videos, therefore, in a new context, in a new light: in the light of what else we know and why it compels a finding of guilt and conviction. So there is some method to our madness.

Tomorrow we will conclude the presentation of the facts and law on article I, and we will begin and complete the same on article II, the President's unconstitutional obstruction of Congress. The President's counsel will then have 3 days to make their presentations, and then you will have 16 hours to ask questions. Then the trial will begin. Then you will actually get to hear from the witnesses yourself, and then you will get to see the documents yourself—or so we hope, and so do the American people. After their testimony and after we have had closing arguments, then it will be in your hands.

So let's begin today's presentation. I yield to House Manager NADLER.

Mr. Manager NADLER. Good morning, Mr. Chief Justice, Senators, my fellow House managers, and counsel for the President. This is the third day of a solemn occasion for the American people.

The Articles of Impeachment against President Trump rank among the most serious charges ever brought against a President. As our recital of the facts indicated, the articles are overwhelmingly supported by the evidence amassed by the House, notwithstanding the President's complete stonewalling, his attempt to block all witnesses and all documents from the U.S. Congress.

The first Article of Impeachment charges the President with abuse of power. President Trump used the powers of his office to solicit a foreign nation to interfere in our elections for his own personal benefit. [Slide 229]

Note that the active solicitation itself—just the ask—constitutes an abuse of power, but President Trump went further. In order to secure his favor from Ukraine, he withheld two official acts of immense value. First, he withheld the release of \$391 million in vital military assistance appropriated by Congress on a bipartisan basis, which Ukraine needed to fight Russian aggression. Second, President Trump withheld a long-sought-after White House meeting which would confirm to the world that America stands behind Ukraine in its ongoing struggle.

The President's conduct is wrong. It is illegal. It is dangerous. It captures the worst fears of our Founders and the Framers of the Constitution.

Since President George Washington took office in 1789, no President has abused his power in this way. Let me say that again. No President has ever used his office to compel a foreign nation to help him cheat in our elections. Prior Presidents would be shocked to the core by such conduct, and rightly so.

Now, because President Trump has largely failed to convince the country that his conduct was remotely acceptable, he has adopted a fallback position. He argues that even if we disapprove of his misconduct, we cannot remove him for it. Frankly, that argument is itself terrifying. It confirms that this President sees no limits on his power or on his ability to use his public office for private gain. Of course, the President also believes that he can use his power to cover up his crimes.

That leads me to the second article of impeachment, which charges that the President categorically, indiscriminately, and unlawfully obstructed our inquiry, the congressional inquiry, into his conduct. This Presidential stonewalling of Congress is unprece-

dented in the 238-year history of our constitutional Republic. It puts even President Nixon to shame. [Slide 229]

Taken together, the articles and the evidence conclusively establish that President Trump has placed his own personal political interests first. He has placed them above our national security, above our free and fair elections, and above our system of checks and balances. This conduct is not America first; it is Donald Trump first. Donald Trump swore an oath to faithfully execute the laws. That means putting the Nation's interests above his own. The President has repeatedly, flagrantly, violated his oath.

(Text of Videotape presentation:)

Mr. GERHARDT. I just want to stress that if this—if what we're talking about is not impeachable, then nothing is impeachable. This is precisely the misconduct that the Framers created a constitution, including impeachment, to protect against.

Mr. Manager NADLER. All of the legal experts who testified before the House Judiciary Committee—those invited by the Democrats and those invited by the Republicans—all agreed that the conduct we have charged constitutes high crimes and misdemeanors.

Professor Michael Gerhardt, the author of six books and the only joint witness when the House considered President Clinton's case, put it simply: "If what we are talking about is not impeachable, then nothing is impeachable."

Professor Jonathan Turley, called by the Republicans as a witness, agreed that the articles charge an offense that is impeachable. In his written testimony, he stated: [Slide 230] "The use of military aid for a quid pro quo to investigate one's political opponent, if proven, can be an impeachable offense."

Thus far, we have presented the core factual narrative. None of that record can be seriously disputed, and none of it will be disputed.

We can predict what the President's lawyers will say in the next few days. I urge you, Senators, to listen to it carefully. You will hear accusations and name-calling. You will hear complaints about the process in the House and the motives of the managers. You will hear that this all comes down to a phone call that was perfect—as if you had not just seen evidence of a months-long, government-wide effort to extort a foreign government. But you will not hear a refutation of the evidence. You will not hear testimony to refute the testimony you have seen. Indeed, if the President had any exculpatory witnesses—even a single one—he would be demanding their appearance here, instead of urging you not to permit additional witnesses to testify.

Let me offer a preview of the path ahead. First, we will examine the law of impeachable offenses, [Slide 231] with a focus on abuse of power. That will be the subject of my presentation. Then, my colleagues will apply the law to the facts. They will demonstrate that the President has unquestionably committed the high crimes and misdemeanors outlined in the first Article of Impeachment.

Once those presentations are concluded, we will take the same approach to demonstrating President Trump's obstruction of Congress—the second Article of Impeachment. We will begin by stating the law. Then we will review the facts, and then we will apply the

law to the facts, proving that President Trump is guilty of the second Article of Impeachment as well.

With that roadmap to guide us, I will begin by walking through the law of abuse of power. Here, I will start by defining the phrase in the Constitution “high Crimes and Misdemeanors.”

When the Framers selected this term, they meant it to capture, as George Mason put it, all manner of “great and dangerous offenses” against the Nation. In contemporary terms, the Framers had three specific offenses in mind: [Slide 232] abuse of power, betrayal of the Nation through foreign entanglements, and corruption of elections.

You can think of these as the ABCs of high crimes and misdemeanors: abuse, betrayal, and corruption. The Framers believed that any one of these offenses, standing alone, justified removal from office.

Professor Noah Feldman of Harvard Law School explained this well before the House Judiciary Committee. Here is his explanation of why the Framers created the impeachment power.

(Text of Videotape presentation:)

Professor FELDMAN. The Framers provided for the impeachment of the President because they feared that the President might abuse the power of his office for personal benefit, to corrupt the electoral process and ensure his reelection, or to subvert the national security of the United States.

Mr. Manager NADLER. That is the standard as described by Professor Feldman. All three appear at once—abuse, betrayal, and corruption. That is where we have the strongest possible case for removing a President from office. Later on, we will apply this rule to the facts.

Abuse: We will show that President Trump abused his power when he used his office to solicit and pressure Ukraine to meddle in our elections for his personal gain.

Betrayal: We will show that he betrayed vital national interests—specifically, our national security—by withholding diplomatic support and military aid from Ukraine, even as it faced armed Russian aggression.

Corruption: President Trump’s intent was to corrupt our elections to his personal, political benefit. He put his personal interest in retaining power above free and fair elections—and above the principle that Americans must govern themselves, without interference from abroad.

Article I thus charges a high crime and misdemeanor that blends abuse of power, betrayal of the Nation, and corruption in elections into a single, unforgivable scheme. That is why this President must be removed from office, especially before he continues his effort to corrupt our next election.

The charges set forth in the first Article of Impeachment are firmly grounded in the Constitution of the United States. Simply stated, impeachment is the Constitution’s final answer to a President who mistakes himself for a King.

The Framers had risked their freedom, and their lives, to escape monarchy. Together, they resolved to build a nation committed to democracy and the rule of law—a beacon to the world at an age of aristocracy. In the United States of America, “We the people”

would be sovereign. We would choose our leaders and hold them accountable for how they exercised power on our behalf.

In writing our Constitution, the Framers recognized that we needed a Chief Executive who could lead the Nation with efficiency, energy, and dispatch. So they created a powerful Presidency and vested it with immense public trust. But this solution created a different problem.

The Framers were not naive. They knew that power corrupts. They knew that republics cannot flourish—and that people cannot live free—under a corrupt leader. They foresaw that a President faithful only to himself would endanger every American. So the Framers built guardrails to ensure that the American people would remain free and to ensure that out-of-control Presidents would not destroy everything they sought to build.

They imposed elections every 4 years to ensure accountability. They banned the President from profiting off his office. They divided the powers of the Federal Government across three branches. They required the President to swear an oath to faithfully execute the laws.

To the Framers, the concept of faithful execution was profoundly important. It prohibited the President from exercising power in bad faith or with corrupt intent, and thus ensured that the President would put the American people first, not himself.

A few Framers would have stopped there. This minority feared vesting any branch of government with the power to remove a President from office. They would have relied on elections alone to address rogue Presidents. But that view was decisively rejected at the Constitutional Convention.

Convening in the shadow of rebellion and revolution, the Framers would not deny the Nation an escape from Presidents who deemed themselves above the law. Instead, they adopted the power of impeachment. In so doing, they offered a clear answer to George Mason's question: "Shall any man be above justice?" As Mason himself explained, "some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corrupt ability of the man chosen."

Unlike in Britain, the President would answer personally—to Congress and thus to the Nation—for any serious wrongdoing. But this decision raised a question: What conduct would justify impeachment and removal?

As careful students of history, the Framers knew that threats to democracy can take many forms. They feared would-be monarchs but also warned against fake populists, charismatic demagogues, and corrupt "kleptocrats."

In describing the kind of leader who might menace the Nation, Alexander Hamilton offered an especially striking portrait. Mr. SCHIFF read this portrait in his introductory remarks and it bears repetition. [Slide 233]

When a man unprincipled in private life, desperate in his fortune, bold in his temper . . . known to have scoffed in private at the principles of liberty—when such a man is seen to mount the hobby horse of popularity—to join in the cry of danger to liberty—to take every opportunity of embarrassing the General Government & bringing it under suspicion—to flatter and fall in with all the non sense of the zealots of the day—It may justly be suspected that his object is to throw things into confusion that he may ride the storm and direct the whirlwind.

Hamilton was a wise man. He foresaw dangers far ahead of his time. Given the many threats they had to anticipate, the Framers considered extremely broad grounds for removing Presidents. For example, they debated setting the bar at maladministration, to allow removal for run-of-the-mill policy disagreements between Congress and the President.

They also considered very narrow grounds, strictly limiting impeachment to treason and bribery. Ultimately, they struck a balance.

They did not want Presidents removed for ordinary political or policy disagreements, but they intended impeachments to reach the full spectrum of Presidential misconduct that might threaten the Constitution, and they intended our Constitution to endure for the ages. They adopted a standard that meant, as Mason put it, to capture all manner of “great and dangerous offenses” incompatible with the Constitution. This standard, borrowed from the British Parliament, was “high Crimes and Misdemeanors.”

In England, the standard was understood to capture offenses against the constitutional system itself. That is confirmed by the use of the word “high,” as well as by parliamentary practice.

From 1376 to 1787 [Slide 234] the House of Commons impeached officials on a few general grounds—mainly consisting of abuse of power, betrayal of national security and foreign policy, corruption, treason, bribery, and disregarding the powers of Parliament.

The phrase “high Crimes and Misdemeanors” thus covered offenses against the Nation itself—in other words, crimes against the British Constitution.

As scholars have shown, the same understanding prevailed on this side of the Atlantic. In the colonial period and under newly ratified State constitutions, most impeachments targeted abuse of power, betrayal of the revolutionary cause, corruption, treason, and bribery. These experiences were well-known to the Framers of the Constitution.

History thus teaches that “high Crimes and Misdemeanors” referred mainly to acts committed by officials using their power or privileges, that inflicted grave harm on society. Such great and dangerous offenses included treason, bribery, abuse of power, betrayal of the Nation, and corruption of office. And they were unified by a clear theme.

Officials who abused, abandoned, or sought to benefit personally from their public trust—and who threatened the rule of law if left in power—faced impeachment and removal. Abuse, betrayal, corruption—this is exactly the understanding that the Framers incorporated into the Constitution.

As Supreme Court Justice Robert Jackson wisely observed, “the purpose of the Constitution was not only to grant power, but to keep it from getting out of hand.”

Nowhere is that truer than in Presidency. As the Framers created a formidable Chief Executive, they made clear that impeachment is justified for serious abuse of power. [Slide 235]

James Madison stated that impeachment is necessary because the President “might pervert his administration into a scheme of . . . oppression.”

Hamilton set the standard for removal at an “abuse or violation of some public trust.”

And in Massachusetts, Rev. Samuel Stillman asked: “With such a prospect [of impeachment], who will dare to abuse the powers vested in him by the people?”

Time and again, Americans who wrote and ratified the Constitution confirmed that Presidents may be impeached for abusing the power entrusted to them.

To the Framers’ generation, moreover, abuse of power was a well-understood offense. It took two basic forms. The first occurred when someone exercised power in ways far beyond what the law allowed [Slide 236]—or in ways that destroyed checks on their own authority.

The second occurred when an official exercised power to obtain an improper personal benefit, while ignoring or injuring the national interest. In other words, the President may commit an impeachable abuse of power in two different ways: by engaging in clearly forbidden acts or by taking actions that are allowed but for reasons that are not allowed—for instance, to obtain corrupt, private benefits.

Let me unpack that idea, starting with the first category: conduct clearly inconsistent with the law, including the law of checks and balances. The generation that rebelled against George III knew what absolute power looked like. It was no abstraction to them. They had a different idea in mind when they organized our government. Most significantly, they placed the President under the law, not above it. That means the President may exercise only the powers vested in him by the Constitution. He must also respect the legal limits on the exercise of those powers. [Slide 237]

A President who egregiously refuses to follow these restrictions, by engaging in wrongful conduct, may be subjected to impeachment for abuse of power. Two American impeachment inquiries have involved claims that a President grossly violated the Constitution’s separation of powers.

The first was in 1868, when the House impeached President Andrew Johnson, who had succeeded Abraham Lincoln after his assassination at Ford’s Theatre.

In firing the Secretary of War, President Johnson allegedly violated the Tenure of Office Act, which restricted the President’s power to remove Cabinet members during the term of the President who had appointed them.

The House of Representatives approved articles charging him with conduct forbidden by law. [Slide 238] That is an action that is an abuse of power on its face. Ultimately, the Senate acquitted President Johnson by one vote. This was partly because there was a strong argument that the Tenure of Office Act, which President Johnson was charged with violating, was itself unconstitutional—a position the Supreme Court later accepted. Of course, historians have also noted that a key Senator appears to have changed his vote at the last minute in exchange for promises of special treatment by President Johnson. So perhaps that acquittal means a little less than meets the eye.

In any event, just over 100 years later, the House Judiciary Committee accused the second Chief Executive of abusing his power in

a manner egregiously inconsistent with the law. The committee charged President Nixon with obstruction of Congress based on his meritless assertion of executive privilege to cover up key White House tape recordings.

We will have more to say about the obstruction charge in a moment.

But the Nixon case also exemplifies the second way a President can abuse his power. President Nixon faced two more Articles of Impeachment. Both of these articles charged him with abusing the powers of his office with corrupt intent. One focused on his abuse of power to obstruct law enforcement. [Slide 239] The other targeted his abuse of power to target political opponents. Each article enumerated specific abuses by President Nixon, many of which involved the wrongful, corrupt exercise of Presidential power and many of which were likely not statutory crimes.

In explaining its second article, the House Judiciary Committee stated that President Nixon's conduct was "undertaken for his personal political advantage and not in furtherance of any valid national policy objective."

That should sound familiar to everyone here. It reflects the standard I have already articulated: the exercise of official power to corruptly obtain a personal benefit while ignoring or injuring the national interest. [Slide 240]

To be sure, all Presidents account to some extent for how their decisions in office may affect their political prospects. The Constitution does not forbid that. Elected officials can and should care about how voters will react to their decisions. They will often care about whether their decisions make it more likely that they will be reelected. But there is a difference—a difference that matters—between political calculus and outright corruption.

Some uses of Presidential power are so outrageous, so obviously improper, that if they are undertaken for a President's own personal gain, with injury or indifference to core national interests, then they are obviously high crimes and misdemeanors. Otherwise, even the most egregious wrongdoing could be justified as disagreement over policy or politics, and corruption that would have shocked the Framers—that they expressly sought to prohibit—would overcome the protections they established for our benefit.

There should be nothing surprising about impeaching a President for using his power with corrupt motives. The House and Senate have confirmed this point in prior impeachments. More important, the Constitution itself says that we can do so.

To start, the Constitution requires that the President "faithfully execute" the law. A President who acts with corrupt motives, putting himself above country, has acted faithlessly, not faithfully executing the law.

Moreover, the two impeachable offenses that the Constitution enumerates—Treason and Bribery—each require proof of the President's mental state. For treason, he must have acted with a "disloyal mind," according to the Supreme Court. And it is well established that the elements of bribery include corrupt motives.

In sum, to the Framers, it was dangerous for officials to exceed their constitutional power. But it was equally dangerous—perhaps

more so—for officials to use their power with corrupt, nefarious motives, thus perverting public trust for private gain.

Abuse of power is clearly an impeachable offense under the Constitution. To be honest, this should not be a controversial statement. I find it amazing that the President rejects it. Yet he does. He insists there is no such thing as impeachable abuse of power. This position is dead wrong. All prior impeachments considered of high office have always included abuse of power. All of the experts who testified before the House Judiciary Committee, including those called by the Republicans, agreed that abuse of power is a high crime and misdemeanor.

Here is testimony from Professor Pam Karlan of Stanford Law School, joined by Professor Gerhardt.

(Text of Videotape presentation:)

Professor EISEN. Professor Karlan, do scholars of impeachment generally agree that abuse of power is an impeachable offense?

Professor KARLAN. Yes, they do.

Professor EISEN. Professor Gerhardt, do you agree that abuse of power is impeachable?

Professor GERHARDT. Yes, sir.

Mr. Manager NADLER. Professor Turley, who testified at the Republican invitation, echoed that view. In fact, he not only agreed, but he “stressed” that “it is possible to establish a case for impeachment based on a non-criminal allegation of abuse of power.” [Slide 241]

Professor Turley is hardly the only legal expert to take that view. Another who comes to mind is Professor Allen Dershowitz—at least Alan Dershowitz in 1998. Back then, here is what he had to say about impeachment for abuse of power.

(Text of Videotape presentation:)

Mr. DERSHOWITZ. It certainly doesn't have to be a crime. If you have somebody who completely corrupts the office of President and who abuses trust and poses great danger to our liberty, you don't need a technical crime.

Mr. Manager NADLER. But we need not look to 1998 to find one of President Trump's key allies espousing this view. Consider the comments of our current Attorney General, William Barr, a man known for his extraordinarily expansive view of Executive power. In Attorney General Barr's view, as expressed about 18 months ago, Presidents cannot be indicted or criminally investigated [Slide 242]—but that's OK because they can be impeached. That's the safeguard. And in an impeachment, Attorney General added, the President is “answerable for any abuses of discretion” and may be held “accountable under law for his misdeeds in office.”

In other words, Attorney General Barr believes, along with the Office of Legal Counsel, that a President may not be indicted. He believes that is OK. We don't need that safeguard against a President who would commit abuses of power. It is OK because he can be impeached. That is the safeguard for abuses of discretion and for his misdeeds in office.

More recently, a group of the Nation's leading constitutional scholars—ranging across the ideological spectrum from Harvard Law Professor Larry Tribe to former Ronald Reagan Solicitor General Charles Fried—issued a statement affirming that “abuse of

power counts as an instance of impeachable high crimes and misdemeanors under the Constitution.” [Slide 243]

They added: “That was clearly the view of the Constitution’s framers.”

I could go on, but you get the point. Everyone, except President Trump and his lawyers, agrees that Presidents can be impeached for abuse of power. The President’s position amounts to nothing but self-serving constitutional nonsense. And it is dangerous nonsense at that. A President who sees no limit on his power manifestly threatens the Republic.

The Constitution always matches power with constraint. [Slide 244] That is true even of powers vested in the Chief Executive. Nobody is entitled to wield power under the Constitution if they ignore or betray the Nation’s interests to advance their own. President Nixon was wrong in asserting that “when the President does it, that means it is not illegal.” And President Trump was equally wrong when he declared that he had “the right to do whatever I want as president.”

Under the Constitution, he is subject to impeachment and removal for abuse of power. And as we will prove, that is exactly what must happen here.

Of course, President Trump’s abuse of power—as charged in the first Article of Impeachment and supported by a mountain of evidence—is aggravated by another concern at the heart of the Constitution’s impeachment clause.

Betrayal. The Founders of our country were not fearful men. When they wrote our Constitution, they had only recently won a bloody war for independence. But as they looked outward from their new Nation, they saw Kings scheming for power, promising fabulous wealth to spies and deserters. [Slide 245] The United States could be enmeshed in such conspiracies. “Foreign powers,” warned Elbridge Gerry, “will intermeddle in our affairs, and spare no expense to influence them.”

The young Republic might not survive a President who schemed with other nations, entangling himself in secret deals that harmed our democracy. That reality loomed over the impeachment debate in Philadelphia.

Explaining why the Constitution required an impeachment option, Madison argued that a President “might betray his trust to foreign powers.” To be sure, the Framers did not intend impeachment for genuine, good faith disagreements between the President and Congress over matters of diplomacy. But they were explicit that betrayal of the Nation through plots with foreign powers must result in removal from office. And no such betrayal scared them more than foreign interference in our democracy.

In his Farewell Address, George Washington warned Americans “to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.”

And in a letter to Thomas Jefferson, John Adams wrote: [Slide 246]

You are apprehensive of foreign Interference, Intrigue, Influence.—So am I.—But, as often as Elections happen, the danger of foreign Influence recurs.

The Framers never suggested that the President's role in foreign affairs should prevent Congress from impeaching him for treachery in his dealings. Case in point: they wrote a Constitution that gives Congress extensive responsibility over foreign affairs—Congress—including the power to declare war, regulate foreign commerce, establish a uniform rule of naturalization, and define offenses against the law of nations.

Contrary to the claims you heard the other day—that the President has plenary authority in foreign affairs and there is nothing Congress can do about it—the Supreme Court has stated that constitutional authority over the “conduct of the foreign relations of our Government” is shared between “the Executive and Legislative [branches].”

Or to quote another Supreme Court case: “The Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue.”

In these realms, Justice Jackson wrote, the Constitution “enjoins upon its branches separateness but interdependence, autonomy but reciprocity.”

Where the President betrays our national security and foreign policy interests for his own personal gain, he is unquestionably subject to impeachment and removal. The same is true of a different concern raised by the Framers: the use of Presidential power to corrupt the elections and the Office of the Presidency.

The Framers were no strangers to corruption. [Slide 247] They understood that corruption had broken Rome, debased Britain, and threatened America. They saw no shortage of threats to the Republic and fought valiantly to guard against them. But as one scholar writes, “the big fear underlying all the small fears was whether they'd be able to control corruption.”

So the Framers attempted to build a government in which officials would not use public power for personal benefits, disregarding the public good in pursuit of their own advancement.

This principle applied with special force to the Presidency. As Madison emphasized, because the Presidency “was to be administered by a single man,” his corruption “might be fatal to the Republic.”

Indeed, no fewer than four delegates to the Constitutional Convention—Madison, plus Morris, Mason, and Randolph—listed corruption as a central reason why Presidents must be subject to impeachment and removal from office. Impeachment was seen as especially necessary for Presidential conduct corrupting our system of political self-government. The Framers foresaw and feared that a President might someday place his personal interest in reelection above our abiding commitment to democracy. Such a President, in their view, would need to be removed from office.

Professor Feldman made this point in his testimony before the House Judiciary Committee:

(Text of Videotape presentation:)

Professor FELDMAN. The Framers reserved impeachment for situations where the President abused his office, that is, used it for his personal advantage. And, in particular, they were specifically worried about a situation where the President used his office to facilitate corruptly his own reelection. That's, in fact, why they thought they needed impeachment and why waiting for the next election wasn't good enough.

Mr. Manager NADLER. Professor Feldman's testimony is grounded in the records of the Constitutional Convention.

There, William Davie warned that a President who abused his office might spare no efforts or means whatever to get himself re-elected and, thus, to escape justice.

George Mason built on Davie's position, asking: "Shall the man who has practiced corruption, and by that means procured his appointment to the first instance, be suffered to escape punishment by repeating his guilt?" Mason's concern was straightforward. He feared that Presidents would win election by improperly influencing members of the electoral college.

Gouverneur Morris later echoed this point, urging that the Executive ought therefore to be impeachable for corrupting his electors.

Taken together, these debates demonstrate an essential point: The Framers knew that a President who abused power to manipulate elections presented the greatest possible threat to the Constitution. After all, the beating heart of the Framers' project was a commitment to popular sovereignty.

At a time when democratic self-government existed almost nowhere on Earth, the Framers imagined a society where power flowed from and returned to the people. That is why the President and Members of Congress must stand before the public for reelection on fixed terms, and if the President abuses his power to corrupt those elections, he threatens the entire system.

As Professor Karlan explained in her testimony:
(Text of Videotape presentation:)

Professor KARLAN. [D]rawing a foreign government into our elections is an especially serious abuse of power because it undermines democracy itself. Our Constitution begins with the words "We the people" for a reason. Our government, in James Madison's words, derives all its powers directly or indirectly from the great body of the people, and the way it derives these powers is through elections. Elections matter, both to the legitimacy of our government and to all of our individual freedoms, because, as the Supreme Court declared more than a century ago, voting is preservative of all rights.

Mr. Manager NADLER. Professor Karlan is right—elections matter. They make our government legitimate, and they protect our freedom. A President who abuses his power in order to kneecap political opponents and spread Russian conspiracy theories—a President who uses his office to ask for or, even worse, to compel foreign nations to meddle in our elections—is a President who attacks the very foundations of our liberty. That is a grave abuse of power. It is an unprecedented betrayal of the national interest. It is a shocking corruption of the election process, and it is without a doubt a crime against the Constitution, warranting, demanding his removal from office.

The Framers expected that free elections would be the usual means of protecting our freedoms, but they knew that a President who sought foreign assistance in his campaign must be removed from office before he could steal the next election.

In a last-ditch legal defense of their client, the President's lawyers argue that impeachment and removal are subject to statutory crimes or to offenses against established law, that the President cannot be impeached because he has not committed a crime. This view is completely wrong. It has no support in constitutional text and structure, original meaning, congressional precedents, common

sense, or the consensus of credible experts. In other words, it conflicts with every relevant consideration.

Professor Gerhardt succinctly captured the consensus view in his testimony.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, Professor Gerhardt, does a high crime and misdemeanor require an actual statutory crime?

Professor GERHARDT. No. It plainly does not. Everything we know about the history of impeachment reinforces the conclusion that impeachable offenses do not have to be crimes. And, again, not all crimes are impeachable offenses. We look, again, at the context of the gravity of the misconduct.

Mr. Manager NADLER. This position was echoed by the Republicans' expert witness, Professor Turley, in his written testimony.

There, he stated: "It is possible to establish a case for impeachment based on a non-criminal allegation of abuse of power." [Slide 248]

He also stated: "It is clear that high Crimes and Misdemeanors can encompass non-criminal conduct."

More recently, Professor Turley—again, the Republican witness at our hearing—wrote an opinion piece in the Washington Post entitled "Where the Trump defense goes too far." In this piece, he stated that the President's argument "is as politically unwise as it is constitutionally shortsighted." He added: "If successful, it would also come at a considerable cost for the Constitution." Although I disagree with Professor Turley on many, many issues, here, he is clearly right.

I might say the same thing of then-House Manager LINDSEY GRAHAM, who, in President Clinton's trial, flatly rejected the notion that impeachable offenses are limited to violations of established law.

This is what he said:

(Text of Videotape presentation:)

Mr. GRAHAM. What is a high crime? How about if an important person hurts somebody of low means? It is not very scholarly, but I think it's the truth. I think that's what they meant by high crimes. It doesn't have to be a crime. It is just—when you start using your office and you're acting in a way that hurts people, you have committed a high crime.

Mr. Manager NADLER. There are many reasons why high crimes and misdemeanors are not and cannot be limited to violations of the Criminal Code. We address them at length in the briefs we have filed and in the report of the House Judiciary Committee respecting these Articles of Impeachment, but I would like to highlight a few especially important considerations. I will tick through them quickly.

First, there is the matter of the historical record. The Framers could not have meant to limit impeachment to statutory crimes. Presidents are to be impeached and removed from office for "treason, bribery, and other high Crimes and Misdemeanors," but bribery was not made a statutory crime until 1837. [Slide 249]

Second, the President's position is contradicted by the Constitution's text. The Framers repeatedly referred to "crimes," "offenses," and "punishment" elsewhere in the Constitution, but here they refer to "high Crimes." That matters. It matters because the phrase "high Crimes" refers to offenses against the State rather than to workaday crimes, and it matters because the phrase "high crimes

and misdemeanors” had a rich history in England, where it had been applied in many, many cases that did not involve crimes under British law. When the Framers added “high Crimes” here but nowhere else in the Constitution, they made a deliberate choice. Any doubt in that score is dispelled by the Framers’ own statements.

In Federalist No. 65, Alexander Hamilton explained that impeachable offenses are defined fundamentally by “the abuse or violation of some public trust.”

A few years later, James Wilson, a Constitutional Convention delegate, agreed with Hamilton.

Wilson stated:

Impeachments, and offences and offenders impeachable, come not . . . within the sphere of ordinary jurisprudence. They are founded on different principles, governed by different maxims, and are directed to different objects.

George Mason expressed concern that the President might abuse the pardon power to “screen from punishment those whom he had secretly instigated to commit the crime, and thereby prevent a discovery of his own guilt.” Sound familiar?

James Madison responded directly to Mason’s concern because Mason’s concern was that the pardon power might be too broad and the President might misuse his broad pardon power to pardon his own coconspirators and prevent a discovery of his own guilt.

Madison responded:

If the President be connected, in any suspicious manner, with any person, and there be grounds to believe he will shelter him, the House of Representatives can impeach him; they can remove him if found guilty.

At the North Carolina ratifying convention, James Iredell, who would go on to serve on the Supreme Court, responded to the same concern. He assured delegates that if the President abused his power with “some corrupt motive or other,” he would be “liable for impeachment.”

In the early 1800s, this understanding was echoed by Supreme Court Justice Story, who wrote a famous treatise on the Constitution. There, he rejected the equation of crimes and impeachable offenses, which, he stated, “must be examined upon very broad and comprehensive principles of public policy and duty.”

Later in American history, Chief Justice and former President William Howard Taft, as well as Chief Justice Charles Evans Hughes, publicly stated that impeachable offenses are not limited to crimes but, instead, capture a broader range of misconduct. Indeed, under Chief Justice Taft, the Supreme Court unanimously observed that abuse of the President’s pardon power to frustrate the enforcement of court orders “would suggest resort to impeachment.” Now, notice, pardon power is unlimited. What they are saying here is the abuse of the pardon power. Abuse of the pardon power for a corrupt motive is impeachable.

If all of that authority is not enough to convince you, there is more.

Historians have shown that American colonists before the Revolution and American States after the Revolution but before 1787 all impeached officials for noncriminal conduct. Over the past two centuries, moreover, a strong majority of the impeachments voted by the House have included one or more allegations that did not

charge a violation of criminal law. Indeed, the Senate has convicted and removed multiple judges on noncriminal grounds.

Judge Archbald was removed in 1912 for noncriminal speculation in coal properties.

Judge Ritter was removed in 1936 for the noncriminal offense of bringing his court “into scandal and disrepute.” During Judge Ritter’s case, one of my predecessors as chairman of the House Judiciary Committee stated expressly: “We do not assume the responsibility . . . of proving that the respondent is guilty of a crime as that term is known in criminal jurisprudence.” What is true for judges is also true for Presidents, at least on this point.

The House Judiciary Committee approved three Articles of Impeachment against President Nixon. [Slide 249] Each of them encompassed many acts that did not violate Federal law. One of the articles—obstruction of Congress—involved no allegations of any legal violation.

It is worth reflecting on why President Nixon was forced to resign. Most Americans are familiar with the story. The House Judiciary Committee approved Articles of Impeachment in July 1974. Those articles passed with bipartisan support, although most Republicans stood by President Nixon.

Then the smoking gun tape came out. Within a week, almost everyone who supported the President the week before changed his position, and the President was forced to resign because of what was revealed on the smoking gun tape. Within a week, Senator Goldwater and others from the Senate went to the President and said: You won’t have a single vote in the Senate. You must resign, or you will be removed from office because of the evidence on the smoking gun tape.

But what was on the smoking gun tape? The smoking gun tape had recordings of President Nixon’s instructing White House officials to pressure the CIA and the FBI to end the Watergate investigation. No law explicitly prohibited that conversation—it was not, in that sense, a crime—but President Nixon had abused his power. He had tried to use two government agencies—the FBI and the CIA—for his personal benefit. His impeachment and removal were certain, and he announced his resignation within days.

Decades later, in President Clinton’s case, the Judiciary Committee’s report on the Articles of Impeachment stated: “The actions of President Clinton do not have to rise to the level of violating the federal statute regarding obstruction of justice in order to justify impeachment.”

There is, thus, overwhelming authority against restricting impeachments to violations of established or statutory law. Every relevant principle of constitutional law compels that result. So does common sense.

Impeachment is not a punishment for crimes. Impeachment exists to address threats to the political system, applies only to political officials, and responds not by imprisonment or fines but only by stripping political power.

It would make no sense to say that a President who engages in horrific abuses must be allowed to remain in office unless Congress had anticipated his or her specific conduct in advance and written a statute expressly outlawing it. For one thing, that would be prac-

tically impossible. As Justice Story observed, the threats posed by Presidential abuse “are of so various and complex a character” that it would be “almost absurd” to attempt a comprehensive list.

The Constitution is not a suicide pact. It does not leave us stuck with Presidents who abuse their power in unforeseen ways that threaten our security and democracy.

Until recently it did not occur to me that our President would call a foreign leader and demand a sham investigation meant to kneecap his political opponents, all in exchange for releasing vital military aid that the President was already required by law to provide.

No one anticipated that a President would stoop to this misconduct, and Congress has passed no specific law to make this behavior a crime.

Yet this is precisely the kind of abuse that the Framers had in mind when they wrote the impeachment clause and when they charged Congress with determining when the President’s conduct was so clearly wrong, so definitely beyond the pale, so threatening to the constitutional order as to require his removal, and that is why we are here today.

You must judge for yourselves whether justice will be had for President Trump’s crimes against our freedom and the Constitution.

I will conclude by highlighting a few points that merit special emphasis, as you apply the law of impeachment to President Trump’s misconduct.

First, impeachment is not for petty offenses. [Slide 250] The President’s conduct must constitute, as Mason put it, a great and dangerous offense against the Nation—offenses that threaten the Constitution.

Second, impeachable offenses involve wrongdoing that reveal the President as a continuing threat if he is allowed to remain in office. In other words, we fully recognize that impeachment does not exist for a mistake. It does not apply to acts that are merely unwise or unpopular. Impeachment is reserved for deliberate decisions by the President to embark on a course of conduct that betrays his oath of office and does violence to the Constitution.

When the President has engaged in such conduct, and when there is strong evidence that he will do so again—when he has told us he will do so again, when he has told us that it is OK to invite interference from a foreign power into our next election—the case for removal is at its peak.

This is certainly the case when he invites, indeed, attempts to compel a foreign government to help him subvert the integrity of our next election. There can be no greater threat to the Republic.

Finally, high crimes and misdemeanors involve conduct that is recognizably wrong to a reasonable, honorable citizen. [Slide 250] The Framers adopted a standard for impeachment that could stand the test of time. At the same time, the structure of the Constitution implies that impeachable offenses should not come as a surprise. Impeachment is aimed at Presidents who act as if they are above the law, at Presidents who believe their own interests are more important than those of the Nation, and, thus, at Presidents who ignore right and wrong in pursuit of their own gain.

Abuse, betrayal, corruption. [Slide 251] Here are each of core offenses that the Framers feared most: The President's abuse of power, his betrayal of the national interest, and his corruption of our elections plainly qualify as great and dangerous offenses.

President Trump has made clear in word and deed that he will persist in such conduct if he is not removed from power. He poses a continuing threat to our Nation, to the integrity of our elections, and to our democratic order. He must not remain in power one moment longer.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, President's counsel, we will now walk through the President's abuse of power, the corrupt object of his scheme, [Slide 252] his three official acts carrying out his scheme, his attempted coverup and exposure, and the harm to our Nation and continuing threat caused by his misconduct.

Let's start first with the object of the President's scheme.

Senators, we have today provided handouts that you can follow along in our slides.

So as this first slide indicates, in this portion of our presentation, [Slide 252] we will discuss the evidence that shows overwhelmingly that President Trump directed this scheme with corrupt intent, with one corrupt objective: to obtain foreign assistance in his reelection bid in the 2020 United States Presidential election. [Slide 253]

We will walk through first how the President wanted Ukraine to help in his reelection campaign. He wanted Ukraine to publicly announce two investigations: one into his political rival Joe Biden and the second into the debunked conspiracy theory relating to Ukraine interference in the 2016 election. President Trump himself later confirmed this intent in public statements.

We will then explain how we know these investigations were solely for President Trump's personal, political gain. [Slide 254]

First, President Trump made clear he cared only about the announcement—the announcement of the investigations, not the actual investigations.

Second, President Trump similarly made clear he cared only about the “big stuff.” The “big stuff” meaning his political investigations.

Third, he used his personal attorney, Mr. Giuliani, who repeatedly told us he was pursuing the investigations in his capacity as the President's personal lawyer and that this wasn't about foreign policy.

Fourth and fifth, there is no real dispute that these investigations were never part of an official U.S. policy, and they in fact went outside official channels. The Department of Justice even publicly confirmed that they were never asked to talk to Ukraine about these investigations—never.

Six, multiple officials who knew what was going on repeatedly reported these concerns to supervisors and even the NSC legal advisors.

Seven, Ukraine expressed concerns multiple times that these were political investigations and Ukraine didn't want to get involved in domestic U.S. politics.

Eight, the White House tried to bury the call.

Nine, President Trump himself told us what he really wanted and cared about in his own words, in many public statements.

And finally, despite the President's counsel's attempts to justify his actions, the evidence makes clear that President Trump did not care about anticorruption efforts in Ukraine. This was only about one thing: his political investigations.

If you are following along on the slide, now, as I mentioned, the object of the President's scheme is clear: two investigations to help his political reelection. [Slide 253]

The Constitution grants the President broad authority to conduct U.S. foreign policy. He is our Commander in Chief and chief diplomat. When the President of the United States calls a foreign leader, a President's first and only objective should be to get foreign leaders to do what is best for the U.S. national interest, consistent with the faithful execution of his oath of office and consistent with official U.S. policy.

But on July 25, when President Trump called the President of Ukraine, [Slide 255] President Trump did the opposite. Instead of following official U.S. talking points, instead of listening to his staff on what was important to our national interests, President Trump asked Ukraine for something that benefited only himself: his political investigations. And not only did these investigations diverge from U.S. national interests, as you will hear, President Trump's actions harmed our national security. In putting himself above our country, he put our country at risk, and that is why his actions are so dangerous.

Now let's take a moment and look carefully at the two investigations that President Trump sought from Ukraine, which are at the heart of the President's scheme, and how he stood to benefit politically from Ukraine's announcement of each.

As you can see on the slide, the first investigation was, of course, of former Vice President Biden. [Slide 256] Let's go straight to that July 25 telephone call again where President Trump stated clearly each of these investigations he wanted.

So let's start with Vice President Joe Biden and the removal of a corrupt prosecutor in Ukraine.

The first investigation related to former Vice President Joe Biden and the Ukrainian gas company Burisma Holdings, on whose board his son Hunter Biden used to sit.

President Trump himself summarized the theory behind his request in broad strokes in his July 25 call with President Zelensky. Here is what he said: [Slide 257]

The other thing, there's a lot of talk about Biden's son, that Biden stopped the prosecution and a lot of people want to find out about that so that whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look it . . . It sounds horrible to me.

Now let's look carefully at the investigation President Trump was asking for and what it was based on. In short, President Trump asked for the investigation into Biden based on a made-up theory that no one agreed with—no one. We will go into this in more detail, but at a high level, the allegation is that late in 2015, Biden pressured Ukraine to remove the then-prosecutor general, Viktor Shokin, by threatening to withhold approximately \$1 billion in loan guarantees if he was not removed.

According to this theory, Vice President Biden did this in order to help his son in a company called Burisma. Vice President Biden's son sat on the board of Burisma.

As the theory goes, Vice President Biden tried to remove Ukraine's prosecutor, all to make sure the prosecutor wouldn't investigate that specific company Burisma because, again, his son was on the board.

Then, Senators, if that doesn't sound farfetched and complicated to you, it should. So let's take this step-by-step and start from the beginning.

In 2014, Vice President Biden's son Hunter joined the board of the Ukrainian natural gas firm Burisma Holdings. At the time, Burisma's owner, a Ukrainian oligarch and former government minister, was under investigation.

In 2015, Viktor Shokin became Ukraine's prosecutor general, a job similar to Attorney General in the United States.

Although Shokin vowed to keep investigating Burisma amid an international push to root out corruption in Ukraine, he allowed the Burisma investigation to go dormant—allowed it to go dormant. That is when he was removed. He was not actively investigating Burisma. He had let it go dormant. Moreover, Shokin was widely perceived as ineffective and corrupt.

George Kent, the second most senior official at the U.S. Embassy in Kyiv at the time, [Slide 258] described Shokin as “a typical Ukraine prosecutor who lived a lifestyle far in excess of his government salary, who never prosecuted anybody known for having committed a crime and covered up crimes that were known to have been committed.”

In late 2015, Vice President Biden, who had assumed a significant role in U.S. policy toward Ukraine, publicly called for the removal of Mr. Shokin because of his failure—his failure—to adequately combat corruption. But Vice President Biden wasn't alone. The European Union, our European allies, the International Monetary Fund, and three reformers inside Ukraine also wanted Mr. Shokin removed to reform the Ukrainian prosecutor general's office—to reform it.

Reforming the prosecutor general's office was also supported on a bipartisan basis by the Ukrainian Caucus here in the Senate. On February 12, 2016, after Vice President Biden had urged removal of Mr. Shokin but before the Ukrainian Parliament voted to remove him, a bipartisan group of Senators, including Senators PORTMAN, DURBIN, SHAHEEN, RON JOHNSON, MURPHY, KIRK, BLUMENTHAL, and SHERROD BROWN sent a letter to President Poroshenko that urged him to make urgent reforms to the prosecutor general's office. The month after the Senators sent that letter, Mr. Shokin was fired. He was fired.

So let's be very clear. Vice President Biden called for the removal of this prosecutor at the official direction of U.S. policy, because the prosecutor was widely perceived as corrupt, and with the support of all of our international allies. His actions were therefore supported by the executive branch, Congress, and the international community.

Common sense would tell us that this allegation against Joe Biden is false and that there was no legitimate basis for any inves-

tigation. But there are several other reasons you know that the only reason President Trump wanted Ukraine to announce the investigation into Biden was solely for his very own personal benefit.

If you look at the slide, we will summarize some points. [Slide 259]

First, none of the 17 witnesses in the House's inquiry said there was any factual basis for this allegation—not 1 of the 17. To the contrary, they testified it was false.

Second, as I mentioned, the former prosecutor general Vice President Biden tried to remove was widely considered to be corrupt and failed to investigate corruption in Ukraine. Thus, removing him from office would only increase the chances that Burisma would be investigated for possible corruption.

Third, because the prosecutor was so corrupt, Vice President Biden calling for his removal was also at the direction of official U.S. policy and undertaken with the unanimous support of our allies.

Fourth, the successor to the fired Ukrainian prosecutor general admitted that Vice President Biden's son didn't do anything wrong in connection with Burisma. So the entire premise of the investigation that the President wanted Ukraine to pursue was simply false.

Finally, President Trump didn't care about any of this until 2019, when Vice President Biden became the frontrunner for the Democratic Presidential nomination and polls showed that he had the largest head-to-head lead against President Trump. That became a problem.

Let's start with the first and second points. [Slide 260] Vice President Biden's conduct was uniformly validated by the witnesses in the House investigation, who confirmed his conduct was consistent with U.S. policy. Every single witness who was asked about the allegations against Biden said it was false. They testified that he acted properly. Every witness with knowledge of this issue testified that Vice President Biden was carrying out official U.S. policy in calling for Shokin's removal because Shokin was corrupt. These witnesses explained, too, that the United States was not alone in this view. All of our European allies also supported this action. There is simply no evidence—nothing, nada—in the record to support this baseless allegation.

I would like to go through some of that testimony now.

First, here are Dr. Hill and Mr. Holmes. Let's watch.

(Text of Videotape presentation:)

Mr. GOLDMAN. Dr. Hill, are you aware of any evidence to support the allegations against Vice President Biden?

Dr. HILL. I am not, no.

Mr. GOLDMAN. And, in fact, Mr. Holmes, the former prosecutor general of Ukraine who Vice President Biden encouraged to fire was actually corrupt; is that right?

Mr. HOLMES. Correct.

Mr. GOLDMAN. And was not pursuing corruption investigations and prosecutions; right?

Mr. HOLMES. My understanding is that the prosecutor general at the time, Shokin, was not at that time pursuing investigations of Burisma or the Bidens.

Mr. GOLDMAN. And, in fact, removing that prosecutor general was part of the United States' anticorruption policy; isn't that correct?

Mr. HOLMES. That's correct. And not just us but all of our allies and other institutions who were involved in Ukraine at the time.

Ms. Manager GARCIA of Texas. Ambassador Yovanovitch confirmed these points. Let's watch her testify.

(Text of Videotape presentation:)

Mr. GOLDMAN. And in fact, when Vice President Biden acted to remove the former corrupt prosecutor in Ukraine, did he do so as part of official United States policy?

Ambassador YOVANOVITCH. Official U.S. policy that was endorsed and was the policy of a number of other international stakeholders, other countries, other monetary institutions, and financial institutions.

Ms. Manager GARCIA of Texas. Similarly, when asked if there was any factual basis to support the allegations about Biden, George Kent replied, "None whatsoever." [Slide 261]

Lieutenant Colonel Vindman and Ms. Williams also confirmed that they are not aware of any credible evidence to support the notion that Vice President Biden did anything wrong. Ambassador Volker testified that the Biden allegations were not credible and that Biden "respects his duties of higher office."

Now, as I mentioned, there was also a concrete reason that the U.S. Government wanted Shokin removed. As David Holmes, a senior official at the U.S. Embassy in Ukraine testified, by the time that Shokin was finally removed in 2016, there were strong concerns that Shokin was himself corrupt and not investigating potential corruption in the country. In fact, part of the concern was that Shokin was not investigating Burisma. Under Shokin, the investigation into the owner of Burisma for earlier conduct had stalled and was dormant. That was part of the reason why the United States and other countries wanted to remove Shokin.

Because of this, and as confirmed by witness testimony we will hear shortly, calling for Shokin's replacement would actually increase the chances that Burisma would be investigated. In other words, Shokin was corrupt and not investigating allegations that Burisma was corrupt, and so Vice President Biden calling for Shokin's removal and advocating for his replacement would actually increase chances of Burisma's investigation.

Ambassador Yovanovitch made this point during her testimony. Let's listen.

(Text of Videotape presentation:)

Mr. GOLDMAN. And, in fact, if he would help to remove a corrupt Ukrainian prosecutor general who was not prosecuting enough corruption, that would increase the chances that corrupt companies in Ukraine would be investigated; isn't that right?

Ambassador YOVANOVITCH. One would think so.

Mr. GOLDMAN. And that would include Burisma; right?

Ambassador YOVANOVITCH. Yes.

Ms. Manager GARCIA of Texas. President Trump and his allies have tried to justify President Trump's withholding of military aid and a White House meeting unless Ukraine announced the investigations he wanted by saying it is the same thing the Vice President did when he called for Ukraine to remove its corrupt prosecutor. It is not the same thing. As you just heard, Vice President Biden followed official U.S. policy. He went through official channels to remove the prosecutor that was corrupt, and he did it with the support of our allies. That is the exact opposite of what President Trump did. He pushed Ukraine for an investigation that has

no basis, that no one agreed with, that was not at all U.S. policy, and that only benefited him.

George Kent addressed this very point during his testimony. Let's listen.

(Text of Videotape presentation:)

Mr. HIMES. And Mr. Kent and Mr. Taylor, the defenders of the President's behavior, have made a big deal out of the fact that Vice President Biden encouraged the Ukrainians to remove a corrupt former Ukrainian prosecutor in 2016, Mr. Shokin. And, in fact, Senator RAND PAUL on Sunday said, and I quote him, "They're impeaching President Trump for exactly the same thing Joe Biden did." Is that correct? Is what the President did in his phone call and what Joe Biden did in terms of Mr. Shokin, are those exactly the same things? And if not, how are they different?

Mr. KENT. I do not think they are the same things. What former Vice President Biden requested of the former President of Ukraine, Poroshenko, was the removal of a corrupt prosecutor general, Viktor Shokin, who had undermined a program of assistance that we had spent, again, U.S. taxpayer money to try to build an independent investigator unit to go after corrupt prosecutors. And there was a case called the Diamond Prosecutor case in which Shokin destroyed the entire ecosystem that we were trying to help create, the investigators, the judges who issued the warrants, the law enforcement that had warrants to do the wiretapping, everybody to protect his former driver who he had made a prosecutor. That's why Joe Biden was asking, remove the corrupt prosecutor.

Mr. HIMES. So Joe Biden was participating in an open effort to establish whole of government effort to address corruption in Ukraine?

Mr. KENT. That is correct.

Mr. HIMES. Great. So, Mr. Kent, as you look at this whole mess, Rudy Giuliani, President Trump, in your opinion, was this a comprehensive and whole government effort to end corruption in Ukraine?

Mr. KENT. Referring to the requests in July?

Mr. HIMES. Exactly.

Mr. KENT. I would not say so. No, sir.

Ms. Manager GARCIA of Texas. In short, the allegations against Vice President Biden are groundless. So there is no comparison—none at all—between what he did and President Trump's abuse of power.

Now let's turn to the third point.

Part of the allegation against former Vice President Biden is that he pushed for the corrupt Ukrainian prosecutor's removal in order to protect his son from the investigation. In fact, the President's claim about being concerned about corruption in Ukraine has recently emphasized this component of the theory: that the President wanted Ukraine to investigate Hunter Biden's work on the board of Burisma, not the former Vice President.

This, too, is false—simply false. You need look no further than the July 25 call record and the President's own statements to see that the President wanted the Ukrainians to investigate Vice President Biden.

Let's look again at what the President's call said. [Slide 257]

The other thing, there's a lot of talk about Biden's son, that Biden stopped the prosecution, and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution, so if you can look into it. It sounds horrible to me.

The President was clearly asking President Zelensky to investigate Joe Biden. And what did the President say on the White House lawn on October 3, when he was asked about the Ukrainian scheme?

He said:

Well, I think if they were honest about it, you saw the film yesterday, they would start a major investigation into the Bidens. It is a very simple answer.

He said the Bidens, plural, not one Biden—the Bidens.

It is clear what the President wanted from Ukraine: an investigation to smear his political rival. But even if the President wanted an investigation of Hunter Biden, there is no basis for that either.

Now, how do you know? [Slide 262] Well, Ukraine's former prosecutor general admitted that the allegation against Vice President Biden's son was plainly false. You can see it on the slide in his own words—"plainly false." Then-Ukrainian Prosecutor General Yuriy Lutsenko recanted his earlier allegations and confirmed: "Biden was definitely not involved in any wrongdoing involving Burisma."

So even the Ukrainians believed that Biden's son did nothing wrong. The long and short of it is that there was no basis for the investigation that the President was pursuing and pushing—none. He was doing it only for his own political benefit.

Let's look at one more important reason why it is clear that President Trump simply wanted a political benefit from Ukraine's announcement of this investigation and didn't care about the underlying conduct. The allegations against Vice President Biden were based on events that occurred in late 2015 and early 2016. [Slide 263] They were all well publicized at the time, but as soon as President Trump took office, he increased military support to Ukraine in 2017 and the next year, 2018.

It wasn't until 2019, over 3 years after Vice President Biden called for Shokin's removal—3 years after—that President Trump started pushing Ukraine to investigate that conduct.

So what changed? What changed? Why did President Trump not care at all about Biden's request on the removal of Shokin the year after it happened in 2017 or the next year in 2018?

Senators, you know what changed in 2019 when President Trump suddenly cared. It is that Biden got in the race. On April 25, Vice President Biden announced he would run for President in 2020. If President Trump was so concerned about this alleged corruption, why didn't he push Ukraine to investigate when he entered office in 2017 or in 2018 after Biden gave public remarks about how he pressured Ukraine to remove Shokin? Why did President Trump instead wait until former Vice President Biden was campaigning for the Democratic nomination?

Senators, it is obvious: because President Trump wanted to hurt Vice President Biden's candidacy and help himself politically. He pushed for the investigation in 2019 because that is when it would be valuable to him, President Trump. He pushed for it when it started to become clear that Vice President Biden could beat him, and he had good reason to be concerned.

Let's look at the slide about some polls. [Slide 264] Throughout this scheme, polling had consistently shown the former Vice President handily beating President Trump by significant margins in head-to-head matchups. The chart on the screen shows FOX News polls emphasizing this point. The chart shows that from March to December, Vice President Biden had consistently led President Trump in national polls by significant margins. So beginning

around March, Vice President Biden is beating the President in the polls, even on FOX News. [Slide 265]

In April, Biden officially announces his candidacy, and that is when the President gets worried. In May, the President's personal lawyer tells the press that he is planning to travel to Ukraine to urge newly elected President Zelensky to conduct the two investigations—one into Vice President Biden. Do you know what else happened in May? A FOX News poll showed Biden beating Trump by 11 points. This clearly did not go unnoticed.

On May 9, the President's personal lawyer, Mr. Giuliani, said in an interview: "I guarantee you, Joe Biden will not get to election day without this being investigated." And by July, right before President Trump's call with President Zelensky, where he asked for the investigation into Biden, the FOX News poll showed Biden beating Trump by 10 points. Then, on July 25, after years of not caring what the Vice President did, does President Trump ask for an investigation in his formidable political rival in the 2020 election. [Slide 265]

Senators, looking at this timeline of events, it is not difficult to see why the investigation into the Bidens would be helpful to President Trump. The mere announcement of such an investigation would immediately tarnish the former Vice President's reputation by embroiling him and his son in a foreign criminal investigation—even if the charges were never pursued, just the mere announcement. And if a foreign country announced a formal investigation into those allegations, it would give allegations against the Bidens an air of credibility and could carry through the election.

The evidence is clear. Everyone knew—even Ukraine—that there was no merit to the allegation that Biden called for the removal of Shokin for any illegitimate reason. Biden asked for it because it was consistent—consistent with U.S. policy because Shokin was corrupt, and it was with the backing of our allies. Even President Trump knew there was no basis for this investigation. That is why, for years, after Shokin's removal, he continued to support Ukraine. He never once raised the issue.

It wasn't until Biden began beating him in the polls that he called for the investigation. The President asked Ukraine for this investigation for one reason and one reason only: because he knew it would be damaging to an opponent who was consistently beating him in the polls and therefore it could help him get reelected in 2020. President Trump had the motive, he had the opportunity, and he had the means to commit this abuse of power.

Now, let's turn to the second investigation that President Trump wanted. What he wanted was a widely debunked conspiracy theory that Ukraine—rather than Russia—interfered in the 2016 U.S. election to benefit President Trump's opponent. As we will explain, the allegation that Ukraine interfered in the 2016 elections, [Slide 266] just like the allegation that Biden improperly removed the Ukraine prosecutor, has absolutely no basis in fact. In fact, this theory ignored the unanimous conclusions of the U.S. intelligence agency, the congressional Intelligence Committees, and Special Counsel Mueller, which found that Russia—Russia attacked our elections. It also went against the Senate Intelligence Committee report which found no evidence supporting that Ukraine attacked

our elections, nor did any witness support the theory that Ukraine attacked our elections. Indeed, even President Trump's own advisers told him the claim was false.

In fact, the one person who told President Trump his theory is true—who was it? You know it was our adversary, Russia, which had everything to gain by deflecting the blame from their attack on Ukraine.

Let's look at what President Trump was actually suggesting Ukraine investigate. The theory is this: Instead of listening to our entire intelligence community that concluded that Russia interfered in our 2016 election to assist Donald Trump, the new theory says it was Ukraine that interfered in the election to help Hillary Clinton and hurt Donald Trump.

One aspect of this conspiracy theory was that the American cyber security firm, CrowdStrike, which had helped the DNC respond to Russia's cyber attack in 2016, moved a DNC server to Ukraine to prevent the FBI from examining it. Here is what President Trump said about this conspiracy theory during the July 25 call. [Slide 267]

I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike . . . I guess you have one of your wealthy people . . . The server, they say Ukraine has it.

Once again, if this sounds farfetched and crazy, it should because it is. There is simply no factual basis to support this conspiracy theory. Let's walk through the concrete reasons why.

First, as I mentioned, our entire U.S. intelligence community, [Slide 268] the Senate Select Committee on Intelligence, and Special Counsel Mueller all unanimously found that Russia—not Ukraine—interfered in the 2016 elections, and Russia did it to help Donald Trump and hurt Hillary Clinton. Here is an example of that. [Slide 269]

This is the conclusion of the Director of National Intelligence's report entitled "Assessing Russian Activities and Intentions in Recent U.S. Elections." I will quote part of it, and you can follow along in the slide.

We assess Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the U.S. Presidential election. Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential Presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump. We have high confidence in these judgments.

"Clear preference for President-elect Trump." And here is the conclusion of the Senate Select Committee on Intelligence: [Slide 270]

The Committee found that the [Russian-based Internet Research Agency] sought to influence the 2016 U.S. presidential election by harming Hillary Clinton's chances of success and supporting Donald Trump at the direction of the Kremlin . . . The Committee found that the Russian government tasked and supported the IRA's interference in the 2016 U.S. election.

"Supporting Donald Trump at the direction of the Kremlin"—that is what it said. And here is the special counsel's conclusion Mueller reported in 2019: [Slide 271]

As set forth in detail in this report, the Special Counsel's investigation established that Russia interfered in the 2016 presidential election principally through two operations. First, a Russia entity carried out a social media campaign that favored

presidential candidate Donald J. Trump and disparaged presidential candidate Hillary Clinton. Second, a Russian intelligence service conducted computer-intrusion operations against entities, employees, and volunteers working on the Clinton Campaign and then released stolen documents.

On December 9, 2019, even President Trump's own FBI Director Christopher Wray stated unequivocally that there is no evidence to support the theory that Ukraine interfered in our election in 2016.

Here is a video of that interview. Let's watch.

(Text of Videotape presentation:)

REPORTER. Did the Government of Ukraine directly interfere in the 2016 election on the scale that the Russians did?

Director WRAY. We have no information that indicates that Ukraine interfered with the 2016 presidential election.

REPORTER. When you see politicians pushing this notion, are you concerned about that in terms of its impact on the American public?

Director WRAY. Well, look, there's all kinds of people saying all kinds of things out there. I think it's important for the American people to be thoughtful consumers of information and to think about the sources of it and to think about the support and predication for what they hear. And I think part of us being well protected against malign foreign influence is to build together an American public that's resilient, that has appropriate media literacy, and that takes its information with a grain of salt.

REPORTER. And Putin has been pushing this theory. And your message to him in terms of the American public?

Director WRAY. Stop trying to interfere with our elections.

REPORTER. And we recently heard from the President himself that he wanted the CrowdStrike portion of this whole conspiracy in the Ukraine investigated, and I'm hearing you say there's no evidence to support that as far as you know.

Director WRAY. As I said, we have no—We at the FBI have no information that would indicate that Ukraine tried to interfere in the 2016 presidential election.

Ms. Manager GARCIA of Texas. You heard him. He said “no information that would indicate that Ukraine tried to interfere in the 2016 Presidential election.”

So to be really, really clear, there is no real dispute that Russia, not Ukraine, attacked our elections.

It is not just that there is no evidence to support his conspiracy theory; it is more dangerous than that. Where did this theory come from? [Slide 272] You guessed it. The Russians—Russia. Russian President Vladimir Putin and Russian intelligence services perpetuated this false, debunked conspiracy theory.

Now remember, there is no dispute among the intelligence community that Russia attacked our 2016 elections. The Senate's own Intelligence Committee published a report telling us that as well. So it is no surprise that Russia wants to blame somebody else.

In fact, President Trump even said that President Putin is the one who told him it was Ukraine who interfered in our elections.

In short, this is a theory that the Russians are promoting to interfere, yet again, in our democratic process and deflect blame from their own attacks against us. But what is so dangerous is that President Trump is helping them perpetuate this. [Slide 272] Our own President is helping our adversary attack our processes, all to help his own reelection.

Dr. Hill, an expert on these matters, explains it in more detail as to why this is very concerning. Let's watch.

(Text of Videotape presentation:)

Dr. HILL. This relates to the second thing I want to communicate. Based on questions and statements I have heard, some of you on the committee appear to believe that Russia and its security services did not conduct a campaign against our country

and that perhaps somehow, for some reason, Ukraine did. This is a fictional narrative that is being perpetrated and propagated by the Russian security services themselves.

The unfortunate truth is that Russia was the foreign power that systematically attacked our democratic institutions in 2016. This is the public conclusion of our intelligence agencies, confirmed in bipartisan and congressional reports. It is beyond dispute, even if some of the underlying details must remain classified.

The impact of the successful 2016 Russian campaign remains evident today. Our nation is being torn apart. Truth is questioned. Our highly professional, expert career Foreign Service is being undermined. U.S. support for Ukraine which continues to face armed Russian aggression is being politicized. The Russian Government's goal is to weaken our country, to diminish America's global role, and to neutralize a perceived U.S. threat to Russian interests.

Ms. Manager GARCIA of Texas. Their "goal is to weaken our country, to diminish America's global role, and to neutralize a perceived U.S. threat to Russian interests." That is why it is so dangerous. Despite the lack of any evidence to support this debunked conspiracy theory, the unanimous conclusion of the intelligence community, Congress, Special Counsel Mueller, and the FBI to the contrary, President Trump continued to promote this fake conspiracy theory just because it would be beneficial and helpful to his own reelection campaign.

Even President Trump's own senior advisers told him these allegations were false. Tom Bossert, President Trump's former Homeland Security Advisor, stated publicly that the CrowdStrike theory had been debunked. [Slide 273]

Here is that interview. Let's watch.

(Text of Videotape presentation:)

Mr. BOSSERT. It's not only a conspiracy theory, it is completely debunked. You know, I don't want to be glib about this matter, but last year, retired former Senator Judd Gregg wrote a piece in The Hill magazine saying the three ways or the five ways to impeach oneself. And the third way was to hire Rudy Giuliani.

And at this point, I am deeply frustrated with what he and the legal team is doing in repeating that debunked theory to the president. It sticks in his mind when he hears it over and over again. And for clarity here, George, let me just again repeat that it has no validity. The United States government reached its conclusion on attributing to Russia the DNC hack in 2016 before it even communicated it to the FBI and long before the FBI ever knocked on the door at the DNC. So a server inside the DNC was not relevant to our determination to the attribution. It was made upfront and beforehand. And so while servers can be important in some of the investigations that followed, it has nothing to do with the U.S. government's attribution of Russia to the DNC hack.

Ms. Manager GARCIA of Texas. The theory "has no validity." That is what he said.

Dr. Hill, too, testified that White House officials, including Mr. Bossert and former National Security Advisor H.R. McMaster, spent a lot of time refuting the CrowdStrike conspiracy theory to President Trump. Let's hear it.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, Dr. Hill, is this a reference to this debunked conspiracy theory about Ukraine interference in the 2016 election that you discussed in your opening statement as well as with Chairman SCHIFF?

Dr. HILL. The reference to CrowdStrike and the server, yes, that's correct.

Mr. GOLDMAN. And it is your understanding that there is no basis for these allegations, is that correct?

Dr. HILL. That's correct.

Mr. GOLDMAN. Now, isn't it also true that some of President Trump's most senior advisers had informed him that this theory of Ukraine interference in the 2016 election was false?

Dr. HILL. That's correct.

Ms. Manager GARCIA of Texas. When she was asked if it is false, she said: "That's correct."

If Vladimir Putin's goals, as Dr. Hill testified, were to deflect from Russia's systematic interference in our election and to drive a wedge between the United States and Ukraine, he has succeeded beyond his wildest dreams. The alternative narrative of Ukrainian interference in the 2016 election has now been picked up by the President's defenders and the conservative media. It has muddied the waters regarding Russia's own interference in our elections—efforts that remain ongoing, as we have learned this week from reporting that Russia hacked Burisma.

If there were any doubt about how President Putin feels about the President's conduct, you need only look to Putin's own words. His statement on November 20 tells it all. He said: [Slide 274]

Thank God nobody is accusing us anymore of interfering in U.S. elections. Now they're accusing Ukraine.

That is a short quotation from Putin, but it speaks volumes. Even though President Trump knew there was no factual basis for the theory that it was Ukraine that interfered in the 2016 election rather than Russia and knew that Russia was perpetuating this theory, he still wanted President Zelensky to pursue the investigation. Why? Because, while Putin and Russia clearly stood to gain by promoting this conspiracy theory about Ukraine, so did Donald Trump. He knew it would be politically helpful to his 2020 election.

An announcement of an investigation by Ukraine would have breathed new life into a debunked conspiracy theory that Ukrainian election interference was there in 2016, and it lent it great credibility. It would have cast doubt on the conclusions of the Intelligence Committee and Special Counsel Mueller that Russia interfered in the 2016 election to help President Trump. And it would have helped eliminate a perceived threat to the legitimacy of Donald Trump's Presidency, that he was only elected because of the help he received from President Putin.

I now yield to Mr. SCHIFF.

Mr. McCONNELL. Mr. Chief Justice.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS SUBJECT TO CALL OF THE CHAIR

Mr. McCONNELL. Mr. Chief Justice, I am going to recommend that we take a 15-minute break at this point.

The CHIEF JUSTICE. Without objection, it is so ordered.

There being no objection, at 2:57 p.m. the Senate, sitting as a Court of Impeachment, recessed until 3:25 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. Mr. Manager SCHIFF.

Mr. Manager SCHIFF. Senators, I am going to pick up where my colleague from Texas left off, but I want to begin by underscoring a few of the points that she made, in listening to her presentation, that really leapt out at me in a way they hadn't leapt out at me before.

First, I want to address—my colleague shared a number of slides showing the polling strength of Joe Biden vis-a-vis the President as

a demonstration of his motive, the fact that he went after these political investigations to undermine someone he was deeply concerned about.

This is an appropriate point for me to make the disclaimer that the House managers take no position in the Democratic primary for President. I don't want to lose a single more vote than necessary. But those polls do show the powerful motive that Donald Trump had—a motive that he didn't have the year before or the year before that; a motive that he didn't have when he allowed the aid to go to Ukraine without complaint or issue in 2017 or 2018. It was only when he had a growing concern with Joe Biden's candidacy that he took a sudden interest in Ukraine and Ukraine funding and the withholding of that aid.

I also want to underscore what the President said in that July 25 call. My colleague showed you that transcript from July 25 where the President says: "I would like you to find out what happened with this whole situation with Ukraine, they say CrowdStrike." My colleagues have explained what that theory is about that server, that CrowdStrike server—the crazy theory that it was Ukraine that hacked the Democratic server and that server was whisked away to Ukraine and hidden there so that the investigators and the FBI couldn't look at this server. That is what Donald Trump was raising in that conversation with President Zelensky.

I bring up this point again because you may hear from my colleagues, the President's lawyers, as we heard during the testimony in the House, that the concern was over Ukrainian interference in the election, and why isn't it possible that both Russia and Ukraine interfered in the election? Never mind that is contrary to all the evidence. But it is important to point out here that we are not talking about generic interference. We are not talking about, as we heard from some of my colleagues in the House, a tweet from a Ukrainian here or an op-ed written by somebody there and equating it with the kind of systematic interference of the Russians. What we are talking about here—what the President is talking about here is a very specific conspiracy theory going to the server itself, meaning that it was Ukraine that hacked the Democratic server, not the Russians. This theory was brought to you by the Kremlin, OK? So we are not talking about generic interference. We are talking about the server. We are talking about CrowdStrike. At least, that is what Donald Trump wanted to investigate or announced—this completely bogus, Kremlin-pushed conspiracy theory.

I was also struck by that video you saw of Tom Bossert, the former homeland security adviser for the President, in which he talked about how completely debunked and crazy this conspiracy theory is. And then there was that rather glib line that he admitted was glib, but nonetheless made a point, about the three or five ways to impeach oneself, and the third way was to hire Rudy Giuliani.

Now, it struck me in watching that clip, again, that it is important to emphasize that Rudy Giuliani is not some Svengali here who has the President under his control. There may be an effort

to say: OK, the human hand grenade, Rudy Giuliani, it is all his fault. He has the President in his grip.

And even though the U.S. intelligence agencies and the bipartisan Senate Intelligence Committee and everyone else told the President time after time that this is nonsense, that the Russians interfered, not the Ukrainians, he just couldn't shake himself of what he was hearing from Rudy Giuliani. You can say a lot of things about President Trump, but he is not led by the nose by Rudy Giuliani. And if he is willing to listen to his personal lawyer over his own intelligence agencies, his own advisers, then you can imagine what a danger that presents to this country.

My colleague also played for you that interview with Director Wray. And, again, I was just struck anew by that interview. In that interview, Director Wray says: "We have no information that indicates that Ukraine interfered with the 2016 presidential election." That is Donald Trump's Director of the FBI: "We have no information that indicates that Ukraine interfered with the 2016 election"—none, as in zero.

The reporter then says: When you see politicians pushing this notion, are you concerned about that in terms of the impact on the American public?

And the Director says: "Well, look, there's all kinds of people saying all kinds of things out there."

Well, yes, there are, but this person is the President of the United States. When he says "there are all kinds of people out there saying all kinds of things," well, what he is really saying is the President of the United States. It is one thing if someone off the streets says it, but when it is coming from the President of the United States, you can see what a danger it is if it is patently false and it is promulgated by the Russians.

And, again, the reporter says: We heard from the President, himself, he wanted the CrowdStrike portion of this whole conspiracy investigated, and I am hearing you say there is no evidence to support this.

And Wray says: "As I said, we at the FBI have no information that would indicate that Ukraine tried to interfere in the 2016 presidential election"—none.

And so you can imagine the view from the Kremlin of all of this. You can imagine Putin in the Kremlin with his aides, and one of his aides comes into the office and says: Vladimir, you are never going to believe this. The President of the United States is pushing our CrowdStrike theory.

I mean, you can almost imagine the incredulity of Vladimir Putin: You are kidding; right? You mean he really believes this? His own people don't believe this. Nobody believes this.

It would be bad enough, of course, that the President of the United States believes this Russian propaganda against the advice of all of his advisers—common sense—and everything else, but it is worse than that. It is worse than that. On the basis of this Russian propaganda, he withheld \$400 million in military aid to a nation Russia was fighting, our ally. I mean, when we ask about what is the national security implication of what the President did, how much more clear can it be that he is not only pushing Russian propaganda, he is not only misleading Americans about who inter-

ferred in the last election, that he is not only doing the Kremlin a favor, but that he is withholding aid from a nation at war. The Russians not only got him to deflect blame from their interference in our democracy, but they got him to withhold military aid.

Now, of course, there was this convergence of interest between the Kremlin and the President. The President wasn't pushing Kremlin talking points just to do Vladimir Putin a favor. He was doing it because it helped him, because it helped him and because it could get these talking points for him in his reelection campaign. And for that, he would sacrifice our ally and our own security.

But nothing struck me more from Representative GARCIA's presentation than that quote from Vladimir Putin from November of this past year, just a couple of months ago. Putin said:

Thank God nobody is accusing us anymore of interfering in U.S. elections. Now they're accusing Ukraine.

"Thank God," Putin says. Well, you have to give Donald Trump credit for this. He has made a religious man out of Vladimir Putin, but I don't think we really want Vladimir Putin, our adversary, to be thanking God for the President of the United States, because they don't wish us well. They don't wish us well. They are a wounded animal. They are a declining power. But like any wounded animal, they are a dangerous animal. Their world view is completely antithetical to ours. We do not want them thanking God for our President and what he is pushing out. We don't want them thanking God for withholding money from our ally, although we can understand why they may. To me, that is what stuck out from that presentation.

Now, in the first part of this presentation, we walked through the corrupt object of President Trump's scheme—getting Ukraine to announce these two political investigations that would help benefit his reelection campaign. And just looking at how baseless and fabricated the allegations behind him were made plain his corrupt motive.

But in addition to this overwhelming evidence, there are at least 10 other reasons we know that President Trump directed his scheme with corrupt intent. There are at least 10 other reasons we know that President Trump was interested in his own personal gain and not the national interest in pressing for these investigations. [Slide 275]

First, the President only wanted these investigations to be announced publicly, not even conducted.

Second, the President's only interest in Ukraine was the "big stuff" that mattered to himself, not issues affecting Ukraine or the United States.

Third, the President tasked his personal lawyer, Rudy Giuliani, to pursue these investigations on his behalf, not government officials.

Fourth, both before and after the July 25 call, the investigations were never part of U.S. official foreign policy. NSC officials, too, make clear that this was not about foreign policy. Other witnesses confirmed the investigations, in fact, diverged from U.S. official policy.

Fifth, the investigations were undertaken outside of normal channels.

Sixth, Ukrainian officials understood that the investigations were purely political in nature. [Slide 275]

Seventh, multiple administration officials reported the President's July 25 call.

Eighth, the White House buried the call.

Ninth, President Trump confirmed he wanted Ukraine to conduct investigations in his own words.

And, finally, President Trump did not care about anti-corruption efforts in Ukraine.

Let's go through these one by one.

First, perhaps the simplest way that we all know that President Trump wanted these investigations done solely to help his personal political interests and not the national interest is that he merely wanted a public announcement of the investigations, not an assurance that they would actually be done. If his desire for these investigations was truly to assist Ukraine's anti-corruption efforts or because he was worried about the larger issues of corruption in Ukraine, someone actually investigating the facts underlying the investigations would have been most important. But he didn't care about the facts or the issues. He just wanted the political benefit of the public announcement of an investigation that he could use to damage his political opponent and boost his own political standing.

Ambassador Gordon Sondland, who was at the center of this scheme, made this quite clear in his testimony.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, for Mr. Giuliani, by this point, you understood that in order to get that White House meeting that you wanted President Zelensky to have and that President Zelensky desperately wanted to have that Ukraine would have to initiate these two investigations. Is that right?

Ambassador SONDLAND. Well, they would have to announce that they were going to do it.

Mr. GOLDMAN. Right. Because Giuliani and President Trump didn't actually care if they did them, right?

Ambassador SONDLAND. I never heard, Mr. Goldman, anyone say that the investigations had to start or had to be completed. The only thing I heard from Mr. Giuliani, or otherwise, was that they had to be announced in some form and that form kept changing.

Mr. GOLDMAN. Announced publicly?

Ambassador SONDLAND. Announced publically.

Mr. Manager SCHIFF. The other evidence gathered by the House's investigation confirms Ambassador Sondland's understanding. For example, recently, the House received documents from Lev Parnas, an associate of Rudy Giuliani's, now indicted, in response to a subpoena. As you know, Lev Parnas was indicted by the Southern District of New York for crimes, including election law violations. As part of the documents that Parnas turned over, we obtained handwritten notes that Parnas apparently took some time in 2019. One of those notes lays out the scheme very clearly and succinctly.

Now, it is not every day that you get a document like this [Slide 276]—what appears to be a member of the conspiracy writing down the object of the conspiracy, but that is exactly what we see here. We see the scheme that ultimately was directed by President Trump to coerce Ukraine to announce the investigation of the Bidens. I repeat: to announce the investigation—not investigate,

not conduct. The only thing that mattered was the public announcement, as this note says with an asterisk: "Get Zelensky to Announce that the Biden case will Be Investigated."

And in early September, after Mr. Giuliani and Ambassadors Volker and Sondland had tried but failed to get President Zelensky to issue a public statement, President Trump made this clear himself. He explained to Ambassador Bolton that he wanted Zelensky in a "public box"; that is, President Trump would only be satisfied if President Zelensky made a public announcement of the investigations, which he subsequently agreed to do on CNN.

Here is Ambassador Taylor's testimony on this:

(Text of Videotape presentation:)

Mr. GOLDMAN. And so, even though President Trump was saying repeatedly that there is no quid pro quo, Ambassador Sondland relayed to you that the facts of the matter were that the White House meeting and the security assistance were conditioned on the announcement of these investigations. Is that your understanding?

Ambassador TAYLOR. That's my understanding.

Mr. GOLDMAN. Now, you referenced a television interview and a desire for President Trump to put Zelensky in a public box, which you also have in quotes. Was that in your notes?

Ambassador TAYLOR. It was in my notes.

Mr. GOLDMAN. And what did you understand that to mean, to put Zelensky in a public box?

Ambassador TAYLOR. I understood that to mean that President Trump, through Ambassador Sondland, was asking for President Zelensky to very publicly commit to these investigations, that it was not sufficient to do this in private, that this needed to be a very public statement.

Mr. Manager SCHIFF. The fact that the President only wanted a public announcement and not the investigations to actually be conducted demonstrates that his desire for investigations was simply and solely to boost his reelection efforts.

No. 2, turning to the second reason, President Trump's agents who helped to carry out this scheme confirmed that his desire for Ukraine to announce the investigations was solely for his personal political benefit.

As we will explain in more detail in a few minutes, President Trump never expressed any interest in U.S. anti-corruption policy toward Ukraine, nor did he care about Ukraine's war against Russia. He only expressed interest in one thing: investigating his political opponent. This was unequivocally confirmed by the testimony of David Holmes, the senior official at the U.S. Embassy in Kyiv. The day after the July 25 call, Holmes overheard a conversation between President Trump and Ambassador Sondland, who was in Kyiv. The only topic they discussed related to Ukraine was as to the investigations.

Here is his testimony:

(Text of Videotape presentation:)

Mr. HOLMES. Ambassador Sondland placed a call on his mobile phone, and I heard him announce himself several times along the lines of "Gordon Sondland, holding for the President." It appeared that he was being transferred through several layers of switchboards and assistants, and I then noticed Ambassador Sondland's demeanor changed and understood he had been connected to President Trump. While Ambassador Sondland's phone was not on speakerphone, I could hear the President's voice through the ear piece of the phone.

The President's voice was loud and recognizable, and Ambassador Sondland held the phone away from his ear for a period of time, presumably because of the loud volume. I heard Ambassador Sondland greet the President and explained he was

calling from Kyiv. I heard President Trump then clarify that Ambassador Sondland was in Ukraine. Ambassador Sondland replied, yes, he was in Ukraine, and went on to state that President Zelensky “loves your ass.” I then heard President Trump ask, “So he’s going to do the investigation?”

Ambassador Sondland replied that “he’s going to do it,” adding that President Zelensky will do “anything you ask him to do.”

Mr. Manager SCHIFF. After the call, Ambassador Sondland confirmed to Holmes that the investigations were the President’s sole interest with Ukraine because—and this is very important—they benefit the President.

(Text of Videotape presentation:)

Mr. HOLMES. After the call ended, Ambassador Sondland remarked that the President was in a bad mood, as Ambassador Sondland stated was often the case early in the morning. I then took the opportunity to ask Ambassador Sondland for his candid impression of the President’s views on Ukraine. In particular, I asked Ambassador Sondland if it was true that the President did not give a [expletive] about Ukraine. Ambassador Sondland agreed that the President did not give a [expletive] about Ukraine.

I asked, “Why Not?” Ambassador Sondland stated the President only cares about “big stuff.” I noted there was big stuff going on in Ukraine, like a war with Russia. Ambassador Sondland replied that he meant big stuff that benefits the President, like the Biden investigation that Mr. Giuliani was pushing. The conversation then moved on to other topics.

Mr. Manager SCHIFF. This understanding by Ambassador Sondland is independently confirmed by President Trump’s own interactions with Ukraine.

During his two telephone calls with President Zelensky—first on April 21 and then on July 25—President Trump did not refer to any anti-corruption efforts or the war against Russia. He never even uttered the word “corruption.” Instead, he only spoke about investigating his political opponents.

He later confirmed this narrow and singular focus to the press. On October 3, when asked about the Ukraine scheme, he said: “Well, I would think if they were honest about it, they would start a major investigation into the Bidens. It’s a very simple answer.”

Here is that conference:

(Text of Videotape presentation:)

REPORTER. What exactly did you hope Zelensky would do about the Bidens after your phone call?

President TRUMP. Well, I would think that, if they were honest about it, they’d start a major investigation into the Bidens. It’s a very simple answer.

Mr. Manager SCHIFF. So we know from witnesses, the President’s personal agents, and, most importantly, the President himself that the only thing President Trump cared about with Ukraine was his investigations in order to benefit himself.

To see this even more starkly, it is helpful to remember what Presidential head-of-state calls are normally used for.

Talk to any former occupant of the Oval Office, and he will tell you that the disparity in power between the President of the United States and other heads of state is vast. Since World War II—and consistent with the requirement to “faithfully execute” their oaths of office—U.S. Presidents from both political parties have made good use of this disparity in power in their telephone calls with foreign leaders. They have used those calls to secure commitments that have bolstered American security and prosperity.

Acting as our chief diplomat, President Reagan used his calls to our European allies, like Prime Minister Margaret Thatcher, to rally the world against the Soviet threat [Slide 277]—the shining city on the hill standing up to the evil empire. His calls laid the foundation for landmark nonproliferation agreements that averted nuclear Armageddon.

It was during a phone call on Christmas Day in 1991 that President George H. W. Bush learned that Mikhail Gorbachev intended to resign as Soviet Premier, marking the end of the Soviet Union. [Slide 278] Historians credit his deft diplomacy, including numerous one-on-one phone calls, for bringing about a peaceful end to the Cold War.

Following September 11, President George W. Bush used his calls with heads of state to rally global support for the U.S. campaign to defeat al-Qaida [Slide 279] and to work with our allies to protect and defend U.S. national security and combat terrorism.

President Obama used his calls with foreign leaders to contain the fallout from the global economic crisis, assemble an international coalition to fight the Islamic State, [Slide 280] and, of course, to rally support for Ukraine following Russia's invasion of Crimea.

No matter what you think of the policy views or priorities of these prior Presidents, there is no question that they are examples of the normal diplomacy that happens during Presidential telephone calls, and there is no doubt, when you are the President of the United States and you call a foreign leader, that you are on the clock for the American people. Consistent with the faithful execution of his or her oath of office, a President's first and only objective is to get foreign leaders to do what is in the best interest of the United States.

That is not what happened on July 25. On that date, President Trump used a head-of-state call with the leader of Ukraine to help himself—to press a foreign leader to investigate the President's political opponent in order to help his reelection campaign. President Trump abused his authority as Commander in Chief and chief diplomat to benefit himself, and he betrayed the interests of the American people when he did so.

Let's go to the third reason that we know the President put his interests first.

The third reason you know that the investigations were politically motivated is the central role played by President Trump's personal attorney, Mr. Giuliani, who has never had an official role in this government but, instead, was at all times representing the President in his personal capacity. There is no dispute about this.

For example, Mr. Giuliani made this point clearly in his May 10 letter to the President of Ukraine himself, where he wrote: [Slide 281]

Dear President-Elect Zelensky, I am private counsel to President Donald J. Trump. Just to be precise, I represent him as a private citizen, not as President of the United States. This is quite common under American law because the duties and privileges of a President and a private citizen are not the same. Separate representation is the usual process.

Mr. Giuliani also repeated this publicly. For example, he confirmed this point on May 9, in the New York Times, when he said

[Slide 282]—well, many things—“We’re not meddling in an election, we’re meddling in an investigation, which we have a right to do.”

“There is nothing illegal about it,” he said. “Somebody could say it’s improper. And this isn’t foreign policy.”

He went on to say, referring to the President: “He basically knows what I’m doing, sure, as his lawyer.”

“My only client is the president of the United States,” he said. “He’s the one I have an obligation to report to, tell him what happened.” [Slide 283]

Think about that. The President is using his personal lawyer to ask Ukraine for investigations that aren’t “foreign policy” but that will be very, very helpful to the President personally. It is not often you get it so graphically as we do here.

Let’s go to the fourth reason that these investigations were never part of U.S. policy.

It was not just that President Trump used his personal lawyer; it was also that what he was asking for was never a part of U.S. policy. Witnesses told us that President Trump’s investigations were not in his official, prepared talking points or briefing materials. To the contrary, they went against official policy and diverged from our national security interests.

All three witnesses—Tim Morrison at the National Security Council, Lieutenant Colonel Alex Vindman at the National Security Council, and Jennifer Williams, who listened to the July 25 call—testified that when President Trump demanded that President Zelensky investigate the Bidens, he had completely departed from the talking points they had prepared for him.

Now, before I get to the video clip, I just want to underscore this: He is not obligated to use his talking points, and he is not obligated to follow the recommendations of his staff no matter how sound they may be. What this makes clear is that it was not U.S. policy that he was conducting; it was his private, personal interests that he was conducting. If it were U.S. policy, it probably would have been in the talking points and briefing materials, but, of course, it was not.

Let’s look at Mr. Morrison’s testimony on this point.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, Mr. Morrison, were—these references to CrowdStrike, the server and 2016 election, and to Vice President Biden and son, were they included in the President’s talking points?

Mr. MORRISON. They were not.

Mr. Manager SCHIFF. Here is Lieutenant Colonel Vindman on this point:

(Text of Videotape presentation:)

Ms. SPEIER. Colonel Vindman, you are the National Security Council’s director for Ukraine. Did you participate in preparing the talking points for the President’s call?

LTC VINDMAN. I did. I prepared them.

Ms. SPEIER. So you prepared them. They were then reviewed and edited by multiple senior officers at the NSC and the White House. Is that correct?

LTC VINDMAN. That is correct.

Ms. SPEIER. Did the talking points for the president contain any discussion of investigations into the 2016 election, the Bidens or Burisma?

LTC VINDMAN. They did not.

Ms. SPEIER. Are you aware of any written product from the National Security Council suggesting that investigations into the 2016 election, the Bidens, or Burisma are part of the official policy of the United States?

LTC VINDMAN. No, I'm not.

Mr. Manager SCHIFF. Dr. Hill also elaborated on this point.
(Text of Videotape presentation:)

Dr. HILL. My point, Mr. NUNES, is that we at the National Security Council were not told either by the President directly or through Ambassador Bolton that we were to be focused on these issues as a matter of U.S. foreign policy towards Ukraine. So when we are talking about Ukraine in 2016, I never personally heard the President say anything specific about 2016 and Ukraine. I've seen him say plenty of things publicly, but I was not given a directive. In fact, I was given a directive by Ambassador Bolton on July 10 very clearly to stay out of domestic politics.

Mr. Manager SCHIFF. So, to be clear, when President Trump asked for these investigations, he was not asking for them based on an official U.S. policy. His top official advisers had not even been told about these investigations. To the contrary, they were told to stay out of U.S. politics.

And it gets worse. It was not just that President Trump ignored official U.S. policy and the talking points he was given; it was that what he was doing—withholding support from Ukraine—was actually contrary to and harmful to U.S. policy.

There is clear and undisputed bipartisan support for Ukraine. Ukraine is our ally. What is more, they are at war with our adversary, Russia. So our goal should be to help President Zelensky's anti-corruption reforms and to help Ukraine fight its adversary, Russia, in any way that we can.

President Trump's own national defense strategy stated that the United States and its European allies "will deter Russian adventurism" [Slide 284]—a clear reference to Russia's usurpation of Ukrainian territory and sovereignty. Consistent with that strategy, we currently have approximately 68,000 troops stationed in Europe. Roughly 10,000 of those U.S. troops are deployed on NATO's eastern border with Russia, to countries like Poland, Hungary, Lithuania, and Bulgaria. These American forces are literally holding the line against another land grab by Vladimir Putin.

The author of that strategy, former U.S. National Security Advisor LTG H.R. McMaster, issued this stark warning about Russia's aggression: [Slide 285]

[F]or too long, some nations have looked the other way in the face of these threats. Russia brazenly and implausibly denies its actions and we have failed to impose sufficient costs. The Kremlin's confidence is growing as its agents conduct their sustained campaigns to undermine our confidence in ourselves and in one another.

What General McMaster says obviously makes sense. Russia's confidence, sadly, is growing. We need to stand up to them, and that is why we support Ukraine, to help defeat Russian aggression.

So, on July 25, when President Zelensky spoke with President Trump, that is what he, McMaster, was hoping to discuss—or he would be hoping that he would discuss how we can support Ukraine in its fight against a huge adversary.

Our confidence in one another; that is what President Zelensky was most worried about when he got on the line with the President on July 25, whether Ukraine could have confidence in U.S. support.

Nearly 70 percent of Ukraine's territory—I am sorry. Nearly 7 percent of Ukraine's territory had been annexed by Russian-backed forces. More than 15,000 troops have been lost in the hot war over the past 5 years.

But when President Zelensky raised the issue of U.S. military aid needed to confront Russian aggression, President Trump did nothing to reassure the Ukrainian leader of our steadfast support for Ukraine's sovereignty. Instead, he made personal demands.

It is for these reasons that President Trump's investigations went against official U.S. policy. Witnesses confirmed that President Trump's requests actually diverged not just from our policy but from our own national security.

As Dr. Hill testified, Ambassador Sondland, in carrying out President Trump's scheme, [Slide 286] "was being involved in a domestic political errand, and we were being involved in national security policy, and those two things had just diverged."

And as Ambassador Taylor elaborated, "[O]ur holding up of security assistance that would go to a country that is fighting aggression from Russia, for no good policy reason, no good substantive reason, no good national security reason, is wrong."

As these officials so correctly observed, there is no question that President Trump's political errand and our national security diverged; that he did this to advance his reelection, not to advance U.S. national security goals, and that he did it for no good reason but the political one.

But it is more than that. It is more than our national security policy. We, as a country, are meant to embody the solution to corruption. Our country is based on promoting the rule of law. And here, what the President did attacks another of the U.S. strengths, that of our ideals and our values.

Part of that is ensuring the integrity of our democracy and our political institutions. It is a fundamental American value underlying our democracy that we do not use official powers to ask for investigations of our political opponents to gain a political advantage.

When President Trump asked a foreign leader to investigate his political opponent, he abused the broad authority provided to the President of the United States.

Witness testimony again confirms this. Vice President PENCE's adviser, Jennifer Williams, was concerned by the President's focus on domestic political issues rather than U.S. national security because the President is not supposed to use foreign governments for political errands.

She characterized the call as "a domestic political matter." Here is her testimony:

(Text of Videotape presentation:)

Ms. WILLIAMS. During my closed-door deposition, members of the committee asked about my personal views, and whether I had any concerns about the July 25th call. As I testified then, I found the July 25th phone call unusual because, in contrast to other Presidential calls I had observed, it involved discussion of what appeared to be a domestic political matter.

Mr. Manager SCHIFF. Lieutenant Colonel Vindman also thought the call was improper and unrelated to the talking points he had drafted for the President.

(Text of Videotape presentation:)

LTC VINDMAN. It is improper for the President of the United States to demand that a foreign government investigate a U.S. citizen, and a political opponent . . . — it was also clear that if Ukraine pursued an investigation into the 2016 elections, the Bidens and Burisma, it would be interpreted as a partisan play. This would undoubtedly result in Ukraine losing bipartisan support, undermining U.S. national security, and advancing Russia's strategic objectives in the region.

Mr. Manager SCHIFF. Lieutenant Colonel Vindman, as a reminder, is a Purple Heart veteran and says what we all know clearly: It is improper for the President of the United States to demand a foreign government to investigate a U.S. citizen and a political opponent.

And it wasn't just that Colonel Vindman thought it was wrong; he was so concerned that he warned Ukraine, too, not to get involved in our domestic politics.

In May, Lieutenant Colonel Vindman grew concerned by the pressure campaign he witnessed in the media, waged primarily by Rudy Giuliani. During a meeting with President Zelensky on May 20, Lieutenant Colonel Vindman warned the Ukrainian leader to stay out of U.S. politics—because that is our official U.S. policy.

(Text of Videotape presentation:)

LTC VINDMAN. During a bilateral meeting in which the whole delegation was meeting with President Zelensky and his team, I offered two pieces of advice: To be particularly cautious with regards to Ukraine—to be particularly cautious with regards to Russia, and its desire to provoke Ukraine; and the second one was to stay out of U.S. domestic policy.

Chairman SCHIFF. Do you mean politics?

LTC VINDMAN. Politics, correct.

Chairman SCHIFF. And why did you feel it was necessary to advise President Zelensky to stay away from U.S. domestic politics?

LTC VINDMAN. Chairman, in the March and April timeframe, it became clear that there were—there were actors in the U.S., public actors, nongovernmental actors that were promoting the idea of investigations and 2016 Ukrainian interference.

And it was consistent with U.S. policy to advise any country, all the countries in my portfolio, any country in the world, to not participate in U.S. domestic politics. So I was passing the same advice consistent with U.S. policy.

Mr. Manager SCHIFF. He once again makes this clear: “[I]t was consistent with U.S. policy to advise any country, all the countries in my portfolio, any country in the world” we do not participate in U.S. domestic politics.

Deputy Assistant Secretary of State George Kent, too, testified that the President's political investigations, of course, had nothing to do with American anticorruption efforts in Ukraine, which has consistently focused on building institutions and never specific investigations, and that if we do ask countries to do our political errands, it entirely threatens our credibility as a democracy.

(Text of Videotape presentation:)

Mr. HECK. You also testified on October 15th, in the deposition, about fundamental reforms necessary for Ukraine to fight corruption and to transform the country. And you cited the importance of reforming certain institutions, notably the security service in the Prosecutor General's Office. Was investigating President Trump's political opponents a part of those necessary reforms? Was it on that list of yours, sir? Or, indeed, was it on any list?

Mr. KENT. No, they weren't.

Mr. HECK. In fact, historically, is it not true that a major problem in the Ukraine has been its misuse of prosecutors precisely to conduct investigation of political opponents? That's a legacy, I dare suggest, from the Soviet era, when, as you stated

in your testimony, prosecutors like the KGB were and I quote you now “instruments of oppression.” Is that correct?

Mr. KENT. I said that, and I believe it's true.

Mr. HECK. So, finally, Mr. Kent, for as long as I can remember, U.S. foreign policy has been predicated on advancing principled interests in democratic values—notably, freedom of speech, press, assembly, religion; free, fair, and open elections; and the rule of law. Mr. Kent, when American leaders ask foreign governments to investigate their potential rivals, doesn't that make it harder for us to advocate on behalf of those democratic values?

Mr. KENT. I believe it makes it more difficult for our diplomatic representatives overseas to carry out those policy goals, yes.

Mr. HECK. How is that, sir?

Mr. KENT. Well, there's an issue of credibility. They hear diplomats on the ground saying one thing, and they hear other U.S. leaders saying something else.

Mr. Manager SCHIFF. The bottom line is this: What was in the best interest of our country was to help Ukraine, to give them the military aid, to fight one of our greatest adversaries, and to help promote the rule of law. And what was in President Trump's personal interest was the opposite: to pressure Ukraine to conduct investigations against his 2020 rival to help ensure his reelection. And when what is best for the country and what was best for Donald Trump diverged, President Trump put himself above the best interests of our country.

Let's now go to the fifth reason that we know the President put himself first.

A fifth reason is that the request for these investigations departed not just from U.S. policy but from established U.S. Government channels.

On the July 25 call, President Trump told President Zelensky that he should speak to Mr. Giuliani and Attorney General Barr, but after the July 25 transcript was released, the Department of Justice disclaimed any knowledge or involvement in the President's political investigations.

The Department of Justice statement from the day the July 25 call was released says this. This was from September 25. [Slide 287]

The President has not spoken with the Attorney General about having Ukraine investigate anything relating to former Vice President Biden or his son. The President has not asked the Attorney General to contact Ukraine—on this or any other matter. The Attorney General has not communicated with Ukraine—on this or any other subject. Nor has the Attorney General discussed this matter, or anything relating to Ukraine, with Rudy Giuliani.

Now, this is pretty extraordinary. You can say a lot of things about the Attorney General, but you cannot say that he ever has looked to pursue something he thought was not in the President's interest.

This is pretty extraordinary, where he is saying the moment this transcript is publicly released: I have got nothing to do with this scheme. I don't know why they brought me up in this call. I don't know why the President brought me up in this call. He hasn't asked me to do anything about this. I want nothing to do with this business.

I suspect the Attorney General can recognize a drug deal when he sees it, too, and he wanted nothing to do with this.

Now, if this were some legitimate investigation, you would think the Department of Justice would have a role. That is traditionally how an investigation with an international component would work,

but this wasn't the case. This wasn't the case. And the Attorney General wanted nothing to do with it.

If these were legitimate investigations that were in the national interest, why was Bill Barr's Justice Department so quick to divorce themselves from it?

The simple answer is that, as we see so clearly, they were against U.S. official policy and our national security. The Justice Department wanted nothing to do with it, and by asking for these investigations, the President was abusing his power.

Let's go to the sixth reason you know President Trump put himself first. It wasn't just that these witnesses told us—what these witnesses told us in the impeachment hearings about this being wrong. They reported the President's conduct in realtime. So it is not just that they came forward later; they came forward in realtime to report the President's conduct.

Of course, you have seen over the last couple days how many times people are told: Go talk to the lawyers.

Well, Tim Morrison, former Republican staffer, and Colonel Vindman were sufficiently concerned by what they heard President Trump solicit on that July 25 call that they both immediately went to speak to the lawyer, John Eisenberg, the NSC Legal Advisor. Let's take a look.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, Mr. Morrison, shortly after you heard the July 25th call, you testified that you alerted the NSC legal advisor, John Eisenberg, pretty much right away. Is that right?

Mr. MORRISON. Correct.

Mr. GOLDMAN. And you indicated in your opening statement, or at least from your deposition, that you went to Mr. Eisenberg out of concern over the potential political fallout if the call record became public and not because you thought it was illegal. Is that right?

Mr. MORRISON. Correct.

Mr. GOLDMAN. But you would agree, right, that asking a foreign government to investigate a domestic political rival was inappropriate, would you not?

Mr. MORRISON. It is not what we recommended the President discuss.

Mr. Manager SCHIFF. I think that is a profound understatement. Mr. Morrison clearly recognized that the request to investigate Biden and Burisma was about U.S. domestic politics and not U.S. national security. Lieutenant Colonel Vindman knew this, too, and he reported his concerns to the White House counsel.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, you said you also reported this incident to the NSC lawyers; is that right?

LTC VINDMAN. Correct.

Mr. GOLDMAN. What was their response?

LTC VINDMAN. John Eisenberg said that he—he took notes while I was talking, and he said that he would look into it.

Mr. GOLDMAN. Why did you report this meeting and this conversation to the NSC lawyers?

LTC VINDMAN. Because it was inappropriate. And, following the meeting, I had a short conversation—following the post-meeting meeting, in the Ward Room. I had a short conversation with Ambassador—correction—Dr. Hill. And we discussed the idea of needing to report this.

Mr. Manager SCHIFF. In fact, Lieutenant Colonel Vindman reported concerns twice, and Mr. Morrison did so multiple times as well. [Slide 288]

They, of course, weren't the only ones. As this slide shows, Dr. Hill reported her concerns to the NSC legal advisor. Mr. Kent reported his concerns about the State Department's failure to respond to the House's document request. The lawyers were awfully busy.

And why did President Trump's own officials—not so-called Never Trumpers, not Democrats or Republicans, but career public servants—report this conduct in real time? Because they knew it was wrong. [Slide 289]

Dr. Hill said: "It was improper, and it was inappropriate, and we said that in the time, in real time."

Lieutenant Colonel Vindman said: "[The July 25] call was wrong" and he had a "duty to report it."

Ambassador Taylor said: "Holding up of security assistance . . . for no good policy reason, no good substantive reason, no good national security reason, is wrong."

Mr. Morrison admitted that he reported the July 25 call "pretty much right away" and "recommended to them that we restrict access to the package."

And Ms. Williams said: "[The July 25 call] struck me as unusual and inappropriate," and "more political in nature."

Mr. Manager SCHIFF. The consensus is once again clear. The President's demand for political investigations was improper, inappropriate, and wrong, and again confirms that these requested investigations were not about anything except Donald Trump's political gains.

Let's go to the seventh reason why you know President Trump put himself first. American officials weren't the only ones who recognized the political nature of these requests. Ukrainian officials did, too. That brings us the seventh reason we know that this was against our national interests. Ukrainian officials themselves expressed concern that these corrupt investigations would drag them into U.S. domestic politics.

For example, in mid-July, Ambassador Taylor texted Sondland, and Taylor explained President Zelensky's reluctance to become a pawn in U.S. politics. Ambassador Taylor said: [Slide 290] "Gordon, one thing Kurt and I talked about yesterday was Sasha Danyliuk's point"—he is a top adviser to President Zelensky—"Sasha Danyliuk's point that President Zelensky is sensitive about Ukraine being taken seriously, not merely as an instrument in Washington domestic reelection politics."

So here you have Sasha Danyliuk, one of the top advisers to Zelensky, affirming that his President wants to be taken seriously. It is pretty extraordinary when a foreign leader has to communicate to this country that they want to be taken seriously and not just as some kind of a pawn for political purposes. When an ally, wholly dependent on us for military support economic support, and diplomatic support, has to say: Please take us seriously. But this is what the Ukrainians are saying. They understood this wasn't American policy—as much as we do—and they didn't want to be used as a pawn.

Ambassador Taylor explained this text during his testimony: [Slide 291] "The whole thrust of this irregular channel was to get these investigations, which Danyliuk and presumably Zelensky

were resisting because they didn't want to be seen to be interfering but also to be a pawn."

This is an important point, too. It wasn't just that they didn't want to be seen as getting involved in U.S. politics, because if they did and it looked like they were getting involved on the side of Donald Trump, that would hurt their support with Democrats, and if it looked like they were getting involved on the other side, it would hurt them with the President. There was no benefit to Ukraine to be dragged into this. There was no benefit to Ukraine by this, but they also didn't want to be viewed as a pawn.

President Zelensky has his own electorate. He is a new leader. He is a former comedian, and he wants to be taken seriously. He needs to be taken seriously, because if the United States isn't going to take him seriously, you can darn well bet Vladimir Putin will not take him seriously.

So the perception—not just that there is a rift, that he can't get military aid or it is in doubt or in question, but the impression—that he is nothing more than a pawn, you could see how problematic that was for President Zelensky. In other words, Ukrainian officials understood, just as our officials understood, just as all those folks you saw—Morrison, Vindman, Hill, and others, all the people who had to go to the lawyers, all the people who listened to that call and understood—that this was just wrong.

Morrison goes on to say that he is no legal expert and can't really opine on the legality of what happened on this call, but they all knew it was wrong. They also knew that it was damaging to bipartisan support. They knew it was damaging to our national security. But here we see. It wasn't just our people. It was the Ukrainians who also understood this was a pure political errand they were being asked to perform.

That is no way to treat an ally at war.

Now, it wasn't just the testimony of U.S. officials on this. We know this directly from the Ukrainians. Indeed, we know this directly from President Zelensky himself, who said: "I am sorry, but I don't want to be involved to democratic, open elections—elections of the USA." [Slide 292]

Here is Zelensky saying: "I don't want to be involved." He shouldn't be involved. He shouldn't be involved in our elections. That is not his job, and he knows that, and it is a tragic fact that the world's oldest democracy has to be told by this struggling democracy: This isn't what you are supposed to do. But that is what is happening.

Let's go to the eighth reason why you can know that President Trump put himself first, and that is because there is no serious dispute that the White House tried to bury the call record. They tried to bury the call record. Although President Trump has repeatedly insisted that his July conversation with President Zelensky "was perfect," the White House apparently believed otherwise. Their own lawyers apparently believed otherwise.

Following a head-of-state call, the President issues a summary or readout to lock in any commitments made by the foreign leader and publicly reinforce the core elements of the President's message. However, no public readout was posted on the White House website following the July 25 call. I wonder why that was.

The White House instead provided reporters with a short, incomplete summary that, of course, omitted the major elements of the conversation.

The short summary said: [Slide 293]

Today, President Donald J. Trump spoke by telephone with President Volodymyr Zelenskyy of Ukraine to congratulate him on his recent election. President Trump and President Zelenskyy discussed ways to strengthen the relationship between the United States and Ukraine, including energy and economic cooperation. Both leaders also expressed that they look forward to the opportunity to meet.

That was it. Now, I don't know about you, but that does not seem like an accurate summary of that call. As you can see, that summary did not mention President Trump's mention of a debunked conspiracy theory about the 2016 election promoted by Russian President Putin. The summary did not mention President Trump's demand that Ukraine announce an investigation into his domestic political rival, former Vice President Biden. The summary did not mention that President Trump praised a corrupt Ukrainian prosecutor, who to this day continues to feed false claims to the President through Rudy Giuliani.

If the call was "perfect," if these investigations were legitimate foreign policy, if the White House had nothing to hide, then ask yourselves: Why did the White House's readout omit any mention of the investigations? Why not publicly confirm that Ukraine had been asked by the President to pursue them?

Why? Because it would have exposed the President's corruption.

Sanitizing the call readout wasn't the only step taken to cover up the President's wrongdoing. The White House Counsel's office also took irregular efforts to hide the call record away on a secure server used to store highly classified information. National Security Council Senior Director Tim Morrison, whom you saw video clips on, testified that he requested that access to the electronic file of the call record be restricted so that it would not be leaked.

Mr. Morrison said the call record did not meet the requirements to be placed on the highly classified system, and Mr. Eisenberg later claimed the call record had been placed on the highly classified system "by mistake."

I am sure it was a very innocent mistake. However, mistake or no mistake, it remained on that system until at least the third week of September 2019. So that mistake continued from July all the way through September.

Why were they trying to hide what the President did? This was U.S. policy and they were proud of it. If they were really interested in corruption, if this was about corruption, if this had nothing to do with the President's reelection campaign, if Biden was merely an interesting coincidence, why did they bury the record? Why did they hide the record? Why did they put the record on a system meant for highly classified information, which the folks in here on the Intelligence Committee and many others can tell you is usually used for things like covert action operations—the most sensitive secrets?

Well, this was a very sensitive political secret. This was a covert action of a different kind. This was a corrupt action and it was hidden, and they knew it was, and that is why they hid it. Innocent people don't behave that way.

Let's go to the ninth reason that you know President Trump put himself first. The clearest reason that we can tell that all that President Trump cared about was the investigations is that President Trump confirmed his desire for these investigations in his statements to his agents and when this scheme was discovered, to the American people.

The very day after he solicited foreign interference to help him cheat in the 2020 election, President Trump spoke with Gordon Sondland, who was in Ukraine. President Trump had only one question for Ambassador Sondland: "So, he's going to do the investigation?"

Here is David Holmes recounting the call between President Trump and Sondland:

(Text of Videotape presentation:)

Mr. HOLMES. I then heard President Trump ask, "So he's going to do the investigation?" Ambassador Sondland replied that he is going to do it, adding that President Zelensky will do "anything you ask him to do."

Mr. Manager SCHIFF. So here we are; this is July 26. President Zelensky doesn't want to be used as a pawn and doesn't want to be drawn into U.S. politics, but at this point he feels he has no choice. Sondland tells David Holmes he is going to do it. Of course, that is the only thing the President asked about in that call. Sondland says he is going to do it, adding that Zelensky will do "anything you ask" him to do, including, apparently, be his pawn.

Although Sondland didn't remember the details of his conversation, he did not dispute Holmes' recollection of it. In fact, Ambassador Sondland had an interesting take on it, which you should hear.

(Text of Videotape presentation:)

Ambassador SONDLAND. Actually, actually, I would have been more surprised if President Trump had not mentioned investigations, particularly given what we are hearing from Mr. Giuliani about the President's concerns.

Mr. Manager SCHIFF. That is pretty telling that in this call, the day after he has had this head-of-state call—they finally got the call arranged between these two Presidents—and Ambassador Sondland, with major support of the President, says: I would have been more surprised if he didn't bring it up.

The President doesn't bring up the war with Russia. He doesn't bring up anything else. He just brings this up, and Sondland confirms: Yeah, frankly, I would have been surprised if it was something different because we are all in the loop here.

Everybody understood what this President wanted, and apparently everybody also understood just how wrong it was and how damaging it was.

In September 2019, even after President Trump learned that his scheme was in danger of becoming publicly exposed, he would not give up. He still expected Ukraine to announce investigations into Joe Biden and his alleged Ukrainian interference in 2016. According to three witnesses, President Trump emphasized to Ambassador Sondland during a call on September 7 that President Zelensky "should want to do it."

Then you have the President's remarks on October 3:

(Text of Videotape presentation:)

REPORTER. What exactly did you hope Zelensky would do about the Bidens after your phone?

President TRUMP. Well, I would think that, if they were honest about it, they'd start a major investigation into the Bidens. It's a very simple answer.

Mr. Manager SCHIFF. So here we hear again from the President's own words what his primary object is, and his primary object is helping his reelection campaign—help to cheat in his reelection campaign. After all that we have been through and after all that we went through with the Russian interference in our election and all that cost, he was at it again, unrepentant and undeterred. If anything, he was emboldened by escaping accountability from his invitation and willful use of Russian-hacked materials in the last election, and unconstrained. This is a President who truly feels that under article II he can do whatever he wants, and that includes coercing an ally to help him cheat in an election.

If he is successful, the election is not a remedy for that. A remedy in which the President can cheat is no remedy at all, which is why we are here. This was not about corruption, which brings me to No. 10, the 10 reasons you know President Trump put himself first.

Ironically, the President has argued that his corrupt conduct in soliciting sham investigations from Ukraine was driven by his concerns about corruption in Ukraine. This attempt to legitimize his efforts is simply not credible and not the least bit believable given the mountain of evidence in the record of President Trump's corrupt intent. There is no evidence that President Trump cared one whit about anti-corruption efforts at all. That is the 10th reason you know this was all political.

First, the evidence and President Trump's own public statements make clear that when the President talks about corruption in Ukraine, he is only talking about that sliver [Slide 294]—that little sliver—of alleged corruption that just somehow happened to be affected by his own political interests, specifically two investigations that would benefit his reelection.

For example, on September 25, in a joint press availability with President Zelensky—the man who doesn't want to be a pawn—at the United Nations General Assembly, President Trump emphasized his understanding of corruption to relate to the Biden investigation.

(Text of Videotape presentation:)

President TRUMP. Now, when Biden's son walks away with millions of dollars from Ukraine, and he knows nothing, and they're paying him millions of dollars, that's corruption.

Mr. Manager SCHIFF. I mean, you can imagine how President Zelensky feels sitting there and hearing this—the man who does not want to be a pawn and the man who doesn't want to be pulled into American politics. And there is the President, at it again, trying to draw his nation in, even while they have a war to fight.

Another example was on September 30, when President Trump stated:

(Text of Videotape presentation:)

President TRUMP. Now, the new President of Ukraine ran on the basis of no corruption. That's how he got elected. And I believe that he really means it. But there was a lot of corruption having to do with the 2016 election against us. And we want to get to the bottom of it, and it's very important that we do.

Mr. Manager SCHIFF. This is, of course, again, bringing up the CrowdStrike conspiracy theory. What does the President say? “Corruption . . . against us.” He is not concerned about actual corruption cases, only about matters that affect him personally.

Two days later, President Trump again tried to link corruption with the Biden investigation.

(Text of Videotape presentation:)

President TRUMP. The only thing that matters is the transcript of the actual conversation that I had with the President of Ukraine. It was perfect. We’re looking at congratulations. We’re looking at doing things together. And what are we looking at? We’re looking at corruption. And, in, I believe, 1999, there was a corruption act or a corruption bill passed between both—and signed—between both countries, where I have a duty to report corruption. And let me tell you something: Biden’s son is corrupt, and Biden is corrupt.

Mr. Manager SCHIFF. Just 2 days after that, the President again equated corruption with actions by others to hurt him politically.

(Text of Videotape presentation:)

President TRUMP. Here’s what’s okay: If we feel there’s corruption, like I feel there was in the 2016 campaign—there was tremendous corruption against me—if we feel there’s corruption, we have a right to go to a foreign country.

Mr. Manager SCHIFF. So here, again, the President is pushing out the Kremlin talking points of Ukrainian interference in 2016 and the CrowdStrike conspiracy theory. Again, when President Trump is talking about corruption, he is talking about perceived efforts by political opponents to hurt him. It is personal, and it is political, but it is not anti-corruption policy.

Ambassador Volker confirmed this fact. Fighting corruption in Ukraine, when used by President Trump and Giuliani, in fact, refers to the investigation of the Bidens in 2016. Volker said:

(Text of Videotape presentation:)

Ambassador VOLKER. In hindsight, I now understand that others saw the idea of investigating possible corruption involving the Ukrainian company Burisma as equivalent to investigating former Vice President Biden.

Mr. Manager SCHIFF. So, again, although President Trump and Mr. Giuliani had used the general term “corruption” to describe what they want Ukraine to investigate, it wasn’t about anything actually related to corruption. The evidence, including the President’s own statements, makes clear that this is simply code for the specific investigations that President Trump wanted Ukraine to pursue.

Second, as we have discussed, the President’s timing of his purported concerns about corruption in Ukraine make it all the more suspect. Before news of Vice President Biden’s candidacy broke, President Trump showed [Slide 295] no interest in Ukraine. He gave Ukraine hundreds of millions of dollars under a regime that lost power because of mounting concerns about corruption.

So here we are, the President, in these prior years, giving money to a government, to Mr. Poroshenko, that is viewed as corrupt, and Zelensky comes and runs against him in an underdog campaign—underdog campaign of Zelensky against Poroshenko. And what is the heart of Zelensky’s campaign? That Poroshenko’s government is corrupt, and he is running to clean it up. He is the reformer. He succeeds because the Ukrainians really want to clean up their gov-

ernment. We see this reformer win and carry the hopes of the Ukrainian people.

President Trump had no problem giving money appropriated by Congress to Ukraine under the corrupt regime of Poroshenko where corruption had existed during Poroshenko. But a reformer gets elected, devoted to fighting corruption, and suddenly there is a problem. There was a reason to give more support to Ukraine. We had a President for whom this was the central pillar of his campaign. He came from outside of the government. People placed their hopes in him. You can see President Zelensky trying to flatter the President in that July 25 call by saying: I am up for draining the swamp too. He ran on a campaign of reform.

So there was no problem giving money to the prior regime where there were abundant concerns about corruption, but you get a reformer in office, and now there is a problem? Of course, we know what changed: the emergence of Joe Biden as a candidate.

In the prior regime, corruption was no problem. A reformer comes into office; suddenly, there is a problem. If you need any more graphic example, again, you look at that call.

No one disputes that Marie Yovanovitch was and is a devoted fighter against corruption. That is her reputation. That was part of the reason they had to get rid of her. If you look at that July 25 call, the President is badmouthing this person fighting corruption. He is praising the former Ukrainian prosecutor, who is corrupt. Are we really to believe that this is about fighting corruption? There was no problem supporting the former regime with corruption problems but problems supporting a reformer trying to clean it up; no problems with a corrupt former Ukrainian prosecutor whom he praises in that call—he is a good man—but problems with a U.S. Ambassador who has devoted her life to this country.

It wasn't until 2019, after Biden emerged as a considerable opponent and after Special Counsel Mueller confirmed that President Trump's campaign had welcomed Russian assistance in 2016 that President Trump, we are to believe, suddenly developed an interest in anti-corruption reforms in Ukraine. Never mind that his own Defense Department said they were meeting all the benchmarks. This new administration, the reformer, was doing exactly what we wanted him to do. Never mind that. Now that Biden is in the picture, he has a problem.

Third, when given the opportunity to raise the issue of corruption with the Ukrainians, the President never did. Despite at the request of his staff, the word "corruption" never crosses his lips, just the Bidens and CrowdStrike.

When the President first spoke to President Zelensky on April 21, he was supposed to—he was asked to by his staff—bring up corruption. Go back and check, but I think the readout of that congratulatory call actually said that he brought up corruption. Am I right? My staff says I am right.

So, on April 21, he is asked to bring up corruption. In the congratulatory call to President Zelensky—great reformer—he doesn't bring it up, but you know the readout says that he did. It was just like the readout of the July 25 call, misleading.

Of course, the readout for the second call was far more misleading because there was far more to mislead about. [Slide 296]

But in those two conversations, there is nary a mention of the word “corruption.” We are to believe that, apart from the Bidens, this is what our President was concerned about in Ukraine.

Here is Lieutenant Colonel Vindman.

(Text of Videotape presentation:)

Chairman SCHIFF. Colonel Vindman, if I could turn your attention to the April 21 call, that is the first call between President Trump and President Zelensky, did you prepare talking points for the President to use during that call?

LTC VINDMAN. Yes, I did.

Chairman SCHIFF. And did those talking points include rooting out corruption in Ukraine?

LTC VINDMAN. Yes.

Chairman SCHIFF. That was something the President was supposed to raise in the conversation with President Zelensky?

LTC VINDMAN. Those were the recommended talking points that were cleared through the NSC staff for the President, yes.

Chairman SCHIFF. Did you listen in on the call?

LTC VINDMAN. Yes, I did.

Chairman SCHIFF. The White House has now released the record of that call. Did President Trump ever mention corruption in the April 21 call?

LTC VINDMAN. To the best of my recollection, he did not.

Mr. Manager SCHIFF. President Trump also did not mention the word “corruption” on the July 25 call. Here is Lieutenant Colonel Vindman confirming that as well. Well, actually, that slide is what I was referring to earlier—the good work of my staff.

This is the readout of the April 21 call, which says: [Slide 296]

President Donald J. Trump spoke today to President-elect Volodymyr Zelensky to congratulate him on his victory in Ukraine’s April 21 election. The President wished him success and called the election an important moment in Ukraine’s history, noting the peaceful and democratic manner of the electoral process. President Trump underscored the unwavering support of the United States for Ukraine’s sovereignty and territorial integrity—within its internationally recognized borders—and expressed his commitment to work together with President-elect Zelensky and the Ukrainian people to implement reforms that strengthen democracy, increase prosperity, and root out corruption.

Except that he didn’t.

Let’s hear Colonel Vindman. No, we don’t have that. OK. Let’s not hear Colonel Vindman. You heard enough of Colonel Vindman.

When President Trump had the ear of President Zelensky during the April 21 and July 25 calls, he did not raise that issue—the word “corruption”—a single time.

There is ample other evidence as well. White House officials made clear to President Trump that President Zelensky was anti-corruption, that President Trump should help him fight corruption. [Slide 297] The President’s agencies and departments supported this too. The Defense Department and State Department certified that Ukraine satisfied all anti-corruption benchmarks before President Trump froze the aid.

The point is this: The evidence is consistent. It establishes clearly that President Trump did not care about corruption. To the contrary, he was pursuing a corrupt aim. He wanted Ukraine to do the exact thing that American policy officials have tried for years to stop foreign governments from doing: corrupt investigations of political rivals.

To sum up, the evidence is unmistakably clear. On July 25, while acting as our Nation’s chief diplomat and speaking to the leader of Ukraine, President Trump solicited foreign interference in the U.S.

election for one particular objective: to benefit his own reelection. To seek help in cheating in a U.S. election, he requested—effectively demanded—a personal political favor: that Ukraine announce two bogus investigations that were only of value to himself.

This was not about foreign policy. In fact, it was inconsistent with and diverged from American national security and American values. His own officials knew this, and they reported it. Ukraine knew this. And his own White House attempted to bury the call.

The President has confirmed what he wanted in his own words. He has made it clear he didn't care about corruption; he cared only about himself. Now it is up to us to do something about it, to make sure that a President—that this President cannot pursue an objective that places himself above our country.

Ms. Manager LOFGREN. Well, we have gone through the object of President Trump's scheme: getting Ukraine to announce that investigations would be held, and that would help him cheat and gain an advantage in the 2020 election. Those sham investigations were to advance his personal political interests, not the national interests of America. Let's drill down on the how—how the President abused the power of his office and executed his corrupt scheme.

As noted earlier, the President executed his scheme through three official actions: [Slide 298] first, by soliciting foreign election interference; second, by conditioning an official Oval Office meeting on Ukraine doing or at least announcing the political investigations; and third, by withholding military aid to pressure Ukraine to announce those investigations.

All three of President Trump's official actions were an abuse of his power as President and done for personal gain, but the original abuse was President Trump's solicitation of election interference from a foreign country—Ukraine. He tried to get an announcement of investigations designed to help him in the 2020 Presidential election, so let's start there.

President Trump's corrupt demands of President Zelensky in the July 25 phone call were not just a spontaneous outburst; they were a dramatic crescendo in a monthslong scheme to extort Ukraine into assisting his 2020 reelection campaign.

As was shown, there is evidence of President Trump himself demanding that Ukraine conduct the investigations, but President Trump also delegated his authority to his political agent, Rudy Giuliani, to oversee and direct this scheme. That was beginning in late 2018 and early 2019. Here is how that scheme worked:

First, in January of 2019, Mr. Giuliani and his associates discussed the investigations with the then current and former prosecutor generals of Ukraine. [Slide 299] As we discussed, both were corrupt.

Then in late April 2019, the scheme hit a roadblock. A reform candidate, Zelensky, won the Ukrainian Presidential election. The fear was that President-elect Zelensky would replace the corrupt prosecutor Giuliani had been dealing with.

President Trump removed Ambassador Yovanovitch because his agents, including Giuliani, believed she was another roadblock to the corrupt scheme they were undertaking on his behalf. In her place, President Trump directed a team of handpicked political appointees—U.S. officials who were supposed to work in the public in-

terest—to instead work with Mr. Giuliani to advance the President’s personal interests. Those were the three amigos. As Ambassador Sondland said, those U.S. officials “followed the President’s orders.”

But even with Ambassador Yovanovitch gone, President Zelensky still resisted Mr. Giuliani’s overtures. So, at the President’s direction, throughout May and June, Giuliani ratcheted up public pressure on Ukraine to announce the investigations. No luck. It was only then, when Mr. Giuliani could not get the deal done, that President Trump turned to the second official action—using the Oval Office meeting to pressure Ukraine.

Before we turn to this scheme for soliciting foreign election interference, we need to understand how Mr. Giuliani, the President’s private agent, assumed the leadership role in this scheme that applied escalating pressure on Ukraine to announce investigations helpful to the President’s political interest.

Why is that so important? First, let’s be clear. Mr. Giuliani is President Trump’s personal lawyer. He represented President Trump with his knowledge and consent. The evidence shows Mr. Giuliani and President Trump were in constant contact in this time period. Both U.S. and Ukrainian officials knew Mr. Giuliani was the key to Ukraine.

Let’s review the President’s use of Mr. Giuliani to advance his scheme.

First, no one disputes that Mr. Giuliani was and is President Trump’s personal lawyer. [Slide 300] President Trump has said this. Mr. Giuliani says it. We all know it is true.

Second, President Trump at all times directed and knew about Mr. Giuliani’s actions. How do we know this? Let’s start with the letter signed by Giuliani to President Zelensky. Here is that letter. [Slide 301]

On May 10, 2019, Mr. Giuliani wrote to a foreign leader, President-elect Zelensky. The letter reads: “In my capacity as personal counsel to President Trump and with his knowledge and consent. . . .” Rudy Giuliani, not a government official, asked to speak about President Trump’s specific request, and he makes it clear that it was in his role as the President’s counsel.

Mr. Giuliani didn’t just tell a foreign leader that; he also told the press. The day before Mr. Giuliani’s letter to Zelensky, the New York Times published an article about Mr. Giuliani’s upcoming trip to Ukraine.

Here is a slide about that article. [Slide 302] It said: “Rudy Giuliani Plans Ukraine Trip to Push for Inquiries That Could Help Trump.”

Mr. Giuliani said his trip was to pressure Ukraine to initiate investigations into false allegations against the Bidens and the 2016 election and that it was at the request of the President. He stated that President Trump “basically knows what I’m doing, sure, as his lawyer.”

President Trump repeatedly admitted knowledge of Mr. Giuliani’s activities and to coordinating with him about the Ukrainian activities.

POLITICO reported on May 11, 2019: [Slide 303]

In a telephone interview with POLITICO on Friday, Trump said he didn't know much about Giuliani's planned trip to Ukraine, but wanted to speak to him about it.

And this is a quote of the President's:

"I have not spoken to him at any great length, but I will," Trump said in the interview. "I will speak to him about it before he leaves."

President Trump knew and directed Mr. Giuliani's activities in May 2019 when Mr. Giuliani was planning his visit to Kyiv, and that remains true today.

The Wall Street Journal reported that when Rudy Giuliani returned from a trip to Kyiv just last month, [Slide 304] "the President called him as the plane was still taxiing down the runway." President Trump asked his lawyer: "What did you get?" Giuliani answered: "More than you can imagine."

Even as President Trump faced impeachment in the House of Representatives, he was coordinating with his personal attorney on the Ukraine scheme. The President asked Rudy: "What did you get?"

The evidence also shows that Mr. Giuliani and the President were in frequent contact. During the investigation and in response to a lawful subpoena, the House got call records. They show contacts—not content—between Giuliani, the White House, and other people involved in the President's scheme. For example, on April 23, Rudy Giuliani learned President Trump had decided to fire Ambassador Yovanovitch. According to phone records, on that day, Giuliani had an 8-minute-and-28-second call with a White House number.

Let's look at what happened the next day, on April 24. [Slide 305] Giuliani was again in repeated contact with the White House. For example, he had one 8-minute-42-second call with a White House number. An hour and a half later, he had another call, which lasted 3 minutes and 15 seconds, with the White House. When a reporter recently asked whom he called at the White House, Mr. Giuliani said this: "I talk to the President, mostly."

Rudy Giuliani remained in close contact with the White House after the disclosure of his planned trip to Ukraine in mid-2019. Now, Rudy is the key to Ukraine. We know from Mr. Giuliani and the President's own statements about his role as President Trump's personal agent advancing the Ukraine scheme. We know from their comments and the documentary evidence about the frequency of their contact.

But it wasn't just the frequency of Mr. Giuliani's contact that is significant. Here is what matters: President Trump directed U.S. officials to work with his personal agent, who was pursuing investigations not at all related to foreign policy. U.S. officials, including the President's own National Security Advisor, knew there was no getting around Rudy Giuliani when it came to Ukraine. Witnesses repeatedly testified to the constant presence of Rudy Giuliani on television and in the newspapers. A State Department official, Christopher Anderson, said that John Bolton "joked about, every time Ukraine is mentioned, Giuliani pops up." [Slide 306]

After Ambassador Yovanovitch's dismissal, Ambassador Bolton told Dr. Hill that Rudy Giuliani was a "hand grenade that's going to blow everybody up." Dr. Hill testified that Ambassador Bolton

issued guidance for the National Security Council staff to not engage with Rudy Giuliani. That made sense. Why? Because Mr. Giuliani was not conducting official U.S. foreign policy; he was doing a domestic political errand for President Trump.

Now, these phone records, as I say, lawfully obtained, reveal potential contact between Ambassador Bolton and Rudy Giuliani on May 9, the day the New York Times reported his trip to Kyiv. Rudy Giuliani's role in Ukraine policy is yet another topic that Ambassador Bolton could speak to. You should call him and hear what he has to say about it.

Even without Ambassador Bolton's testimony, multiple other administration officials confirmed Mr. Giuliani's central role. Ambassador Sondland said: It was apparent to everyone that the key to changing the President's mind on Ukraine was Giuliani. David Holmes, U.S. political counselor in Kyiv, said: "Giuliani, a private lawyer, was taking a direct role in Ukrainian diplomacy."

Bad enough that the President ordered U.S. diplomats to "talk to Rudy" about Ukraine, [Slide 306] the scheme got worse. The evidence shows that Ukrainian officials also came to recognize the important role of Mr. Giuliani. On July 10, 2019, Andriy Yermak, the top aide to President Zelensky, sent a text to Ambassador Volker about Rudy Giuliani. In that text, the Ukrainian official said this: [Slide 307]

Thank you for the meeting and your clear and very logical position. Will be great meet with you before my departure and discuss. I feel that the key for many things is Rudi and I ready to talk with him at any time.

Let me repeat that quote: "[T]he key for many things is Rudy.

So the President used his personal agent to conduct his scheme with Ukraine. They were in frequent contact. Everyone—White House officials and Ukrainian officials—knew they had no choice but to deal with Giuliani. What was Mr. Giuliani doing that was so important to Ukraine? Again, the evidence is clear. Mr. Giuliani's focus was to get investigations into President Trump's political rival to help the President's reelection.

We have walked through some of the timeline of Mr. Giuliani's actions and statements about Ukraine, but let's just line them up briefly because it makes the story so clear. April 2019: Vice President Biden officially announced his campaign for the Democratic Party's Presidential nomination. [Slide 308] And a reminder: At the time of Biden's announcement and for months after, [Slide 264] public polling, including from FOX News, showed that Biden would beat President Trump. The FOX News polling data is up on the chart.

Right after Vice President Biden announced his candidacy and while Biden was beating President Trump in the polls, [Slide 308] Mr. Giuliani said in a public interview with the New York Times that he was traveling to Ukraine to pursue investigations. He wanted to make sure that "Biden will not get to election day without this being investigated." The scheme was all about President Trump's reelection.

This continued in June. Mr. Giuliani tweeted on June 21 and urged President Zelensky to pursue the investigation. The scheme continues even now. Mr. Giuliani has tweeted about Joe Biden over 65 times since September, and President Trump told you himself.

He admitted on October 2: “. . . we’ve been investigating, on a personal basis [Slide 308]—through Rudy and others, lawyers—corruption in the 2016 election.” Again, to review, President Trump used his personal agent for Ukraine. He has made this clear to U.S. officials and to the Ukrainians. The evidence shows President Trump and Rudy Giuliani were in constant contact during this period. President Trump directed him to pursue investigations. He told U.S. officials to work with Rudy. He told Ukrainians to work with Rudy. Rudy and his associates pressed Ukraine for investigations into the President’s political rival. Giuliani said: “Biden will not get to election day without this being investigated.”

Keeping all this in mind, let’s turn to the President’s first official act: soliciting foreign interference. As we mentioned, in late 2018 and early 2019, Rudy Giuliani and his associates Lev Parnas and Igor Fruman were busy soliciting information from corrupt Ukrainians to help President Trump. They pursued a monthslong campaign to dig up dirt on Biden. In late 2018 and early 2019, [Slide 309] Parnas, Fruman, and Giuliani met extensively with two corrupt Ukrainian prosecutors, Yuriy Lutsenko and Viktor Shokin, [Slide 310] to gather information they believed would help President Trump. As you will recall, Shokin was corrupt. George Kent described Shokin as “a typical Ukrainian prosecutor who lived a lifestyle far in excess of his government salary, who never prosecuted anybody known for having committed a crime” and who “covered up crimes that were known to have been committed.” And remember, because Shokin was corrupt, Vice President Biden had urged his removal. This was in accordance with U.S. policy.

Shokin blamed the former Vice President for his dismissal by the Ukrainian Parliament. He wanted to revive his political fortunes in Ukraine by assisting with Giuliani’s effort. At the end of January, Giuliani, Parnas, and Fruman participated in a conference call with Shokin. He made allegations about Vice President Biden and Burisma. Shokin also falsely claimed that Ambassador Yovanovitch had improperly denied him a U.S. visa and that she was close to Vice President Biden. Also, in January, Giuliani, Parnas, and Fruman met with Lutsenko in New York. They discussed investigations into Burisma and the Bidens and whether Ambassador Yovanovitch was “loyal to President Trump.” Lutsenko held a grudge against Ambassador Yovanovitch because she and the broader State Department were critical of Lutsenko’s failures. They were critical of his failure to prosecute corruption in Ukraine. This was the motivation for Lutsenko to give Giuliani and his associates false information on Biden and Burisma.

And here is the point: Lutsenko and Shokin had grudges against Biden and Ambassador Yovanovitch. Why? Because they were implementing U.S. policy to fight corruption in Ukraine. Now, Giuliani and his associates had motive to harm Biden: to help get President Trump reelected. They had motive to remove Ambassador Yovanovitch or anyone else who got in the way of their efforts to smear Biden. Giuliani admitted this. He told the New York Times that he spoke to President Trump about how Ambassador Yovanovitch frustrated efforts that could be politically helpful to President Trump. Giuliani admitted this was all to benefit President Trump. Documents give us evidence of this scheme. WhatsApp

exchanges that Parnas recently gave to Congress made clear that, in exchange for derogatory information about Biden, Lutsenko wanted Yovanovitch removed from her post in Kyiv.

Here is that WhatsApp report. [Slide 311] For example, on March 22, Lutsenko wrote: “It’s just that if you don’t make a decision about Madam—you are bringing into question all my allegations, including about B.” Now, here, “B” could either be Biden or Burisma or both, but “Madam” is Ambassador Yovanovitch.

In the March 22 text, Lutsenko implied that, if Parnas wanted dirt on Biden—Burisma—he needed to do something about Ambassador Yovanovitch. Days later, on March 28, Parnas assured Lutsenko that his efforts were being recognized in the United States and that he would be rewarded. Parnas wrote: [Slide 312]

I was asked to personally convey to you that America supports you and will not let you be harmed no matter how things look now. Soon everything will turn around and will be on the right course. Just so you know, here people are talking about you as a true Ukrainian hero.

Lutsenko responded with the dirt that President Trump wanted. He wrote: “I have copies of payments from Burisma to Seneca.” Minutes after being reassured that “America supports you and will not let you be harmed,” Lutsenko claimed he had records of payments from Burisma to Rosemont Seneca Partners, a firm founded by Hunter Biden. This text message, along with others, shows that Lutsenko was providing derogatory information on the Bidens in exchange for Parnas pushing for Ambassador Yovanovitch’s removal.

Now, in late March and throughout April 2019, the smear campaign against the Bidens and against Ambassador Yovanovitch entered a more public phase through a series of opinion pieces published in *The Hill*. The public airing of these allegations was orchestrated—orchestrated by Giuliani, Parnas, and Lutsenko. We know from records produced by Parnas that he played an important role in getting derogatory information from Lutsenko and his deputy to John Solomon, who wrote the opinion pieces in *The Hill*.

According to *The Hill* articles, Ukrainian officials falsely claimed to have evidence of wrongdoing about the following: One, Vice President Biden’s efforts in 2015 to remove Shokin; two, Hunter Biden’s role as a Burisma board member; three, Ukrainian interference in the 2016 election in favor of Hillary Clinton; and four, the misappropriation and transfer of Ukrainian funds abroad.

This was what President Trump wanted from the Ukrainians: the same information Mr. Giuliani and his agents were scheming up with Ukraine to hurt Biden and, in exchange, to have Ambassador Yovanovitch removed.

Now, Mr. Giuliani was very open about this, and here is a clip worth watching.

(Text of Videotape presentation:)

MR. GIULIANI. Let me tell you my interest in that. I got information about three or four months ago that a lot of the explanations for how this whole phony investigation started will be in the Ukraine, that there were a group of people in the Ukraine that were working to help Hillary Clinton and were colluding really—[LAUGHTER]—with the Clinton campaign. And it stems around the ambassador and the embassy, being used for political purposes. So I began getting some people that were coming forward and telling me about that. And then all of a sudden, they revealed the story about Burisma and Biden’s son.

Ms. Manager LOFGREN. Mr. Giuliani got laughed at on FOX News for advancing the crowd source conspiracy theory, but the clip shows that he had been making an effort to get derogatory information from the Ukrainians on behalf of his client, President Trump.

My colleague Mrs. DEMINGS will now further detail how the scheme evolved.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. I understand the presentations will continue for a while, and I would suggest a dinner break at 6:30 for 30 minutes.

The CHIEF JUSTICE. Without objection.

Mrs. Manager DEMINGS. Chief Justice Roberts, Senators, and, of course, the counsel for the President, at this point, everything was going to plan. Mr. Giuliani was scheming with the corrupt Ukrainian prosecutors who were offering dirt on Biden that would help President Trump get reelected. They were pressing President Trump to remove Ambassador Yovanovitch, including publicly tarnishing her reputation, based on false and baseless claims. But then the President's scheme hit a roadblock.

On April 21, President Zelensky—then the anti-corruption candidate—won a landslide victory in Ukraine's Presidential election. U.S. officials unanimously testified that President Zelensky's mandate to pursue reform would be good for our national security. However, it was potentially bad news for President Trump's scheme.

Mr. Giuliani did not have a relationship with Zelensky. As a reformer, he would be less amenable to announcing the sham investigations. Zelensky would not want to get dragged into U.S. domestic politics.

Additionally, the election of a new Ukrainian President raised the concern that Lutsenko, with whom Mr. Giuliani had been plotting, would be replaced by a new Ukrainian prosecutor general. A new prosecutor general, especially one appointed in an anti-corruption regime, would likely be less willing to conduct sham investigations to please an American President.

Mr. Giuliani decided to attack the issue from both sides. He pressed President Trump to remove Ambassador Yovanovitch, which would keep Lutsenko happy. He continued to work hard to get dirt on Biden. And he tried to get a meeting with Zelensky to secure the new Ukrainian leader's commitment to press the investigations. This strategy played out on April 23 and 24.

First, on April 23, Parnas and Fruman were in Israel, trying to arrange a meeting between Giuliani and the newly minted Ukrainian President Zelensky.

On April 23, Giuliani left a voicemail message for Parnas. Let's play that voicemail.

Well, I was going to say it would be difficult to hear, but I am sure you cannot hear it at all. Let me tell you what it says. He says:

It's Rudy. When you get a chance, give me a call and bring me up to date okay? I got a couple of things to tell you too.

Parnas and Giuliani eventually spoke on that same day. We have the phone records that prove that. According to phone records, Parnas and Giuliani had a 1-minute-50-second call.

Fifteen minutes after they hung up, the records also show that Mr. Giuliani [Slide 313] placed three short phone calls to the White House. Shortly thereafter, the White House called Giuliani back. Giuliani spoke with someone at the White House for 8 minutes and 28 seconds.

I will quickly note that at the time the Intelligence Committee issued its report in mid-December, we did not know whether that 8-minute-28-second call was from the White House. We have since received information from a telecom company that it was indeed the White House.

We don't have a recording of that call. Neither the White House nor Giuliani produced any information to Congress about what was discussed. Of course, the White House has refused, as you already know, to cooperate in any way. But even without the evidence that the White House is hiding—with the evidence we do have—these phone records prove that Mr. Giuliani was keeping President Trump informed about what was going on when he was trying to meet President Zelensky and get Ukraine to commit to the investigations.

Let's look at President Trump's decision to remove Ambassador Yovanovitch. Following the call between Mr. Giuliani and the White House on April 23, Parnas asked Giuliani for an update. [Slide 314] Parnas texted: "Going to sleep my brother please text me or call me if you have any news."

Giuliani responded: "He fired her again." [Slide 315]

That was, of course, in reference to Ambassador Yovanovitch. Her removal would no doubt please the corrupt Ukrainian prosecutor, Lutsenko, who offered derogatory information about Hunter Biden. It also eliminated a potential obstacle identified by Giuliani.

Parnas responded: "I pray it happens this time I'll call you tomorrow my brother." [Slide 316]

And it did—because we know that the very next day, on April 24, Ambassador Yovanovitch received two frantic phone calls from Ambassador Carol Perez at the State Department. The second call came at 1 a.m.

According to Ambassador Yovanovitch, as you can see from the slide on the screen, the Director General of the Foreign Service told her that [Slide 317] "there was a lot of concern for me, that I needed to be on the next plane home to Washington."

Yovanovitch recalled:

And I was like, what? What happened?

And Perez said:

I don't know, but this is about your security. You need to come home immediately. You need to come home on the next plane.

Yovanovitch asked what Perez meant by "physical security." Perez "didn't get that impression" but repeated that Yovanovitch needed "to come back immediately." This was no coincidence.

Mr. Giuliani and his agents conspired to meet President Zelensky. They conspired for Ambassador Yovanovitch to be removed. Within hours of Mr. Giuliani saying he prayed Ambassador

Yovanovitch would get fired, Ambassador Yovanovitch got a frantic phone call to get on the next plane.

That same day, on April 24, Giuliani appeared on “Fox & Friends” and promoted the false conspiracy theories about Ukraine and Vice President Biden that were all part of this agreement. Let’s look and listen to what he said.

(Text of Videotape presentation:)

Mr. GIULIANI. And I ask you to keep your eye on Ukraine, because in Ukraine, a lot of the dirty work was done digging up the information. American officials were used, Ukrainians officials were used. That’s collusion with Ukrainians. And, or actually in this case, conspiracy with the Ukrainians. I think you’d get some interesting information about Joe Biden from Ukraine. About his son, Hunter Biden. About a company he was on the board of for years, which may be one of the most crooked companies in Ukraine. [Russian company—not a Ukrainian—you know, big difference there. Yanukovich—the guy they tossed out and Manafort got in all the trouble with—the guy who owns it worked for Yanukovich, pulled 10 billion out of the Ukraine, has been a fugitive—was a fugitive when Biden’s kid first went to work there.] And Biden bragged about the fact that he got the prosecutor general fired. The prosecutor general was investigating his son and then the investigation went south.

Mrs. Manager DEMINGS. Ambassador Yovanovitch was never provided a justification for her removal. She was an anti-corruption crusader, a highly respected diplomat. And she had been recently asked to extend her stay in Ukraine.

While American Ambassadors serve at the pleasure of the President—we do understand that—I am sure you would all agree that the manner and circumstances surrounding the Ambassador’s removal were unusual and raised questions of motive.

Every witness who testified confirmed that there was no factual basis to the accusations Lutsenko lodged against Ambassador Yovanovitch. Under Secretary of State David Hale, the most senior career diplomat at the State Department, [Slide 318] testified that Marie Yovanovitch was an outstanding Ambassador and should have been permitted to remain in Kyiv.

Even more significant, several witnesses testified that President Trump’s decision to remove Ambassador Yovanovitch undercut U.S. national security objectives in Ukraine during a critical time.

Dr. Hill, for example, explained that many of the key U.S. policies toward Ukraine were being implemented by the U.S. Embassy in Kyiv. And then suddenly “we had just then lost the leadership.” This created what Hill labeled “a period of uncertainty” as to how our government was going to execute U.S. policy.

George Kent testified that the ouster of Ambassador Yovanovitch “hampered U.S. efforts to establish rapport with the new Zelensky administration in Ukraine.”

So why did President Trump remove a distinguished career public servant Yovanovitch, an anti-corruption crusader and a top diplomat in the State Department?

We know why. The answer is simple: President Trump removed Ambassador Yovanovitch because she was in the way. She was in the way of the sham investigations that he so desperately wanted; investigations that would hurt former Vice President Biden and undermine the Mueller investigation into Russian election interference; investigations that would help him cheat in the 2020 election.

Rudy Giuliani admitted that he personally told President Trump about his concern that Ambassador Yovanovitch was an obstacle to securing Ukrainian cooperation on the two bogus investigations they solicited from Ukraine. And Rudy Giuliani confirmed that President Trump decided to remove Ambassador Yovanovitch based on the bogus claim that she was obstructing his scheme to secure Ukraine's cooperation. Indeed, Mr. Giuliani was explicit about this when he told the New Yorker last month. He said: [Slide 319]

I believed that I needed Yovanovitch out of the way. She was going to make the investigations difficult for everybody.

So let's recap. Mr. Giuliani and his agents, on behalf of President Trump, the United States President, worked with corrupt Ukrainians to get dirt on President Trump's political opponent. Mr. Giuliani said this in press interviews. He texted about it with his agents, and he repeatedly called the White House.

Following the election of a new Ukrainian leader committed to fighting corruption, President Trump removed Ambassador Yovanovitch, an anti-corruption crusader, and Mr. Giuliani told us why: to get her out of the way for the investigations to move forward. That is how far President Trump was willing to go to get his investigations. To smear a highly respected, dedicated Foreign Service officer who had served this country unselfishly for his own selfish political interests is disgraceful.

Even with the removal of Ambassador Yovanovitch, President Zelensky's election victory threw a wrench into the President's scheme. That is because Lutsenko was reportedly going to be replaced. After Mr. Giuliani told the New York Times on May 9 that he intended to travel to Ukraine on behalf of President Trump in order to "meddle in an investigation," Ukrainian officials publicly pushed back. Please hear what I said. Ukrainian officials publicly pushed back on the suggestions of corruption proposed by Mr. Giuliani, who was working on behalf of the U.S. President.

Well, Mr. Giuliani canceled his trip on May 10 and claimed on FOX News that President Zelensky was surrounded by "enemies" of President Trump. Let's listen.

(Text of Videotape presentation:)

Mr. GIULIANI. I decided, Shannon, I'm not going to go to Ukraine.

REPORTER. You are not going to go?

Mr. GIULIANI. I am not going to go because I think I'm walking into a group of people that are enemies of the President.

Mrs. Manager DEMINGS. It appears Giuliani's statement influenced President Trump's view of Ukraine, as well. At an Oval Office meeting on May 23, U.S. officials learned of Giuliani's influence. Ambassador Volker testified that President Trump "didn't believe" the positive assessment government officials gave the new Ukrainian President. Instead, President Trump told them that Giuliani "knows all of these things" and said that President Zelensky has "some bad people around him." At this point, the scheme had stalled. Mr. Giuliani and the President knew that they were going to have trouble with President Zelensky fulfilling his corrupt demand for investigations that would benefit President Trump's reelection campaign.

That brings us to the next phase of this scheme. Although his corrupt scheme was in trouble due to the unexpected results of the

Ukrainian election—the election which yielded an anti-corruption reformer—President Trump doubled down on his scheme to solicit investigations for his personal benefit.

In May of 2019, with a gap in American leadership in Ukraine after Ambassador Yovanovitch was removed, President Trump enlisted U.S. officials to help to do his political work. The scheme grew from false allegations by disgruntled, corrupt Ukrainian prosecutors to a plot by the President of the United States to extort the new Ukrainian President into announcing his political investigations. During the May 23 Oval Office meeting, President Trump directed Ambassador Sondland, Ambassador Volker, and Secretary Perry to work with Mr. Giuliani on Ukraine. Giuliani had made clear he was pursuing investigations for President Trump in a personal capacity. He said publicly, on numerous instances, that he was only working for the President in a personal capacity and not on foreign policy. Yet President Trump still told White House officials that they had to work with Mr. Giuliani to get anywhere on Ukraine. We heard significant testimony on this point. For example, Ambassador Volker recalled that at the Oval Office meeting on May 23, President Trump directed the U.S. officials to “talk to Rudy.” Ambassador Sondland testified that President Trump directed them to “talk to Rudy.” In that moment, the U.S. diplomats saw the writing on the wall and concluded “that if we did not talk to Rudy, nothing would move forward, nothing would move forward on Ukraine.” Pay attention to Ambassador Sondland’s testimony.

(Text of Videotape presentation:)

Ambassador SONDLAND. In response to our persistent efforts in that meeting to change his views, President Trump directed us to, quote, “talk with Rudy.” We understood that “talk with Rudy” meant, talk with Mr. Rudy Giuliani, the President’s personal lawyer.

Let me say again, we weren’t happy with the President’s directive to talk with Rudy. We did not want to involve Mr. Giuliani. I believe then, as I do now, that the men and women of the State Department, not the President’s personal lawyer, should take responsibility for Ukraine matters.

Nonetheless, based on the President’s direction, we were faced with a choice. We could abandon the efforts to schedule the White House phone call and the White House visit between Presidents Trump and Zelensky, which was unquestionably in our foreign policy interest, or we could do as President Trump had directed and talk with Rudy. We chose the latter, of course, not because we liked it, but because it was the only constructive path open to us.

Mrs. Manager DEMINGS. And just like that, U.S. officials charged with advancing U.S. foreign policy—U.S. officials who were supposed to act in our country’s interest—were directed to, instead, advance President Trump’s personal interests. From that point on, they worked with the President’s personal agent on political investigations to benefit the President’s reelection.

Their work on President Trump’s behalf to solicit foreign interference in our elections continued throughout all of June. For instance, on June 21, Mr. Giuliani tweeted that President Zelensky had not yet publicly committed on two politically motivated investigations designed to benefit President Trump. [Slide 320] And when Mr. Giuliani’s public efforts and his tweets didn’t move President Zelensky to announce the investigations, he used U.S. diplomats as directed by President Trump. This is important.

After Giuliani canceled his trip to Ukraine in May and commented that President-elect Zelensky had enemies of President

Trump around him, Giuliani had minimal access to the new Ukrainian leader's inner circle. His primary Ukraine connection, Prosecutor General Lutsenko, had already been informed that he would be removed as soon as the new Parliament convened. So President Trump gave him U.S. diplomats and directed them to work with Mr. Giuliani on his scheme. As you heard, President Trump told Ambassadors Sondland and Volker to talk with Rudy and work with Rudy on Ukraine. And what did that mean? Well, Mr. Giuliani tried to use Ambassador Sondland and Volker to gain access to President Zelensky and his inner circle through their official State Department channels and made clear to President Zelensky that he had to announce the investigations.

On June 27, Ambassador Sondland brought Ambassador Taylor up to speed on Ukraine since Ambassador Taylor had just arrived in the country a few weeks beforehand. Ambassador Sondland explained that President Zelensky needed to make clear that he was not standing in the way of the investigations that President Trump wanted—that President Zelensky needed to make clear that he was not standing in the way of the investigations that President Trump wanted. And here is his testimony.

(Text of Videotape presentation:)

Ambassador TAYLOR. On June 27th, Ambassador Sondland told me during a phone conversation that President Zelensky needed to make clear to President Trump that he, President Zelensky, was not standing in the way of investigations.

Mrs. Manager DEMINGS. Ambassador Taylor relayed this conversation to one of his deputies, U.S. Diplomat David Holmes, who testified that he understood the investigations to mean the “Burisma-Biden investigations that Mr. Giuliani and his associates had been speaking about” publicly.

Let's listen to Mr. Holmes.

(Text of Videotape presentation:)

Mr. HOLMES. On June 27th, Ambassador Sondland told Ambassador Taylor in a phone conversation, the gist of which Ambassador Taylor shared with me at the time, that President Zelensky needed to make clear to President Trump that President Zelensky was not standing in the way of, quote, “investigations.” I understood that this meant the Biden/Burisma investigations that Mr. Giuliani and his associates had been speaking about in the media since March.

Mrs. Manager DEMINGS. Even with the addition of President Trump's political appointees to aid Mr. Giuliani's efforts, President Zelensky did not announce the investigations. As Mr. Giuliani's June 21 tweet shows, the Ukrainian President was resisting President Trump's pressure.

So what happened? Well, that brings us to the President's next official act: turning up the pressure by conditioning an official White House meeting on Ukraine announcing his political investigations.

Senators, I know we have covered a lot of ground, but as we have shown, there is overwhelming and uncontradicted evidence of the President's scheme to solicit foreign interference in this year's Presidential election.

Let me say this also. Each time that we remind this body of the President's scheme to cheat, to win, some of his defenders say that we are only concerned about winning the next election—the Democrats are only doing this to win the next election.

But you know better because this trial is much bigger than any one election, and it is much bigger than any one President. This moment is about the American people. Whether a maid or a janitor, whether a nurse, a teacher, or a truck driver, whether a doctor or a mechanic, this moment is about ensuring that their votes matter and that American elections are decided by the American people.

President Trump acted corruptly. He abused the power of his office by ordering U.S. diplomats to work with his political agent to solicit two politically motivated investigations by Ukraine. The investigations were designed solely to help his personal interests, not our national interests. Neither investigation solicited by President Trump had anything to do with promoting U.S. foreign policy or U.S. national security. Indeed, as we will discuss later, both investigations and the President's broader scheme to secure Ukraine's interference was a threat. It was a threat. It was a threat to our national security. The only person who stood to benefit from the abuse of office and solicitation of these investigations was Donald Trump—the 45th President of the United States.

This was a violation of public trust and a failure to take care that the laws be faithfully executed, but when it came down to choosing between the national interests of the country and his own personal interests—his reelection—President Trump chose himself.

Mr. Manager JEFFRIES. Mr. Chief Justice, the distinguished Members of the Senate, the counsel to the President, and all of those who are assembled here today, earlier this morning, I was on my way to the office, and I ran into a fellow New Yorker who just happens to work here in Washington, DC.

He said to me: Congressman, have you heard the latest outrage?

I wasn't really sure what he was talking about. So, to be honest, I thought to myself, Well, the President is now back in town. What has Donald Trump done now? So I said to him: What outrage are you talking about?

He paused for a moment, and then he said to me: Someone voted against Derek Jeter on his Hall of Fame ballot.

(Laughter.)

Life is all about perspective.

I understand that, as House managers, we certainly hope we can subpoena John Bolton and subpoena Mick Mulvaney, but perhaps we can all agree to subpoena the Baseball Hall of Fame to try to figure out who, out of 397 individuals, was the one person who voted against Derek Jeter.

I was thinking about that as I prepared to rise today, because what is more American than baseball and apple pie? Perhaps the one thing that falls into that category is the sanctity and continuity of the U.S. Constitution.

As House managers, we are here in this august body because we believe it is necessary to defend our democracy. Some of you may agree with us at the end of the day, and others most likely will not, but we do want to thank you for your courtesy and for your patience in extending to us the opportunity to present our case with dignity to you and to the American people during this solemn constitutional moment.

I want to speak for just some time on the second official act that President Trump used to corruptly abuse his power, which was the withholding of an official Oval Office meeting with the President of Ukraine.

As discussed yesterday, “quid pro quo” is a Latin term. It means “this for that.” [Slide 321]

President Trump refused to schedule that Oval Office meeting until the Ukrainian leader announced the phony political investigations that he demanded on July 25. He knew President Zelensky needed the meeting to bolster his standing. He knew that Ukraine was a fragile democracy. He knew that President Zelensky needed the meeting to show Vladimir Putin that he had the support of Donald Trump, but President Trump exploited that desperation for his own political benefit—this for that. Did a quid pro quo exist? The answer is yes.

Let’s listen to Ambassador Sondland on this point.

(Text of Videotape presentation:)

Ambassador SONDLAND. I know that members of this committee frequently frame these complicated issues in the form of a simple question. Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes.

Mr. Manager JEFFRIES. Did President Trump abuse his power and commit an impeachable offense? The answer is yes.

The phony political investigations that President Trump demanded from Ukraine were part of a scheme to sabotage a political rival—Joe Biden—and cheat in the 2020 election. No national interest was served. The President used his awesome power to help himself and not the American people. He must be held accountable.

The President’s defenders may argue, as Mick Mulvaney tried to, that quid pro quo arrangements are a common aspect of U.S. foreign policy. Nonsense. There are situations where official United States acts, like head-of-state meetings or the provision of foreign assistance, are used to advance the national interests of the United States. That is not what happened here. Here, President Trump sought to advance his own personal political interests, facilitated by Rudolph Giuliani, the human hand grenade.

Let’s walk through the overwhelming evidence of how President Trump withheld an official White House meeting, which was vitally important to Ukraine, as part of a corrupt scheme to convince President Zelensky to announce two phony political investigations.

First, the Oval Office meeting President Trump corruptly withheld constitutes an official act. President Trump chose to withhold this meeting for a reason. [Slide 322] It was not some run-of-the-mill meeting. It was one of the most powerful tools he could wield in his role as the leader of the free world. It would have demonstrated U.S. support for Ukraine’s newly elected leader at a critical time. Ukraine is under relentless attack by Russian-backed separatists in Crimea and in the East. Ukraine desperately needed an Oval Office meeting, and President Trump knew it.

Second, President Trump withheld that Oval Office meeting to increase pressure on Ukraine to assist his reelection campaign by announcing two phony investigations. As my colleagues have detailed extensively throughout the day, this is a classic quid pro quo.

Third, multiple administration officials, including the President's own handpicked supporters and appointees, confirmed that a corrupt exchange was being sought.

Finally, contemporaneous documentation makes clear that the President corruptly abused his power to advance the scheme to try and cheat in the 2020 election—this for that.

Let's explore whether the granting or the denial of an Oval Office meeting constitutes an official act.

As we discussed earlier today, an abuse of power occurs when the President exercises his official power to obtain a corrupt personal benefit while ignoring or injuring the national interests.

Pursuant to the Constitution and more than 200 years of tradition, as President, Donald Trump is America's head of state and chief diplomat. Article II grants the President wide latitude to conduct diplomacy and to, specifically, receive Ambassadors and other public Ministers. The President decides which head-of-state meetings best advance the national interests and which foreign leaders are deserving of an official reception in the Oval Office—perhaps one of the most prestigious nonreligious venues in the world.

In diplomacy, perception matters. Meetings between heads of state are make-or-break moments that can determine the trajectory of global events, and a meeting with the President of the United States in the Oval Office is unquestionably monumental, particularly for a fragile democracy like Ukraine.

The Oval Office is where foreign leaders facing challenges at home go—like a war with Russia—in pursuit of a strong and public demonstration of American support. That is especially true in this particular case. The decision to grant or withhold an Oval Office meeting to President Zelensky has profound consequences for the national security interests of both Ukraine and the United States.

To understand the full context of President Trump's corrupt demands to the Ukrainian leader, it is important to consider the geopolitical context—that all of you are very familiar with—confronting the Ukrainian people.

Ukraine is at war with Russia. In 2014, Russia annexed Crimea by force. The United States and other European countries rallied to Ukraine's defense, providing economic assistance, diplomatic support, and later, with strong advocacy from this body, lethal aid. This support meant Russia faced consequences for its aggression.

Here is Ambassador Yovanovitch's testimony explaining just how important the United States is to Ukraine.

(Text of Videotape presentation:)

Ambassador YOVANOVITCH. The U.S. relationship for Ukraine is the single most important relationship, and so I think that President Zelensky, any president, would do what they could to lean in on a favor request. I'm not saying that that's a yes, I'm saying they would try to lean in and see what they could do.

Mr. GOLDMAN. Fair to say that a president of Ukraine that is so dependent on the United States would do just about anything within his power to please the president of the United States if he could?

Ambassador YOVANOVITCH. If he could. I'm sure there are limits, and I understand there were a lot of discussions in the Ukrainian government about all of this, but yeah, we are an important relationship on the security side and on the political side. And so, the president of Ukraine, one of the most important functions that individual has is to make sure the relationship with the U.S. is rock solid.

Mr. Manager JEFFRIES. But it isn't just the relationship itself. It was a public meeting in the White House that would show U.S. support for Ukraine.

A meeting with the President of the United States in the Oval Office is one of the most forceful diplomatic signals of support that the United States can send.

Veteran diplomat George Kent testified to this.
(Text of Videotape presentation:)

Mr. KENT. New leaders, particularly countries that are trying to have good footing in the international arena, see a meeting with the US president in the Oval Office at the White House as the ultimate sign of endorsement and support from the United States.

Mr. Manager JEFFRIES. President Zelensky was a newly elected leader. He was swept into office on the pledge to end pervasive corruption. He also had a mandate to negotiate an end to the war with Russia. To achieve both goals, he needed strong U.S. support, particularly from President Trump, which Zelensky sought in the form of a White House meeting.

David Holmes, political counselor to the Embassy in Kyiv, described the particular importance of a White House visit to Ukraine in the context of its war with Russia.

(Text of Videotape presentation:)

Mr. HOLMES. It is important to understand that a White House visit was critical to President Zelensky. President Zelensky needed to show U.S. support at the highest levels in order to demonstrate to Russian President Putin that he had U.S. backing, as well as to advance his ambitious anticorruption agenda at home.

Mr. Manager JEFFRIES. In other words, Ukraine knew that Russia was watching carefully.

That was particularly true in the spring of 2019, when Donald Trump launched the scheme at the center of the abuse of power charge.

During this time period, Vladimir Putin was preparing for peace negotiations with the new Ukrainian leader. Putin could choose to escalate or he could choose to deescalate Russian aggression. And influencing his decision was an assessment of whether President Trump had Ukraine's back.

(Text of Videotape presentation.)

Ambassador TAYLOR. The Russians, as I said in my deposition, "would love to see the humiliation of President Zelensky at the hands of the Americans."

Mr. Manager JEFFRIES. An Oval Office meeting would have sent a strong signal of support that President Trump had Ukraine's back. The absence of such a meeting could be devastating. Indeed, Ukraine made very clear to the United States just how important a White House meeting between the two heads of State was for its fragile democracy.

At the deposition, as the one on the screen reveals, Lieutenant Colonel Alexander Vindman, the director for Ukraine on the National Security Council, recalled [Slide 323] that following President Zelensky's inauguration, at every single meeting with Ukrainian officials, they asked their American counterparts about the status of an Oval Office meeting between the two Presidents.

Initially, the Ukrainians had reason to be optimistic that a White House meeting would be promptly scheduled. On April 21, during President Zelensky's first call with President Trump, [Slide 324]

the new Ukrainian leader asked about a White House visit three times. As part of that brief congratulatory call, President Trump himself did extend an invitation. Ukraine's dependence on the United States and its desperate need for a White House meeting created an unequal power dynamic between the two Presidents.

As Lieutenant Colonel Vindman testified, it is that unequal power dynamic that turned any subsequent request for a favor from the President into a demand.

(Text of Videotape presentation:)

The CHAIRMAN. Colonel, you've described this as a demand, this favor that the President asked. What is it about the relationship between the President of the United States and the President of Ukraine that leads you to conclude that when the President of the United States asks a favor like this, it's really a demand?

LTC VINDMAN. Chairman, the culture I come from, the military culture, when a senior asks you to do something, even if it's polite and pleasant, it's not—it's not to be taken as a request, it's to be taken as an order.

In this case, the power disparity between the two leaders, my impression is that, in order to get the White House meeting, President Zelensky would have to deliver these investigations.

Mr. Manager JEFFRIES. Ambassador Gordon Sondland, Trump appointee, also acknowledged the importance of this power disparity and how it made President Zelensky eager to satisfy President Trump's wishes.

(Text of Videotape presentation:)

Mr. GOLDMAN. Holmes then said that he heard President Trump ask, quote, "is he," meaning Zelensky, "going to do the investigation?" To which you replied, "he's going to do it." And then you added that President Zelensky will do anything that you, meaning President Trump, ask him to. Do you recall that?

Ambassador SONDLAND. I probably said something to that effect because I remember the meeting—the President—or President Zelensky was very—"solicitous" is not a good word. He was just very willing to work with the United States and was being very amicable. And so putting it in Trump speak by saying he loves your ass, he'll do whatever you want, meant that he would really work with us on a whole host of issues.

Mr. GOLDMAN. He was not only willing. He was very eager, right?

Ambassador SONDLAND. That's fair.

Mr. GOLDMAN. Because Ukraine depends on the United States as its most significant ally. Isn't that correct?

Ambassador SONDLAND. One of its most, absolutely.

Mr. Manager JEFFRIES. In other words, any request President Trump made to Ukraine would be difficult to refuse.

So when President Trump asked Ukraine to investigate Joe Biden, as well as the wild conspiracy theory about the 2016 election, those were absolutely interpreted by President Zelensky and his staff as a demand.

And that is where the White House meeting enters into the equation. When Ukraine did not immediately cave to Rudy Giuliani in the spring and announce the phony investigations, President Trump ratcheted up the pressure. As leverage, he chose the White House meeting he dangled during his April 21 call, precisely because President Trump knew how important the meeting was to Ukraine.

Following their visit to Kyiv for the new Ukrainian leader's inauguration, Ambassador Sondland, Ambassador Volker, and Secretary Perry met with President Trump, and each of them encouraged the President to schedule the meeting. Here is what Ambassador Sondland had to say.

(Text of Videotape presentation:)

Ambassador SONDLAND. We advised the president of the strategic importance of Ukraine and the value of strengthening the relationship with President Zelensky. To support this reformer, we asked the White House for two things. First, a working phone call between Presidents Trump and Zelensky, and second, a working oval office visit. In our view, both were vital to cementing the US-Ukraine relationship, demonstrating support for Ukraine in the face of Russian aggression and advancing broader US foreign policy interests.

Mr. Manager JEFFRIES. So even though this meeting was critical to both Ukraine and America, President Trump ignored all of his policy advisers and expressed reluctance to meet with the new Ukrainian President. He refused to schedule an actual date.

He claimed that Ukraine “tried to take me down” in 2016 and directed that three U.S. officials “talk to Rudy.” And even though on May 29 the President signed a letter reiterating his earlier invitation for President Zelensky to visit the White House, he still did not specify a date.

But then President Trump went further. He met with Ukraine’s adversary, Ukraine’s enemy, our enemy. President Trump met with Russia. [Slide 325]

This didn’t go unnoticed. Ukrainian officials became concerned when President Trump scheduled that face-to-face meeting with Vladimir Putin at the G20 summit in Japan on June 28.

Mr. Holmes testified on this particular point and the troubling signal that meeting sent to our friend, to our ally, Ukraine.

(Text of Videotape presentation:)

Mr. HOLMES. Also, on June 28th, while President Trump was still not moving forward on a meeting with President Zelensky, we met with . . . He met with Russian President Putin at the G20 Summit in Osaka, Japan, sending a further signal of lack of support to Ukraine.

Mr. Manager JEFFRIES. Now, let’s discuss how exactly President Trump used the withholding of the White House meeting to pressure Ukraine for his phony investigations—his quid pro quo scheme.

It is important to understand that the pressure exerted on Ukraine by delaying the White House meeting didn’t just occur right before the July 25 call. That pressure existed during the entire scheme, and it continues to this day.

We know this from the efforts of administration officials to secure the meeting and from the Ukrainians continuously trying to lock down a date. For example, even after President Trump expressed reluctance about Ukraine on May 23, his administration officials continued working to secure a White House meeting.

On July 10, for instance, they raised it again when Mr. Yermak and Ukraine’s national security advisor met with John Bolton at the White House.

(Text of Videotape presentation:)

Dr. HILL. And then we knew that the Ukrainians would have on their agenda, inevitably, the question about a meeting. As we get through the main discussion, we are going into that wrap-up phase. The Ukrainians, Mr. Danylyuk, starts to ask about a White House meeting and Ambassador Bolton was trying to parry this back.

Mr. Manager JEFFRIES. As you have seen, President Zelensky didn’t just raise the Oval Office meeting on his April 21 call, he raised the meeting on the July 25 call with President Trump again.

President Zelensky said on the July 25 call: [Slide 326] “I also wanted to thank you for your invitation to visit the United States, specifically Washington, DC.”

After the July 25 call, the Ukrainians continued to press for the meeting, but that meeting never happened.

Only on September 25, after the House announced its investigation into the President’s misconduct as it relates to Ukraine and the existence of a whistleblower complaint became public, did President Trump and President Zelensky meet face-to-face for the first time. That meeting was on the sidelines of the U.N. General Assembly in New York. It was dominated by public release of the July 25 call record that occurred the day before. It was a far cry from the demonstration of strong support that would have been achieved by an Oval Office meeting.

Even President Zelensky recognized that a face-to-face talk on the sidelines of the United Nations General Assembly was not the same as an official Oval Office meeting. Sitting next to President Trump in New York, he again raised a White House meeting. Here is what President Zelensky said:

(Text of Videotape presentation:)

President ZELENSKY. And I want to thank you for the invitation to Washington. You invited me, but I think—I’m sorry, but I think you forgot to tell me the date. But I think in the near future.

Mr. Manager JEFFRIES. President Trump was not just withholding a small thing; the Oval Office meeting was a big deal. Ukraine remains at war with Russia. It desperately needs our support. As a result, the pressure on Ukraine not to upset President Trump—who still refuses to meet with President Zelensky in the Oval Office—continues to this day.

David Holmes testified that the Ukrainian Government wants an Oval Office meeting even after the release of the security assistance and that our own U.S. national security objectives would also benefit from such a meeting.

(Text of Videotape presentation:)

Mr. HOLMES. And although the hold on the security assistance may have been lifted, there were still things they wanted that they weren’t getting, including a meeting with the President in the Oval Office. Whether the hold, the security assistance hold continued or not, the Ukrainians understood that that’s something the President wanted and they still wanted important things from the President. That continues to this day. We have to be very careful. They still need us now going forward.

In fact, right now President Zelensky is trying to arrange a summit meeting with President Putin in the coming weeks, his first face-to-face meeting with him to try to advance the peace process. He needs our support. He needs President Putin to understand that America supports Zelensky at the highest levels. So this doesn’t end with the lifting of the security assistance hold. Ukraine still needs us, and as I said, is still fighting this war this very day.

Mr. Manager JEFFRIES. Let’s evaluate exactly how President Trump made clear to Ukraine that a White House meeting was conditioned on Ukraine announcing two phony political investigations that would help with President Trump’s reelection in 2020—help him cheat and corrupt our democracy.

By the end of May, it was clear that President Trump’s pressure campaign to solicit foreign election interference wasn’t working. President Zelensky had been elected and was rebuffing Mr. Giuliani’s overtures. Even when President Trump directed his offi-

cial staff to work with Mr. Giuliani in an effort to get President Zelensky to announce the two phony political investigations, that didn't work. So President Trump apparently realized that he had to increase the pressure. That is when he explicitly made clear to Ukraine that it would not get the desperately sought after Oval Office meeting unless President Zelensky publicly announced the phony investigations that President Trump sought.

On July 2, 2019, Ambassador Volker personally communicated the need for investigations directly to President Zelensky during a meeting in Toronto.

(Text of Videotape presentation:)

Ambassador VOLKER. After weeks of reassuring the Ukrainians that it was just a scheduling issue, I decided to tell President Zelensky that we had a problem with the information reaching President Trump from Mayor Giuliani. I did so in a bilateral meeting at a conference on Ukrainian economic reform in Toronto on July 2, 2019, where I led the U.S. delegation.

I suggested that he call President Trump directly in order to renew their personal relationship and to assure President Trump that he was committed to investigating and fighting corruption, things on which President Zelensky had based his Presidential campaign. I was convinced that getting the two Presidents to talk with each other would overcome the negative perception of Ukraine that President Trump still harbored.

Mr. Manager JEFFRIES. After Ambassador Volker instructed President Zelensky in Toronto on what to do, he updated Ambassador Taylor on his actions. He told Ambassador Taylor that he had counseled the Ukrainian President [Slide 327] on how to "prepare for the phone call with President Trump." He also told Ambassador Taylor that he advised Zelensky that President Trump "would like to hear about the investigations."

In addition to Ambassador Volker's direct outreach to President Zelensky, Ambassador Sondland continued to apply pressure as well during two White House meetings that took place on July 10 with Ukrainian officials. The first meeting included [Slide 328] National Security Advisor John Bolton, Dr. Fiona Hill, Lieutenant Colonel Alexander Vindman, Secretary Rick Perry, Ambassador Volker, as well as Bolton's Ukrainian counterpart and Ukrainian Presidential aide Andriy Yermak.

After discussion on Ukraine's national security reform plans, Ambassador Sondland broached the subject of the phony political investigations.

Fiona Hill, who also attended the meeting, recalled that Ambassador Sondland blurted out the following in that meeting with the Ukrainians: "Well, we have an agreement with the Chief of Staff for a meeting if these investigations in the energy sector start." That is code for Burisma, which is code for the Bidens.

Ambassador Volker also recalled that Ambassador Sondland raised the issue of the 2016 election and Burisma investigations. Ambassador Volker found Ambassador Sondland's comments in that meeting to be inappropriate.

(Text of Videotape presentation:)

Ambassador VOLKER. I participated in the July 10 meeting between National Security Advisor Bolton and then-Chairman of the National Security Defense Council, Alex Danyliuk. As I remember, the meeting was essentially over when Ambassador Sondland made a general comment about investigations. I think all of us thought it was inappropriate.

Mr. Manager JEFFRIES. The exchange underscores that by early July, President Trump's demand for investigations had come to totally dominate almost every aspect of U.S. foreign policy toward Ukraine. Securing a Ukrainian commitment to do investigations was a major priority of senior U.S. diplomats, as directed by President Donald John Trump.

The July 10 meetings also confirmed that the scheme to pressure Ukraine into opening investigations was not a rogue operation but one blessed by senior administration officials at 1600 Pennsylvania Avenue. As Ambassador Sondland testified, "Everyone was in the loop."

Mr. Majority Leader, based on the statement that we should break at around 6:30 p.m., I ask your indulgence. This may be a natural breaking point in connection with my presentation.

The CHIEF JUSTICE. The majority leader.

RECESS

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that we have a break for 30 minutes.

There being no objection, at 6:24 p.m., the Senate, sitting as a Court of Impeachment, recessed until 7:14 p.m., whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. Mr. Chief Justice, after consulting with Congressman SCHIFF, it looks like roughly 10:30 tonight. So we may need a short break somewhere between now and 10:30.

The CHIEF JUSTICE. Thank you.

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, counsel to the President, my colleagues, the American people, the second official act that President Trump used to corruptly abuse his power was the withholding of an Oval Office meeting with the President of Ukraine.

Before we took the break, we started walking through the overwhelming evidence about how President Trump withheld this official White House meeting that was vitally important to Ukraine as part of a corrupt scheme to convince President Zelensky to announce two phony political investigations. These investigations were entirely unrelated to any official U.S. policy and solely benefited President Trump.

We talked about why withholding the meeting was so significant to our ally Ukraine. Ukraine is a fragile democracy, under relentless attack from Russian-backed separatists in the east. U.S. support is vitally important to Ukraine in that war. They desperately need our support. They desperately need our assistance.

Because of this vast power disparity, President Trump had immense power over Ukraine, and President Trump knew it. So when President Trump asked for a favor on a July 25 call, he knew that President Zelensky would feel incredible pressure to do exactly what President Trump wanted.

President Trump used his agents—both his administration appointees and his personal attorney, Rudolph Giuliani—to make clear to Ukraine, even in early July, that the much-needed White House meeting they requested would only occur if they announced these phony political investigations.

To be clear, as Ambassador Sondland testified, “everyone was in the loop.” That includes Acting Chief of Staff Mick Mulvaney, Secretary of State Mike Pompeo, and Secretary of Energy Rick Perry.

Even ahead of the July 25 call, Ambassador Sondland was in close, repeated contact with these officials. His mission: Schedule a telephone conversation during which the new Ukrainian leader would personally commit to do the phony investigations sought by President Trump in order to unlock a meeting in the Oval Office—this for that, a quid pro quo.

This isn’t just based on the testimony of witnesses. It is corroborated by texts and emails as well. Let’s look at some of that evidence now.

On July 13, for example, Ambassador Sondland emailed National Security Council official Timothy Morrison and made the case for President Trump to call the Ukrainian leader prior to the parliamentary elections scheduled for July 21. [Slide 329] In that email, as the highlighted text shows, Ambassador Sondland said the “sole purpose” of the call was to assure President Trump that investigations would be allowed to move forward. In other words, to get the Oval Office meeting, President Zelensky had to move forward on the phony political investigations, part of the scheme to cheat in the 2020 Presidential campaign—this for that.

On July 19, Ambassador Sondland spoke directly with President Zelensky. He spoke directly with President Zelensky to prepare him for a call with President Trump. Ambassador Sondland coached President Zelensky to use key phrases and reassure President Trump of Ukraine’s intention to bend to President Trump’s will with respect to the phony investigations that President Trump sought.

Ambassador Sondland told Kurt Volker that he gave the Ukrainian leader “a full briefing. He’s got it.” [Slide 330]

That is what Sondland told Volker.

In response, Volker texted: “Most important is for Zelensky to say that he will help with the investigation.”

That same day, Ambassador Sondland emailed top administration officials, including Acting Chief of Staff Mulvaney, Secretary Pompeo, and Secretary Perry, to summarize his conversation with Zelensky. In that email, Ambassador Sondland said Zelensky is “prepared to receive POTUS’ call. [Slide 331] Will assure him”—meaning POTUS—“that he intends to run a fully transparent investigation and will ‘turn over every stone.’”

Both Acting Chief of Staff Mulvaney and Secretary Perry responded to the email, noting that the head-of-state call would be scheduled.

Secretary Perry wrote: “Mick just confirmed the call being set up for tomorrow by NSC”—the National Security Council.

Mulvaney responded: “I asked NSC to set it up for tomorrow.”

Neither Mulvaney nor Secretary Perry took issue with the fact that Sondland coached Zelensky to yield to President Trump’s pressure campaign, but instead they took steps to connect the two leaders. Everyone was in the loop.

They were aware that during the July 20 call, President Trump intended to solicit foreign interference in the 2020 election and pressed the Ukrainian leader to announce investigations into

former Vice President Biden and the CrowdStrike conspiracy theory. There was no focus on advancing America's foreign policy or national security objectives. The only priority was President Trump's corrupt demand for phony investigations in exchange for an Oval Office meeting—this for that.

Here is Ambassador Sondland's testimony confirming this scheme.

(Text of Videotape presentation:)

Ambassador SONDLAND. Everyone was in the loop. It was no secret. Everyone was informed via email on July 19th, days before the Presidential call. As I communicated to the team, I told President Zelensky in advance that assurances to run a fully transparent investigation and turn over every stone were necessary in his call with President Trump.

Mr. Manager JEFFRIES. "Necessary in his call with President Trump."

Now, we come to July 25, the morning of the infamous phone call—the culmination of a monthslong campaign to engineer a corrupt quid pro quo.

That morning, before the call took place, President Trump provided guidance to Sondland. On the morning of July 25, he told him that President Zelensky should be prepared to announce the investigations in exchange for the White House meeting. After Sondland's call with President Trump on the morning of July 25, Sondland urgently tried to reach Kurt Volker. When he could not reach Ambassador Volker by phone, he sent a text that said, "Call ASAP," and he left a message. [Slide 332]

Volker testified that he indeed received that message, which involved the following content: "President Zelensky should be clear, convincing, forthright, with President Trump about his commitment to fighting corruption, [Slide 333] investigating what happened in the past." That refers to the Russian-inspired fake, phony, and false conspiracy theory about Ukraine having been involved in interfering in our 2016 elections.

He continues: "And if he does that, President Trump was prepared to be reassured, that he would say yes, come on, let's get this date for this visit scheduled."

Ambassador Volker then conveyed that message approximately 30 minutes before the Trump-Zelensky call to Zelensky's top aide, Andriy Yermak.

As you can see on the slide, [Slide 334] Ambassador Volker texts Yermak, Zelensky's guy, and says, "assuming President Z convinces Trump he will investigate/get to the bottom of what happened' in 2016," the White House meeting would get scheduled—this for that.

So President Trump talks to Ambassador Sondland. Sondland talks to Ambassador Volker. Volker talks to President Zelensky's aide Yermak, and then the July 25 call occurs.

When Ambassador Sondland testified, he agreed with this sequence, indicating it "certainly makes sense." Here is what Sondland had to say.

(Text of Videotape presentation:)

Mr. GOLDMAN. But the sequence certainly makes sense, right?

Ambassador SONDLAND. Yeah, it does.

Mr. GOLDMAN. You talked to President Trump.

Ambassador SONDLAND. Yeah.

Mr. GOLDMAN. You told Kurt Volker to call you. You left a message for Kurt Volker. Kurt Volker sent this text message to Andriy Yermak to prepare President Zelensky, and then President Trump had a phone call where President Zelensky spoke very similar to what was in this text message. Right?

Ambassador SONDLAND. Right.

Mr. GOLDMAN. And you would agree that the message in this, that is expressed here is that President Zelensky needs to convince Trump that he will do the investigations in order to nail down the date for a visit to Washington, DC. Is that correct?

Ambassador SONDLAND. That's correct.

Mr. Manager JEFFRIES. Indeed, on the July 25 call when President Trump asked for a favor, President Zelensky was ready with the magic words. He said: [Slide 335]

I also wanted to thank you for your invitation to visit the United States, specifically Washington DC. On the other hand, I want to ensure you that we will be very serious about the case and will work on the investigation.

This for that.

"Read the transcript," President Trump says. We have read the transcript, and it is damning evidence of a corrupt quid pro quo.

The evidence against Donald Trump is hiding in plain sight. During our presentation, we walked through the serious issues presented in the plain reading of the July 25 call, but now you can see the entire content of how this corrupt parade of horrors unfolded.

The quid pro quo was discussed in text messages, emails, voicemails, calls, and meetings amongst top administration officials and top Ukrainian officials. Indeed, President Trump's message was delivered to either President Zelensky or his top aides on four different occasions in the month of July—four different occasions: on July 2, in Toronto; on July 10, at the White House; on July 19, during a call between Zelensky and Ambassador Sondland; and then on July 25, before the call with the two leaders.

Before that fateful call on July 25, President Zelensky understood exactly what needed to be done—a quid pro quo.

The evidence of President Trump's grave misconduct does not end with that July 25 call. From that point onward, President Zelensky was on notice that it was President Trump himself who demanded those two phony political investigations.

After the July 25 call, the Ukrainians followed up with President Trump's direction and began to coordinate with Rudolph Giuliani, the President's political bagman. Acting on the President's orders, U.S. diplomats, including Ambassador Sondland and Ambassador Volker, worked with Mr. Giuliani to continue pressuring Ukraine to announce the phony investigations that President Trump sought in exchange for that Oval Office meeting. This is corruption and abuse of power in its purest form.

Over the next 2 weeks, Mr. Giuliani directed Ambassadors Sondland and Volker to negotiate a public statement for President Zelensky announcing the investigations that President Trump corruptly demanded. Here is how Ambassador Sondland described this August timeframe.

(Text of Videotape presentation:)

Ambassador SONDLAND. Mr. Giuliani conveyed to Secretary Perry, Ambassador Volker and others that President Trump wanted a public statement from President Zelensky committing to investigations of Burisma and the 2016 election. Mr. Giuliani expressed those requests directly to the Ukrainians and Mr. Giuliani also

expressed those requests directly to us. We all understood that these prerequisites for the White House call and the White House meeting reflected President Trump's desires and requirements.

Mr. Manager JEFFRIES. Deputy Assistant Secretary of State George Kent described the pursuit of President Trump's corrupt demands as "infecting U.S. engagement with Ukraine." Here is his full testimony.

(Text of Videotape presentation:)

Mr. KENT. In mid-August it became clear to me that Giuliani's efforts to gin up politically-motivated investigations were now infecting U.S. engagement with Ukraine, leveraging President Zelensky's desire for a White House meeting.

Mr. Manager JEFFRIES. In short, U.S. diplomats responsible for Ukraine policy understood that Giuliani had de facto control over whether the Oval Office meeting would be scheduled and under what circumstances. Mr. Giuliani had been given that level of authority by President Trump, and it was infecting official U.S. policy toward Ukraine.

To shake loose the White House meeting, top Ukrainian officials knew that they had to meet with Mr. Giuliani, who John Bolton described as a human hand grenade who was going to blow everybody up. So, on August 2, Mr. Giuliani met with Mr. Yermak, President Zelensky's top aide, in Madrid—Giuliani, in Madrid, meeting with Zelensky's top aide on August 2. Mr. Giuliani made clear in that meeting that President Trump needed more private assurances that Ukraine would pursue the investigations. Mr. Giuliani made clear that President Trump needed a public statement.

According to Ambassador Sondland—and this is very important—President Trump did not require that Ukraine actually conduct the investigations in order to secure that White House meeting. The Ukrainian Government only needed to announce the investigations because they were phony and they were simply designed to cheat in the 2020 election, solicit foreign interference, and corrupt our democracy—to the benefit of President Trump. So the goal was not the investigations themselves but the corrupt political benefit President Trump would receive as a result of these announcements. He also wanted to shake "this Russia thing" and instead blame Ukraine with the fairytale that Ukraine interfered in the 2016 election. The facts didn't matter for President Trump; he only cared about the personal political benefit of these sought-after investigative announcements.

Over the next few weeks, Ambassadors Sondland and Volker worked with Mr. Yermak to draft a public statement for President Zelensky to issue. Ambassador Volker was also in frequent contact with Rudy Giuliani regarding the content of that statement.

Now, Rudy Giuliani, of course, is not a Secretary of State. He is not an Ambassador. He is not a member of the diplomatic corps. He was working in the political personal interests of President Trump, interacting with Ukrainian officials.

On August 9, Ambassador Volker texted Mr. Giuliani and requested a call to update him on the progress of the negotiations for the statement [Slide 336] and discuss the content of what it should include. Volker said that Yermak had "mentioned Z"—President Zelensky—"making a statement." He suggested that he and Mr.

Giuliani “get on the phone to make sure I advise Zelensky correctly as to what he should be saying.”

Later that afternoon, Ambassador Sondland suggested to Ambassador Volker that they obtain a draft statement from the Ukrainian Government [Slide 337] “to avoid misunderstandings” or, in other words, make sure that President Trump’s political objectives were met. Ambassador Sondland also reiterated that President Trump would not be satisfied by a vague statement. The Ukrainian leader needed to commit to the phony investigations in explicit terms in order to secure the sought-after Oval Office meeting—this for that.

Call records subpoenaed by the House show multiple communications between Ambassador Sondland and Mr. Giuliani [Slide 338] on the one hand and numbers associated with the Office of Management and Budget and the White House on the other.

On August 8, around the time of direct communications between Mr. Giuliani and Mr. Yermak, Mr. Giuliani communicated repeatedly with the White House, sending or receiving six text messages and completing several calls.

Most notably, late in the evening on August 8, Mr. Giuliani called the White House in a highly distinctive pattern.

At 8:53 p.m., Giuliani texted a White House number. [Slide 339]

At 10:09, a number identified only as “-1” in the White House call records called Mr. Giuliani five times in rapid succession.

Two minutes later, Mr. Giuliani attempted to return the call, trying an Office of Management and Budget number, then the White House Situation Room, and then the White House switchboard.

At 10:28, 16 minutes after Mr. Giuliani tried to call the White House back, frantically—Situation Room, Office of Management and Budget, switchboard—16 minutes after Mr. Giuliani tried to call the White House back, Giuliani and the -1 number connected for 4 minutes 6 seconds.

We should be clear. We do not know what Mr. Giuliani said or even whom he talked to. We do not know who was on the other end of that mysterious call with the -1. President Trump refused to produce documents and ordered key witnesses not to testify, hiding part of the truth from the American people. He obstructed our congressional investigation. But we do know that Rudolph Giuliani frantically called the White House late into the night. We do know that he talked to someone at 1600 Pennsylvania Avenue, and we know that Mr. Giuliani likely talked about the drug deal that John Bolton characterized.

Over the next few days, President Zelensky’s aide, Mr. Yermak, exchanged drafts of the public statement with Ambassadors Volker and Sondland, who consulted on these drafts with Mr. Giuliani. The Ukrainian officials appeared to finally relent. They agreed to Mr. Giuliani’s specific language about the phony political investigations in exchange for the Oval Office meeting.

On August 10, Yermak texted Volker that the Ukrainians were willing to make the requested statements [Slide 340] but only if they received a date for the White House meeting first. Mr. Yermak texted: “I think it’s possible to make this declaration and mention all these things.” Yermak, again, is Zelensky’s top guy. He

later wrote that the statement would come out “after we ‘receive a confirmation of date’ for the White House visit.

Ambassador Volker counterproposed: They would iron out the statement in private, use that to get the date for the meeting in the Oval Office, and then President Zelensky would make the public statement—this for that.

Mr. Yermak countered: [Slide 341] “Once we have a date, will call for a press briefing, announcing upcoming visit and outlining vision for the reboot of the US-UKRAINE relationship, including, among other things, Burisma and election meddling in investigations.” That was the specific reference to President Trump’s corrupt demands.

Two days later, Mr. Yermak sent the draft statement, but the statement did not reference Burisma or the 2016 election. As soon as Mr. Yermak sent the statement, [Slide 342] what did Ambassadors Sondland and Volker do? [Slide 343] They sought a call with Rudolph Giuliani to see if the statement would suffice. They needed to check in with Mr. Giuliani, who was leading the charge to lock down the corrupt quid pro quo.

Let’s listen to Ambassador Volker.

(Text of Videotape presentation:)

Ambassador VOLKER. This is the first draft of that from Mr. Yermak after the conversations that we had.

Mr. GOLDMAN. And it does not mention Burisma or the 2016 election interference, correct?

Ambassador VOLKER. It does not.

Mr. GOLDMAN. And you testified in your deposition that you and Ambassador Sondland and Mayor Giuliani had a conversation about this draft after you received it. Is that right?

Ambassador VOLKER. That is correct.

Mr. GOLDMAN. And Mr. Giuliani said that if the statement did not include Burisma and 2016 election, it would not have any credibility. Is that right?

Ambassador VOLKER. That’s correct.

Mr. Manager JEFFRIES. Mr. Giuliani, acting on behalf of President Trump, made clear that the statement from the Ukrainians had to target Vice President Biden—for reasons outlined earlier today—and it had to mention the conspiracy theory about Ukraine interfering in the 2016 election.

After Mr. Giuliani conveyed this on the telephone call, Ambassadors Volker and Sondland texted Mr. Yermak and requested a call to convey that message. Ambassador Volker says: [Slide 344] “Hi Andrey—we spoke with Rudy. When is good to call you?” And Ambassador Sondland makes clear the urgency, texting: “Important. Do you have 5 minutes?”

Now, Ambassador Volker made clear to Mr. Yermak that the statement needed the two key items Mr. Giuliani required for the President.

Here is Ambassador Volker’s testimony to that effect.

(Text of Videotape presentation:)

Ambassador VOLKER. Hi, Andre. Good talking. Following is text with insert at the end for the two key items. We will work on official request.

Mr. GOLDMAN. And then you will see the highlighted portion of the next text. The other is identical to your previous one and then it just adds including the . . . Including Burisma and the 2016 elections. Is that right?

Ambassador VOLKER. That is correct.

Mr. GOLDMAN. And that was what Mr. Giuliani insisted on adding to the statement?

Ambassador VOLKER. That's what he said will be necessary for that to be credible.

Mr. GOLDMAN. And the Ukrainians ultimately did not issue the statement. Is that right?

Ambassador VOLKER. That is correct.

Mr. GOLDMAN. And President Zelensky ultimately did not get the Oval Office meeting either, did he?

Ambassador VOLKER. Not yet.

Mr. Manager JEFFRIES. President Zelensky is still waiting for that Oval Office meeting.

Ronald Reagan, in a speech that he delivered in 1987 at the foot of the Berlin Wall, in the midst of the Cold War, said to the world:

East and West do not mistrust each other because we are armed. We are armed because we mistrust each other. And our differences are not about weapons. It's about liberty.

The Trump-Ukraine scandal is certainly about weapons. It is about the unlawful withholding of \$391 million in security aid. It is about a withheld, sought-after Oval Office meeting. It is about trying to cheat in the 2020 election. It is about corrupting our democracy. It is about undermining America's national security. It is about a stunning abuse of power. It is about obstruction of Congress. It is about the need for us here in this great Chamber to have a fair trial with witnesses and evidence. It is about a corrupt quid pro quo.

Perhaps, above all, it is about liberty, because in America, for all of us, what keeps us free from tyranny is the sacred principle that in this great country no one is above the law.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, President's counsel, we have reviewed the mountain of evidence that proves the President's official act in his scheme: the corrupt bargain of a White House meeting in exchange for Ukraine announcing sham political investigations.

You heard from each relevant witness with firsthand knowledge of the President's corrupt scheme—Sondland, Taylor, Volker, Hill, and Vindman—that there was a corrupt deal: an Oval Office meeting for investigations—quid pro quo, this for that.

You also saw inescapable documentary proof that clearly proves a corrupt quid pro quo. The evidence is consistent, corroborated. It comes in many forms, from many individuals who are lifelong public servants with no motivation to lie. In short, the evidence is overwhelming.

Given how much we have gone through, let's review some of those career public servants' testimony, who state clearly that they too believed it was a quid pro quo—a this for that—because it is really powerful to hear directly from them.

Let's watch Ambassador Taylor.

(Text of Videotape presentation:)

Ambassador TAYLOR. By mid-July, it was becoming clear to me that the meeting President Zelensky wanted was conditioned on the investigations of Burisma, and alleged Ukrainian interference and the 2016 U.S. elections. It was also clear that this condition was driven by the irregular policy channel I had come to understand was guided by Mr. Giuliani.

Ms. Manager GARCIA of Texas. It was clear that these were conditions driven by irregular policies. We know this too because Ambassador Sondland said so at the July 10 meeting. Dr. Fiona Hill

described the scene in Ambassador Bolton's office, where the quid pro quo was made clear.

Let's watch.

(Text of Videotape presentation:)

Dr. HILL. Ukrainian Mr. Danylyuk starts to ask about a White House meeting, and Ambassador Bolton was trying to parry this back. Although he's the National Security Advisor, he's not in charge of scheduling the meeting. We have input recommending the meetings, and this goes through a whole process. It's not Ambassador Bolton's role to start pulling out the schedule and start saying, "Right, well, we're going to look and see if this Tuesday in this month is going to work with us." And he does not as a matter of course like to discuss the details of these meetings, he likes to leave them to, you know, the appropriate staff for this. So, this was already going to be an uncomfortable issue.

As Ambassador Bolton was trying to move that part of the discussion away, I think he was going to try to deflect it onto another wrap-up topic, Ambassador Sondland leaned in basically to say, "Well, we have an agreement that there will be a meeting, and the specific investigations are put underway." And that's when I saw Ambassador Bolton stiffen. I was sitting behind him in the chair, and I saw him sit back slightly like this. He'd been more moving forward, like I am, to the table. And, for me, that was an unmistakable body language, and it caught my attention. And then he looked up to the clock and, you know, at his watch, or at his wrist in any case. Again, I am sitting behind him . . . and basically said, "Well, you know, it's been really great to see you. I'm afraid I've got another—another meeting."

Ms. Manager GARCIA of Texas. "Ambassador Bolton stiffened"—quite a description. Lieutenant Colonel Vindman's testimony is consistent with Dr. Hill's recollection of the July 10 meeting, and that it was made clear that the deal for the White House meeting was investigations.

Let's watch Lieutenant Colonel Vindman.

(Text of Videotape presentation:)

Mr. GOLDMAN. I want to move now to that July 10th meeting that you referenced, Colonel Vindman. What exactly did Ambassador Sondland say when the Ukrainian officials raised the idea of a White House meeting?

LTC VINDMAN. As I recall, he referred to specific investigations that the Ukrainians would have to deliver in order to get these meetings.

Ms. Manager GARCIA of Texas. Lieutenant Colonel Vindman, firsthand knowledge—they would have to deliver in order to get these meetings.

It was also clear that this wasn't about general investigations about corruption. This wasn't about corruption at all. Ambassador Sondland directed everyone—including the Ukrainian officials—to reconvene in the Ward Room, where he discussed the arrangement he had reached with Mr. Mulvaney in more detail. He made clear that it was about specific investigations that would benefit President Trump personally.

Here is Lieutenant Colonel Vindman testifying, where he explains that Ambassador Sondland referred to the Bidens, Burisma, and the 2016 election, which had nothing to do with national security policy.

Let's watch.

(Text of Videotape presentation:)

Mr. GOLDMAN. Were the investigations, the specific investigations that Ambassador Sondland referenced in the larger meeting, also discussed in the Ward Room meeting?

LTC VINDMAN. They were.

Mr. GOLDMAN. And what did Ambassador Sondland say?

LTC VINDMAN. Ambassador Sondland referred to investigations into the Bidens, Burisma, and 2016.

Mr. GOLDMAN. How did you respond, if at all?

LTC VINDMAN. I said that this request to conduct these meetings was inappropriate—these investigations was inappropriate and had nothing to do with national security policy.

Ms. Manager GARCIA of Texas. “Nothing to do with national security policy”—that about some sums it up. Doesn’t it? It has nothing to do with national security policy. President Trump’s scheme was for his personal interest, not national security. And his testimony, once again, is corroborated.

Dr. Hill joined the Ward Room conversation later and also recalled the discussion of investigations and a White House meeting, and that Lieutenant Colonel Vindman said: “This is inappropriate. We’re the National Security Council; we can’t be involved in this.”

Here is her testimony.

(Text of Videotape presentation:)

Dr. HILL. And so when I came in, Gordon Sondland was basically saying, well, look, we have a deal here that there will be a meeting. I have a deal here with Chief of Staff Mulvaney. There will be a meeting if the Ukrainians open up or announce these investigations into 2016 and Burisma.

And I cut it off immediately there. Because by this point, having heard Mr. Giuliani over and over again on the television and all of the issues that he was asserting, by this point it was clear that Burisma was code for the Bidens, because Giuliani was laying it out there. I could see why Colonel Vindman was alarmed. And he said: “This is inappropriate. We’re the National Security Council; we can’t be involved in this.”

Ms. Manager GARCIA of Texas. And what’s more, as Ambassador Sondland told us, everyone was in the loop—meaning, it became clear that President Trump was directing this.

Dr. Hill, who at one point confronted Gordon Sondland over this arrangement, further reached the conclusion that he was acting on the President’s orders and coordinating with other senior officials. He had made this clear: he was briefing the President on all this.

Here is Dr. Hill’s testimony. Let’s watch.

(Text of Videotape presentation:)

Dr. HILL. So, I was upset with him that he wasn’t fully telling us about all of the meetings that he was having. And he said to me: “But I’m briefing the president. I’m briefing Chief of Staff Mulvaney. I’m briefing Secretary Pompeo and I’ve talked to Ambassador Bolton. Who else do I have to deal with?”

And the point is we have a robust interagency process that deals with Ukraine. It includes Mr. Holmes, it includes Ambassador Taylor as, the Charge in Ukraine, it includes a whole load of other people. But it struck me when yesterday, when you put up on the screen Ambassador Sondland’s emails and who was on these emails and he said, these [are] the people who need to know, that he was absolutely right. Because he was being involved in a domestic political errand, and we were being involved in national security foreign policy. And those two things had just divulged.

Ms. Manager GARCIA of Texas. The evidence is very clear: The White House meeting would only be scheduled if Ukraine announced the investigations that everyone, including the Ukrainians, understood to be purely political efforts to benefit the President. The only way to come to a different conclusion is to ignore the evidence.

One additional way you can tell that this conduct is truly corrupt, and not U.S. foreign policy as usual, is that these officials—these lifetime, career public servants—didn’t just testify about this

in impeachment proceedings. They contemporaneously reported this conduct in realtime.

Their reactions illustrate that this was not the kind of thing that both parties do when they have the White House. This was something different, something corrupt, something “insidious,” to use Ambassador Sondland’s characterization in later testimony.

The officials who instinctively recoiled from the corrupt deal that Sondland blurted out were distinguished patriotic public servants.

Let’s go through some specific examples of that evidence.

After the July 10 meeting we just talked about, where Ambassador Sondland made clear the agreement that the White House meetings were conditioned on the investigations, Dr. Hill consulted with Ambassador Bolton and told him what she had heard. Ambassador Bolton gave her, as she put it, a “very specific instruction” to report this conduct in realtime, and she did.

Here is her testimony. Let’s watch.

(Text of Videotape presentation:)

Dr. HILL. The specific instruction was that I had to go to the lawyers, to John Eisenberg, our senior counsel for the National Security Council, to basically say, you tell Eisenberg, Ambassador Bolton told me, that I am not part of this whatever drug deal that Mulvaney and Sondland are cooking up.

Mr. GOLDMAN. What did you understand him to mean by the drug deal Mulvaney and Sondland were cooking up?

Dr. HILL. I took it to mean investigations for a meeting.

Mr. GOLDMAN. Did you go speak to the lawyers?

Dr. HILL. I certainly did.

Ms. Manager GARCIA of Texas. Again, investigations for a meeting, the quid pro quo.

Consistent with Dr. Hill’s recounting, after both the July 10 meeting and the July 25 call, Lieutenant Colonel Vindman reported what he had learned through the lawyers.

Here he is discussing that later interaction. Let’s see it.

(Text of Videotape presentation:)

Mr. MALONEY. And you went immediately, and you reported it, didn’t you?

LTC VINDMAN. I did.

Mr. MALONEY. Why?

LTC VINDMAN. Because that was my duty.

Ms. Manager GARCIA of Texas. When Vindman said he reported this conduct, again, “because that was my duty,” he acted as he did out of a sense of duty and as a Purple Heart veteran, with confidence that in America he would be protected for doing the right thing even if it angered the President of the United States.

His father, who fled the Soviet Union to come to this country, worried about his son fulfilling that duty.

Here was Colonel Vindman’s message to his father. Let’s listen.

(Text of Videotape presentation:)

LTC VINDMAN. Dad, my sitting here today in the U.S. Capitol talking to our elected officials is proof that you made the right decision 40 years ago to leave the Soviet Union to come here to the United States of America in search of a better life for our family. Do not worry. I’ll be fine for telling the truth.

Mr. MALONEY. You realize when you came forward out of a sense of duty that you were putting yourself in direct opposition to the most powerful person in the world? Do you realize that, sir?

LTC VINDMAN. I knew I was assuming a lot of risk.

Mr. MALONEY. And I’m struck by the word . . . that phrase, “do not worry,” you addressed to your dad. Was your dad a warrior?

LTC VINDMAN. He did serve. It was a different military though.

Mr. MALONEY. And he would've worried if you were putting yourself up against the President of the United States, is that right?

LTC VINDMAN. He deeply worried about it because in his context it was the ultimate risk.

Mr. MALONEY. And why do you have confidence that you can do that and tell your dad not to worry?

LTC VINDMAN. Congressman, because this is America. This is the country I've served and defended, that all of my brothers have served, and here right matters.

Mr. MALONEY. Thank you, sir. I yield back. [applause].

Ms. Manager GARCIA of Texas. Imagine. He had to tell his father: Do not worry; I will be fine for telling the truth. It was his duty because, in America, right matters.

President Trump has suggested that all of the witnesses are Never Trumpers. That couldn't be further from the truth. As we just saw, these U.S. officials are brave public servants. It is wrong—just flat wrong—to suggest they were doing anything other than testifying out of a sense of duty, as Lieutenant Colonel Vindman testified.

But it wasn't just U.S. officials whose reactions show us that this was wrong; it is also clear how corrupt this scheme was because Ukraine resisted it. President Zelensky was elected as a reformer. His first few months in office lived up to this promise.

Here is Ambassador Taylor testifying on this point. Let's see it. (Text of Videotape presentation:)

Ambassador TAYLOR. But once I arrived in Kyiv, I discovered a weird combination of encouraging, confusing, and ultimately alarming circumstances.

First, the encouraging. President Zelensky was reforming Ukraine in a hurry. He appointed reformist ministers and supported long-stalled anti-corruption legislation. He took quick executive action, including opening Ukraine's High Anti-Corruption Court. With a new parliamentary majority stemming from snap elections, President Zelensky changed the Ukraine Constitution to remove absolute immunity from Rada deputies, the source of raw corruption for two decades. The excitement in Kyiv was palpable. This time could be different, a new Ukraine finally breaking from its corrupt, post-Soviet past.

Ms. Manager GARCIA of Texas. So we know that President Zelensky was a reformer, fighting corruption, fighting for reform, and he got started early, as soon as he was sworn in. We know that President Zelensky's agenda was in our U.S. national interest. In fact, every witness testified that President Zelensky deserved America's support and that they told President Trump that.

So keeping that in mind, it is extremely telling what President Zelensky and his aides were saying behind closed doors. They were concerned about being dragged into President Trump's scheme. They recognized the political peril of going along with the President's corrupt scheme. We know that was the case for many reasons, but let's look at some of the evidence showing that now.

First, the Ukrainians made their concerns clear directly to U.S. officials. On July 20, just days ahead of the July 25 call, Ambassador Taylor spoke with President Zelensky's national security advisor. He then conveyed to Ambassadors Sondland and Volker that the Ukrainian leader "did not want to be used as a pawn in a U.S. reelection campaign."

Here is Ambassador Taylor explaining what he understood that to mean. Let's watch.

(Text of Videotape presentation:)

Mr. GOLDMAN. What did you understand it to mean when—that Zelensky had concerns about being an instrument in Washington domestic reelection politics?

Ambassador TAYLOR. Mr. Danyliuk understood that these investigations were pursuant to Mr. Giuliani's request to develop information, to find information about Burisma and the Bidens. This was very well known in public. Mr. Giuliani made this point clear in several instances in the beginning—in the springtime. And Mr. Danyliuk was aware that that was a problem.

Mr. GOLDMAN. And would you agree that, because President Zelensky is worried about this, they understood, at least, that there was some pressure for them to pursue these investigations? Is that fair?

Ambassador TAYLOR. Mr. Danyliuk indicated that President Zelensky certainly understood it, that he did not want to get involved in these type of activities.

Ms. Manager GARCIA of Texas. As the slide shows, [Slide 345] on July 21, Ambassador Taylor relayed the same message to Ambassadors Volker and Sondland, making clear that "President Zelensky is sensitive about Ukraine being taken seriously, not merely as an instrument in Washington domestic politics."

But Ambassador Sondland did not back down. Instead, Ambassador Sondland reinforced the importance that President Zelensky reassure President Trump of his commitment to investigations. He said: "Absolutely, but we need to get the conversation started and the relationship built, irrespective of the pretext. I am worried about the alternative." The "pretext" that Ambassador Sondland referred to was President Trump's requirement that Ukraine announce investigations that would benefit him personally and politically. He wanted help in cheating.

It wasn't just Ambassador Taylor. Deputy Assistant Secretary George Kent, too, testified that Ukraine was "very uncomfortable" when the issue of investigations was raised during the negotiations of the statement in August of 2019.

As the slide shows, Mr. Kent said: [Slide 346]

I had a conversation with Chargé Taylor in which he . . . indicated that Special Representative Volker had been engaging Andriy Yermak; that the President and his private attorney Rudy Giuliani were interested in the initiation of investigations and that Yermak was very uncomfortable when this was raised with him, and suggested that if that were the case, if that were really the position of the United States, it should be done officially and put in writing . . . And I told Bill Taylor, that's wrong, and we shouldn't be doing that as a matter of U.S. policy.

When asked, "What did he say?" Mr. Kent said, "He said he agreed with me."

What is also important to note here is why. Ukraine made this clear. If the United States was asking them for investigations, especially investigations that made them uncomfortable, they should be done "officially" and "put in writing."

Mr. Kent's testimony shows that. He said:

Yermak was very uncomfortable when this was raised with him, and suggested that if that were the case, if that were really the position of the United States, it should be done officially and put in writing.

And this wasn't the only time. On August 13, Mr. Yermak asked Ambassador Volker "whether any requests had ever been made by the U.S. to investigate election interference in 2016."

Now, this makes sense. Normally, if something is actually about official U.S. policy, the President would go through official U.S. channels, but, as we have seen here, he didn't. His personal attorney made this—this wasn't about foreign policy; it was something that would benefit President Trump personally.

The administration officials made this clear too. There was undisputed testimony that the investigations were not part of U.S.

policy. In fact, they diverged with the U.S. national security and our Nation's values. The Department of Justice has made this crystal clear in public statements. There has never been an official asked officially to do any of these investigations. And that is how we know this is so very wrong.

Even Ukraine, a struggling, new country, knew this was wrong, and they stood up to President Trump and said no. Yermak—remember, he was Zelensky's chief aide—was basically saying: You want an investigation? Please send us a formal request from DOJ. Show us you are willing to stand behind the legitimacy of what you are asking. But Ambassador Volker was unable to provide that information. And that is why—even though the White House meeting was so critical to Ukraine, even though Ukraine needed it so desperately—they still wouldn't make the statement with key additions: President Trump's political investigations, which were solely to help his reelection and had nothing to do with foreign policy.

President Zelensky tried in different ways to resist the pressure of becoming a "pawn" in U.S. politics. Even though the Oval Office meeting was important, Zelensky repeatedly tried to find a way around committing to the investigations that President Trump demanded—or at the very least, schedule it before taking any official action. This is what you saw in the negotiation over the statement in August, and this is why even President Trump's second official act—withholding the White House meeting—was not enough to make Ukraine do his dirty work.

Senators, we are coming to the end of a section of the presentation regarding the withholding of the White House meeting. So I want to just quickly remind us one last time about the central points that we have covered.

President Trump exercised his official power when he withheld an Oval Office meeting that was critical to Ukraine, and he did this for only one reason and one reason only: [Slide 322] President Trump conditioned that Oval Office meeting on Ukraine's announcing investigations that would help him politically. This had nothing to do with official U.S. policy. President Trump directed U.S. officials who were supposed to work for the American people to work, instead, with his personal agent, Rudy Giuliani, and focus only on his personal political interests.

Acting on behalf of the President and with the President's full knowledge, Mr. Giuliani worked with those U.S. officials to carry out the President's scheme. They pressured the Ukrainian Government to act as a personal opposition research firm for President Trump. They tried to use a foreign government to dig up dirt on his client's rival, former Vice President Biden, an American citizen—all so President Trump could win his election. They made clear that Ukraine would not get the official U.S. Government support it so desperately needed—support that the President's national security team conveyed was necessary to advance our own national security objectives—unless President Zelensky announced the sham investigations.

Remember that an abuse of power occurs when a President corruptly exercises official power to obtain a personal benefit in a way that ignores or injures the national interest.

Senators, that is exactly what happened here. By withholding a White House meeting, President Trump used official power to corruptly pressure Ukraine. Indeed, the entire quid pro quo—the “this for that”—the entire campaign to use the Oval Office meeting as some kind of asset for the President’s reelection campaign—was corrupt. U.S. officials knew this. Ukrainians knew this too. I think, deep down, we all know it, and I think the American people know it.

Senators, I ask you this one question: Is that not an abuse of power? Was it OK? If it is not an abuse of power, then what is? Is it OK to withhold official acts from a foreign country until that foreign country assists in your reelection effort?

If any other public official did that, he or she would be held accountable. I know, if one of us did that, we would be held accountable. The only way to hold this President accountable is right here in this trial. Otherwise, you would be telling Ukraine and the world that it is OK for the President to use our Oval Office and this country’s prestige and power for himself instead of for the American people.

If we allow this gross abuse of power to continue, this President will have free rein to abuse his control of U.S. foreign policy for personal interests and so would any other future President. Then this President and all Presidents become above the law. A President could take the powers of the greatest office in this land and use those powers not for the country, not for the American people, but for him or herself.

I ask you to make sure this does not happen because, in this country, no one—no one—is above the law.

(The above statement is spoken in Spanish.)

I now yield to Mrs. DEMINGS.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, the House managers have requested a 5-minute break.

There being no objection, the Senate, at 8:19 p.m., recessed until 8:38 p.m. and reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. Mr. Chief Justice, if I may, one brief announcement: In the morning, there will be a coronavirus briefing for all Members at 10:30. Senator ALEXANDER and Senator MURRAY are involved in that. The location will be emailed to your office.

Mrs. Manager DEMINGS. Chief Justice Roberts, Senators, and counsel for the President, we have now been through the first two official acts by the President. But neither of those official acts got the President what he wanted—help in his reelection campaign. So he turned to another official act to turn up the pressure even more—[Slide 347] withholding nearly \$400 million of vital military assistance to Ukraine in exchange for the investigations.

Withholding military assistance to Ukraine made the original abuse of power, soliciting foreign interference in our elections, that much worse. But it was also in and of itself an abuse of power. And not only that, it violated the law. It was illegal.

The Government Accountability Office, a nonpartisan, independent agency, concluded that President Trump's hold on the security assistance clearly violated the Impoundment Control Act, a law that Congress enacted to curb President Nixon's own abuse of power.

President Trump may not like it, but once a law is passed, the President cannot change that law without coming back to us, the Congress.

And President Trump did not just break the law, he jeopardized our national security, because Ukraine's national security is our national security. How? Because a free and democratic Ukraine is a shield against Russian aggression in Europe. That has been one of America's most important foreign policy and national security goals since World War II. Freedom, liberty, democracy—those values keep us safe.

Let us now explain how President Trump's improper withholding of military assistance was clearly done to pressure Ukraine to announce the two baseless investigations—a gross abuse of power.

First, we will briefly describe how important the military aid was to Ukraine's defense against Russian aggression, which affects our security. [Slide 348]

Second, we will explain how President Trump used the power of his office to freeze military aid to Ukraine in a way meant to conceal it from Congress.

And third, we will present the overwhelming evidence that President Trump ordered the hold for a corrupt purpose: to pressure Ukraine to announce two investigations that would personally benefit his own reelection effort.

Let us start with the importance of the aid to our—the United States'—national security. The United States has supported Ukraine since it secured independence from the Soviet Union in 1991. Our support was critical to convince Ukraine to forgo its pursuit of a nuclear arsenal in 1994. We promised them that we would defend them if necessary. But our support became truly vital in 2014, when Ukraine revolted against its Russian-friendly President, Viktor Yanukovich. Ukrainian citizens rose up in protest, demanding democratic reforms and an end to corruption. The protests, rightly known as the Revolution of Dignity, removed the pro-Kremlin President.

Russia responded by using its own military forces and proxies in Ukraine to invade Ukraine. [Slide 349] This was the first effort to redraw European boundaries by military force since World War II.

The war was devastating to Ukraine and remains so today. Approximately 7 percent of Ukraine's territory is now occupied by Russia. Approximately 15,000 people have been killed as a result of the conflict, and over 1.4 million people have been displaced.

In response to Russia's invasion of Ukraine, [Slide 350] the United States and our allies imposed sanctions on Russian individuals and entities and agreed to provide billions of dollars in assistance to support Ukrainian sovereignty and democratic development.

We understood immediately, Democrats and Republicans alike, that Ukraine's safety and security was directly tied to our safety and security. With this all in mind, [Slide 351] since 2014, the

United States has delivered roughly \$1.5 billion in security assistance and another \$1.5 billion in other assistance to our ally Ukraine. Our allies in Europe have provided approximately \$18 billion in loans and grants since 2014.

As we have explained, the U.S. assistance comes partially from the Department of Defense, which provides important military support. It comes partially from the State Department, which helps Ukraine purchase military services or equipment manufactured by American companies in the United States.

Ambassador Taylor explained how security assistance counters Russian aggression and can help shorten the war in the east. Here is his testimony:

(Text of Videotape presentation:)

Ambassador TAYLOR. Mr. Chairman, the security assistance that we provide takes many forms. One of the components of that assistance is counter-battery radar. Another component are sniper weapons.

These weapons and this assistance allows the Ukrainian military to deter further incursions by the Russians against Ukrainian territory. If that further incursion, further aggression, were to take place, more Ukrainians would die. So it is a deterrent effect that these weapons provide.

It's also the ability—it gives the Ukrainians the ability to negotiate from a position of a little more strength when they negotiate an end to the war in Donbas, negotiating with the Russians. This also is a way that would reduce the numbers of Ukrainians who would die.

Mrs. Manager DEMINGS. Congress imposed certain conditions on the DOD assistance. Those conditions require DOD to hold half of the money in reserve. To release all of the funds, DOD, in coordination with the State Department, must conduct a review and certify to Congress that Ukraine has done enough to fight corruption.

President Trump may argue that the conditions imposed by Congress are similar to the hold he placed on aid to Ukraine. As Mick Mulvaney said, “[w]e do that all the time.” But let us be very clear: These types of conditions, which are often included in appropriations bills, are designed to promote official U.S. policy, not the policy of one individual or one President. This is exactly the type of permissible condition on aid that Vice President Biden was implementing when he required that Ukraine fire its corrupt prosecutor general before getting a loan guarantee.

Prior to 2019, the Trump administration provided security assistance to Ukraine without incident. Even under the previous Ukrainian administration of President Petro Poroshenko—which suffered from serious corruption—President Trump allowed \$510 million in 2017 and \$359 million in 2018 to flow unimpeded to Ukraine.

But in the summer of 2019, without any explanation, President Trump abruptly withheld the security assistance for Ukraine.

So what had changed by July of 2019? Congress had appropriated the funds. President Trump had signed this into law. The Department of Defense had certified that Ukraine was meeting the required anti-corruption reforms. In fact, DOD had begun to spend the funds. So what happened?

Well, in April, two critical things happened. First, Joe Biden publicly announced his campaign for President. Second, the Mueller investigation concluded that Russia interfered in the 2016 U.S. elections to assist the Trump campaign and that the Trump campaign had extensive contacts with Russians and even took advantage of

some of the Russian efforts. The evidence shows that the only reason—the only logical reason, and we deal in what is reasonable—President Trump withheld the aid was to undermine these threats to his political future.

As we have discussed, security assistance to Ukraine has broad bipartisan support from Congress, as well as every agency within the President's own administration.

Let us be clear about something. The money mattered to Ukraine. [Slide 352] It mattered to Ukraine. Witness testimony revealed that this money was 10 percent of Ukraine's defense budget—10 percent.

Now imagine if President Trump just decided without cause or explanation to hold 10 percent of our own defense budget. That would have a dramatic impact on our military. It certainly did to Ukraine, our ally.

Keep in mind, too, that President Trump had to sign the bill into law, which he did in September of 2018. At no time—at no time—through the congressional debate or passage of the bill did the White House express any concerns about the funding or the program itself.

I want you to see the slide before us. [Slide 353] It shows President Trump signs the bill authorizing aid to Ukraine for fiscal year 2019.

On June 18, President Trump's own Department of Defense [Slide 354] certified that Ukraine had met all of the anti-corruption requirements necessary to receive aid. And do you know what? The Department of Defense announced that the money was on its way, just as we, the United States of America, had promised.

Senators, our word must continue to mean something. Our word must continue to mean something powerful in the world. So let us make certain that America continues to live up to its promise.

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, thank you so much for the attention that you have given to our presentation throughout this day. It is a long day. You are here without your cell phones or any access to other information. It is not easy, but you are paying attention, and the country and the managers thank you for that.

We have just gone through the importance of security assistance to Ukraine to our national security and the clear consensus among Congress, the Executive, and the President's agencies and advisers that the aid should be released to Ukraine. In fact, by June 18, after having certified that Ukraine had met all the anti-corruption reform requirements to receive the aid, DOD announced its intention to provide the \$250 million in security assistance to Ukraine.

This brings us to the second part of this section of our argument.

Soon after that June 18 press release, President Trump quickly moved to stop the aid from flowing. He did this with no explanation, against the clear consensus of his advisers and his agencies, and against our Nation's security interests. He was so determined to do it in order to pressure Ukraine to do his political dirty work that he was willing to violate the law, something his own officials were well aware of and worried about.

How do we know the President ordered the hold? First, there is no real dispute that the President ordered the hold. The hold on

security assistance to Ukraine was a unilateral official act by the President. Immediately after the DOD's June 18 press release announcing the \$250 million in security assistance funds for Ukraine, President Trump started asking questions about the funding program. Laura Cooper from DOD and Mark Sandy from OMB testified about this sudden interest in Ukraine security assistance, something that Cooper called unusual.

We, of course, have received no documents from OMB and DOD because of the President's obstruction. Why did the President want to hide these documents? We don't know, but thanks to Freedom of Information Act lawsuits and hard-working reporters, we know a little from the documents that we do have.

For instance, we know that the day after the DOD press release, the President asked for information about the Ukraine aid. On June 19, [Slide 355] Michael Duffey, the Associate Director for National Security Programs at OMB, sent an email to Elaine McCusker, the DOD comptroller, with an article by the Washington Examiner reporting: "Pentagon to send \$250M in weapons to Ukraine."

In Duffey's email, he asked McCusker the following question:

The President has asked about this funding release, and I have been tasked to follow-up with someone over there to get more detail. Do you have insight on this funding?

It seems that on June 19, Robert Blair, Mick Mulvaney's deputy, called Acting OMB Director Russell Vought to discuss Ukraine's security assistance. He told him: "We need to hold it up."

That is right. The hold was actually directed impulsively without any policy or agency review as soon as President Trump learned about it from a press release.

We know what was on the President's mind about Ukraine that day because President Trump gave a phone interview with Sean Hannity on FOX News. During the interview, he mentioned the so-called CrowdStrike conspiracy theory that blames Ukraine rather than Russia for interfering in the 2016 election. Remember, President Trump raised the CrowdStrike theory a month later during his July 25 call with President Zelensky. Of course—and this has been said many times—that theory has been completely refuted by U.S. intelligence agencies, as well as the President's own hand-picked senior advisers.

The New York Times also reported that on June 27, Mick Mulvaney sent Blair an email. Mulvaney wrote: [Slide 356]

I am just trying to tie up some loose ends. Did we ever find out about the money to Ukraine and whether we can hold it back?

What was Blair's response to Mulvaney? That it was possible to hold security assistance, but he warned: "Expect Congress to become unhinged." [Slide 357]

Blair, who previously worked for Congress, knew that Congress would be "unhinged" because there was overwhelming bipartisan support for Ukraine. Congress had already authorized the release of the funds. DOD had already told Congress and the world that it was going to spend the \$250 million on Ukraine security assistance, and it had already started to do so.

Mark Sandy, the senior career official at OMB responsible for this type of aid, couldn't recall any other time in his 12-year career at OMB when a hold was placed on security assistance after a congressional notification was made.

Later, if the President's counsel starts listing other times that aid has been held, ask yourself three questions.

One, had Congress already cleared the money to be released; two, was there a significant geopolitical development in that country; and three, did the GAO determine that the hold was illegal, in part, because Congress was not notified?

Here, the money had been cleared. There was nothing new or important in Ukraine to disrupt the aid—just that a true anti-corruption reformer was elected. The hold was illegal.

From freedom of information releases and press reports, we know about just a few of the many documents being hidden from you about how the hold began. Given President Trump's obstruction with the facts that have come to light through the Freedom of Information Act lawsuits and news reporting, you may assume the documents that are being withheld would probably incriminate the President; otherwise, why wouldn't he have provided them? If he had a legitimate executive privilege claim, he could follow the rules and make each claim. Instead, he just said no—no to everything.

By mid-July, the President had put a hold on all the money. Jennifer Williams, special adviser to Vice President PENCE for Europe, learned about the hold on July 3. She said it came "out of the blue" and hadn't previously been discussed by OMB or the National Security Council. The hold was never discussed with any policy experts in any of the relevant agencies.

That is remarkable. President Trump ordered a hold on congressionally appropriated funds without the benefit of any interagency deliberation, consultation, or advice. The evidence shows the President's hold was an impulsive decision unrelated to any American policy.

On July 12, Robert Blair, Mulvaney's deputy, emailed Duffey at OMB. He said "the President is directing a hold on military support funding for Ukraine." This is according to Sandy, the career officer at OMB who got a copy of the email.

Now, we don't have a copy of the email because of the President's obstruction, but here is what we do know from Mr. Sandy's description of the email, as well as testimony from other witnesses. The hold was not part of a larger review of foreign aid. We do know it was not the result of a policy debate about what was best for America. It came "out of the blue." We now know why it was done: to turn the screws on Ukraine to provide political help for the President.

The hold was immediately suspect simply because of its timing. Duffey later asked Blair about the reason for the hold. Blair gave no explanation. Instead he said [Slide 358] "we need to let the hold take place" and then "revisit" the issue with the President. Blair either didn't know the reason or wouldn't share the real reason because it was corrupt. It sure would be nice to know what Blair knew about the reason for the hold and what Duffey knew. We could ask them the question if you authorize a subpoena.

Now, we had hoped, as we said, that the Senate would authorize subpoenas before our arguments were made. We thought it would have been helpful. But we know that you will have another opportunity to call witnesses, to require documents, and we hope that your decision will be informed by the arguments we are making to you over these days and that you will, in fact, get the full story.

Well, we do know actually the reason why the President did what he did. We know the President held the money. It wasn't because of any policy reason to benefit America or any concern about corruption in Ukraine or any desire for more burden-sharing from other countries. It was because the President was upset that Ukraine was not announcing the investigations that he wanted because he wanted to ramp up pressure to force them to do it.

From the very beginning, it was clear the hold was not in America's national interest. Those within the U.S. Government responsible for Ukraine security and for shaping and implementing U.S. foreign policy were caught off guard by the President's decision. Support for the aid and against the hold was unanimous, forceful, and unwavering. The President can call Ukraine policy experts "unelected bureaucrats" all he wants, but those are officers charged with implementing his official policy developed by the President himself, which was also a product of congressional action.

Anyway, it wasn't just the career officers. President Trump's own politically appointed senior officials—his Cabinet members—also opposed the hold. Why? Because it was against our national interest.

But the President wasn't persuaded by arguments about national interest. Why? Because the hold had nothing to do with the national interest. It had to do with the interest of just one person, Donald J. Trump.

The demand for Ukraine to announce these investigations was not a policy decision but a personal decision by the President to benefit his own personal interest. At an NSC-led meeting on July 8, OMB announced that President Trump had directed a hold on Ukraine security assistance. The news shocked meeting participants. Ambassador Taylor testified that he and others on the call "sat in astonishment" when they learned about the hold. He immediately "realized that one of the key pillars of our strong support for Ukraine was threatened."

David Holmes, political counselor at the U.S. Embassy in Kyiv, testified he was "shocked" and thought the hold was "extremely significant" because it undermined what he understood to be long-standing U.S. policy in Ukraine. Catherine Croft, the State Department special adviser for Ukraine, testified that the announcement "blew up the meeting." [Slide 359]

Deputy Assistant Secretary of State George Kent said. "There was great confusion among the rest of us because we didn't understand why that had happened." He explained: Since there was unanimity about this security assistance to Ukraine, it was in our national interest, it just surprised all of us.

The policy consensus at this and later NSC meetings was clear. With the exception of OMB, which was following the direction of the President, everyone supported lifting the hold. All the way up to the No. 2 officials at the agencies—the political appointees of

President Trump—[Slide 360] there was unanimous agreement that the hold was ill-advised and the aid should be released.

Tim Morrison, national security adviser to John Bolton, understood that the most senior appointed officials [Slide 361] “were all supportive of the continued disbursement of the aid.”

On August 15, at the President’s golf club in Bedminster, NJ, members of the President’s Cabinet “all represented to Ambassador Bolton that they were prepared to tell the President they endorsed the swift release and disbursement of the funding.”

The President ignored his advisers’ recommendation to lift the hold. He provided no credible explanation for it—not from the day the hold was made until the day it was lifted.

Witness after witness—including Hale, Vindman, Croft, Holmes, Kent, Cooper, Sandy—[Slide 362] testified they weren’t given any reason for the hold while it was in place.

Croft said: “[T]he only reason given was that the order came at the direction of the President.”

Mr. Holmes confirmed: “The order had come from the President without further explanation.”

Kent testified too: “I don’t recall any coherent explanation.”

Ambassador Sondland agreed: “I was never given a straight answer as to why it had been put in place to begin with.”

Dr. Hill explained: “No, there was no reason given.”

Even Senator McCONNELL has said: “I was not given an explanation for the hold.”

Even as OMB was implementing the hold, officers in OMB were saying it should be lifted. Mr. Sandy testified that his team drafted a memo on August 7 to OMB Acting Director Russ Vought. [Slide 363] It recommended lifting the hold because, one, the assistance was consistent with national security to support a stable, peaceful Europe; two, the aid countered Russian aggression; and three, there was bipartisan support for the program.

Michael Duffey, the senior political appointee overseeing funds, approved the memorandum. He agreed with the policy recommendations, and it wasn’t just OMB. Senior advisers in the administration tried over and over again to convince President Trump to lift the hold over the summer.

Sometime prior to August 16, Ambassador Bolton had a one-on-one meeting with President Trump about the aid. The President didn’t budge. Then, at the end of August, when the hold on the aid became public, Ambassador Taylor expressed to multiple officials his concerns about withholding the aid from Ukraine at a time when it was fighting Russia. Ambassador Taylor stressed the importance of the hold not just as a message to Ukraine but, importantly, to Russia as well. Withholding the aid on vital military assistance while Ukraine was in the midst of a hot war with Russia sent a message to Russia about U.S. support of Ukraine.

Ambassador Taylor felt so strongly about the harm withholding the security assistance that for the first time ever in his decades of service at the State Department, he sent a first-person cable with his concerns to Secretary Pompeo. In the cable, he described directly the “folly” that Taylor saw in withholding the aid. Here is his testimony.

(Text of Videotape presentation:)

Mr. MALONEY: Have you ever sent a cable like that? How many times in your career of 40, 50 years have you sent a cable directly to the Secretary of State?

Ambassador TAYLOR: Once.

Mr. MALONEY: This time?

Ambassador TAYLOR: Yes, sir.

Mr. MALONEY: In 50 years?

Ambassador TAYLOR: Rifle company commanders don't send cables, but yes, sir.

Ms. Manager LOFGREN. Ambassador Taylor never received an answer to the cable, but he was told that Secretary Pompeo carried it with him to a White House meeting about security assistance to Ukraine.

It seemed this meeting about the aid may have occurred on August 30. There are press reports that Secretary Pompeo, Secretary Esper, and National Security Advisor Bolton discussed the hold with President Trump shortly after Ambassador Taylor sent his cable. Keep this in mind. This was 2 days after the hold was publicly reported and after the President was briefed on the whistleblower complaint. Yet, even then, President Trump refused to release the aid.

On August 30, Michael Duffey sent an email to Elaine McCusker, the DOD comptroller. [Slide 364] It said: "Clear direction from POTUS to continue to hold." President Trump has refused to produce this or any other email to Congress.

When the administration was forced to produce it in a freedom of information case in response to a court order, this critical passage was actually blacked out. What is the reason for blacking out this direction from the President about an issue so central to this case? No reason has been given to us. So you should ask yourself this: What is the President hiding?

The President finally released the hold on September 11, but, again, there was no credible reason given for the release. [Slide 365] Mark Sandy testified that he could not recall another instance "where a significant amount of assistance was being held up" and he "didn't have a rationale in this case."

On the day it was released, OMB still didn't know why President Trump had ordered the hold. On September 11, the day the President finally released the aid, McCusker at DOD reportedly sent an email to Duffey asking: "What happened?"

Michael Duffey answered: "Not exactly clear but President made the decision to go. Will fill you in when I get details."

So let's take a step back for a minute. Why was no reason given to anyone for the President deciding to hold up hundreds of millions of dollars in military assistance to our allies? Because there was no supportable reason for withholding the aid. No one agreed with it. According to the 17 witnesses in the House impeachment inquiry, President Trump insisted on holding the aid and provided no reason, despite unanimous support for lifting the hold throughout his administration, including his handpicked top advisers. It also wasn't consistent with American policy. The aid had the clear support of career officers and political appointees in President Trump's administration as important for national security. There was no national security or foreign policy reason provided. No one could think of one. DOD had already certified to Congress, as the law required, that Ukraine had met the anti-corruption conditions

for the aid and that it planned to begin implementing the expenditures.

So why did the President do this? I think we know why. The President ordered the hold for an improper purpose: to pressure Ukraine to announce investigations that would personally benefit President Trump.

That brings us to a key point. It wasn't just that the President ordered a hold on the aid without any explanation against the unanimous advice of his advisers and even after, for weeks, as his administration—both career and political appointees—continued to try to get him to release the hold. What the President was trying to hide was worse. What the President did was not just wrong; it was illegal.

In ordering the hold, President Trump not only took a position contrary to his senior advisers, counter to congressional intent, and adverse to American national security interests in Ukraine, he also violated the law.

This issue was not a surprise. From the start of the hold in July, compliance of the Impoundment Control Act was a significant concern for OMB and DOD officials. Mark Sandy raised concerns with his supervisor, Michael Duffey, that the hold might violate the Impoundment Control Act. DOD voiced the same concerns.

Laura Cooper from DOD described the discussion at a July 26 meeting with No. 2 officials at all of the relevant agencies about the hold, stating: "Immediately, deputies began to raise concerns about how this could be done in a legal fashion." She further testified that there was no legal mechanism to use to implement the hold after Congress had been notified of the release of the funding.

At a July 31 meeting with more junior officials, Laura Cooper put all attendees on notice, including representatives of the White House, that because "there were only two legally available options, and we do not have direction to pursue either," DOD would have to start spending the funds on or about August 6.

In other words, the President had a choice. He could release the aid, or he could break the law. He chose to break the law. He was so determined to turn up the pressure on Ukraine that he kept the hold for no legitimate purpose and without any congressional notification for long enough to violate the law.

The concerns from OMB and DOD were ultimately accurate. As has been mentioned just last week, the nonpartisan Government Accountability Office found that President Trump broke the law by implementing the hold and in failing to notify Congress about it.

Because of the President's hold, DOD was ultimately unable to spend all the \$250 million in security assistance before the end of the fiscal year, as Congress—as we—intended.

As GAO explained, [Slide 366] the Constitution grants the President no unilateral authority to withhold funds from obligation. And they further explained: [Slide 367]

Faithful execution of the law does not permit the President to substitute his own constitutional priorities for those that Congress has enacted into law. OMB withheld funds for a policy reason, which is not permitted under the Impoundment Control Act.

The bottom line, President Trump froze the aid to increase the pressure on Ukraine to announce the investigations he wanted. He

violated the law. He violated his constitutional duty to take care that the laws be faithfully executed.

But the President didn't just violate the Impoundment Control Act while pressuring Ukraine to announce the investigations he wanted. He was dishonest about it in the process. This is really telling because he is still not telling the truth about it even now.

The budget documents that implemented the hold until September 11 asserted that it was being imposed to [Slide 368] "allow for an interagency process to determine the best use of such funds."

But that wasn't true. There was no ongoing interagency process after July 31 after it became clear that the entire interagency, including Cabinet offices, unanimously agreed the aid should be released. The truth is, there simply was no debate or review in the interagency regarding the best use of such funds. So the reason given by the President was not only illegal; it was false too.

The dishonesty in the budget documents weren't the only steps that the President's men at OMB took to cover up his misconduct and enable his scheme. OMB went so far as to remove the authority to approve the budget documents from Mark Sandy, a career officer, and gave it to Michael Duffey, a political appointee without experience managing such documents.

This change was unusual. It occurred less than 2 weeks after Sandy raised concerns that the hold violated the law. Sandy was not aware of any prior instance when a political appointee assumed this kind of funding approval authority.

Duffey's explanation that he simply wanted to learn more about the accounts doesn't make sense to Sandy. Really? This odd change in responsibility was just another way to keep the President's illegal hold within a tight-knit unit of loyal soldiers within the OMB.

Michael Duffey defied the House's subpoena. At the President's direction, he refused to appear. The White House did not assert any privileges or immunities when it directed Duffey to defy Congress's subpoena. It wasn't a real exercise of executive privilege. They told him not to appear, and they had no reason why.

If Mr. Duffey knew about any legitimate reason for the hold, I will bet he would not have been blocked from testifying. The fact that he was blocked might lead you to infer that his testimony would be damaging to the President and would be consistent with the testimony of the other witnesses that the hold was solely used to ratchet up pressure on Ukraine.

But the warning from DOD wasn't just about how the hold was illegal. There were also practical consequences. By August 12, the Department of Defense told OMB it could no longer guarantee it would be able to spend all \$250 million that Congress had directed before the end of the fiscal year.

Not long after this August 12 email, DOD determined that time had run out. Ms. Cooper testified that DOD estimated that as much as \$100 million of aid might go unspent, even if the hold was immediately lifted. As a result, DOD refused to certify that it would be able to spend the funds by September 30.

On August 20, OMB issued the first of six budget documents and removed the language providing legal cover for the hold. From that point on, the White House knew that DOD would not be able to spend all the funds, which was what the law required before Sep-

tember 30. Yet, even though he knew the hold would violate the Impoundment Control Act, President Trump continued the hold for another 23 days without telling us—without telling the Congress.

This had the exact outcome that DOD feared. After the President lifted the hold on the evening of September 11, DOD had only 18 days to spend the remaining \$223 million, which is about 89 percent of the total. DOD scrambled, and they spent all but approximately \$35 million. About 14 percent of the appropriated funds were left.

That \$35 million would have expired and would have been forever lost to Ukraine had Congress not stepped in to pass a law to roll the money over to the next year. But even as of today, more than \$18 million of that money has not yet been spent. Why? You will have to ask DOD. They haven't given us a reason.

OK, all of this shows, clearly, that President Trump knowingly and willfully violated the law when he withheld aid from Ukraine. But just to be clear, the Articles of Impeachment do not charge Donald Trump with violating the Impoundment Control Act. We are not arguing that, but understanding this violation of the law is important to understanding the broader scheme of his abuse of power. It shows the great lengths the President was willing to go to in order to pressure Ukraine to do his political dirty work.

The security assistance wasn't something the law allowed him to give or take at his discretion. No, he was legally obliged to release the money, but he simply didn't care.

Why? He was so determined to get the announcement from Ukraine to smear his election opponent that holding the aid to force Ukraine to do that was the most important thing. He didn't care if he was breaking the law.

I have been sitting here on the Senate floor. Honestly, I never wanted to be here under these circumstances. But I have been looking at "novus ordo seclorum." Now, I didn't study Latin. So I had to look it up. It means: "A new order of the ages is born." That is what the Founders thought they were doing. Keeping that new order, the democracy, where the power is in the hands of the people, not in the hands of an unaccountable executive, is what we in the Congress—the House and the Senate—are charged to do.

Senator BLUNT and I are in charge of the Joint Committee on Printing. Every year, we print a new copy of the Constitution. This year, in the back, we printed a quote: "At the conclusion of the Constitutional Convention, Benjamin Franklin was asked, 'What have you wrought?' He answered, ' . . . a Republic, if you can keep it.'"

That is the challenge that all of us face, and that you Senators face.

I turn now to Mr. CROW, who will outline information about the President's intentions.

Mr. Manager CROW. Mr. Chief Justice, Members of the Senate, counsel for the President, just bear with us a little while longer. I promise, we are almost there.

You have heard a lot the last few days about what happened. How do we know that the President ordered the hold to pressure Ukraine to announce investigations that would help his personal

political campaign? In other words, how do we know why it happened?

We know it because, to this day, there is no other explanation. We know it because senior administration officials, including the President's own senior political appointees, have confirmed it. We know it because the President's own Chief of Staff said it at a national press conference. And we know it because the President himself directed it.

Here are the facts. One, the President asked President Zelensky for a favor on July 25, and we all know what that favor was. [Slide 369]

Two, multiple U.S. officials with fact-based knowledge of the process have confirmed it.

Three, President Trump lifted the hold only after his scheme was exposed.

Four, there were no other legitimate explanations for the release of the hold. It was not based on a legitimate review of the foreign aid. It was not based on concerns of corruption in Ukraine. It was not because President Trump wanted countries to pay more. There are no facts that show that the President cared about any of those things.

Five, as we know, White House Chief of Staff Mick Mulvaney admitted at a press conference that the bogus 2016 election interference allegations were "why we held up the money."

Eventually, the truth comes out. There was no legitimate policy reason for holding the aid. So the truth came out.

As Ambassador Sondland said, the President was a businessman who saw congressionally approved, taxpayer-funded military aid for Ukraine, our partner at war, as just another business deal to be made. Military aid in exchange for fabricated dirt on his political opponent. Dirt for dollars. This for that. A quid pro quo.

Let's start with the President's own words to President Zelensky on the July 25 call. With the hold on his mind and on President Zelensky's mind, too—we know that—President Trump linked military aid to his request for a favor. At the very beginning of the call, President Zelensky said:

I would also like to thank you for your great support in the area of defense. We are ready to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes.

The "great support in the area of defense" included, of course, the \$391 million in military aid, because remember, just a month before, DOD had publicly announced its intent to provide \$250 million of that aid. President Zelensky was showing gratitude to the President for the aid that DOD had just announced would be on its way. [Slide 370] But the President had put a hold just a few weeks before.

Immediately after President Zelensky brought up the U.S. military support and said that Ukraine was almost ready to buy more Javelin anti-tank missiles, President Trump pivoted to what he wanted in return. He turned from the quid to the quo.

President Trump immediately responded. [Slide 371] He said: "I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it."

And what was that favor? Well, we all know by now; don't we? It wasn't to fight corruption. It wasn't to help the United States or our national interests. It was the two specific political investigations that he wanted Ukraine to announce to help his own personal political campaign. President Trump's quick pivot from the critical military aid that he knew Ukraine desperately needed to the investigations that would benefit him personally speaks volumes. By bringing up the investigations immediately after President Zelensky raised the issue of military support, he linked the two issues.

U.S. officials listening to the call also made that connection. Here is what Jennifer Williams, Vice President PENCE's aide, testified: (Text of Videotape presentation:)

Chairman SCHIFF. But I was struck by something else you said in your deposition. You said that it shed some light on possible other motivations behind the security assistance hold. What did you mean by that?

Ms. WILLIAMS. Mr. Chairman, I was asked during the closed-door testimony how I felt about the call; and, in reflecting on what I was thinking in that moment, it was the first time I had heard internally the President reference particular investigations that previously I had only heard about through Mr. Giuliani's press interviews and press reporting. So, in that moment, it was not clear whether there was a direct connection or linkage between the ongoing hold on security assistance and what the President may be asking President Zelensky to undertake in regard to investigations. So I—it was—it was noteworthy in that regard. I did not have enough information to draw any firm conclusions.

Chairman SCHIFF. But it raised a question in your mind as to whether the two were related.

Ms. WILLIAMS. It was the first I had heard of any requests of Ukraine which were that specific in nature. So it was noteworthy to me in that regard.

Mr. Manager CROW. In fact, the hold was formally implemented by OMB the very day of the call. Just hours after the call between President Trump and President Zelensky, Duffey sent an email to senior DOD officials instructing them to put a hold on the security aid. He said he underscored: [Slide 372] "Given the sensitive nature of the request, I appreciate your keeping that information closely held to those who need to know to execute the direction." In other words, don't tell anybody about it. If the President ordered the hold for a legitimate policy reason, then why did he want to hide it from the rest of the administration?

President Trump has obstructed Congress's ability to get those answers. We would like to ask Duffey why they wanted to keep it quiet. There is more evidence, of course—a lot more. In fact, there is so much evidence that, according to witnesses, the fact that the security assistance was conditioned on investigations became as clear as "two plus two equals four." Everyone knew it. Indeed, with no explanation for the hold, unanimous support for its release in the administration, and ongoing efforts by the President's top advisers to pressure Ukraine into announcing the investigations by holding up the White House meeting, it became crystal clear, as confirmed by multiple witnesses, that the only reason for the hold was to put additional pressure on Ukraine.

David Holmes, the senior official at the U.S. Embassy in Kyiv, explained.

(Text of Videotape presentation:)

Mr. GOLDMAN. Mr. Holmes, you have testified that by late August you had a clear impression that the security assistance hold was somehow connected to the in-

vestigation that President Trump wanted. How did you conclude that—how did you reach that clear conclusion?

Mr. HOLMES. We'd been hearing about the investigation since March, months before. President Zelensky had received a letter, a congratulatory letter, from the President saying he'd be pleased to meet him following his inauguration in May. And we hadn't been able to get that meeting, and then the security hold came up with no explanation. I'd be surprised if any of the Ukrainians . . . you said earlier, we discussed earlier, sophisticated people . . . when they received no explanation for why that hold was in place, they wouldn't have drawn that conclusion.

Mr. GOLDMAN. Because the investigations were still being pursued?

Mr. HOLMES. Correct.

Mr. GOLDMAN. And the hold was still remaining without explanation?

Mr. HOLMES. Correct.

Mr. GOLDMAN. This to you was the only logical conclusion that you could reach?

Mr. HOLMES. Correct.

Mr. GOLDMAN. Sort of like two plus two equals four?

Mr. HOLMES. Exactly.

Mr. Manager CROW. And Ambassador Sondland said the same thing.

(Text of Videotape presentation:)

Mr. GOLDMAN. So, is this kind of a two plus two equals four conclusion that you reached?

Ambassador SONDLAND. Pretty much.

Mr. GOLDMAN. Is the only logical conclusion to you that, given all of these factors, that the aid was also a part of this quid pro quo?

Ambassador SONDLAND. Yep.

Mr. Manager CROW. Ambassador Sondland didn't reach that conclusion based only on common sense. It was confirmed by Secretary Pompeo and Vice President PENCE, too.

So let's begin with what Secretary Pompeo knew about the link between the investigations and the aid. In front of you is an email. At the end of August, before President Trump canceled his trip to Warsaw to meet with President Zelensky, Sondland sent an email to Secretary Pompeo in which he proposed a pull-aside between President Zelensky and President Trump at the proposed meeting in Warsaw. [Slide 373] Three minutes later, Secretary Pompeo replied "yes." That is it. Ambassador Sondland explained the email in his testimony.

(Text of Videotape presentation:)

Chairman SCHIFF. Later in August, you told Secretary Pompeo that President Zelensky would be prepared to tell President Trump that his new justice officials would be able to announce matters of interest to the President, which could break the logjam. When you say matters of interest to the President, you mean the investigations that President Trump wanted. Is that right?

Ambassador SONDLAND. Correct.

Chairman SCHIFF. And that involved 2016 and Burisma or the Bidens?

Ambassador SONDLAND. 2016 and Burisma.

Chairman SCHIFF. And when you're talking here about breaking the logjam, you're talking about the logjam over the security assistance, correct?

Ambassador SONDLAND. I was talking logjam generically because nothing was moving.

Chairman SCHIFF. But that included the security assistance, did it not?

Ambassador SONDLAND. Correct.

Chairman SCHIFF. And based on the context of that email, this was not the first time you had discussed these investigations with Secretary Pompeo, is it?

Ambassador SONDLAND. No.

Chairman SCHIFF. He was aware of the connections that you were making between the investigations and the White House meeting and the security assistance?

Ambassador SONDLAND. Yes.

Mr. Manager CROW. So let's break that down for a minute. A meeting between two Presidents is a big deal. A pull-aside is a big

deal. These are highly choreographed events. Secretary Pompeo didn't ask any questions and didn't show any surprise or confusion in response to the email. Instead, he immediately endorsed the idea. This shows that Secretary Pompeo, who also listened to the July 25 call as well, understood that the security assistance was conditioned on the investigations.

By this time, everyone knew what was happening. A simple "yes" by Secretary Pompeo was enough. Secretary Pompeo wasn't the only senior official who knew. Vice President PENCE knew as well. Sondland raised the issue to Vice President PENCE during a meeting to prepare for the Warsaw trip. At some point late in the meeting, Sondland said: "It appears that everything is stalled until this statement gets made." What Sondland was referring to, of course, was the military aid and the White House meeting. Ambassador Sondland testified about Vice President PENCE's reaction.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, I want to go back to that conversation that you had with Vice President PENCE right before that meeting in Warsaw. And you indicated that you said to him that you were concerned that the delay in the aid was tied to the issue of investigations. Is that right?

Ambassador SONDLAND. I don't know exactly what I said to him. This was a briefing attended by many people, and I was invited at the very last minute. I wasn't scheduled to be there. But I think I spoke up at some point late in the meeting and said, it looks like everything is being held up until these statements get made, and that's my, you know, personal belief.

Mr. GOLDMAN. And Vice President PENCE just nodded his head?

Ambassador SONDLAND. Again, I don't recall any exchange or where he asked me any questions. I think he, it was sort of a duly noted response.

Mr. GOLDMAN. Well, he didn't say, Gordon, what are you talking about?

Ambassador SONDLAND. No, he did not.

Mr. GOLDMAN. He didn't say, what investigations?

Ambassador SONDLAND. He did not.

Mr. Manager CROW. Like Secretary Pompeo, Vice President PENCE wasn't surprised, nor did he ask what Sondland meant—because they all knew. This meeting also confirmed Sondland's understanding that the President had indeed conditioned the military aid on the public announcement of the investigations. This was a commonsense conclusion, confirmed by the Secretary of State and the Vice President.

With that confirmation in mind, Sondland pulled aside Yermak, the top aide to President Zelensky, immediately after the Pence-Zelensky meeting. Now, recall, he was the one who resisted the public statement about the specific investigations in August. Ambassador Sondland described what he told Yermak in that short meeting.

(Text of Videotape presentation:)

Ambassador SONDLAND. Based on my previous communication with Secretary Pompeo, I felt comfortable sharing my concerns with Mr. Yermak. It was a very, very brief pull-aside conversation that happened within a few seconds. I told Mr. Yermak that I believed that the resumption of U.S. aid would likely not occur until Ukraine took some kind of action on the public statement that we had been discussing for many weeks.

Mr. Manager CROW. You see, this just wasn't an internal scheme among the President's top advisers. President Trump, through his agents, communicated the quid pro quo clearly to Ukraine. Ambassador Sondland told President Zelensky's top aide on September 1 that Ukraine would not get the military aid unless

it announced the investigations. This, my Senate colleagues, is the very definition of a quid pro quo.

But other witnesses know it, too. Morrison watched Sondland's conversation with Yermak and then received an immediate readout from Sondland after that meeting. Morrison urgently reported the interaction to Ambassador Bolton on a secure phone call, and, of course, Bolton told him to go tell the NSC lawyers.

Morrison did as he was instructed. He also told Ambassador Taylor. Ambassador Taylor then confronted Sondland. [Slide 374] Taylor texted: "Are we now saying that security assistance and WH meeting are conditioned on investigations?"

Sondland responded: "Call me."

And as everyone knows, when someone says "call me," it says stop putting this in writing.

During their subsequent phone call, Sondland confirmed to Taylor that the military aid was conditioned on an announcement of investigations and that President Trump wanted President Zelensky in a "public box."

Here is how Taylor, who took contemporaneous notes of the conversation, explained that call.

(Text of Videotape presentation:)

Ambassador TAYLOR. During that phone call Ambassador Sondland told me that President Trump had told him that he wants President Zelensky to state publicly that Ukraine will investigate Burisma and alleged Ukrainian interference in the 2016 election. Ambassador Sondland also told me that he now recognized that he had made a mistake by earlier telling Ukrainian officials that only a White House meeting with President Zelensky was dependent on a public announcement of the investigations. In fact, Ambassador Sondland said, everything was dependent on such an announcement including security assistance. He said that President Trump wanted President Zelensky in a public box by making a public statement about ordering such investigations.

Mr. Manager CROW. President Trump wanted President Zelensky in a "public box." A private commitment wasn't enough for President Trump because he needed the political benefit, and he could only get the political benefit if it was public. We all know how this works with President Trump, how he weaponizes investigations for political purposes.

Think about that for a second. That is actually the exact opposite of how law enforcement investigations are conducted. If they are legitimate, law enforcement does not announce to the world they are investigating before actually doing it. That would tip off your targets. It would lead to witness intimidation, destruction of evidence. But the President didn't actively want a legitimate investigation. He only wanted the announcement.

At the end of that conversation between Taylor and Sondland on September 1, Taylor asked Sondland to speak to the President to see if he could change his mind. That is exactly what Sondland did.

On September 7, President Trump and Sondland spoke. We know the call was on September 7 for four reasons. First, Morrison testified that he had a conversation with Sondland on September 7 about Sondland's discussion with the President.

Second, Morrison told Taylor about this conversation on September 7.

Third, Sondland and Taylor had a conversation on September 8 about the conversation that Sondland had the day before.

Finally, Sondland texted Taylor and Volker on September 8 that he had conversations with “POTUS” and “Ze”—meaning President Trump and President Zelensky. So we know that the conversations must have happened before the morning of September 8, when that text was sent.

For his part, Sondland, who doesn’t take notes, also recalled that on that call, he simply asked President Trump an open-ended question about what he wanted from Ukraine. President Trump immediately responded: “I want no quid pro quo.”

Let’s stop here for a second. The President has latched on to this statement that he said that, and because he said it, it must be true, right? But wait just a minute. Remember what is happening here at the same time. The President had just learned about the whistleblower complaint in the Washington Post editorial linking the military aid to the investigations just 2 days before. The fact that the President immediately blurted that out speaks volumes.

I am a parent, and there are a lot of parents in this room. I think many of you can probably relate to the situation where you are in a room and you hear a large crash in the next room, and you walk in, and your kid is sitting there, and that first thing that happens is “I didn’t do it.”

But there is more. Sondland did acknowledge that President Trump said he wanted Zelensky to “clear things up.”

You will no doubt hear a lot from the President’s counsel that Sondland testified no one in the world told him that there was a quid pro quo, including President Trump. And, of course, that is right, because people engaging in misconduct don’t usually admit it.

But we know exactly what the President told Sondland. We know it from the testimony of Tim Morrison and Ambassador Taylor. We know it because Sondland testified that his own conclusion that there was a quid pro quo was confirmed by his conversation with President Trump. And we know it because Sondland relayed the exact message to President Zelensky right after he spoke to President Trump.

Keep in mind that Sondland does not take notes, and he readily admitted that if he could have seen his own documents prior to testifying, he would have remembered more.

But Morrison and Taylor took extensive notes at the time and testified based on those notes, and Sondland—and this is important—said he did not dispute any of the accounts of Morrison and Taylor.

Let’s look at what Morrison and Taylor said about that September 7 phone call. Here is Tim Morrison’s understanding of the Trump-Sondland call.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, a few days later, on September 7th, you spoke again to Ambassador Sondland, who told you that he had just gotten off the phone with President Trump. Is that right?

Mr. MORRISON. That sounds correct, yes.

Mr. GOLDMAN. What did Ambassador Sondland tell you that President Trump said to him?

Mr. MORRISON. If I recall this conversation correctly, this was where Ambassador Sondland related that there was no quid pro quo, but President Zelensky had to make the statement and that he had to want to do it.

Mr. GOLDMAN. And by that point, did you understand that the statement related to the Biden and 2016 investigations?

Mr. MORRISON. I think I did, yes.

Mr. GOLDMAN. And that that was essentially a condition for the security assistance to be released?

Mr. MORRISON. I understood that that's what Ambassador Sondland believed.

Mr. GOLDMAN. After speaking with President Trump?

Mr. MORRISON. That's what he represented.

Mr. Manager CROW. Here is the consistent recollection of how Ambassador Taylor described his understanding of the call. First, here is what he heard from Mr. Morrison.

(Text of Videotape presentation:)

Ambassador TAYLOR. According to Mr. Morrison, President Trump told Ambassador Sondland he was not asking for a quid pro quo, but President Trump did insist that President Zelensky go to a microphone and say he is opening investigations of Biden and 2016 election interference and that President Zelensky should want to do this himself.

Mr. Manager CROW. And second, here is Ambassador Taylor explaining what Sondland himself told Taylor about what took place on that Sondland-Trump call a day later.

(Text of Videotape presentation:)

Ambassador TAYLOR. He confirmed that he had talked to President Trump, as I had suggested a week earlier, but that President Trump was adamant that President Zelensky himself had to clear things up and do it in public. President Trump said it was not a quid pro quo.

Mr. Manager CROW. Like Sondland, both Taylor and Morrison recalled that President Trump said that he did not want a quid pro quo, but they both testified that President Trump followed that statement immediately by describing perfectly an exchange of this for that—or, in other words, a quid pro quo.

Prior to his call with the President, Sondland had reached the conclusion that the aid was being held until the public announcement of the investigations. That conclusion was confirmed by Secretary Pompeo and Vice President PENCE. Then Sondland relayed it to the Ukrainians. And after this phone call with President Trump, that conclusion was confirmed.

(Text of Videotape presentation:)

Mr. GOLDMAN. Well, you weren't dissuaded then, right, because you still thought that the aid was conditioned on the public announcement of the investigations after speaking to President Trump?

Ambassador SONDLAND. By September 8 I was absolutely convinced it was.

Mr. GOLDMAN. And President Trump did not dissuade you of that in the conversation that you acknowledge you had with him?

Ambassador SONDLAND. I don't ever recall because that would have changed my entire calculus. If President Trump had told me directly, I'm not—

Mr. GOLDMAN. That's not what I'm asking, Ambassador Sondland. I'm just saying, you still believed that the security assistance was conditioned on the investigation after you spoke to President Trump. Yes or no?

Ambassador SONDLAND. From a timeframe standpoint, yes.

Mr. Manager CROW. How else do we know that President Trump confirmed to Sondland that the aid was conditioned on the announcement? Sondland relayed the message to President Zelensky right after his conversation with President Trump.

Here is Ambassador Taylor's recollection of what Sondland told Zelensky, based on his notes.

(Text of Videotape presentation:)

Ambassador TAYLOR. Ambassador Sondland also said that he had talked to President Zelensky and Mr. Yermak and had told them that, although this was not a quid pro quo, if President Zelensky did not clear things up in public, we would be at a stalemate. I understood a “stalemate” to mean that Ukraine would not receive the much needed military assistance.

Mr. Manager CROW. Ambassador Sondland confirmed that Taylor’s memory of this call was accurate; there would be a stalemate without the investigations. Here is his testimony.

(Text of Videotape presentation:)

Mr. GOLDMAN. And then you also told Ambassador Taylor in that same conversation that if President Zelensky, rather you told President Zelensky and Andriy Yermak that although this was not a quid pro quo as the President had very clearly told you, it was however required for President Zelensky to clear things up in public or there would be a stalemate. You don’t have any reason to dispute Ambassador Taylor’s recollection of that conversation you had with President Zelensky, do you?

Ambassador SONDLAND. No.

Mr. GOLDMAN. And that you understood the stalemate referenced the aid, is that correct?

Ambassador SONDLAND. At that point, yes.

Mr. Manager CROW. A stalemate. Nothing would happen with the aid unless President Zelensky publicly announced the investigations. The President had not received his “quid” so there would be no “quo.”

Don’t take my word for it. Here is a recap of how we knew what happened during the call. First, Sondland testified about the conversation. [Slide 375] Second, Morrison received a readout from Sondland immediately after the call and testified based on his notes. Third, Taylor testified based on his own notes. And fourth, Sondland agreed that President Trump had confirmed a quid pro quo, and Sondland actually relayed the message to the President of Ukraine and told Ambassador Taylor about it.

President Zelensky got the message. He succumbed to the pressure. At the end of the conversation between Sondland and President Zelensky, President Zelensky explained that he had finally relented. His country needed the military aid, desperately. Their people were dying on the frontline all of the time. They were taking casualties every day. He agreed to make the statement.

(Text of Videotape presentation:)

Ambassador TAYLOR. Ambassador Sondland said that this conversation concluded with President Zelensky agreeing to make a public statement in an interview on CNN.

Mr. Manager CROW. President Zelensky had resisted making the announcement of the corrupt investigations for months. He resisted when Giuliani and other agents of the President made it known that President Trump required it. He resisted when President Trump himself asked directly on July 25. He resisted when the White House meeting he so desperately desired was conditioned on that announcement. And he resisted as vital military aid was on hold. But the money is 10 percent of his entire defense budget. Russia occupied the eastern part of his country. He could resist no more.

Ambassador Taylor was worried that even if the Ukrainian leader did as President Trump wanted, President Trump might continue to hold the military aid.

Ambassador Taylor texted his concerns to Ambassadors Volker and Sondland stating: [Slide 376]

The nightmare is they give the interview and don't get the security assistance. The Russians love it. (And I quit.)

In other words, the nightmare is that they make the announcement but President Trump doesn't release the aid. This would be perfect for the Russians. Russian propaganda would be adopted by the United States and the United States would be withdrawing its support for Ukraine.

On September 9, Ambassador Taylor reiterated his concerns about the President's quid pro quo in another series of text messages with Ambassadors Volker and Sondland. Ambassador Taylor said: [Slide 377]

The message to the Ukrainians (and Russians) we send with the decision on security assistance is key. With the hold, we have already shaken their faith in us. Thus my nightmare scenario.

And then later, he texted again saying:

Counting on you to be right about this interview, Gordon.

Ambassador Sondland responded:

Bill, I never said I was "right". I said we are where we are and believe we have identified the best pathway forward. Lets hope it works.

Ambassador Taylor replied:

As I said on the phone, I think it's crazy to withhold security assistance for help with a political campaign.

Here it is. Once again, in clear text message between three U.S. officials: "It's crazy to withhold security assistance for help with a political campaign."

Think about that. If there was no quid pro quo, then why did everybody know about it? Well, Ambassador Taylor told us why, too. Here is his testimony.

(Text of Videotape presentation:)

Ambassador TAYLOR. As I said on the phone, I think it is crazy to withhold security assistance for help with a political campaign.

Mr. GOLDMAN. What did you mean when you said you thought it was crazy?

Ambassador TAYLOR. Mr. Goldman, I meant that the importance—because of the importance of security assistance that we had just described and had a conversation with the chairman, because that was so important, that security assistance was so important for Ukraine as well as our own national interests, to withhold that assistance for no good reason other than help with a political campaign made no sense. It was counterproductive to all of what we had been trying to do. It was illogical. It could not be explained. It was crazy.

Mr. GOLDMAN. And when you say "all of what we were trying to do," what do you mean by "we"?

Ambassador TAYLOR. I mean that the United States was trying to support Ukraine as a frontline state against Russian attack. And, again, the whole notion of a rules based order was being threatened by the Russians in Ukraine. So our security assistance was designed to support Ukraine. And it was not just the United States; it was all of our allies.

Mr. GOLDMAN. When you referenced "help with a political campaign" in this text message, what did you mean?

Ambassador TAYLOR. I meant that the investigation of Burisma and the Bidens was clearly identified by Mr. Giuliani in public for months as a way to get information on the two Bidens.

Mr. Manager CROW. Now, that testimony is really clear, and it makes sense. It is consistent with all of the evidence you have seen here today. That is a quid pro quo as clear as two plus two equals four.

And what happened next also makes sense. Sondland got scared. Taylor was making clear that he didn't agree with the scheme. In response to Taylor's text message that it was "crazy to withhold security assistance for help in a political campaign," Sondland repeated again the false denial of a quid pro quo. At 5:17 a.m., Sondland responded to Taylor: [Slide 378]

Bill, I believe you are incorrect about President Trump's intentions. The President has been crystal clear: no quid pro quos of any kind. The President is trying to evaluate whether Ukraine is truly going to adopt the transparency and reforms that President Zelensky promised during his campaign. I suggest we stop the back and forth by text. If you still have concerns, I recommend you give Lisa Kenna or S—

That is Secretary Pompeo—

a call to discuss them directly. Thanks.

Now, the text message says very clearly that there are no quid pro quos "of any kind." So end of story, right? Case closed. But Sondland's testimony revealed this text and the President's denial were false. Just like President Trump, when Ambassador Sondland thought he was getting caught, he got nervous, and he wanted to deny it in writing to cover his tracks. That is why he suddenly says: "I suggest we stop the back and forth by text." Again, quit putting this in writing.

We know that Sondland's denial in the text was false because later, when he was under oath, under penalty of perjury, he actually said a quid pro quo did exist.

(Text of Videotape presentation:)

Ambassador SONDLAND. Was there a quid pro quo? As I testified previously with regard to the requested White House call and the White House meeting, the answer is yes.

Mr. Manager CROW. The answer is yes. It is clear that President Trump himself confirmed that the aid was conditioned on the public announcement of the investigations that the President wanted. To get Ukraine to help him with his reelection campaign, the President of the United States violated the law by withholding nearly \$400 million of taxpayer dollars intended to fight Russia. He put his own interests over the country, and that is why we are here.

Mr. Chief Justice and Members of the Senate, in deference to our proposed schedule and the late hour, I am now going to yield to my colleague, Mr. SCHIFF, to provide a brief recap of today and then we will begin again in the morning.

Mr. Manager SCHIFF. He means the afternoon.

Senators, Chief Justice, President's counsel, it has been a long day. We started out the day with the Chaplain asking for empathetic listening, and I think that is certainly what you have delivered for us today. I know you have been bombarded with information all day, and when you leave this Chamber, you are bombarded again by members of the press. There is no refuge, I know. And I just want to thank you for keeping an open mind about all the issues that we are presenting—an open mind for us and an open mind for the President's counsel. That is all that we can ask for.

Having watched you now for 3 days, whether it is someone you are predisposed to agree with or predisposed not to, it is abun-

dantly clear that you are listening with an open mind, and we can't ask for anything more than that, so we are grateful.

At the beginning of the trial, you may have seen the President's tweet. He tweeted a lot, but he tweeted a common refrain: "Read the transcript." So I thought at the end of the evening, I would join in the President's request that you reread the transcript because now that you know a lot more of the facts of this scheme, it reveals a lot more about that conversation.

Let me just point out a few things that may have escaped your attention about that transcript, which is not really a transcript because it is not complete. Let me just tell you a few things that may have escaped your attention about that call record. We have already talked about it. I will not go into it again. There are the pivotal sections where he talks about CrowdStrike and he asks for that favor and he wants investigation of the Bidens. There is a lot more to that call.

Now that you know so much more about that scheme, let me just point out a few things that really struck my attention. Early in the call, President Zelensky says:

We brought in many many new people. Not the old politicians, not the typical politicians, because we want to have a new format and a new type of government.

Again, this is the July 25 call. Early in the call, President Zelensky wants to impress upon President Trump he has brought in new people; that he is a reformer. This was his campaign pledge. He is a reformer. He is coming in. He is bringing in new people. So if there had been any concern about corruption in Ukraine, he is bringing in new people. He is a reformer. That is one of the first messages he wants to get across.

You can better well believe that he is prepared for this call because he needs that White House meeting. So everything he says is prepared. And early on, he wants to make sure that he lets the President know he is a reformer. Now, the President has his own agenda in this call, and immediately after that, in the next exchange, the President makes this point:

[T]he United States has been very very good to Ukraine. I wouldn't say that it's reciprocal necessarily because things are happening that are not good but the United States has been very very good to Ukraine.

This is very interesting that he brings up very early in the conversation this relationship is nonreciprocal. We've been "very very good to Ukraine," but, you know, can't say there is much coming the other way.

Now, you will remember that Bill Taylor had this reaction to talking to Gordon Sondland. When Sondland says: Donald Trump is a businessman. Before he writes a check, he likes to get what he is owed, Taylor's reaction is, well, that makes no sense because Ukraine doesn't owe us anything.

Well, in this call you can see that Donald Trump does think he is owed. This is what he is talking about when he says "there's not much reciprocity here." He thinks he is owed something. You want to get this military, you want to get this meeting—I don't see much reciprocity here. He thinks he is owed something. When you read that passage and you know about that: "He is a businessman. Before he signs a check" that takes on new meaning.

Now, a little later in the call, Zelensky says:

I will personally tell you that one of my assistants spoke with Mr. Giuliani just recently and we are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine.

You should read this carefully yourself, but this may be the first mention of Giuliani. Zelensky is bringing him up and saying: Well, I would really like to meet with Giuliani.

This is July. What do we know now about the meeting between Giuliani and Zelensky? We know that Giuliani, in May, wanted to go meet with Zelensky. We saw that letter from Giuliani: I want to go meet with Zelensky. And we know he was rebuffed or something happened because he didn't get that meeting. And he was angry and went on TV and he said that Zelensky is surrounded by enemies of Trump, right?

So Zelensky is prepared for this call, and he knows it is going to resonate with Donald Trump if he says he would like to meet with Rudy Giuliani. And immediately after that he says: "[W]e are hoping very much that Mr. Giuliani will be able to travel to Ukraine and we will meet once he comes to Ukraine." Immediately thereafter, the next sentence he says: "I just wanted to assure you once again you have nobody but friends around us."

Now, we could have read this transcript to you early on, and that wouldn't have meant much to you, but now that you know that Rudy Giuliani was out there on TV saying Zelensky is surrounded by enemies of Trump, you can see why Zelensky says "you have nobody but friends around us." And he goes on. "I also wanted to tell you that we are friends." He brings up friendship again. "We are great friends." That is the third time he wants to underscore what great friends they are. And why? Because Rudy Giuliani has been saying they are enemies. And then he goes on to say:

I also plan to surround myself with great people and in addition to that investigation, I guarantee as the President of Ukraine that all the investigations will be done openly and candidly. That I can assure you.

He needs to assure the President that he is going to get his deliverable because it has been made clear before this call what the President wants to hear—more than that—what the President needs to hear is there will be no stone unturned in that investigation.

So the President in the next response says:

Mr. Giuliani is a highly respected man. He was the mayor of New York City, a great mayor, and I would like him to call you.

Well, that sounds familiar, doesn't it? Call Rudy. The same thing he told the three amigos in May: Call Rudy. Now he is telling Zelensky: Call Rudy. And he says: I will ask him to call you along with the Attorney General. Rudy very much knows what's happening and he is a very capable guy. If you could speak to him, that would be great.

Talk to Rudy.

That is pretty remarkable—right?—a head-of-state to head-of-state call. It is not: Talk to my Secretary of State. It is not: Talk to my national security advisers. It is: Talk to Rudy.

It is interesting, too, that it is not just Rudy, right?

I will ask him to call you along with the Attorney General.

That was quite a shock when this call record was released, right? The Attorney General shows up in this call record. A couple of times, he shows up in this call record.

That is when the Department of Justice immediately issues a statement: We have got nothing to do with this. We don't know anything about this. The ink is barely dry. This thing has been released, and we don't know what this is about. We haven't talked about it. We haven't gone to Ukraine. We don't know a thing about it.

Now, bear in mind a couple of other things that you know at this point. Bear in mind that there was a whistleblower complaint before this call record was released. Bear in mind that the law that we passed and you passed requires that a whistleblower complaint that is designated to go to Congress must go to Congress and must go to the intelligence committees. If the inspector general finds it credible and urgent, it has to not only go to Congress, it has to go to Congress soon. There is a timetable.

Bear in mind what happens when that complaint is filed and the inspector general says: It is not only credible—it is urgent. It is urgent.

What happens? Well, it goes to the Acting Director of National Intelligence. And what does he do? He contacts the White House, and he contacts Bill Barr's Justice Department. And what does Bill Barr's Justice Department do in consultation with the White House? They say: Don't turn it over to Congress. You don't have to turn it over to Congress.

I know what the law says. It says "you shall." It doesn't say "you may." It doesn't say "you might." It doesn't say "you can if you want to." It doesn't say "if the President doesn't object." It says "you shall." We are telling you—Bill Barr's Justice Department is telling you—you don't have to. The highest office of the law in the land is saying: Ignore the law. Ignore the law. We will come up with some rationalization. We will get our guys at the Office of Legal Counsel to write some opinion. We will find a way. Do not turn it over. You don't have to.

And they don't.

The inspector general, who deserves a lot of credit for guts, reports to the intelligence committees and says: They are violating the law, and I don't know what to do about it. They are supposed to turn it over to you, and I don't know what to do about it, but I need to tell you, to meet my obligation, they are not doing what they should.

So we subpoena the Director of National Intelligence, and we make it clear to the Director of National Intelligence that he is going to have to come before Congress in an open hearing and explain why he is the first Acting Director to refuse to turn a complaint over to Congress. The investigations are open.

The result is they are forced to turn it over to Congress, and they are forced to release this call record, but here you have the Department of Justice weighing in: You don't have to turn it over.

It is the same call record that mentions the Attorney General of the United States, but it fails. That effort to cover up—to conceal the whistleblower complaint—fails, and it comes out. No sooner

than it does, the Attorney General says: We had nothing to do with this.

Of course, if that had never been released, well then, the Attorney General's name would have never come up in this call record, and there would have been no necessity to distance himself from the President's actions.

In the next exchange, President Zelensky says that he or she—he is going to have a new Prosecutor General—will look into the situation, specifically into the company that you mention in this issue.

Now, this is also interesting: the company that you mention in this issue.

There is no company mentioned in this issue in the call record, but, of course, you have heard now testimony from two witnesses who were on that call that Burisma was mentioned.

So why isn't Burisma in the call record? Well, I can say this: That call record went to that highly classified server, and the mention of Burisma didn't make it into the call record.

Zelensky goes on to say: The issue of the investigation of the case is actually the issue of making sure to restore the honesty. So we will take care of that, and we will work on the investigation of the case.

Time after time after time, Zelensky feels the need to assure the President he is going to do those political investigations that the President wants.

In the next exchange, after Zelensky says this, the President says: I will have Mr. Giuliani give you a call, and I am also going to have Attorney General Barr call, and we will get to the bottom of it.

I mean, you can count. Don't take my word, but I think there is no one who comes up more in this call record than Rudy Giuliani, which tells us something.

In the next exchange, among other things, Zelensky says: I also wanted to thank you for your invitation to visit the United States, specifically Washington, DC. On the other hand, I also want to assure you that we will be very serious about the case, and we will work on the investigation.

In the same way that earlier in the conversation Zelensky brings up those weapons he needs—those Javelins—the President immediately says: I have a favor. So we have military assistance and “I have a favor.”

Here, Zelensky says: I want to thank you for your invitation to come visit. I also want to assure you we are serious about doing the investigation.

Clearly, he is linking the two, and, of course, he is linking the two because he is told the two are linked before the call, and he is conveying to the President: I got the message.

The President, in the next exchange, says: I will tell Rudy and Attorney General Barr to call.

Again, let's make sure there is no misunderstanding here.

I am going to have them call. I want you in touch with Rudy Giuliani and the Attorney General. I will tell Rudy and Attorney General Barr to call. Thank you. Whenever you would like to come to the White House, feel free to call.

I am going to have you talk to Rudy and the Attorney General, and by the way, anytime you want to come to the White House, just call.

Give us a date, and we will work that out. I look forward to seeing you.

Then Zelensky says: Thank you very much. I would be very happy to come. I am looking forward to our meeting.

Again and again, Zelensky's ask, what he goes into that call wanting, is the meeting. You could tell what he was prepared for. He was prepared for the request for investigations. He knew what he had to promise, and he knew what he wanted to obtain, and that was the visit.

You also saw in that video, that rather sad video—yes, sort of humorous but sad, too—Zelensky and President Trump at the U.N., where he is saying: You know, I still haven't gotten that meeting.

I can tell you something—and this is what is so frightening about these circumstances. If we had not discovered all of this, he would likely be saying at that U.N. meeting: You know, we are still waiting on that military aid.

Yes, we forced the aid to be released because the President got caught, but, even now, our ally can't get his foot in the door. Even now, our ally can't get his foot in the door.

This brings me to the last point I want to make tonight, which is, when we are done, we believe that we will have made the case overwhelmingly of the President's guilt—that is, that he has done what he is charged with. He withheld the money. He withheld the meeting. He used it to coerce Ukraine to do these political investigations. He covered it up. He obstructed us, and he is trying to obstruct you. He has violated the Constitution.

But I want to address one other thing tonight. OK. He is guilty. OK. He is guilty. Does he really need to be removed? We have an election coming up. Does he really need to be removed? He is guilty. You know, is there really any doubt about this? I mean, do we really have any doubt about the facts here? Does anybody really question whether the President is capable of what he is charged with? Nobody is really making the argument "Donald Trump would never do such a thing" because, of course, we know that he would, and, of course, we know that he did.

It is a somewhat different question, though, to ask: OK. It is pretty obvious. Whether we can say it publicly or we can't say it publicly, we all know what we are dealing with here with this President, but does he really need to be removed?

This is why he needs to be removed: Donald Trump chose Rudy Giuliani over his own intelligence agencies. He chose Rudy Giuliani over his own FBI Director. He chose Rudy Giuliani over his own national security advisers. When all of them were telling him this Ukraine 2016 stuff was kooky, crazy, Russian propaganda, he chose not to believe them. He chose to believe Rudy Giuliani. That makes him dangerous to us, to our country. That was Donald Trump's choice.

Why would Donald Trump believe a man like Rudy Giuliani over a man like Christopher Wray? OK. Why would anyone in his right mind believe Rudy Giuliani over Christopher Wray? Because he

wanted to, because what Rudy was offering him was something that would help him personally and what Christopher Wray was offering him was merely the truth. What Christopher Wray was offering him was merely the information he needed to protect this country and its elections, but that was not good enough. What is in it for him? What is in it for Donald Trump? This is why he needs to be removed.

You may be asking: How much damage can he really do in the next several months until the election? A lot—a lot of damage.

We just saw last week a report that Russia tried to hack or maybe did hack Burisma, OK? I don't know if they got in. I am trying to find out. My colleagues on the Intel Committees of the House and Senate are trying to find out. Did the Russians get in? What are the Russians' plans and intentions?

Well, let's say they get in, and let's say they start dumping documents to interfere in the next election. Let's say they start dumping some real things they have from Burisma. Let's say they start dumping some fake things they didn't hack from Burisma, but they want you to believe they did. Let's say they start blatantly interfering in our election again to help Donald Trump.

Can you have the least bit of confidence that Donald Trump will stand up to them and protect our national interests over his own personal interests? You know you can't, which makes him dangerous to this country. You know you can't. You know you can't count on him. None of us can.

What happens if China got the message? Now, you can say: Well, he is just joking, of course. He didn't really mean China should investigate the Bidens. You know that that is no joke.

Now, maybe you could have argued it 3 years ago when he said: Hey, Russia. If you are listening, hack Hillary's emails. Maybe you could have given him a freebee and said he was joking, but now we know better. Hours after he did that, Russia did, in fact, try to hack Hillary's emails. There is no mulligan here when it comes to our national security.

So what if China does overtly or covertly start to help the Trump campaign? Do you think he is going to call them out on it or do you think he is going to give them a better trade deal on it?

Can any of us really have the confidence that Donald Trump will put national interests ahead of his personal interests? Is there really any evidence in this Presidency that should give us the ironclad confidence that he would do so? You know you can't count on him to do that. That is the sad truth. You know you can't count on him to do that.

The American people deserve a President they can count on to put their interests first—to put their interests first.

Colonel Vindman said: Here, right matters. Here, right matters.

Well, let me tell you something. If right doesn't matter—if right doesn't matter—it doesn't matter how good the Constitution is; it doesn't matter how brilliant the Framers were; it doesn't matter how good or bad our advocacy in this trial is; it doesn't matter how well written the oath of impartiality is. If right doesn't matter, we are lost. If the truth doesn't matter, we are lost. The Framers couldn't protect us from ourselves if right and truth don't matter. And you know that what he did was not right.

You know, that is what they do in the old country that Colonel Vindman's father came from or the old country that my great-grandfather came from or the old countries that your ancestors came from or maybe you came from, but here, right is supposed to matter. It is what has made us the greatest Nation on Earth. No Constitution can protect us if right doesn't matter anymore.

And you know you can't trust this President to do what is right for this country. You can trust he will do what is right for Donald Trump. He will do it now. He has done it before. He will do it for the next several months. He will do it in the election if he is allowed to. This is why, if you find him guilty, you must find that he should be removed—because right matters. Because right matters. And the truth matters. Otherwise, we are lost.

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m., Friday, January 24, and that this order also constitute the adjournment of the Senate.

There being no objection, at 10:32 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Friday, January 24, 2020, at 1 p.m.

[From the CONGRESSIONAL RECORD, January 24, 2020]

The Senate met at 1:05 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will please lead us in prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

Almighty God, as we resume this impeachment trial, let Your will be done. Enlighten our Senators as You show them Your will. Lord, guide them with Your wisdom, supporting them with Your power. In spite of disagreements, may they strive for civility and respect. May they respect the right of the opposing side to differ regarding convictions and conclusions. Give them the wisdom to distinguish between facts and opinions without lambasting the messengers.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. Will Senators please be seated.

If there is no objection, the Journal of proceedings of the trial are approved to date.

Hearing no objection, it is so ordered.

The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, for all of our colleagues' information about scheduling, today we will plan to take short breaks every 2 to 3 hours and will accommodate a 30-minute recess for dinner, assuming it is needed, until the House managers have finished their opening presentation.

For scheduling purposes, we have organized tomorrow's session to convene at 10 a.m. and run for several hours as the President's counsel begin their presentation.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 483, the managers for the House of Representatives have 7 hours 53 minutes remaining to make the presentation of their case.

The Senate will now hear you.

OPENING STATEMENT—CONTINUED

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, distinguished counsel of the President, I keep wanting to say "good morning," but good afternoon. I just wanted to give a very brief orientation to the argument you will hear today.

We will begin with JASON CROW, who was talking about the conditionality of the military assistance. This is the latter part, although not the end, of the argumentation on the application of the constitutional law as it respects article I, the abuse of power. I will have a presentation after Mr. CROW, and soon thereafter we will conclude the presentation on article I. We will then begin the presentation on article II, once again applying the constitutional law to the facts on the President's obstruction of Congress. We will then have some concluding thoughts and then turn it over to the President's counsel.

That is what you should expect for the day, and with that, I will now yield to Mr. CROW of Colorado.

Mr. Manager CROW. Mr. Chief Justice, good afternoon. I woke up this morning and walked to my local coffee shop, where, unlike my esteemed colleague Mr. JEFFRIES from New York, nobody complained to me about Colorado baseball. So I could only conclude that this is only a New York Yankees problem.

As Mr. SCHIFF mentioned, we talked last night about the July 25 call and the multiple officials who had confirmed the intent of the President in withholding the aid, so now I would like to turn to what happened around the time the aid was lifted.

We know that the aid was lifted ultimately on September 11, [Slide 379] but it wasn't lifted for any legitimate reason. It was only lifted because President Trump had gotten caught. Let's go through how we know that.

On August 26, [Slide 380] the whistleblower complaint had been sent to the Director of National Intelligence, and public reports indicate that President Trump was told about the complaint by White House Counsel Pat Cipollone.

On September 5, though, the scheme became public. An editorial in the Washington Post on that day, [Slide 381] for the first time publicly, explicitly linked the military aid hold and the investigations that President Trump wanted.

Keep in mind that public scrutiny of the President's hold increased exponentially after this became public. And this is where things start moving really fast.

A few days later, on September 9, the House investigative committees publicly announced their investigation of the President's conduct in Ukraine. Lieutenant Colonel Vindman testified to the National Security Council, [Slide 380] and others at the White House learned about the investigation when it was announced. And a colleague of his said that it might have the effect of releasing the aid. On that same day, the House Intelligence Committee learns that the administration had withheld the whistleblower complaint from Congress. The scheme was unravelling. What happens 2 days later? President Trump released the military aid.

He only released it after he got caught. But there is another reason we know the President lifted the aid only [Slide 382] because he got caught: because there is no other explanation. The testimony of all of the witnesses confirmed it. [Slide 383] Both Lieutenant Colonel Vindman and Ms. Williams testified that they were not provided any reason for lifting the hold. [Slide 384] Vindman testified that nothing on the ground had changed in the 2 months of the hold, and Mark Sandy of the OMB also confirmed that. Ambassador Taylor, too, testified that "I was not told the reason why the hold had been lifted."

Let me take a moment to address another defense I expect you will hear: that the aid was released and the investigations were never announced; so therefore no harm, no foul, right? Well, this defense would be laughable if this issue wasn't so serious.

First, I have spoken over the past 3 days about the real consequences of inserting politics into matters of war. Real people, real lives are at stake. Every day, every hour matters. So, no, the delay wasn't meaningless. Just ask the Ukrainians sitting in trenches right now. And to this day, they are still waiting on \$18 million of the aid that hasn't reached them.

Jennifer Williams, who attended the Warsaw meeting with Vice President PENCE, described President Zelensky's focus during this time.

(Text of Videotape presentation:)

Mr. GOLDMAN. And you testified in your deposition that in that conversation President Zelensky emphasized that the military assistance, the security assistance, was not just important to assist Ukraine in fighting a war against Russia but that it was also symbolic in nature. What did you understand him to mean by that?

Ms. WILLIAMS. President Zelensky explained that more than—or just equally with—the financial and physical value of the assistance, that it was the symbolic nature of that assistance that really was the show of U.S. support for Ukraine and for Ukraine's sovereignty and territorial integrity. And I think he was stressing that to the Vice President to really underscore the need for the security assistance to be released.

Mr. GOLDMAN. And, then, if the United States was holding the security assistance, is it also true then that Russia could see that as a sign of weakening U.S. support for Ukraine and take advantage of that?

Ms. WILLIAMS. I believe that is what President Zelensky was indicating, that any signal or sign that U.S. support was wavering would be construed by Russia as potentially an opportunity for them to strengthen their own hand in Ukraine.

Mr. Manager CROW. This is an important point, particularly when the President and his attorneys tried to argue: no harm, no foul.

The financial assistance itself was really important to Ukraine, no question about it. But the aid was equally important as a signal to Russia of our support for Ukraine. And regardless of whether the aid was ultimately released, the fact that the hold became public sent a very clear signal to Russia that our support for Ukraine was wavering, and Russia was watching very closely for any sign of weakness. The damage was done.

Now, [Slide 385] any possible doubt about whether the aid was linked to the investigations has been erased by the President's own Chief of Staff. We have seen this video before during the trial, but there is a really good reason for this. It is a complete admission on national TV that the military aid was conditioned on Ukraine helping the President's political campaign.

Here, once again, is what Mulvaney said.

(Text of Videotape presentation:)

Mr. MULVANEY. Did he also mention to me in the past the corruption related to the DNC server? Absolutely. No question about that. But that is it. And that's why we held up the money.

Mr. Manager CROW. When pressed that he just confessed to the very quid pro quo that President Trump had been denying, Mulvaney doubled down.

(Text of Videotape presentation:)

REPORTER. To be clear, what you just described is a quid pro quo. Funding will not flow unless the investigation into the Democratic server happened as well.

Mr. MULVANEY. We do that all the time with foreign policy. If you read the news reports and you believe them, what did McKinney say yesterday? Well, McKinney said yesterday that he was really upset with the political influence in foreign policy. That was one of the reasons he was so upset about this. And I have news for everybody: Get over it. There is going to be political influence in foreign policy.

Mr. Manager CROW. Remember, at the time he made these statements, Mulvaney was both the head of OMB and the Acting Chief of Staff at the White House. He knew about all of the legal concerns. He also knew about the President's so-called drug deal, as Ambassador Bolton called it. He knew exactly what was going on in the Oval Office and how OMB implemented the President's illegal order to hold the aid.

Mulvaney confirmed why the President ordered the hold. It was not to develop further policy to counter aggression. It was not to

convince the Ukrainians to implement additional anti-corruption reforms. And it was not to pressure our allies to give more to Ukraine.

Since we won't have an opportunity to respond to the President's presentation, I am going to take a minute to respond to some of the arguments that I expect them to make.

You will notice, I am sure, that they will ignore significant portions of the evidence, while trying to cherry-pick individual statements here and there to manufacture defenses. But don't be fooled.

One defense you may hear is that the aid was held up to allow for a policy review. This is what the administration told the GAO at one point. But the evidence shows the opposite. The evidence shows that the administration didn't conduct a review at any time after the President ordered the hold.

Laura Cooper was not aware of any review of the funding conducted by DOD in July, August, or September, and, similarly, George Kent testified that the State Department did not conduct and was never asked to conduct a review of funding administered by the State Department. In fact, on May 23, the anti-corruption review was complete and DOD certified to Congress that Ukraine had complied with all of the conditions and that the remaining half of the aid should be released. This was confirmed by the June 18 press release announcing the funding.

Do you remember the fictitious "interagency review process"? That was made up too. No review is necessary because it had already been done.

Next, the President's counsel keeps saying this was about corruption in Ukraine. President Trump was not concerned with fighting corruption. It is difficult to even say that with a straight face. The President never mentioned corruption on either call with President Zelensky. But let's go through the evidence.

As we just discussed, DOD had already completed a review and concluded that Ukraine had "made sufficient progress in meeting defense reform and anti-corruption goals consistent with the National Defense Authorization Act in order to receive the funds."

In fact, Mark Sandy, who was not at that meeting but who was initially responsible for approving the hold, said he had never heard corruption as a reason for the hold in all of the discussions he had about it.

Similar to the anti-corruption argument, there is simply no evidence to support the President's after-the-fact argument that he was concerned about burden-sharing; that is, other countries also contributing to Ukraine.

I imagine the President may cite the emails in June about what other countries provided to Ukraine, the reference to other countries' contributions in the July 25 call, and testimony from Sandy about a request for information about what other European countries give to Ukraine. But there is simply no evidence that ties the concern to his decision to hold the funding.

First, let's actually look at the contributions of European countries to Ukraine. There is a slide in front of you. [Slide 386] It shows that other European countries have significantly contributed to Ukraine since 2014, and the European Union, in total, has given far more than the United States. The EU is the single largest

donor to Ukraine, having provided over \$16 billion in grants and loans.

The President's assertion that other countries did not support Ukraine is meritless. There are other reasons too.

After DOD and OMB responded to the President's request, presumably with some of the information we just provided you, showing Europe gives a lot to Ukraine, nobody in the Trump administration mentioned burden-sharing as a reason for the hold to any of the 17 witnesses that we have been talking about. [Slide 387]

Sondland, whose actual portfolio is the EU—not Ukraine—testified that he was never asked to speak to the EU or EU member countries about providing more aid to Ukraine. If President Trump were truly concerned about that, he would have been the perfect guy to handle it because he was our Ambassador to the EU. But it never happened. How could it? Sondland himself knew the aid was linked to the investigations because that is what the President himself had told him.

It wasn't until the President's scheme began to unravel, after the White House learned of the whistleblower complaint and after POLITICO publicly revealed the existence of the hold, that the issue of burden-sharing came up again.

If the President's concern were genuinely about burden-sharing, he never made any public statements about it, never ordered a review of burden-sharing, and never ordered his officials to push Europe to increase their contributions. And then he released the aid without any changes in Europe's contributions.

This last point is important. You know the President's purported concern about burden-sharing rings hollow because the aid was released after the President got caught, not because the EU or any European country made any new contributions. As Lieutenant Colonel Vindman testified, the facts on the ground had not changed.

Finally, you may hear the President's counsel say that Ukraine didn't know about the hold until August 28, long after the hold was implemented. Therefore, they could not have felt pressure. But this makes no sense.

First, they found out about it long before August 28. Multiple witnesses testified that the Ukrainians showed "impressive diplomatic tradecraft" in learning quickly about the hold, and, of course, they would know. The DOD release was announced in June. U.S. agencies knew about it in July. It should be no surprise that the first inquiries about the aid were on July 25, the same day as the call.

You see, it doesn't matter if extortion lasts 2 weeks or 2 months. It is still extortion, and Ukraine certainly felt the pressure. Other Ukrainian officials also expressed concerns that the Ukrainian government was being singled out and penalized for some reason. And they were, by President Trump.

Do you know how else you know they felt the pressure from the hold? President Zelensky finally relented and was planning to do the CNN interview. Ultimately, right around the time of President Zelensky's conversation with President Trump, which is the subject of the classified document that I urge all Senators to look at, Presi-

dent Zelensky canceled the CNN interview. But the damage was already done.

The evidence is clear. The question for you is whether it is OK for the President to withhold taxpayer money, aid for our ally—our friend at war—for a personal political benefit; whether it was OK for the President to sacrifice our national security for his own election. It is not OK to me, it is certainly not OK with the American people, and it should not be OK to any of you.

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, President's counsel, the American people, once again, we are gathered here, not as Democrats or Republicans, not as the left or the right, not as progressives or conservatives, but as Americans doing our constitutional duty during this moment of Presidential accountability. As House managers, we thank you for your courtesy, your attentiveness, and your hospitality.

At the heart of article II, obstruction of Congress, is a simple, troubling reality. President Trump tried to cheat, he got caught, and then he worked hard to cover it up. The President tried to cheat, he got caught, and then he worked hard to cover it up. [Slide 388]

Patrick Henry, one the Nation's great patriots, once said that "the liberties of a people never were, nor ever will be secure, when the transactions of their rulers may be concealed from them."

Let's now address the effort by President Trump and his team to cover up his wrongdoing. By July of 2019, White House officials were aware of serious allegations of misconduct by President Trump regarding Ukraine, but instead of halting the President's corrupt scheme, they worked overtime to conceal it from the American people.

As additional evidence of the President's wrongdoing mounted, White House lawyers redoubled their efforts to prevent Congress and the American people from learning of the President's misconduct.

At the same time, top administration officials—including Secretary of State Pompeo, Secretary of Defense Esper, and National Security Advisor John Bolton—tried to convince President Trump to lift the hold on the security assistance. They failed. President Trump was determined to carry out his corrupt scheme.

The military and security aid was only released on September 11 after the hold became public, after the House launched an investigation, and after Congress learned about the existence of a whistleblower complaint. The \$391 million in security aid was only released because President Trump was caught redhanded.

The actions of President Trump and high-level White House officials allowed his abuse of power to continue beyond the watchful eye of Congress and, most importantly, the American people.

As we have discussed at length, on July 10, Ambassador Sondland told the Ukrainians and other U.S. officials that he had a deal with Acting Chief of Staff Mick Mulvaney to schedule the White House meeting President Zelensky wanted, if the new Ukrainian leader committed to the phony investigations that President Trump sought.

As you have seen in testimony shown during this trial, following that meeting, National Security Council officials, Dr. Fiona Hill

and Lieutenant Colonel Alexander Vindman immediately reported this information to John Eisenberg, the Legal Advisor for the National Security Council and a Deputy Counsel to the President. According to Dr. Hill, Mr. Eisenberg told her that he was also concerned about that July 10 meeting. On the screen is Dr. Hill's deposition testimony where she explains Mr. Eisenberg's reaction, saying: [Slide 389]

I mean, he wasn't aware that Sondland, Ambassador Sondland was . . . kind of running around doing a lot of these . . . meetings and independently. We talked about the fact that . . . Ambassador Sondland said he'd been meeting with Giuliani and he was very concerned about that. And he said he would follow up on this.

Mr. Eisenberg was very concerned about that and said that he would follow up on this.

Dr. Hill further testified that Mr. Eisenberg told her that he followed up with his boss, the distinguished White House Counsel, Pat Cipollone. However, because the President blocked Mr. Eisenberg from testifying in the House, we do not know what, if anything, he or Mr. Cipollone did in response to this deeply troubling information. What we do know is that President Trump's effort to cheat continued with reckless abandon. By failing to put the brakes on the wrongdoing after that July 10 meeting—even after they were notified by concerned national security officials—the White House attorneys allowed it to continue unchecked.

Right around the same time that the July 10 meetings at the White House took place, the Office of Management and Budget began executing President Trump's illegal order to withhold all security assistance from Ukraine.

On July 10, Robert Blair, an assistant to the President, communicated the hold to the Acting Director of the Office of Management and Budget, Russell Vought. On July 18, an Office of Management and Budget official communicated the hold to other executive branch agencies, including the Department of State and the Department of Defense. And a week later, on July 25, President Trump had his imperfect telephone call with President Zelensky and directly pressured the Ukrainian leader to commence phony political investigations as part of his effort to cheat and solicit foreign interference in the 2020 election.

The July 25 call marked an important turning point. If there was any question among senior White House officials and attorneys about whether President Trump was directly involved in the Ukraine scheme, as opposed to just a rogue operation being led by Rudolph Giuliani or some other underlings, after July 25, there can be no mistake that the President of the United States was undoubtedly calling the shots.

Thereafter, the complicity of White House officials with respect to the coverup of the President's misconduct intensified. Immediately after the July 25 call, both Lieutenant Colonel Vindman and his direct supervisor, Tim Morrison, reported their concerns about the call to Mr. Eisenberg and his Deputy, Michael Ellis. In fact, within an hour after the July 25 call, Lieutenant Colonel Vindman returned again a second time to Mr. Eisenberg and reported his concerns.

(Text of Videotape presentation:)

LTC VINDMAN. I was concerned by the call. What I heard was inappropriate and I reported my concerns to Mr. Eisenberg. It is improper for the President of the United States to demand that a foreign government investigate a U.S. citizen and a political opponent.

I was also clear that if Ukraine pursued an investigation, it was also clear that if Ukraine pursued investigation into the 2016 elections, the Bidens and Burisma, it would be interpreted as a partisan play. This would undoubtedly result in Ukraine losing bipartisan support, undermining U.S. national security and advancing Russia's strategic objectives in the region.

I want to emphasize to the committee that when I reported my concerns on July 10th relating to Ambassador Sondland and then on July 25th relating to the President, I did so out of a sense of duty. I privately reported my concerns in official channels to the proper authority in the chain of command. My intent was to raise these concerns because they had significant national security implications for our country. I never thought that I'd be sitting here testifying in front of this committee and the American public about my actions. When I reported my concerns, my only thought was to act properly and to carry out my duty.

Mr. Manager JEFFRIES. Timothy Morrison, the National Security Council's Senior Director for Europe and Russia, also reported the call to Mr. Eisenberg and asked him to review the call, which he feared would be "damaging" if leaked.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, Mr. Morrison, shortly after you heard the July 25th call, you testified that you alerted the NSC legal advisor, John Eisenberg, pretty much right away. Is that right?

Mr. MORRISON. Correct.

Mr. GOLDMAN. And you indicated in your opening statement, or at least from your deposition, that you went to Mr. Eisenberg out of concern over the potential political fallout if the call record became public and not because you thought it was illegal. Is that right?

Mr. MORRISON. Correct.

Mr. GOLDMAN. But you would agree, right, that asking a foreign government to investigate a domestic political rival is inappropriate. Would you not?

Mr. MORRISON. It's not what we recommended the President discuss.

Mr. Manager JEFFRIES. The July 25 call was at least the second time that National Security Council officials had reported concerns about President Trump's pressure campaign to White House lawyers—the second time—who now clearly understood the gravity of the ongoing misconduct.

But because the President blocked Mr. Eisenberg from testifying without any justification, the record is silent as to what, if any, actions he or the White House Counsel took to address President Trump's brazen misconduct and abuse of power. We do know, however, that instead of trying to halt the scheme, White House lawyers facilitated it by taking affirmative steps to conceal evidence of President Trump's misconduct. For example, after Lieutenant Colonel Vindman and Mr. Morrison reported their concerns related to the July 25 call to the National Security Council lawyers, they tried to bury the call summary. They tried to bury it. Lieutenant Colonel Vindman testified that the National Security Council lawyers believed it was "appropriate to restrict access" to the call summary "for the purpose of the leaks" and "to preserv[e] the integrity" of the transcript.

According to Lieutenant Colonel Vindman, Mr. Eisenberg "gave the go-ahead" to restrict access to the call summary. Mr. Morrison testified that he learned in late August, after he raised concerns that the call record might leak and be politically damaging to the President, that the call summary had been placed on a highly classified National Security Council server. The call record was placed

on a server that is reserved for America's most sensitive national security secrets and covert operations, not routine calls with foreign leaders.

Apparently, Mr. Eisenberg claimed at the time that burying the call transcript on a highly classified server was a "mistake."

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, in a second meeting with Mr. Eisenberg, what did you recommend that he do to prevent the call record from leaking?

Mr. MORRISON. I recommended we restrict access to the package.

Mr. GOLDMAN. Had you ever asked the NSC legal advisor to restrict access before?

Mr. MORRISON. No.

Mr. GOLDMAN. Did you speak to your supervisor, Dr. Kupperman, before you went to speak to John Eisenberg?

Mr. MORRISON. No.

Mr. GOLDMAN. Did you subsequently learn that the call record had been put in a highly classified system?

Mr. MORRISON. I did.

Mr. GOLDMAN. And what reason did Mr. Eisenberg give you for why the call record was put in a highly classified system?

Mr. MORRISON. It was a mistake.

Mr. GOLDMAN. He said it was just a mistake?

Mr. MORRISON. It was an administrative error.

Mr. Manager JEFFRIES. In Mr. Morrison's view, the July 25 call record did not meet the requirements to be placed on a highly classified server.

At his deposition, [Slide 390] Mr. Morrison testified that the call record was placed on the server by "mistake." However, even after this alleged "mistake" was discovered, the July 25 call summary was not removed from the classified system because someone was trying to hide it. It was not until a launch of the House impeachment inquiry in late September, and after intense public pressure, that the rough transcript of the July 25 call was released.

Again, because Mr. Eisenberg and Mr. Ellis refused to testify in the House, we do not know exactly how the July 25 call record ended up on this highly classified National Security Council server. What we do know is that Mr. Eisenberg ordered access restricted after multiple officials, like Dr. Fiona Hill and Lieutenant Colonel Vindman, advised him of the scheme to condition a White House meeting on phony political investigations. They strongly suggested there was an active attempt to conceal the clear evidence of the President's wrongdoing. Instead of addressing the President's misconduct, Mr. Eisenberg seemingly tried to cover it up.

Why did Mr. Eisenberg place the July 25 call summary on a server for highly classified material? Did anyone senior to Mr. Eisenberg direct him to hide the call record? Why did the call record remain on the classified server even after the so-called error was discovered? Who ordered the coverup of the call record? The American people deserve to know.

Following the July 25 call, the President's scheme to pressure Ukraine for political purposes intensified, apparently unchecked by any effort to stop it from the White House Counsel's Office. After the July 25 call, Ambassadors Sondland and Volker worked with the President's personal lawyer, Rudolph Giuliani, to procure a public statement from President Zelensky to announce phony investigations into Joe Biden and the CrowdStrike conspiracy theory being peddled by President Trump. At the same time, President

Trump continued to withhold the White House meeting and security assistance from Ukraine in a manner that broke the law.

As these efforts were ongoing, White House attorneys reportedly received yet another warning sign that the President was abusing his power. According to a published report in the New York Times, [Slide 391] the week after the July 25 call, an anonymous whistleblower reported concerns that the President was abusing his office for personal gain. The whistleblower's complaint landed with the CIA's General Counsel's office. Although the concerns related directly to the President's own misconduct, the CIA's General Counsel, Courtney Elwood, alerted Mr. Eisenberg. Over the next week, Ms. Elwood, Mr. Eisenberg, and their deputies reportedly discussed the whistleblower's concerns, and they determined, as required by law, that the allegations had a "reasonable basis."

So, by early August, White House lawyers began working, along with the attorneys at the Department of Justice, to cover up the President's wrongdoing. They were determined to prevent Congress and the American people from learning anything about the President's corrupt behavior. Although senior Justice Department officials, including Attorney General Bill Barr, were reportedly made aware of the concerns about corrupt activity, no investigation into President Trump's wrongdoing was even opened by the DOJ.

As White House and Justice Department lawyers were discussing how to deal with the whistleblower's concerns, on August 12—another important date—the whistleblower filed a formal complaint with the inspector general for the intelligence community.

In accordance with Federal law, on August 26, the inspector general transmitted the whistleblower's complaint to the Acting Director of National Intelligence, Joseph Maguire, along with the inspector general's preliminary conclusion that the complaint was both credible and related to a matter of urgent concern. Instead of transmitting the whistleblower's complaint to the House's and Senate's distinguished Intelligence Committees, as required by law, the Acting Director of National Intelligence notified the White House.

(Text of Videotape presentation:)

Chairman SCHIFF. I'm just trying to understand the chronology. [So] you first went to the Office of Legal Counsel, and then you went to White House Counsel?

Mr. MAGUIRE. We went to the—repeat that, please, sir.

Chairman SCHIFF. I'm just trying to understand the chronology. You first went to the Office of Legal Counsel, and then you went to the White House Counsel?

Mr. MAGUIRE. No, no, no, sir. We went to the White House first to determine—to ask the question—

Chairman SCHIFF. That's all I want to know is the chronology. So you went to the White House first. So you went to the subject of the complaint for advice first about whether you should provide the complaint to Congress?

Mr. MAGUIRE. There were issues within this, a couple of things: One, it did appear that it has executive privilege. If it does have executive privilege, it is the White House that determines that. I cannot determine that, as the Director of National Intelligence.

Mr. Manager JEFFRIES. Under Federal law, the Acting Director of National Intelligence was required to share the whistleblower's complaint with Congress—period, full stop. If that had occurred, the President's scheme to withhold security assistance and a White House meeting—being sought by the new Ukrainian leader—in order to pressure Ukraine for his own, personal political gain would have been exposed.

To prevent that from happening, the President's lawyers and top-level advisers adopted a two-pronged coverup strategy: first, block Congress and the American people from learning about the whistleblower's complaint; second, try to convince President Trump to lift the hold on the security assistance before anyone could find out about it and use that evidence against him.

As to the first prong, sometime after the Acting Director of National Intelligence told the White House Counsel's Office about the complaint on August 26, Mr. Cipollone and Mr. Eisenberg reportedly briefed the President. They likely discussed with President Trump whether they were legally required to give the complaint to Congress. [Slide 392] They stated that they were consulting with the Office of Legal Counsel at the Department of Justice. The Acting Director of National Intelligence testified that he and the inspector general consulted with the Office of Legal Counsel, which opined without any reasonable basis that he did not have to turn over the complaint to Congress.

On September 3—the day after the statutory deadline for the Director of National Intelligence to provide the complaint to this body and to the House—the Office of Legal Counsel issued a secret opinion, concluding that, contrary to the plain language of the statute, the Acting Director of National Intelligence was not required to turn over the complaint. The coverup was in full swing.

The Office of Legal Counsel opined that the whistleblower's complaint did not qualify as an urgent concern and therefore did not have to be turned over. What could be more urgent than a sitting President's trying to cheat in an American election by soliciting foreign interference? What could be more urgent than that? That is a constitutional crime in progress, but they concluded it was not an urgent matter.

Acting Director of National Intelligence Maguire testified that the Office of Legal Counsel's opinion did not actually prevent him from turning over the complaint to Congress. Instead, based upon his testimony, it is clear that he withheld it on the basis that the complaint might deal with information he believed could be covered by executive privilege, but President Trump never actually invoked executive privilege. He never actually invoked executive privilege, nor did he inform Congress that he was doing so with respect to this complaint. Instead, the White House secretly instructed the Acting Director of National Intelligence to withhold the complaint based on the mere possibility that executive privilege could be invoked. By doing so, the White House was able to keep the explosive complaint from Congress and the American public without ever having to disclose the reason it was withholding this information.

But truth crushed to the ground will rise again. There is a toxic mess at 1600 Pennsylvania Avenue, and I humbly suggest that it is our collective job, on behalf of the American people, to try to clean it up. President Trump tried to cheat. He got caught. Then he worked hard to cover it up.

There have been many great Presidents throughout the history of this Republic—great Republican Presidents and great Democratic Presidents. Perhaps one of the greatest Presidents was Abraham Lincoln. He once said that any man can handle adversity, but if you want to test a man's character, give him some power.

America is a great nation. We can handle adversity better than any other country in the world. Whenever America has found itself in a tough spot, we have always made it to the other side. We were in a tough spot during the Civil War, when America was at risk of tearing itself apart, but we made it to the other side. We were in a tough spot in October of 1929, when the stock market collapsed, plunging us into the Great Depression, but we made it to the other side. We were in a tough spot in December of 1941, when a foreign power struck, plunging us into a great conflict with the evil empire of Nazi Germany, but America made it to the other side. We were in a tough spot in the 1960s when dealing with the inherent contradictions of Jim Crow, but we made it to the other side. We were in a tough spot on September 11, when the Towers were struck and when young men and women, like JASON CROW, were sent to Afghanistan to fight the terrorists there so we didn't have to fight the terrorists here, and we made it to the other side.

America is a great country. We can handle adversity better than any other nation in the world, but what are we going to do about our character?

President Trump tried to cheat and solicit foreign interference in an American election. That is an attack on our character. President Trump abused his power and corrupted the highest office in the land. That is an attack on our character. President Trump tried to cover it all up and hide it from America and obstruct Congress. That is an extraordinary attack on our character.

America is a great nation. We can handle adversity better than any other country in the world, but what are we going to do about our character?

Mr. Manager CROW. As the crisis around the President's hold deepened throughout our government, the President's own top advisers redoubled their efforts to lift the hold on military aid and stem the fallout in case it went public, and it did go public. On August 28, POLITICO publicly reported that the President was withholding the military aid.

As you have heard, the public disclosure of the President's hold in late August caused deep alarm among Ukrainian officials. It also caused U.S. officials to redouble their efforts once again. [Slide 393]

At the end of August, Secretary of State Pompeo, Defense Secretary Esper, and Ambassador Bolton reportedly tried to convince President Trump to release the military aid, but they failed. The President wanted the hold to remain. That prompted Duffey, the political appointee charged with implementing the hold, to send an email on August 30 to the DOD, stating: "Clear direction from POTUS to hold." This is consistent with Laura Cooper's deposition testimony, when she said that they were "hopeful this whole time that Secretary Esper and Secretary Pompeo would be able to meet with the President and just explain to him why this was so important and get the funds released," but, instead, the President held firm. [Slide 394]

Even as the President's own Cabinet officials were trying to convince him to lift the hold, White House lawyers were receiving new reports about the President's abuse.

On September 1, Vice President PENCE met with President Zelensky in Warsaw, and immediately after, Sondland had a side

conversation with the top Ukrainian Presidential aide. Morrison was privy to these conversations, and when he returned from Warsaw, he reported to Eisenberg the details.

(Text of Videotape presentation:)

Mr. GOLDMAN. And what did Ambassador Sondland tell you that he told Mr. Yermak?

Mr. MORRISON. That the Ukrainians would have to have the prosecutor general make a statement with respect to the investigations as a condition of having the aid lifted.

Mr. GOLDMAN. And you testified that you were not comfortable with what Ambassador Sondland had told you. Why not?

Mr. MORRISON. Well, I was concerned about what I saw as essentially an additional hurdle to accomplishing what I had been directed to help accomplish, which was giving the President the information that he needed to determine that the security sector assistance could go forward.

Mr. GOLDMAN. So now there's a whole other wrinkle to it, right?

Mr. MORRISON. There was the appearance of one, based on what Ambassador Sondland represented.

Mr. GOLDMAN. And you told Ambassador Taylor about this conversation as well. Is that right?

Mr. MORRISON. I promptly reached out to Ambassador Taylor to schedule a secure phone call.

Mr. GOLDMAN. And in your deposition, you testified that his testimony, other than one small distinction between President Zelensky and the prosecutor general, was accurate as to what you told him. Is that correct?

Mr. MORRISON. About that conversation, yes.

Mr. GOLDMAN. And, generally speaking, you confirmed everything that Ambassador Taylor told you, except for that one thing and a small other ministerial matter relating to the location of the meeting. Is that correct?

Mr. MORRISON. Correct.

Mr. GOLDMAN. Now, did you tell Ambassador Bolton about this conversation as well?

Mr. MORRISON. I have reached out to him as well and requested his availability for a secure phone call.

Mr. GOLDMAN. And what was his response when you explained to him what Ambassador Sondland had said?

Mr. MORRISON. Tell the lawyers.

Mr. GOLDMAN. Did you go tell the lawyers?

Mr. MORRISON. When I returned to the States, yes.

Mr. GOLDMAN. And did he explain to you why he wanted you to tell the lawyers?

Mr. MORRISON. He did not.

Mr. Manager CROW. Now, this wasn't the first time—and it wouldn't be the last—that Ambassador Bolton instructed other government officials to report details of the President's scheme to White House lawyers.

Now, let's be clear. When government employees have concerns about whether something is legal, they often go to their agency's lawyers. And it was happening an awful lot around this time. Recall that Bolton also instructed Dr. Hill to report to the lawyers Sondland's statements about requiring an announcement of the investigations as a condition for a White House meeting—what Bolton called Sondland's "drug deal" with the President's top aide, Mick Mulvaney. Ambassador Bolton's testimony would obviously shine further light on these concerns and what or who, if anyone, in the White House or the Cabinet did to try to stop the President at this time.

After the President's hold on military aid became public in late August, there was increasing pressure on the President to lift the hold. On September 3, a bipartisan group of Senators sent a letter to Acting White House Chief of Staff Mick Mulvaney. An excerpt

from that letter is in front of you. [Slide 395] The Senators expressed “deep concerns” that the “Administration is considering not obligating the Ukraine Security Initiative funds for 2019.” The Senators’ letter also urged that the “vital” funds be obligated “immediately.”

On September 5, the chairman and the ranking member of the House Foreign Affairs Committee sent a joint letter to Mulvaney and OMB Director Russell Vought. [Slide 396] That letter also expressed “deep concern” about the continuing hold on the military aid.

The same day, Senators MURPHY and JOHNSON visited Kyiv and met with President Zelensky, along with Ambassador Taylor.

(Text of Videotape presentation:)

Ambassador TAYLOR. On September 5th, I accompanied Senators JOHNSON and MURPHY during their visit to Kyiv. When we met with President Zelensky, his first question to the Senators was about the withheld security assistance. My recollection of the meeting is that both Senators stressed that bipartisan support for Ukraine in Washington was Ukraine’s most important strategic asset and that President Zelensky should not jeopardize that bipartisan support by getting drawn in to U.S. domestic politics.

I had been making and continue to make this point to all of my official Ukrainian contacts. But the odd push to make President Zelensky publicly commit to investigations of Burisma and alleged interference in the 2016 election showed how the official foreign policy of the United States was undercut by the irregular efforts led by Mr. Giuliani.

Mr. Manager CROW. The Senators sought to reassure President Zelensky that there was bipartisan support in Congress for providing the military aid.

Also on September 5, the Washington Post editorial board reported concerns that President Trump was withholding the aid and a meeting to force President Zelensky to announce investigations to benefit his personal political campaign.

The editors wrote: [Slide 397]

“[W]e are reliably told that the President has a second and more venal agenda: He is attempting to force Mr. Zelensky to intervene in the 2020 U.S. Presidential election by launching an investigation of the leading Democratic candidate, Joe Biden. Mr. Trump is not just soliciting Ukraine’s help with his Presidential campaign; he is using U.S. military aid the country desperately needs in an attempt to extort it.

Despite these efforts to get the President to lift the hold and the now-public discussion about the President’s abuse of power, the scheme continued. Two days later, on September 7, Morrison went back to the White House lawyers to report additional details he had learned from Ambassador Sondland about the President’s scheme—again, at the direction of Ambassador Bolton.

(Text of Videotape presentation:)

Mr. GOLDMAN. Now, a few days later, on September 7th, you spoke again to Ambassador Sondland, who told you that he had just gotten off the phone with President Trump. Isn’t that right?

Mr. MORRISON. That sounds correct, yes.

Mr. GOLDMAN. What did Ambassador Sondland tell you that President Trump said to him?

Mr. MORRISON. If I recall this conversation correctly, this was where Ambassador Sondland related that there was no quid pro quo, but President Zelensky had to make the statement and that he had to want to do it.

Mr. GOLDMAN. And by that point, did you understand that the statement related to the Biden and 2016 investigations?

Mr. MORRISON. I think I did, yes.

Mr. GOLDMAN. And that that was essentially a condition for the security assistance to be released?

Mr. MORRISON. I understood that that's what Ambassador Sondland believed.

Mr. GOLDMAN. After speaking with President Trump?

Mr. MORRISON. That's what he represented.

Mr. GOLDMAN. Now, you testified that hearing this information gave you a sinking feeling. Why was that?

Mr. MORRISON. Well, I believe if we're on September 7th, the end of the fiscal year is September 30th, these are 1 year dollars, the DOD and the Department of State funds, so we only had so much time. And, in fact, because Congress imposed a 15 day notification requirement on the State Department funds, September 7th, September 30th, that really means September 15th in order to secure a decision from the President to allow the funds to go forward.

Mr. GOLDMAN. Did you tell Ambassador Bolton about this conversation as well?

Mr. MORRISON. I did. I did, yes.

Mr. GOLDMAN. And what did he say to you?

Mr. MORRISON. He said to tell the lawyers.

Mr. GOLDMAN. And why did he say to tell the lawyers?

Mr. MORRISON. He did not explain his direction.

Mr. Manager CROW. Again, "tell the lawyers."

Ambassador Sondland's call with President Trump on September 7 also prompted deep concern by Ambassador Taylor, which you have already heard about.

On September 8 and 9, Ambassador Taylor exchanged WhatsApp messages with Ambassadors Sondland and Volker, [Slide 398] describing his "nightmare" scenario that "they give the interview and don't get the security assistance." He then goes on to say: "The Russians love it. (And I quit.)"

After the hold on the military aid became public, the White House took two actions in early September.

First, the White House and the Justice Department ensured that the Acting DNI continued to withhold the whistleblower complaint from Congress, in clear violation of the law.

And second, the White House attempted to create a cover story for the President's withholding of the assistance.

Approximately 2 months after President Trump had ordered the freeze, Mark Sandy received an email from his boss, Michael Duffey that, for the first time, gave a reason for the hold. Sandy testified that in early September he received an email from Duffey "that attributed the hold to the President's concern about other countries not contributing more to Ukraine."

Again, after months of scrambling, this was the first time any reason had been provided for the hold.

And according to Sandy, it was also only in early September—again, after the White House learned of the whistleblower complaint and the hold became public—that the White House requested data from OMB on other countries' assistance to Ukraine.

So let's recap why we know the concern about burden-sharing was bogus. First, for months, no reason was given to the very people executing the military aid who had been actively searching for answers about why the aid was being held.

Second, remember the supposed interagency process performed by OMB? Well, it was fake.

And third, after the hold went public and the White House became aware of the whistleblower, they started scrambling to develop another excuse. Public reports confirm this.

A November 24 news report, for instance, revealed that in September, Mr. Cipollone's lawyers conducted an internal records review. The review reportedly "turned up hundreds of documents that reveal extensive efforts to generate an after-the-fact justification for the decision and a debate over whether the delay was legal."

The President's top aides were trying to convince the President to lift the hold in late August and early September, and White House officials were actively working to develop an excuse for the President's scheme and devise a cover story in the event it was exposed, and soon it would be.

On September 9, the chairs of the House Intelligence Committee, the Committee on Foreign Affairs, and the Committee on Oversight and Reform publicly announced a joint investigation of President Trump and Mr. Giuliani's scheme. [Slide 399] And this is when the music stops and everyone starts running to find a chair.

Word of the committees' investigation spread quickly through the White House to the NSC. [Slide 400] Morrison recalled seeing and discussing the letter with NSC staff. Lieutenant Colonel Vindman also recalled discussions among NSC staff members, including Morrison's deputy, John Erath, about the investigation.

The same day, there were efforts at OMB to create a paper trail to try to shift the blame for the President's hold on security assistance away from the White House. Duffey sent an email to Elaine McCusker that contradicted months of email exchanges and stated falsely that OMB had in fact "authoriz[ed] DOD to proceed with all processes necessary to obligate funds." Duffey was attempting to shift all the responsibility for the delay onto the Pentagon. McCusker replied: "You can't be serious. I am speechless."

Now, all of this—including OMB's efforts to shift blame to the Pentagon, the White House's effort to create a cover story for the hold on security assistance—was a continuation of the coverup.

It started with the White House lawyers' failure to stop the scheme after the July 10 meeting was reported to them, continued with attempts to hide the July 25 call summary, and escalated with the White House's illegal concealment of the whistleblower complaint from Congress.

On September 10, the House Intelligence Committee requested that the DNI provide a copy of the whistleblower complaint as the law requires. But DNI continued to withhold the complaint for weeks. [Slide 401]

The same day, it was announced that Ambassador Bolton was resigning or had been fired. It is unclear whether Ambassador Bolton's departure from the White House had anything to do with his opposition to the hold on military aid, but, of course, Ambassador Bolton could shed light on that himself if he were to testify.

The next day, on September 11, President Trump met with Vice President PENCE, Mulvaney, and Senator PORTMAN to discuss the hold. Later that day, the President relented and lifted the hold after his scheme had been exposed.

The President's decision to release the aid, like his decision to impose the hold, was never explained. Cooper testified that President Trump's lifting of the hold "really came out of the blue. . . . It was quite abrupt."

The only logical conclusion, based upon all of this evidence, is that the President lifted the hold on September 11 because he got caught.

The President's decision to lift the hold without any explanation is also very telling. If the hold was put in place for legitimate policy reasons, why lift it arbitrarily with no explanation?

By lifting the hold only after Congress had launched an investigation—when, as Lieutenant Colonel Vindman testified, none of the “facts on the ground” had changed since the hold had been put in place—the President was conceding that there was never a legitimate purpose.

Since the hold was lifted, the President has paid lip service to purported concerns about corruption and burden-sharing. But the administration has taken no concrete steps before or since those statements were made to show that it really cares.

The record is clear. Before he got caught, the President had no interest in anti-corruption reforms in Ukraine. And, as you have already learned, those people who really were concerned about these issues—like Congress, this Senate, the DOD, and the State Department—had already gone through the process to address them.

As Ambassador Sondland testified, at no point did the President ask him to discuss additional contributions to Ukraine from the EU countries, nor did President Trump push Ukraine to undertake any specific anti-corruption reforms.

Now, the President's counsel will likely say that his lifting of the hold shows his good faith. They will say that because Ukraine ultimately received the aid without President Zelensky having to announce the sham investigations, then there was no abuse of power. As a legal matter, the fact that the President's corrupt scheme was not fully successful makes no difference. Trump's abuse occurred at the moment he used the power of the Presidency to assist his reelection campaign, undermining our free and fair elections and our national security.

But, importantly, President Trump almost did get away with it. As discussed earlier, President Zelensky agreed during his September phone call with Ambassador Sondland to do a CNN interview during which he would announce the investigations. On September 12, Ambassador Taylor personally informed President Zelensky and the Ukrainian Foreign Minister that President Trump's hold on military assistance had been lifted. On September 13, Ambassador Taylor and David Holmes met with President Zelensky and his advisers and urged them not to go forward with the CNN interview.

It was not until September 18 and 19—around the time that President Zelensky spoke with Vice President PENCE—that the Ukrainians finally canceled the CNN interview.

The President has also repeatedly pointed to President Zelensky's public statements that he did not feel pressured by Trump. Not only unsurprising, it is also irrelevant. The question is whether President Trump used the power of the Presidency to coerce President Zelensky into helping him win a political campaign.

But we know that President Zelensky was pressured. He kept delaying and delaying because he did not want to be a pawn in U.S. domestic politics.

In fact, President Zelensky remains under pressure to this day. As Holmes testified, there are still things the Ukrainians want and need from the United States, including a meeting with the President in the Oval Office, which has still not been scheduled. And yes, Ukraine remains at war and needs U.S. military aid, including aid that is still delayed from last year. For these reasons, Mr. Holmes explained: [Slides 402 and 403]

I think [the Ukrainians are] being very careful. They still need us now going forward. In fact, right now President Zelensky is trying to arrange a summit meeting with President Putin in the coming weeks, his first face-to-face meeting with him to try to advance the peace process.

He needs our support. He needs—he needs President Putin to understand that America supports Zelensky at the highest levels. So this doesn't end with the lifting of security assistance hold. Ukraine still needs us, and as I said, still fighting this war this very day.

When President Trump, for his own personal political gain, asked for a favor from President Zelensky, he did exactly what the Framers feared most: He invited the influence of a foreign power into our elections. He used the power of his office to secure that advantage and jeopardized our national security.

Yet President Trump maintains that he was always in the right and that his July 25 call with President Zelensky was “perfect.” President Trump has made it clear that he believes he is free to use his powers the same way, to the same ends, whenever and wherever he pleases. Even more troubling, he is even doubling down on his abuse, inviting other countries to interfere in our elections.

What does all of this tell you? It tells you that Ambassador Sondland was correct when he told Holmes after hanging up with President Trump on July 26 that the President doesn't care about Ukraine. He only cares about the “big stuff,” meaning stuff that helps him personally.

The bottom line is that the President used the powers of his office for personal political gain. He did so knowingly, deliberately, and repeatedly, and his misconduct continues to this day.

Mr. Manager SCHIFF. Senators, just for your orientation, this will be the last presentation on article I, and, Mr. Leader, I think at the conclusion of this presentation would be a logical point to take a break.

This last section on article I deals with the injury to our national interests and our national security.

When President Trump used Ukraine's leader for a political favor and withheld critical military aid to an ally in exchange for that favor, he did exactly what our Framers feared most: He invited foreign interference in our elections and sold out our country's security for his personal benefit and betrayed the Nation's trust to a foreign power.

The President's scheme to pressure Ukraine to do his political dirty work harmed our national security, undermined our free and fair elections, and even today—even today—threatens the very foundation of our democracy.

When the President argues that his call was “perfect,” [Slide 404] that he did nothing wrong, what he is really saying is that there is nothing wrong with a President asking a foreign government to do a personal favor, that there is nothing wrong with the President

pressuring that foreign country to interfere in our elections for his personal benefit, that there is nothing wrong with withholding congressionally appropriated taxpayer-funded military assistance to that foreign country to extort that country to help the President cheat to win an election.

But there are a great many things wrong with that. Most significant for the purposes that bring us here today, the Constitution does not permit it. The Constitution does not permit it because that conduct is the quintessential abuse of power—the use of official power for personal gain, putting personal interests over the national interests, and placing personal benefits over our Nation's security.

The President's conduct that we outlined yesterday harmed our national security. That is without a doubt. [Slide 405] It endangered our elections and it has sent our country on a dangerous path that if left unchecked will cause irrevocable damage to the balance of power contemplated in our Constitution. If someone sacrifices the national interest in favor of his own and is not removed from office, our democracy is in jeopardy. It is just that simple.

The grave consequences of President Trump's misconduct demand our attention. Let me take these issues in turn, beginning with this harm to national security.

First, the President's abuse of power had immediate consequences to our security. Ukraine is a burgeoning democracy entangled in a hot war with Russia. [Slide 406] By withholding military aid, President Trump not only denied Ukraine much-needed military equipment but also weakened Ukraine's position in negotiations over the end of the war with Russia. Because of President Trump's corrupt actions, Vladimir Putin was emboldened at a pivotal moment ahead of those sensitive negotiations to attempt to end the war. An emboldened Russia is a threat to the United States and global security around the world.

The President's willingness to put himself over country undercut our European allies' confidence in America's commitment to deterring Russian aggression, and it signaled to adversaries and friends alike that the President of the United States, the most powerful man in the world, our Commander in Chief, could be influenced by manipulating his perception of what was best for his personal interests.

Now, I have no doubt that the Russians, and probably every other nation that has the capacity, does a psychological profile of the President of the United States, as we profile other leaders. If a President can be so easily manipulated to disbelieve his own intelligence agencies, to accept the propaganda of the Kremlin, that is a threat to our national security. That is just what has happened here, but that is not all.

President Trump's willingness to entangle our foreign allies in a corrupt political errand also undermined the credibility of Americans to promote the rule of law and fight corruption abroad.

This is "Trump first," not "America first," not American ideals first. And the result has and will continue to be great harm to our Nation if this Chamber does not stand up and say it is wrong, if you do not stand up and say this is not only wrong, not only unacceptable but conduct incompatible with the Office of the Presi-

dency. If it really is incompatible with the Office of the Presidency, if you cannot faithfully execute that responsibility, if you cannot bring yourself to put your Nation's interests ahead of your own, it must be impeachable, for the Nation remains at risk.

Let's consider the big picture, and probably a question many people around the country are asking: Why does Ukraine matter to the United States? Why does Ukraine matter to the United States? Because we are talking about a small country that many people know very little about.

Well, this small country, this ally of ours, is a country hungry for reform and eager for a stronger relation with its most powerful, important ally, the United States. We are talking about ourselves and what it means to the strength of our own democracy and democracies around the world when countries like Ukraine are fighting our fight against authoritarianism. It used to be our fight, and God help us if it is not our fight still.

Russian President Putin declared the collapse of the Soviet Union to be the greatest geopolitical catastrophe of the 20th century. Ukraine's vote for independence in December 1991 was the final nail in the Soviet Union's coffin. That made Ukraine's greatest moment Putin's greatest tragedy.

When it declared independence from Soviet domination, Ukraine inherited roughly 1,900 Soviet nuclear warheads, enough firepower to level every major American city several times over—1,900 Soviet nuclear warheads. In exchange for Ukraine's surrendering this arsenal, the United States, Russia, and the United Kingdom reached an understanding called the Budapest Memorandum of 1994. [Slide 407] They committed in this memorandum to respecting the borders of an independent Ukraine and also to refrain from using the threat or use of force against Ukraine. This was an early success of the post-Cold War period.

Despite its commitment to respect Ukraine's independence, of course, Russia continued to meddle in Ukraine's affairs. Ambassador Taylor recounted how events took an even more sinister turn in 2013:

(Text of Videotape presentation:)

Ambassador TAYLOR. In 2013, Vladimir Putin was so threatened by the prospect of Ukraine joining the European Union that he tried to bribe the Ukrainian President. This triggered mass protests in the winter of 2013 that drove that President to flee to Russia in February of 2014, but not before his forces killed 100 Ukrainian protesters in central Kyiv.

Mr. Manager SCHIFF. Angered by the fall of the Kremlin-backed leader in Kyiv, President Putin ordered the invasion of Ukraine—specifically, a region known as Crimea. Russia's aggression was met with global condemnation.

(Videotape presentation.)

Mr. Manager SCHIFF. We don't have the sound there, but you can see the images of that conflict on the screens before you.

Deputy Assistant Secretary of Defense Laura Cooper testified as to the stakes for U.S. national security:

(Text of Videotape presentation:)

Ms. COOPER. Russia violated the sovereignty of Ukraine's territory. Russia illegally annexed territory that belonged to Ukraine. They also denied Ukraine access to its naval fleet at the time. And to this day, Russia is building a capability on

Crimea designed to expand Russian military power projection far beyond the immediate region.

Mr. CARSON. In 2014, were there concerns in Washington, here in Washington, and European capitals that Russia might not stop in Ukraine?

Ms. COOPER. I was not in my current position in 2014, but it is my understanding that there was significant fear about where Russian aggression would stop.

Mr. Manager SCHIFF. One American—a war hero and statesman who was no stranger to this body—recognized the threat posed by Russia’s invasion of Crimea: Senator John McCain.

In an interview, he declared: [Slide 408] “We are all Ukrainians.” Senator McCain advised that this is a chess match reminiscent of the Cold War, and we need to realize that and act accordingly. He was, of course, absolutely right.

Consistent with the commitments made to Ukraine in 1994, the United States and Europe responded to Russia’s invasion by imposing significant sanctions on Russia. We joined Europe in providing Ukraine billions of dollars in economic support to help it resist Russian influence, and the Senate approved, by an overwhelming bipartisan majority, vital security assistance to help rebuild Ukraine’s military, which the former Russian-backed leader of Ukraine had starved of resources.

This strong bipartisan support for Ukraine reflected what Senator McCain said was an opportunity for the United States to undermine Russian leverage in Eastern Europe by building a “success” in Ukraine. Senator McCain outlined this vision:

(Text of Videotape presentation:)

Mr. MCCAIN. . . . Putin also sees—here’s this beautiful and large and magnificent country called Ukraine. And suppose Ukraine, finally, after failing in 2004, gets it right, democracy, gets rid of corruption, economy is really improving and it’s right there on the border of Russia. And so I think it makes him very nervous if there were a success in Ukraine in bringing about a free and open society and economic success, which is not the case in Russia, as you know, which is propped up by energy.

Mr. Manager SCHIFF. Achieving the Ukrainian success that Senator McCain and many of us hoped for proved to be a daunting task, but several witnesses who testified before the House said Volodymyr Zelensky’s landslide election in April 2019 was a game changer. Here is how U.S. diplomat David Holmes explained the “historic opportunity” created by his election:

(Text of Videotape presentation:)

Mr. HOLMES. Despite the Russian aggression, over the past 5 years, Ukrainians have rebuilt a shattered economy, adhered to a peace process, and moved economically and socially closer to the West, toward our way of life.

Earlier this year, large majorities of Ukrainians again chose a fresh start by voting for a political newcomer as President, replacing 80 percent of their parliament, endorsing a platform consistent with our democratic values, our reform priorities, and our strategic interests.

This year’s revolution at the ballot box underscores that, despite its imperfections, Ukraine is a genuine and vibrant democracy and an example to other post-Soviet countries and beyond, from Moscow to Hong Kong.

Mr. Manager SCHIFF. So American support for Ukraine’s security and reform is critical not only to our own national security but to other allies and emerging democracies around the world. The widely accepted fact of Ukraine’s importance to our national security makes President Trump’s abuse of power and withholding of vital diplomatic and military support all the more disturbing.

First, witnesses assessed that withholding the military aid likely helped to prolong the war against Russia. When wars drag on, more people die. Ambassador Taylor testified to this sober reality. (Text of Videotape presentation:)

Chairman SCHIFF. I take it, if the provision of the U.S. military assistance would save Ukrainian lives, that any delay in that assistance may also cost Ukrainian lives. Is that true?

Ambassador TAYLOR. Chairman, of course it's hard to draw any direct lines between any particular element of security assistance and any particular death on the battlefield. But it is certainly true that that assistance had enabled Ukrainian Armed Forces to be effective and deter and to be able to take countermeasures to the attacks that the Russians had—

Chairman SCHIFF. I think you said that a Ukrainian soldier lost their life while you were visiting Donbas.

Ambassador TAYLOR. We keep very careful track of the casualties. And I noticed, on the next day, the information that we got, that one was killed, four soldiers were wounded on that day.

Chairman SCHIFF. And, indeed, Ukrainians lose their lives every week.

Ambassador TAYLOR. Every week.

Mr. Manager SCHIFF. David Holmes also testified that prolonging the war in Ukraine resulted in additional casualties.

(Text of Videotape presentation:)

Mr. HOLMES. As we sit here today, Ukrainians are fighting a hot war on Ukrainian territory against Russian aggression. This week alone, since I have been here in Washington, two Ukrainian soldiers were killed and two injured by Russian-led forces in eastern Ukraine despite a declared cease-fire. I learned overnight that seven more were injured yesterday.

Mr. Manager SCHIFF. Withholding the aid has real consequences to real soldiers with real families. Bear in mind that U.S. aid is fully 10 percent of Ukraine's defense budget—10 percent. That is not an extra bonus. That is necessary aid for Ukraine to defend itself on the frontline.

Now, a second consequence of President Trump's withholding of military assistance was that it emboldened Russia, our adversary. Here is Laura Cooper, a Pentagon official, who oversaw the military aid.

(Text of Videotape presentation:)

Mr. CARSON. So what about today? If the U.S. were to withdraw its military support of Ukraine, what would effectively happen?

Ms. COOPER. It is my belief that, if we were to withdraw our support, it would embolden Russia. It would also validate Russia's violation of international law.

Mr. CARSON. And which country stands to benefit the most—would stand to benefit the most from such a withdrawal?

Ms. COOPER. Russia.

Mr. Manager SCHIFF. Russia was not only emboldened on the battlefield. Ambassador Taylor testified that President Trump's corrupt withholding of military assistance and his failure to host President Zelensky in the Oval Office was a "sign of weakness" to Moscow. It harmed Ukraine's negotiating position, even as recently as December 9 when Zelensky and Putin met to discuss the conflict in the east shown in this photo.

Ambassador Taylor explained:

(Text of Videotape presentation:)

Chairman SCHIFF. I think you also testified that Russia was watching closely to gauge the level of American support for the Ukrainian government. Why is that significant?

Ambassador TAYLOR. This is significant, Mr. Chairman, because the Ukrainians, in particular under this new administration, are eager to end this war, and they

were eager to end it in a way that the Russians leave their territory. These negotiations, like all negotiations, are difficult. Ukrainians would like to be able to negotiate from a position of strength or at least more strength than they now have. Part of that strength, part of the ability of the Ukrainians to negotiate against the Russians with the Russians for an end to the war in Donbas, depends on United States and other international support. If we withdraw or suspend or threaten to withdraw our security assistance, that's a message to the Ukrainians, but it's at least as important, as your question indicates, Mr. Chairman, to the Russians, who are looking for any sign of weakness or any sign that we are withdrawing our support for Ukraine.

Chairman SCHIFF. And so, when the Ukrainians learned of the suspension of the military aid, either privately or when others learned publicly, the Russians would be learning also, and they would take that as a lack of robust U.S. support for Ukraine. Is that right?

Ambassador TAYLOR. That's correct, sir.

Chairman SCHIFF. And that would weaken Ukraine in negotiating an end to the war in Donbas.

Ambassador TAYLOR. It would.

Mr. Manager SCHIFF. Indeed, the aid doesn't just supply much needed weapons to Ukraine. It is a symbol of support, a signal of strength, a signal of the backing of the United States. Withholding that aid, even for a period of time, undermined all of those things.

President Trump's actions toward Ukraine also undercut worldwide confidence in the United States as a reliable security partner. Maintaining that confidence is crucial to the strength of our alliances in Europe to deterring Russia and ultimately protecting and projecting democracy around the world.

The United States has roughly 68,000 troops stationed in Europe. They serve alongside troops from 28 other countries that comprise the North Atlantic Treaty Organization, or NATO. They are holding the line against further Russian aggression. It was U.S. leadership that led to the creation of NATO 70 years ago as the Iron Curtain was descending across the heart of Europe, and it is American leadership that makes NATO work today.

NATO is also affected because other countries, friends and foes alike, know that we are committed to our collective defense; that an attack against one nation is an attack against all of us. That principle deterred a Russian invasion of Europe during the Cold War. It has only been invoked once by NATO in the aftermath of the September 11 terrorist attacks. New York is a long way from the frontlines with Russia, but our European allies stood with us after that dark day.

They deployed tens of thousands of troops to Afghanistan and joined us in fighting the al-Qaida terrorists who attacked the Twin Towers and the Pentagon.

Now, Ukraine is not a member of NATO, but Russia's invasion of Ukraine was a threat to the peace and security of Europe. Moscow's aggression threatened the rules of the road that have kept the peace in Europe since World War II, the sacrosanct idea that borders cannot be changed by military force.

If we had not supported Ukraine in 2014, if Members of this body had not voted overwhelmingly on a bipartisan basis for military assistance to rebuild Ukraine's military, there is no question it would have invited further Russian adventurism in Ukraine and perhaps elsewhere in the heart of Europe. It would have weakened our allies and exposed U.S. troops stationed in Europe to greater danger.

Deterring Russia requires persistence—not just one military aid package or one Oval Office meeting but a sustained policy of support for our partners. We only deter Russia by consistently demonstrating support for our friends—friends like Ukraine.

George Shultz, who served as Ronald Reagan's Secretary of State, understood this. He compared diplomacy and alliance management to gardening. He said:

If you plant a garden and go away for six months, what have you got when you come back? Weeds. Diplomacy is kind of like that. You go around, talk to people, you develop a relationship of trust and confidence, and then if something comes up, you have that base to work from.

President Trump's decision to transform the military aid and Oval Office meeting into leverage was the equivalent of trampling all over George Shultz's garden, crushing Ukraine's confidence in the United States as a partner. He also caused our NATO allies to question whether we would stand with them against Russia. Leaders in European capitals now wonder whether personal political favors and not treaty obligations guide our foreign policy.

Colleagues, this is how alliances wither and die and how Russia wins. Ambassador Taylor made clear that is why it is so important to our security that we stand with Ukraine.

(Text of Videotape presentation:)

Ambassador TAYLOR. Mr. Chairman, as my colleague, Deputy Assistant Secretary George Kent, described, we have a national security policy, a national defense policy that identifies Russia and China as adversaries. The Russians are violating all of the rules, treaties, understandings that they committed to that actually kept the peace in Europe for nearly 70 years. Until they invaded Ukraine in 2014, they had abided by sovereignty of nations, of inviolability of borders. That rule of law, that order that kept the peace in Europe and allowed for prosperity as well as peace in Europe was violated by the Russians. And if we don't push back on that, on those violations, then that will continue. And that, Mr. Chairman, affects us. It affects the world that we live in, that our children will grow up in, and our grandchildren. This affects the kind of world that we want to see abroad. So that affects our national interest very directly. Ukraine is on the front line of that conflict.

Mr. Manager SCHIFF. We understood that in 2017, the first year of the Trump administration, and it appeared the Trump administration understood it as well. We understood it in 2018, and the Trump administration understood that as well. We understood that in 2019, and the Trump administration appeared to as well—at least it did until it didn't. It did until something of greater importance and significance came along. That event of greater significance to the Oval Office was the emergence of Joe Biden as a candidate for President, and then that military support, which had increased during the Trump administration, was suddenly put on hold for inexplicable reasons.

Ukraine got the message. It wasn't very inexplicable to Ukraine. What is more, Russia got the message. It wasn't very inexplicable to Russia, which had pushed out the whole propaganda theory that it was Ukraine that had interfered in our election and not Russia.

So that consensus among the Congress and the administration, among the right and the left and the center, that, as Ambassador Taylor explained, this is not only vital to Ukraine's security and the post-World War II order that has kept the peace in Europe for 70 years, but it is vital to us and our security as well, that all broke down. That all broke down over an effort led by the President and his agent Rudy Giuliani and his agents Parnas and

Fruman to overturn all of that—overturn a decades-long commitment to standing up to Russian aggression.

We have so tremendously benefited. No country has benefited more from the international rules of the road, the international order, than the United States. It gave us the peace and stability to prosper like no other nation has before, and we are throwing it away. We are throwing it away. We are undermining the rule of law. We are undermining the principle that you don't invade your neighbor. We are undermining the key to our own success. And for what? For help with a political campaign. To quote Bill Taylor, that is crazy. That is crazy.

If our allies can't trust us to stand behind them in a time of need, we will soon not have a single ally left. I know it is painful to see some of our allies and how they talk about this President because when they talk about this President, they are also talking about the United States. It is painful to see our allies distance themselves from the United States. It is more than painful; it is dangerous. It is dangerous to us. I think it was Churchill who once said there is nothing worse than allies except having no allies.

If we are going to condition our support for our allies on their willingness to be dragged kicking and screaming into our politics, if we are going to condition the strength of our alliance on whether they will help us cheat in an election, we are not going to have a single ally left, and not a single one of us in this Chamber is ever going to be able to say to one of our counterparts to respect the rule of law without it being thrown in our face.

Promoting the rule of law and fighting corruption is central to our foreign policy. It distinguishes U.S. global leadership from the transactional approach favored by authoritarian adversaries.

The inherently corrupt nature of the President's demand that Ukraine investigate his political opponent undermined the credibility of efforts to promote the rule of law and combat corruption in Ukraine and around the world. Indeed, the President engaging in the very conduct at home that our policy fights abroad sabotages longstanding bipartisan pillars of American diplomacy.

This was a problem, not least because the pervasive corruption within Ukraine leaves its politics and economy susceptible to Russian influence and subterfuge.

Ambassador Yovanovitch emphasized that U.S. policy in Ukraine has long recognized that the struggle against corruption and defending against Russia are, in fact, two sides of the very same coin.

(Text of Videotape presentation:)

Ambassador YOVANOVITCH. Corruption makes Ukraine's leaders ever vulnerable to Russia, and Ukraine people understand that. That's why they launched the Revolution of Dignity in 2014, demanding to be a part of Europe, demanding transformation of the system, demanding to live under the rule of law.

Ukrainians wanted the law to apply equally to all people, whether the individual in question is the President or any other citizen. It was a question of fairness, of dignity.

Here, again, there is a coincidence of interests. Corrupt leaders are inherently less trustworthy while an honest and accountable Ukrainian leadership makes a U.S.-Ukrainian partnership more reliable and more valuable to the United States.

A level playing field in this strategically located country, bordering four NATO allies, creates an environment in which U.S. business can more easily trade, invest, and profit.

Corruption is also a security issue, because corrupt officials are vulnerable to Moscow.

Mr. Manager SCHIFF. During that conversation that we related in the past, when Ambassador Volker urged his Ukrainian counterpart, Andriy Yermak, not to investigate the past President of Ukraine and Yermak threw it back in his face—you remember the conversation: Oh, you mean like the investigation you want us to do of the Clintons and the Bidens. They taught us something in that conversation. They taught us that we had forgotten, for that moment, our own values.

Just listening to the Ambassador right now, I was thinking how interesting it is that Ukrainians chose to describe their revolution as a Revolution of Dignity. Maybe that is what we need here—a revolution of dignity at home, a revolution of civility here at home. Maybe we can learn a lot more from our Ukrainian ally.

In short, it is in America's national security interest to help Ukraine transform into a country where the rule of law governs and corruption is held in check.

As we heard yesterday, anti-corruption policy was a central part of the talking points provided to President Trump before his phone calls with President Zelensky on April 21 and July 25. President Trump, of course, didn't mention corruption, but, importantly, those same foreign policy goals remained intact following the call, as Tim Morrison testified. Anti-corruption reforms—institutional reforms—remain a top priority to help Ukraine fight corruption.

President Zelensky was swept into office on an anti-corruption platform. Immediately, he kept his promise and introduced numerous bills in Ukraine's Parliament. In a sign that he intended to hold himself accountable, Zelensky even introduced a draft law on Presidential impeachment. He also introduced a bill to restore punishment of top officials found guilty of "illicit enrichment."

President Trump's self-serving scheme threatened to undermine Zelensky's anti-corruption work. Zelensky's successful anti-corruption reforms would have advanced U.S. security. Instead, President Trump's demands undermined that effort to bring about reform to Ukraine.

Here is George Kent, a rule of law and corruption expert at the State Department.

(Text of Videotape presentation:)

Mr. KENT. U.S. efforts to counter corruption in Ukraine focus on building institutional capacity so that the Ukrainian Government has the ability to go after corruption and effectively investigate, prosecute, and judge alleged criminal activities using appropriate institutional mechanisms, that is, to create and follow the rule of law. That means that if there are criminal nexuses for activity in the United States, U.S. law enforcement should pursue the case. If we think there's been a criminal act overseas that violates U.S. law, we have the institutional mechanisms to address that. It could be through the Justice Department and FBI agents assigned overseas, or through treaty mechanisms, such as a mutual legal assistance treaty.

As a general principle, I do not believe the United States should ask other countries to engage in selective politically associated investigations or prosecutions against opponents of those in power because such selective actions undermine the rule of law, regardless of the country.

Mr. Manager SCHIFF. So it is clear: What President Trump did when abusing his office and demanding Ukraine open an investigation into Joe Biden was not fighting corruption. It was not part of established U.S. anti-corruption policy. That corrupt pressure campaign for his own, personal political benefit in fact subverted U.S.

anti-corruption efforts in Ukraine and undercut our national security.

President Trump is not fighting to end corruption in Ukraine, as my colleague in the House, Mr. HIMES, pointed out during one of our hearings. He was trying to aim corruption in Ukraine at Vice President Biden and our 2020 election.

Selective, politically motivated prosecutions of political opponents undercut governance in Ukraine. President Trump's demand that Zelensky help him do precisely what U.S. diplomats for decades advised Ukrainian officials not to do completely undercut the credibility of efforts to promote the rule of law there. The demand also undercut the U.S. moral standing and authority in the eyes of a global audience.

Once again, here is George Kent.

(Text of Videotape presentation:)

Mr. GOLDMAN. Mr. Kent, is pressuring Ukraine to conduct what I believe you have called "political investigations" a part of U.S. foreign policy to promote the rule of law in Ukraine and around the world?

Mr. KENT. It is not.

Mr. GOLDMAN. Is it in the national interests of the United States?

Mr. KENT. In my opinion, it is not.

Mr. GOLDMAN. Why not?

Mr. KENT. Because our policies, particularly in promoting the rule of law, are designed to help countries. And in Eastern Europe and Central Europe, that is overcoming the legacy of communism. In the communist system in particular, the Prosecutor General Office was used to suppress and persecute citizens, not promote the rule of law. So, in helping these countries reach their own aspirations to join the Western community of nations and live lives of dignity, helping them have the rule of law, with strong institutions, is the purpose of our policy.

Mr. GOLDMAN. So, in other words, it is a purpose of our foreign policy to encourage foreign nations to refrain from conducting political investigations. Is that right?

Mr. KENT. Correct. And, in fact, as a matter of policy, not of programming, we oftentimes raise our concerns, usually in private, with countries that we feel are engaged in selective political prosecution and persecution of their opponents.

Mr. Manager SCHIFF. Ambassador Yovanovitch aptly summarized the global consequences and harm to U.S. national security resulting from President Trump's demand that Ukraine investigate his political opponent.

(Text of Videotape presentation:)

Ambassador YOVANOVITCH. Such conduct undermines the U.S., exposes our friends, and widens the playing field for autocrats like President Putin. Our leadership depends on the power of our example and the consistency of our purpose. Both have now been opened to question.

Mr. Manager SCHIFF. The issues I just covered are not a matter of policy disagreement over foreign policy and national security. Article I asserts that the President was engaged in no such policy at all but, instead, sold out our policies and our national interests for his own personal gain and to help him corrupt the next election. That is the core conduct of an impeachable offense.

The President's abuse of power also affected our election integrity.

The Framers of our Constitution were particularly fearful that a President might misuse or abuse the power of his office to undermine the free and fair elections at the heart of our democracy. Sadly, that moment has arrived. [Slide 409] President Trump's repeated solicitation of a Ukrainian investigation was a clear effort

to leverage foreign interference and bolster his prospects in the 2020 election; in other words, to cheat in his election.

In our democracy, power flows from the will of the people as manifested in free and fair elections. One person, one vote is fundamental in our democracy.

President Trump's invitation of foreign interference in the 2020 election—for the purposes of helping him win an election—undercut the Constitution's commitment to popular sovereignty. Americans are now left to wonder if their vote matters or if they are simply pawns in a system being manipulated by shadowy foreign forces working on behalf of the corrupt interests of a lawless President. Over the long term, this weakens our democratic system's capacity for self-governance by encouraging apathy and nonparticipation.

Cynicism makes it easier for enemies to influence our politics and undermine the national good. Indeed, this is precisely what Vladimir Putin intended when he meddled in the 2016 election: for us to become more cynical; for us to lose faith in the notion that the American system of government is superior to the corrupt, autocratic model of government that he has erected in Russia and sought to export to places like Ukraine.

These are not the free and fair elections Americans expect or demand if foreign powers are interfering. How can we know that our elections are free from foreign interference, whether by disinformation or hacking or fake investigations? We must not become numb to foreign interference in our elections.

Our elections are sacred. If we do not act to put an end to the solicitation of foreign interference in our election by the President of the United States, the effect would be corrosive to our elections and our values. Future Presidents may believe that they, too, can use the substantial power conferred on them by the Constitution in order to undermine our system of free and fair elections, that they, too, can cheat to obtain power or keep it. That way lies disaster for the great American experiment in self-governance.

As you have seen, there is powerful evidence that President Trump will continue to betray the national interest to a foreign power and further undermine both our security and democracy. This creates an urgent need to remove him from office before the next election.

To explain the nature of that continuing threat, let me describe Russia's ongoing efforts to harm our elections, [Slide 410] the President's corrupt refusal to condemn or defend against those attacks, his statements confirming that he welcomes foreign interference in our elections so long as this is meant to help him and his conduct, proving that he will persist in seeking to corrupt elections at the expense of our security and at the expense of those elections.

Let's start with Russia's ongoing attacks on our democracy. At the heart of the President's Ukraine scheme is his decision to subscribe to that dangerous conspiracy theory that Ukraine, not Russia, was responsible for interfering in 2016. President Trump and his men pressured Ukraine into investigating this bogus piece of Russian propaganda, and in doing so, they aided Putin's concerted plot to undermine our security and democracy.

Special Counsel Mueller warned that Putin's plot was ongoing:
(Text of Videotape presentation:)

Mr. HURD. Is this—in your investigation, did you think this was a single attempt by Russia to get involved in our election, or do you find evidence to suggest they'll try to do this again?

Mr. MUELLER. Oh, it wasn't a single attempt. They're doing it as we sit here, and they expect to do it during the next campaign.

Mr. Manager SCHIFF. Not a single attempt. They're doing it as we sit here, and they expect to do it in the next campaign.

That was Special Counsel Mueller's stark warning. And we now know that Director Mueller was right. Just the other week, we saw public reporting that Russian hackers may be using phishing emails to attack Ukrainian gas company Burisma, presumably in search of dirt on Joe Biden. Those are the same tactics deployed by the same adversary, Russia, that the special counsel warned about in the last election. It may be Russia once again attempting to sway our election for one candidate, this time through Ukraine.

Indeed, President Trump, to this very day, refuses to accept the unanimous assessment of our intelligence community and law enforcement professionals that Russia interfered in the 2016 campaign and poses a threat to the 2020 Presidential election. Instead, he views it from his own personal lens—whether it is an attack on the legitimacy of his 2016 electoral victory.

Special Counsel Mueller's testimony on July 24, 2019, the day before the President's call with President Zelensky, contradicted President Trump's claim that his was "a clean campaign." Mueller found that individuals associated with the 2016 campaign of the President welcomed Russia's offers of assistance and adjusted their political strategy so that then-Candidate Donald Trump might benefit from Russia's assistance.

When they were subsequently asked by U.S. law enforcement about their activities, President Trump's advisers repeatedly lied. In Helsinki in July of 2018, however, President Trump refused to acknowledge the Russian threat to our elections. When a reporter explicitly asked whether he believed Putin or the U.S. intelligence agencies on the issue of foreign interference in the 2016 election, President Trump said: "I don't see any reason why it would be"—Russia—and talked about the DNC server.

(Text of Videotape presentation:)

President TRUMP. So let me just say that we have two thoughts. You have groups that are wondering why the FBI never took the server. Why haven't they taken the server? Why was the FBI told to leave the office of the Democratic National Committee? I've been wondering that. I've been asking that for months and months, and I've been tweeting it out and calling it out on social media. Where is the server? I want to know, where is the server? And what is the server saying?

With that being said, all I can do is ask the question. My people came to me—Dan Coats came to me and some others—they said they think it's Russia. I have President Putin; he just said it's not Russia.

I will say this: I don't see any reason why it would be, but I really do want to see the server. But I have—I have confidence in both parties. I really believe that this will probably go on for a while, but I don't think it can go on without finding out what happened to the server. What happened to the servers of the Pakistani gentleman that worked on the DNC? Where are those servers? They're missing. Where are they? What happened to Hillary Clinton's emails? Thirty-three thousand emails gone—just gone. I think, in Russia, they wouldn't be gone so easily. I think it's a disgrace that we can't get Hillary Clinton's 33,000 emails.

Mr. Manager SCHIFF. I am sure you remember this. It was, I think, unforgettable for every American. But I am sure it was equally unforgettable for Vladimir Putin. I mean, there he is, the President of Russia, standing next to the President of the United States and hearing his own Kremlin propaganda talking points coming from the President of the United States. Now, if that is not a propaganda coup, I don't know what is.

It is the most extraordinary thing. It is the most extraordinary thing: the President of the United States standing next to the President of Russia, our adversary, saying he doesn't believe his own intelligence agencies. He doesn't believe them. He is promoting this kooky, crazy server theory cooked up by the Kremlin, right next to the guy who cooked it up. It is a breathtaking success of Russian intelligence. I don't know if there has ever been a greater success of Russian intelligence. Whatever profile Russia did of our President, boy, did they have him spot-on. Flattery and propaganda. Flattery and propaganda is all Russia needed.

As to Ukraine, well, they needed to deliver a political investigation to get help from the United States. I mean, this is just the most incredible propaganda coup. As I said yesterday, it is not just that the President of the United States, standing next to Vladimir Putin, is reading Kremlin talking points; he will not read his own national security staff talking points, but he will read the Kremlin ones. It is not just that he adopts the Kremlin talking points. That would be bad enough. It is not bad enough, it is not damaging enough, it is not dangerous enough to our national security that he is undermining our own intelligence agencies. It is not bad enough that he undermines those very agencies that he needs later, that we need later to have credibility.

We just had a vigorous debate over the strikes against General Soleimani, and the President has made his argument about what the intelligence says and supports. How do you make those arguments when you say the U.S. intelligence community can't be believed?

Now, we have had a vigorous debate about what that intelligence has to say. That is not the issue here. The issue here is you undermine the credibility of your own intelligence agency—you weaken the country—for when you need to rely on them, for when you need to persuade your friends and your allies that “you can trust us when we tell you this is what the intelligence shows.” How do you make that argument, as the President of the United States, when you have just told the world you trust the Russians more than your own people? You trust Rudy Giuliani more than Christopher Wray. How do you make that case? And if you can't make that case, what does that mean to our security?

But that is not the end of it. It is not just the propaganda coup. It is not just the undermining of our agencies. It is also that the buy-in to that propaganda meant that Ukraine wasn't going to get money to fight the Russians.

I mean, that is one hell of a Russian intelligence coup. They got the President of the United States to provide cover for their own interference with our election. They got the President of the United States to discredit his own intelligence agencies. They got the President of the United States to drive a wedge between the United

States and Ukraine. They got the President of the United States to withhold aid from Ukraine in a war with Russia, in a war that is claiming Ukrainian lives every week.

Has there ever been such a coup? I would submit to you, in the entire length of the Cold War, the Soviet Union had no such success—no such success. And why? Because a former mayor of New York persuaded a President of the United States to sacrifice all of that for a cheap shot at his political opponent, for a smear against his political opponent. Was it worth it? I hope it was worth it. I hope it was worth it for the President because it certainly wasn't worth it for the United States.

Now, you can see President Trump did not blame Vladimir Putin and the Russian intelligence agencies who interfered in our election for the questions surrounding his victory. He did not blame the people who worked for his campaign and were subsequently convicted of lying to our law enforcement agencies. No. He blamed the investigators—Special Counsel Mueller, the man in charge of getting to the bottom of Russia's interference in 2016. And he chose to believe Vladimir Putin, a former Russian intelligence officer, rather than his own intelligence agencies.

We can see a pattern here. President Trump solicited interference from Russia as a candidate in 2016, and then his campaign welcomed Russian interference in the election. [Slide 411]

In Helsinki, President Trump chose to believe Putin over his own agencies: "I don't see any reason why it would be"—referring to Russia. Instead of denouncing Russia's interference, he denounced those investigating Russia's interference, and he raised that now-familiar DNC CrowdStrike server thing: "I really do want to see the server. I don't think it can go on without finding out what happened to the server."

That is the exact same server that President Trump demanded Ukraine investigate during his July 25 call with President Zelensky.

When the President talked about the DNC server in Helsinki, with Vladimir Putin standing by his side, he was referencing the same discredited conspiracy theory about the Ukraine interference in 2016 that Putin repeatedly promoted.

Let's look at this Washington Post article from July 2018. [Slide 412]

In the end, Trump's performance alongside Putin in the Finnish capital seemed like a tour through his most controversial conspiracy theories, tweets and off-the-cuff musings on Russia—except he did it all while abroad, standing just feet from Putin, the leader of one of America's greatest geopolitical foes.

The spectacle in Helsinki also underscored Trump's eagerness to disregard his own advisers, his willingness to flout the conclusions of his own intelligence community—that Russia interfered in the 2016 elections—and his apparent fear that pressing Putin on the subject might cast doubt on his electoral victory.

White House officials told the Washington Post that President Trump's remarks in Helsinki were "very much counter to the plan."

That is another understatement of the century. If that sounds familiar, it is because the witnesses who testified before the House as part of the impeachment inquiry all said the same thing about the July 25th phone call. The President ignored vital national security issues he was supposed to raise and instead raised disproven

conspiracies about 2016 and the DNC server—the very same Russian propaganda he publicly endorsed in Helsinki.

Do you think it is going to stop now? Do you think if we do nothing it is going to stop now? All of the evidence is to the contrary. You know it is not going to stop.

The President just told one of the Members of this body he still wants Biden investigated. It is not going to stop unless the Congress does something about it.

President Trump's betrayal began in 2016, when he first solicited Russian interference in our election.

(Text of Videotape presentation:)

Candidate TRUMP. Russia, if you're listening, I hope you're able to find the 30,000 emails that are missing.

Mr. Manager SCHIFF. That betrayal continued in Helsinki in 2018, when, as we saw, he rejected the intelligence community's assessment about Russian interference in that same election—when he criticized U.S. officials investigating the Russian interference and instead promoted Putin's conspiracy theory about Ukraine.

The betrayal continued in 2019 when he carried out a scheme to cheat in the 2020 election by demanding that the leader of Ukraine—a U.S. partner under military attack by Russia—announced an investigation into the same baseless conspiracy theory about a DNC server and the bogus allegations about Vice President Biden.

The abuse of power continues. He is still trying to cheat in the next election, even after the scheme came to light. Even after it became the subject of an impeachment inquiry, it continued, and the false statements about it continued.

President Trump repeatedly asserted that he had a prerogative to urge foreign nations to investigate U.S. citizens who dare to challenge him politically.

Just for a minute, we should try to step into the shoes of someone else. My father used to say, you don't understand a person until you step in their shoes. I also thought he invented that wisdom himself until I watched "To Kill a Mockingbird" and found out that Atticus Finch said it first.

Let's try to step into someone else's shoes for a moment. Let's imagine it wasn't Joe Biden. Let's imagine it was any one of us. Let's imagine the most powerful person in the world was asking a foreign nation to conduct a sham investigation into one of us. What would we think about it then? Would we think that is good U.S. policy? Would we think he has every right to do it? Would we think that is a perfect call?

Let's step, for a minute, into Ambassador Yovanovitch's shoes, and we are the subject of a vicious smear campaign that no one in the Department we work for, up to the Secretary of State, thinks has a shred of credibility. Let's step into her shoes for a minute. We spent our whole life devoted to public service, served in dangerous places around the world, and we are hounded out of our post. And one day someone releases a transcript of a call between the President of the United States and a foreign leader, and the President says there is going to be some things happening to you, or to you, or to you, or to you, or to you. How would you feel about the President of the United States? Would you think he was abus-

ing the power of his office? If you would, it shouldn't matter that it wasn't you. It shouldn't matter that it was Marie Yovanovitch. It shouldn't matter that it was Joe Biden. I will tell you something. The next time it just may be you. It just may be you.

Do you think for a moment that any of you, no matter what your relationship with this President, no matter how close you are to this President—do you think for a moment that if he felt it was in his best interest he wouldn't ask you to be investigated? Do you think for a moment that he wouldn't?

If somewhere deep down below you realize that he would, you cannot leave a man like that in office when he has violated the Constitution. It shouldn't matter that it was Joe Biden. It could have been any of us. It may be any of us. It shouldn't matter that it was Marie Yovanovitch. It will be some other diplomat tomorrow, for some other pernicious reason.

It goes to what Mr. JEFFRIES said. It goes to character. You don't realize how important character is in the highest office in the land until you don't have it, until you have a President willing to use his power to coerce an ally to help him cheat, to investigate one of our fellow citizens—one of our fellow citizens.

Yes, he is running for President. He is still a U.S. citizen. He is still a U.S. citizen, and he deserves better than that.

Of course, it wasn't just Ukraine. It wasn't just Russia. There is the invitation to China to investigate the Bidens. It is not going to stop.

On September 19, Rudy Giuliani was interviewed by Chris Cuomo on CNN. You have probably all seen the clip. When asked specifically if he had urged Ukraine to look into Vice President Biden, Mr. Giuliani replied immediately: "Of course I did." "Of course I did."

It shouldn't matter that it was Joe Biden. It wasn't Hunter Biden there. It was Joe Biden. It wasn't Hunter Biden on that call. It was Joe Biden. It shouldn't matter whether it was Hunter Biden or Joe Biden. We are talking about American citizens. It shouldn't matter to any of us which American citizens.

He hasn't stopped urging Ukraine to conduct these investigations. Mr. Giuliani hasn't. Donald Trump hasn't. To the contrary and consistent with everything we know about the President, he has done nothing but double down.

During the first week of December, Mr. Giuliani traveled to Ukraine and Hungary to interview the corrupt former Ukrainian prosecutors, who had been pushing these false narratives about Vice President Biden and this kooky conspiracy about 2016. Mr. Giuliani met with current members of the Ukraine Parliament who have advocated for that same fraudulent investigation.

In June of last year, President Trump told ABC News that he would take political dirt from a foreign country if it was offered again.

If he has learned anything from the tumult of the last 3 years, it is that he can get away with anything, can do it again. He can't be indicted. He can't be impeached—can't, if you believe our Attorney General, even be investigated.

Our Founders worried about a situation just like this. James Madison put it simply: The President "might betray his trust to for-

eign powers.” In his farewell address, George Washington warned Americans “to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.”

John Adams, in a letter to Thomas Jefferson wrote:

You are apprehensive of foreign Interference, Intrigue, Influence. So am I. But as often as Elections happen, the danger of foreign influence recurs.

Or to quote the President’s Chief of Staff:

Get over it. There is going to be politics in foreign policy.

Well, I don’t think that was John Adams’ point, and I don’t think that was James Madison’s point, and I don’t think that was George Washington’s point. If it was, they would have said: “Get over it.” But they recognized, as I know we recognize, what a profound danger that would be for that to become the new normal.

Another election is upon us. In 10 months, voters will undertake their most important duty as citizens by going to the polls and voting for their leader. And so we must ask: What role will foreign powers play in trying to influence the outcome? And if they take the President’s side, who will protect our franchise if the President will not?

As charged in the first Article of Impeachment, President Trump has demonstrated that he will remain a threat to national security and the Constitution if allowed to remain in office and has acted in a manner grossly incompatible with self-governance and the rule of law.

Based on the abuse of power for which he was impeached and his ongoing powers to solicit foreign influence, both directly and through Mr. Giuliani, there can be little doubt that President Trump will continue to invite foreign interference in our elections again and again. That poses an imminent threat to the integrity of our democracy.

Our Founders understood that a President like Donald Trump might one day grasp the reins of power: an unremorseful, overreaching executive, faithful to himself only, and willing to sacrifice our democracy and national security for his own personal advantage. His pattern of conduct—repeatedly soliciting foreign interference in our elections for his own benefit—confirms that he will stop at nothing to retain his power. He willfully chose to place his own personal interests above the country’s and the integrity of our elections.

There is every reason to believe that will continue. He has stonewalled Congress and ordered executive branch agencies—organizations that work for the American people, not for the President—to join in his obstruction. He deployed Mr. Giuliani to Ukraine to continue advancing a scheme that serves no other purpose than advancing his 2020 reelection prospects. He attacked witnesses, public servants, patriots, who stayed true to their oath and leveled with the American people about the grave national injury that resulted from the President’s misconduct. And he continued to urge foreign nations to investigate American citizens that he views as a threat. The threat that he will continue to abuse his power and cause grave harm to the Nation over the course of the next year, until a new President is sworn in or until he would be

reelected is not a hypothetical. Merely exposing the President's scheme has not stopped him from continuing this destructive pattern of behavior that has brought us to this somber moment. He is who he is. That will not change, nor will the danger associated with him. Every piece of evidence supports the terrible conclusion that the President of the United States will abuse his power again, that he will continue to solicit foreign interference to help corruptly secure his reelection. He has shown neither remorse nor acknowledgement of wrongdoing. If you can believe that July 25 was a perfect call, that asking for investigations of your political opponents and using the power of your office to make it so is perfectly fine, then, there is nothing that would stop you from doing it again.

President Trump has abused the power of his office and must be removed from that office.

Mr. McCONNELL, I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. McCONNELL. Mr. Chief Justice, I suggest a 15-minute recess.

There being no objection, at 3:30 p.m., the Senate, sitting as a Court of Impeachment, recessed until 4:04 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senate will come to order.

Mrs. Manager DEMINGS. Mr. Chief Justice and Senators, first of all, I want to join my colleagues in just thanking you for your patience and your indulgence.

What I can tell you today is that we are closer today than we were yesterday because I am prepared to present article II: Obstruction of Congress.

The second Article of Impeachment charges the President with misusing the powers of his high office to obstruct the House impeachment inquiry.

We are here today in response to a blanket order issued by President Trump directing the entire executive branch to withhold all documents and testimony from that inquiry.

President Trump's obstruction of the impeachment inquiry was categorical, indiscriminate, and historically unprecedented. And its purpose was clear: to impede Congress's ability to carry out its duties under the Constitution to hold the President accountable for high crimes and misdemeanors.

As part of his effort to cover up evidence of his scheme to solicit foreign interference in the upcoming election, President Trump did something no President has ever dared to do in the history of our Republic. [Slide 413] President Trump directed the entire executive branch not to cooperate with the House's impeachment inquiry. President Trump blocked every person who works in the White House and every person who works in every department, agency, and office of the executive branch from providing information to the House as part of the impeachment inquiry.

This was not about specific, narrowly defined security or privacy issues. Nor was it based on potential privileges available to the executive branch. Indeed, President Trump has not once asserted executive privilege during this process.

This was a declaration of total defiance of the House's authority to investigate credible allegations of the President's misconduct and a wholesale rejection of Congress's ability to hold the President accountable.

The President's order, executed by his top aids, substantially interfered with the House's constitutionally authorized power to conduct an impeachment inquiry.

At President Trump's direction, the White House itself refused to produce a single document or record in response to a House subpoena that remains in full force and effect, and it continues to withhold those documents from Congress and from the American people.

But it is not just the White House. [Slide 414] Following President Trump's order, the Office of the Vice President, the Office of Management and Budget, the Department of State, the Department of Energy, and the Department of Defense all continued to refuse to produce a single document or record in response to 71 specific requests, including 5 subpoenas.

Additionally, following President Trump's order, 12 current or former administration officials continue to refuse to testify as part of the House's impeachment inquiry—not only current administration officials but former administration officials as well. Nine of those witnesses, including senior officials with direct firsthand knowledge of the President's actions, continue to defy subpoenas for testimony because of the President's order. And yet, despite President Trump's obstruction, as you have heard and seen throughout the House managers' presentation of the facts of the President's scheme, the House gathered overwhelming evidence of his misconduct from courageous public servants who were willing to follow the law, comply with subpoenas, and tell the truth.

On the basis of that formidable body of evidence, the House adopted the first Article of Impeachment. These witnesses also testified with great specificity about extensive documents, communications, and records in the possession of the White House and other agencies regarding the President's scheme to coerce Ukraine's leader to help his reelection.

As you have heard over the past few days, the House was, therefore, able to develop an extensive catalog of specific documents and pertinent communications that go to the heart of the President's wrongdoing and which the President has ordered be concealed from Congress and the American people.

Revelations of evidence harmful to the President have only continued since the House compiled its investigative reports. Recent court-ordered releases under the Freedom of Information Act, as well as disclosures to the media, have further demonstrated that the White House, OMB, State Department, and other agencies are actively withholding highly relevant documents that could further implicate the President and his subordinates.

Over time, these documents and this evidence will undoubtedly come to light, and I ask this body to not wait to read about it in the press or in a book. You should be hearing this evidence now—hearing this evidence now.

Now, there is one point that I would like to make very clear. President Trump's wholesale obstruction of Congress strikes at the

very heart of our Constitution and our democratic system of government.

The President of the United States could undertake such comprehensive obstruction only because of the exceptional powers entrusted to him by the American people. Only one person in the world has the power to issue an order to the entire executive branch. That person, Senators, as you know, is the President. And President Trump used that power not to faithfully execute the law but to order agencies and employees of the executive branch to conceal evidence of his misconduct.

Now, I know that no other American could seek to obstruct an investigation into his or her wrongdoing in this way. We all know that no other American could use the vast powers of our government to undertake a corrupt scheme to cheat to win an election and then use those same powers to suppress the evidence of his constitutional crime. We would not allow—I am convinced that we would not allow any member of our State or local governments to use the official powers of their office to cover up crimes and misdeeds. As this body is well aware, mayors and Governors have gone to jail for doing so. Sheriffs and police chiefs are certainly not immune. If we allow President Trump to escape accountability, we will inflict lasting damage on the separation of powers among our branches of government—our fundamental system of checks and balances. It would inflict irreversible damage by allowing this Commander in Chief and establishing precedence for future Presidents to act corruptly or abusively and then use the vast powers of their office—the Office of the Presidency—to conceal their own misconduct from Congress and the American people. In other words, we would create a system that allows this President and any future President to really do whatever he or she wants.

It is an attack on congressional oversight, not just on the House but also on the Senate's own ability to oversee and serve as a check on this and future Presidents in both Republican and Democratic administrations. Without meaningful oversight, without the power of impeachment, Americans will have to come to accept a far greater likelihood of misconduct by the Oval Office, and they would not be able to look to other branches of government to hold their President—the people's President—accountable.

Executive power without any sort of restraint, without oversight, and without any checks and balances is absolute power. We know what has been said about absolute power: "Absolute power corrupts absolutely."

This is the very opposite of what the Framers intended. The Framers of the Constitution purposefully entrusted the power of impeachment to the legislative branch so that it may protect the American people from a corrupt President. Well, the times, Senators, have found us. If Congress allows President Trump's obstruction to stand, it essentially nullifies the impeachment power.

Senators, we are the keepers, the protectors, the defenders of what the Framers intended. We must hold any unprincipled and undisciplined Executive accountable.

Senators, I know that this is not easy. I don't take this moment lightly. These are tough times. I remember quite a few tough times

during my 27 years as a law enforcement officer, but we must stop this President. Today we will explain why.

First, we will review key facts regarding the scope and breadth of President Trump's unprecedented actions to stop the House's impeachment powers. As you well know, we covered many of these facts on Tuesday when we explained in depth what evidence the President had blocked from Congress. We addressed documents we know the White House and other agencies are concealing. We addressed testimony the President's aides would provide if they testified under oath. [Slide 415] We will, therefore, review the documents and witnesses briefly.

Second, after surveying relevant history and constitutional law, we will explain why obstruction of Congress in and of itself warrants impeachment and removal from office.

Finally, we will demonstrate that President Trump is without question guilty of obstruction of Congress, that his defenses lack any legal foundation, and that his actions pose a dire and continuing threat to the foundation of our constitutional framework.

This is very simple. It is simple. The President abused the powers entrusted in him by the American people in a scheme to suppress evidence, escape accountability, and orchestrate a massive coverup, and he did so in plain sight. His obstruction remains ongoing.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, President's counsel:

Before I start, I, too, want to thank all the Senators for being so patient and being such good listeners. It reminds me, quite frankly, of one of the first days that I went to what was affectionately called "baby judge school." When we first got started, those were the first two things they told us—that we needed to be patient and that we needed to listen and that we needed to be fair and always give the opportunity to be heard to each side.

I am going to say that you have certainly been playing a very good role as judges because, although I know the press calls you jurors, I know that you are in the role of judges, and I commend you for being good listeners and for having the patience to listen to us these last 2 days and in our final remarks today. So thank you all.

Ms. DEMINGS has given us an overview of the second Article of Impeachment: Obstruction of Congress.

So let us now turn to the facts of the case because to fully appreciate the scope and the scale of the President's wrongdoing and the size of the coverup he has orchestrated, it requires an understanding of the evidence that he has lawlessly hidden from Congress and the American people.

President Trump categorically, indiscriminately, and in unprecedented fashion obstructed Congress's impeachment inquiry; in other words, he orchestrated a coverup. He did it in plain sight.

First, from the beginning, the Trump administration sought to hide the President's misconduct by refusing to turn over the Intelligence Committee whistleblower complaint. That complaint would sound the first alarm of the President's wrongdoing. [Slide 416]

Second, the President issued an order prohibiting the entire executive branch from participating in the impeachment inquiry—no cooperation, no negotiation, nothing—or as we say in Texas, nada.

Following the President's orders, Federal agencies refused to produce documents, and key witnesses refused to testify. In fact, the President sanctioned specific directions to officials, ordering them to defy congressional subpoenas. Third, and perhaps the most reprehensible of all, the President waged a campaign of intimidation against those brave public servants who did come forward to comply with their obligation under the law.

Senators, as I mentioned, I am a lawyer and a former judge. I have never ever seen anything like this from a litigant or a party in any case, not anywhere. But from the very beginning of this scandal, President Trump has sought to hide and cover up key evidence.

The coverup started even before the House began to investigate the President's Ukrainian-related activity. It began when the White House sought to conceal the record of Donald Trump's July 25 call with the President of Ukraine by placing it on a highly classified system. [Slide 417] But, as we have said before, there was no legitimate national security reason to do so. The coverup continued. A top OMB official instructed the freeze to be "closely held." In other words, "Don't say anything to anybody."

Senators, you know that in order to lock in the hold of the funding, the President was required to notify Congress about the amount of money involved and why he was intending to freeze it. Instead, the White House tried to keep the freeze secret.

Maybe they kept it a secret because a senior White House aide, Rob Blair, accurately predicted to his boss, Mick Mulvaney, to "expect Congress to become unhinged" if it learned that bipartisan aid approved for a valuable foreign partner was being frozen for the President's personal gain.

But the coverup reached its peak soon after August 12 because, on August 12, a whistleblower filed a lawful and protected complaint intended for Congress with the inspector general of the intelligence community. The President, who was the subject of the complaint, learned of the filing well before Congress and the American people.

In an effort to conceal the whistleblower's concerns, the White House and the Department of Justice took an unprecedented step. No administration had ever intervened in such a manner before. But President Trump maneuvered to keep the whistleblower's concerns from the congressional Intelligence Committee.

In the history of the Intelligence Committee Whistleblower Protection Act, no credible and urgent complaint had ever, ever been withheld from Congress—not ever before. It was through immense public pressure and vigorous oversight by the House that the Trump administration ultimately produced a complaint to the House and Senate Intelligence Committees. I will add that even when it was produced, it was weeks after the legal deadline.

If the President's efforts to conceal the whistleblower's concerns had succeeded, Congress would never have learned about the existence of the complaint, let alone the allegations that it contained.

But this attempt to hide key information from Congress was only the first sign of what was to come.

Following new, deeply troubling revelations about the President's July 25 call, on September 24, the Speaker of the House announced that the House investigations into the President's scheme to pressure Ukraine for personal gain would be folded into the ongoing impeachment inquiry. Just days later, the President began to attack the legitimacy of the House impeachment inquiry.

While standing on the tarmac at Andrews Air Force Base, President Trump argued that the House impeachment inquiry "shouldn't be allowed." He claimed "There should be a way of stopping it—maybe legally, through the courts."

Let's watch the President and what he had to say:

(Text of Videotape presentation:)

President TRUMP. My call was perfect. The President, yesterday, of Ukraine said there was no pressure put on him whatsoever. None whatsoever. And he said it loud and clear to the press. What these guys are doing—Democrats—are doing to this country is a disgrace and it shouldn't be allowed. There should be a way of stopping it—maybe legally, through the courts.

Ms. Manager GARCIA of Texas. "There should be a way of stopping it."

Soon after, President Trump took the matter into his own hands. The President used his authority and his office to wage a relentless and misleading public campaign to attack the impeachment inquiry.

The President spent time at rallies, at press conferences, and on Twitter trying to persuade the American people that the House's inquiry was invalid and fraudulent.

Here are just a few of President Trump's comments about the impeachment inquiry. He called it "a witch hunt," "a COUP," "an unconstitutional power grab," [Slide 418] and "a fraud against the American people." He said it is "the phony Impeachment Scam," "the phony Impeachment Hoax," the "Ukraine Hoax," and "a continuation of the greatest Scam and Witch Hunt in the history of our Country."

Those are probably some of the ones that I can repeat here. And it didn't stop. The attacks did not end there. President Trump turned from rhetoric to action.

On October 8, the White House sent a letter to Speaker NANCY PELOSI informing her that President Trump would seek to completely obstruct the impeachment inquiry. They sent this letter. [Slide 419] White House stationery. I shouldn't say this—I am a lawyer—but it is very lawyerly. It is an eight-page letter. You know, lawyers can't do one thing in one page; we have to do it in seven or eight. This was eight pages, and it is long. No worries, I am not going to read it all. I just want to get to the bottom line. It says: "President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances."

He was just saying: We are not going to cooperate.

The letter is dated, again, October 8, and it is signed by Pat Cipollone, who is here, of course, with us today as the lead counsel for the President.

The President did not make any claim of privilege. The President did not make any attempt to compromise. He had no valid excuse.

Although we are all too familiar with President Trump's rhetoric and rants, these words in this letter on White House stationery, signed by his lead counsel here today, have consequences. These words have consequences. They were more than just ink on a page. They were more than just eight pages of words.

In the days that followed, President Trump's agencies and officials followed his order to conceal information from Congress. Over the past few days, you have heard in extensive detail from all of us about some of the specific and incriminating documents that the President has withheld from Congress. But, again, here is the bottom line: The House investigating committees sought a total of 71 specific categories of documents from 6 different agencies and offices. President Trump blocked every single one of these requests—all of them. [Slide 420]

Between September 27 and October 10, the investigating committees issued subpoenas to the Department of State, the White House, the Office of Management and Budget, Department of Defense, and the Department of Energy. [Slide 421] The committees always remained open to working with the executive branch to discuss and prioritize the subpoenas.

Some agents initially suggested that they might comply. For example, a few days after receiving the subpoena, the Department of State staff reached out to the committee to "discuss accommodations."

As you all know, the accommodation process is when Congress and the executive branch discuss priorities and concerns so that the committee gets what it needs most efficiently, while minimizing any burden to the agency.

On October 7, the committee staff met with State Department officials. During that conversation, the committees made a good-faith attempt to engage the Department in negotiations.

To start, the committees requested that the Department prioritize production of a narrow set of nonprivileged documents. The Department's representatives stated that they would take the request back to senior State Department officials, but that was the end. That was the end. Those priority documents were never provided to the committees.

In addition to the State Department, the Department of Defense also showed an initial interest in cooperating. During an October 13 television appearance, Secretary of Defense Mark Esper stated repeatedly that the Department of Defense would seek to comply. He said on air, on TV, that they would seek to comply with the subpoena.

In an exchange on "Face the Nation," he was specifically asked:

Question. Very quickly, are you going to comply with the subpoena that the House provided you and provide documents to them regarding the halt to military aid to Ukraine?

Answer. [From the Secretary] Yeah we will do everything we can to cooperate with the Congress. Just in the last week or two, my general counsel sent out a note as we typically do in these situations to ensure documents are retained.

[But, again, the question is] Is that a yes?

Answer. [By the Secretary] That's a yes.

Question. You will comply with the subpoena?

Answer. [Again, by the Secretary] We will do everything we can to comply.

These are his very own words: We can comply.

But remember that October 8 letter from the White House Counsel sent to the Speaker stating the President's position of total defiance. President Trump—again, I will quote it. It said: "President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances."

So every department and every office, top to bottom, of the executive branch was under these instructions. You know, that is about 2 million public servants, top to bottom. The executive branch was all ordered by President Trump not to provide information to Congress. The President offered no accommodation and no opportunity for negotiation.

Ultimately, each agency and office followed the President's order. In response to each subpoena, the Trump administration produced no documents—nothing, nada—and the agencies and offices made clear that it was due to the President's instructions. [Slide 422] They always deferred to that October 8 letter.

For example, [Slide 423] despite the Secretary's initial signal of cooperation—I gave you the quote from when he was asked specifically on TV. He said they would try to cooperate. But despite that, the Department of Defense later refused to respond to the committee's subpoena. In a letter to the committees, the Department of Defense echoed many of the White House's unsupported legal arguments and concluded: "In light of these concerns, and in view of the President's position as expressed in the White House Counsel's October 8 letter, and without waiving any other objections to the subpoena that the Department may have, the Department is unable to comply with your request for documents at this time."

In a TV interview on "Face the Nation, they tried to ask him again. When asked by Chris Wallace on FOX News:

Question. And—but do you feel Congress has a right to oversight and to be able to see documents from the Pentagon about a program that was approved by Congress?

Answer. Well, they do, but provided it's done in the right and proper way. And I think that was the issue. Again, I think my reputation is pretty good in terms of being very transparent. I like to communicate with members of Congress. But in this case, they were—my recollection is that there were technical and legal issues that prohibited us from doing exactly what was requested by Congress.

So he said he would try to cooperate, to seek to comply, but now they are back-peddling. But, Senators, there were no valid technical or legal arguments. None were put forth to justify the stonewalling of the impeachment inquiry. The documents President Trump is withholding are highly relevant, responsive, and would further our understanding of the President's scheme.

Here is just a sampling of the documents we know exist that are currently being withheld: National Security Advisor John Bolton's notes, Ambassador Taylor's first-person cable to Secretary Pompeo, emails between OMB and other agencies about the President's directive to place a hold on the Ukraine military aid, and the hundreds of heavily redacted documents that the administration has now turned over to third parties under FOIA court orders.

Certainly the documents released pursuant to the FOIA lawsuits were not subject to any claims of privilege or confidentiality or burden. The administration released them publicly. By contrast, the President turned over nothing in response to the House impeachment investigation.

Senators, there still is another component of the President's obstruction that I want all of us to focus on.

Not only did the President block agencies and offices from producing documents, his administration also blocked current and former officials from identifying, producing, or even reviewing relevant documents.

First, the Trump administration actively discouraged its employees from even identifying documents responsive to the committees' request.

Deputy Assistant Secretary George Kent testified in his deposition that he informed the State Department attorney about additional responsive records that the Department had not collected. According to Kent, the Department attorney "got very angry" and "objected to [Mr. Kent] raising of the additional information." He "made clear that he did not think it was appropriate for [Mr. Kent] to make the suggestion."

So here is a lawyer telling the witness: Don't say that. I just—frankly, as a lawyer and former judge, I just can't believe something like this would happen. But Kent responded that he was just trying to "make sure that the Department was being fully responsive."

Second, the Trump administration refused to permit individual witnesses to produce relevant documents themselves.

After the State Department failed to respond to voluntary requests for documents at the beginning of the investigation, the committee sent document requests to six individual State Department employees. Secretary Pompeo objected to the committee's request to State officials, calling them "an act of intimidation and invitation to violate federal court laws." He also claimed that the House inquiry was "an attempt to intimidate, bully, and treat improperly the distinguished professionals of the Department of State."

Now we were the bullies. But let's be clear: His statement has been contradicted by actual State Department professionals from whom the committees sought documents. Kent testified that he "had not felt bullied, threatened, and intimidated" by the House. [Slide 424] In fact, Kent said that the language in Secretary Pompeo's letter, which had been drafted by a State Department attorney, was without consulting Mr. Kent.

He said: "It was inaccurate"—"inaccurate." Then the State Department ordered witnesses to withhold documents from Congress.

For example, on October 14, [Slide 425] the Department sent a letter to Kent's personal attorney warning—warning: "Your client is not authorized to disclose to Congress any records relating to official duties."

Certain witnesses defied those orders and produced the substance of key documents, providing critical insight into the President's scheme. Other witnesses produced documents to the Trump administration so they could be turned over to Congress, but now the administration is also sitting on those documents and is refusing to turn them over. Ambassador Taylor testified that he turned over documents to the Trump administration but, to his knowledge, they had not been produced to the House.

Let's watch.

(Text of Videotape presentation:)

Mr. QUIGLEY. But has any of the documents that you turned over, to your knowledge, been turned over to the committee?

Ambassador TAYLOR. No.

Ms. Manager GARCIA of Texas. Senators, I will confirm. The committees have not seen not one of these documents—none.

Finally, if it could be any worse—well, it is—a Trump administration official, Ambassador Sondland, informed us that he was not even permitted to review his own relevant records in preparation for their testimony. Again, this would be his own records so that he could prepare to testify.

Let's watch.

(Text of Videotape presentation:)

Ambassador SONDLAND. I have not had access to all of my phone records, State Department emails, and many, many other State Department documents. And I was told I could not work with my EU staff to pull together the relevant files and information. Having access to the State Department materials would have been very helpful to me in trying to reconstruct with whom I spoke and met and when and what was said.

My lawyers and I have made multiple requests to the State Department and the White House for these materials. Yet these materials were not provided to me, and they have also refused to share these materials with this committee. These documents are not classified and, in fairness—and, in fairness—should have been made available.

Ms. Manager GARCIA of Texas. Of course, we agree.

At President Trump's order, agencies and offices refused to produce documents in response to the committee's requests, and they refused to allow individual witnesses to do so either.

So let's recap. No documents—zero, goose egg, nada—in response to over 70 requests—70 requests and 5 subpoenas. There was no attempt to negotiate, no genuine attempt to accommodate. There was categorical, indiscriminate, and unprecedented stonewalling.

Again, never in my time as a lawyer or as a judge have I seen this kind of total disrespect in defiance of a lawfully issued subpoena—and all on President Trump's orders. And it could continue because this obstruction of Congress is real, and it is beyond—beyond—comparison. This President should be removed.

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, let's turn to President Trump's efforts to stop witnesses from testifying.

No other President facing impeachment has taken the extreme step to prohibit executive branch witnesses from testifying before Congress. Even President Nixon, who famously attempted to defy a subpoena for tape recordings of his conversations, let his most senior staff testify before Congress.

I remember listening on TV as John Dean testified before the Senate Watergate Committee. He was the President's lawyer. President Nixon didn't block him. Not only did President Nixon allow his staff to testify before Congress; he publicly directed them to testify and without demanding a subpoena.

Actually, with the Senate Watergate investigation, President Nixon said: [Slide 426]

All members of the White House staff will appear voluntarily when requested by the committee. They will testify under oath, and they will answer fully all proper questions.

Now compare that to President Trump. He publicly attacked the House's impeachment inquiry, calling it "constitutionally invalid," and he ordered every single person working in the executive branch to defy the House impeachment inquiry.

As just discussed, in the letter to the Speaker of the House, the White House Counsel said that President Trump [Slide 419] "cannot permit his administration to participate."

No President ever used the official power of his office to prevent witnesses from giving testimony to Congress in such a blanket and indiscriminate manner. There is no telling how many government officials would have come forward if the President hadn't issued this order.

Let's look at some of the witnesses who followed the President's orders.

The House issued subpoenas to compel the testimony of three officials at the Office of Management and Budget: [Slide 427] Acting Director Russell Vought, Associate Director Michael Duffey, and Associate Director, Brian McCormack.

According to testimony in the House, which was reinforced by emails recently revealed through the Freedom of Information Act lawsuits, OMB was just central to the President's hold on security assistance to Ukraine. Its officials served as conduits for the White House to implement the hold without directly engaging the agencies that actually supported release of the aid. President Trump directed these three OMB officials to violate their legal obligation by defying lawful subpoenas, and they followed his orders.

This isn't just an argument. It is a fact. In response to House subpoenas, OMB sent a letter to Chairman SCHIFF refusing to comply. This is what the letter said: [Slide 428] "As directed by the White House Counsel's October 8, 2019, letter, OMB will not participate in this partisan and unfair impeachment inquiry."

In that simple statement, OMB admitted several key points. [Slide 429] First, Mr. Cipollone's letter of October 8 was an official directive from the White House.

Second, President Trump's blanket order applied to OMB and the three officials subpoenaed by the House.

Third, President Trump's blanket order not only directed them to refuse to participate voluntarily; it also directed them to defy House subpoenas.

Fourth, President Trump's blanket order directly prevented the three OMB officials from providing testimony to the House.

There is no question about the scope of President Trump's order. It was total. There is no question about the intent of the order. It was clearly understood by administration officials, as shown by OMB. And there is no question the order had an impact. It directly prevented the House from getting testimony from the three senior officials at OMB.

So here we are. The President of the United States issued an official order forbidding every single person who works for the executive branch of our government from giving testimony to the House as part of an impeachment investigation. That order prevented the House from getting testimony from witnesses who knew about the President's conduct.

The matter is simple. It is plain to see. The question we here in Congress must ask is whether we are prepared to turn a blind eye to a President's obstruction—obstruction not only of oversight but also the power to determine whether Congress may gather evidence in an impeachment proceeding.

If the Senate is prepared to accept that, it will mean that not only President Trump but all Presidents after him will have veto power over Congress's ability to conduct oversight and the power of impeachment. The House was not prepared to accept that, and that is why the House approved article II.

As you consider what you think about this, please know that President Trump's blanket order was not the end of his campaign to obstruct the impeachment inquiry. Actually, it was just the beginning.

In addition to his total ban of government witnesses, President Trump also sent specific explicit orders. He directed key witnesses to defy subpoenas and to refuse to testify as part of the House's impeachment inquiry.

As you know, the House subpoenaed Acting White House Chief of Staff Mick Mulvaney. We wanted his testimony. [Slide 430]

At a White House press briefing in October—I know you have seen it before—Mr. Mulvaney confirmed what we had suspected. Mr. Mulvaney admitted that President Trump withheld the aid to pressure Ukraine into announcing an investigation into the conspiracy theory that Ukraine interfered in the 2016 elections. Here are his words.

(Text of Videotape presentation:)

Mr. MULVANEY. Did he also mentioned to me in the past the corruption that related to the DNC server? Absolutely, no question about that. But that's it, and that's why we held up the money.

Ms. Manager LOFGREN. After this really stunning admission, the House issued a subpoena to require Mr. Mulvaney to testify, but on the day of Mr. Mulvaney's scheduled deposition, the White House sent a letter to his personal attorney. It prohibited him from obeying the subpoena. The letter said: [Slide 431] "The President directs Mr. Mulvaney not to appear at the Committee's scheduled deposition."

When he issued this order, President Trump doubled down on his previous blanket order. He did so after the House voted to approve resolution 660, which in no uncertain terms made clear that Mr. Mulvaney was being subpoenaed to testify in an impeachment investigation.

This order was the first of many. President Trump also ordered another [Slide 432] White House official, Robert Blair, not to testify. Mr. Blair is Mr. Mulvaney's senior adviser and his closest aide. He was involved in communications about the hold on Ukraine aid.

The day after his initially scheduled deposition, Mr. Blair's personal attorney sent a letter to the House. [Slide 433] It said: "Mr. Blair has been directed by the White House not to appear and testify."

The House also wanted testimony from John Eisenberg, [Slide 434] the senior attorney on President Trump's National Security Council. As you have heard over the past few days, key witnesses,

including Dr. Hill and Lieutenant Colonel Vindman, said they were concerned by President Trump's efforts to pressure Ukraine. They were told to report these concerns to Mr. Eisenberg.

The day before his scheduled deposition, the White House sent a letter to Mr. Eisenberg's personal attorney. [Slide 435] It said: "The President directs Mr. Eisenberg not to appear at the Committee's deposition." Now, that language is starting to sound familiar.

Mr. Eisenberg's personal attorney then sent a letter to the House. The letter said this: [Slide 436]

Under these circumstances, Mr. Eisenberg has no other option that is consistent with his legal and ethical obligations except to follow the direction of his client and employer, the President of the United States. Accordingly, Mr. Eisenberg will not be appearing for a deposition at this time.

Now, that language, I think, is important. And it is telling. It shows that President Trump's order left Mr. Eisenberg with "no other option that is consistent with his legal and ethical obligations." By directing him to defy a lawful subpoena, President Trump created a legal and ethical problem for Mr. Eisenberg.

I am sure you know, contempt of Congress can be punished as a criminal offense. It carries the possible sentence of up to 12 months in jail. No President has ever dared, during an impeachment inquiry, to officially and explicitly order government witnesses to defy House subpoenas. You don't have to consider high-minded constitutional principles to understand why this was wrong. It is simple, really. By ordering specific government officials to defy congressional subpoenas, President Trump forced those officials to choose between submitting to the demands of their boss or breaking the law. Nobody should abuse a position of power in that way. But President Trump specifically ordered all three of these senior White House officials—Mulvaney, Blair, and Eisenberg—to defy the House's subpoenas and refuse to testify.

President Trump's efforts to conceal his actions didn't stop there, and they didn't stop at the front door of the White House. No less than 12 other witnesses were specifically ordered not to testify. One of those witnesses, Ulrich Brechbuhl, hasn't been highlighted much over the past few days, [Slide 437] but the way he fits into the story is worth noting.

Mr. Brechbuhl is a senior official at the State Department. Like these other senior officials, he was ordered not to testify. In a letter to the House, his attorney said: "Mr. Brechbuhl has received a letter of instruction from the State Department directing that he not appear." Mr. Brechbuhl is still another person who could shed light on President Trump's actions. He was kept updated on Rudy Giuliani's broader efforts in Ukraine. He had firsthand knowledge of Secretary Pompeo's involvement. For one thing, he handled Ambassador Yovanovitch's recall from Ukraine, though he refused to meet with her in the aftermath.

Also, messages by Ambassador Volker show that Mr. Brechbuhl knew about Mr. Giuliani's efforts in Ukraine as they occurred. On July 10, Ambassadors Taylor, Volker, and Sondland discussed Rudy Giuliani's push abroad. While discussing the problems Rudy was creating by meddling in official U.S. foreign policy, Ambassador Taylor noted that he "briefed Ulrich this afternoon." [Slide 438] Also on August 11, Ambassador Sondland emailed Mr.

Brexbuhl to ask him to brief Secretary Pompeo in the statement he was negotiating with President Zelensky, the aim of “making the boss happy enough to authorize an invitation.”

Ambassador Sondland wrote to him:

Kurt and I negotiated a statement from Z to be delivered for our review in a day or two. The contents will hopefully make the boss happy enough to authorize an invitation.

Now, State Department Executive Secretary Lisa Kenna answered Ambassador Sondland several hours later, letting him know that she passed that information on to Secretary Pompeo. Let’s pause here and consider why this message to Mr. Brexbuhl, which the State Department continues to conceal, is important. In this exchange, Ambassador Sondland told Brexbuhl that he had negotiated a deal to get President Zelensky to make a statement and that Sondland hoped that the promised statement would “make the boss happy enough to authorize an invitation.”

It shows that senior State Department leadership, including Secretary Pompeo, was quite aware of the deal to trade an invitation to the White House for a statement from President Zelensky.

Indeed, Ambassador Sondland confirmed that he kept them in the loop. Here is his testimony:

(Text of Videotape presentation:)

Ambassador SONDLAND. We kept the leadership of the State Department and the NSC informed of our activities, and that included communications with Secretary of State Pompeo; his counselor, Ulrich Brexbuhl; his Executive Secretary, Lisa Kenna; and also communications with Ambassador Bolton, Dr. Hill, Mr. Morrison, and their staff at the NSC. They knew what we were doing and why.

Ms. Manager LOFGREN. Eight other witnesses were also ordered not to testify as part of the House’s impeachment inquiry, but those eight witnesses came forward anyway, despite the President’s efforts to prevent them from testifying. All of the following witnesses were told not to testify: [Slide 439] Ambassador Marie Yovanovitch, Ambassador Gordon Sondland, Deputy Assistant Secretary of State George Kent, Ambassador Bill Taylor, Deputy Assistant Secretary of Defense Laura Cooper, Deputy Associate Director at OMB Mark Sandy, State Department official Catherine Croft, and State Department official Christopher Anderson. Each of these eight witnesses followed the law. They obeyed House subpoenas, and they testified before the House.

In all, we know that by issuing the blanket order and later specific orders, President Trump prevented at least 12 current or former administration officials from testifying during the House’s impeachment inquiry. He specifically forced nine of those witnesses to defy duly authorized subpoenas.

The facts are straightforward, and they are not in dispute:

First, in the history of our Republic, no President ever dared to issue an order to prevent even a single government witness from testifying in an impeachment inquiry.

Second, President Trump abused the power of his office by using his official power in an attempt to prevent every single person who works in the executive branch from testifying before the House.

Finally, President Trump’s orders, in fact, prevented the House from obtaining key witness testimony from at least 12 current or former government officials.

President Trump's orders were clear; they were categorical; they were indiscriminate; and they were wrong. They prevented key government witnesses from testifying. There is no doubt. That is obstruction, plain and simple.

Mrs. Manager DEMINGS. Mr. Chief Justice, now let us turn to some final sets of facts. In a further effort to silence his administration, President Trump engaged in a brazen effort to publicly attack and intimidate the dedicated public servants who came forward to testify. To be clear, these witnesses didn't seek the spotlight in this way. For years, they had quietly and effectively performed their duties on behalf of our national interest and on behalf of the American people.

Why would they seek the spotlight in this way, knowing that the President of the United States would lead the chorus of attacks against them. And he did. In response, the President issued threats, openly discussed possible retaliation, attacked their character and patriotism, [Slide 440] and subjected them to mockery and other insults—the President. The President's attacks were broadcast to millions of Americans, including the witnesses, their families, their friends, and their coworkers. This campaign of intimidation risked discouraging witnesses from coming forward voluntarily or complying with mandatory subpoenas for documents and testimony. And, as we all know, witness intimidation is a Federal crime.

There is simply not enough time today to walk through each of the President's attacks on the House's witnesses, but let's talk about a few. As I am sure my colleagues recall, the House subpoenaed Ambassador Marie Yovanovitch for public testimony. Ambassador Yovanovitch's first tour was in Somalia, [Slide 441] an increasingly dangerous place as that country's civil war progressed. During a different tour, Ambassador Yovanovitch helped to open a U.S. Embassy, during which time the Embassy was attacked by a gunman who sprayed the Embassy building with gunfire. Ambassador Yovanovitch has also served as an ambassador to Armenia and served the U.S. Embassy in Moscow. As Chairman SCHIFF said earlier, she has served in some dangerous places around the world on behalf of our interests and the interests of the American people.

President Trump's Under Secretary of State for Political Affairs described Ambassador Yovanovitch as "an exceptional officer, doing exceptional work at a critical embassy in Kyiv." But during Ambassador Yovanovitch's public testimony, President Trump tweeted: [Slide 442]

Everywhere Marie Yovanovitch went turned bad. She started off in Somalia, how did that go? Then fast forward to Ukraine, where the new Ukrainian President spoke unfavorably about her in my second phone call with him. It is a U.S. President's absolute right to appoint ambassadors.

In that same hearing, Chairman SCHIFF asked Ambassador Yovanovitch for her reactions to the President's attacks during her testimony before the House. Let's listen to that exchange.

(Text of Videotape presentation:)

Chairman SCHIFF. Ambassador, you've shown the courage to come forward today and testify, notwithstanding the fact you were urged by the White House or the State Department not to, notwithstanding the fact that, as you testified earlier, the President implicitly threatened you in that call record. And now the President, in

real-time, is attacking you. What effect do you think that has on other witnesses' willingness to come forward and expose wrongdoing?

Ambassador YOVANOVITCH. It is very intimidating.

Chairman SCHIFF. It is designed to intimidate, is it not?

Ambassador YOVANOVITCH. I mean, I can't speak to what the President was trying to do, but I think the effect is to be intimidating.

Chairman SCHIFF. Well, I want to let you know, Ambassador, that some of us here take witness intimidation very, very seriously.

Mrs. Manager DEMINGS. The House also subpoenaed the public testimony of Ambassador William B. Taylor, another career public servant, who graduated at the top of his class from West Point, [Slide 443] served as an infantry commander in Vietnam, and earned a Bronze Star and an Air Medal with the "V" device for Valor.

Yet, shortly after Ambassador Taylor came forward to Congress, President Trump publicly referred to him as a Never Trumper without any basis. Then, when a reporter noted that Secretary of State Mike Pompeo had hired Ambassador Taylor, President Trump responded: "Hey, everybody makes mistakes." He then had the following exchange about Ambassador Taylor. Let's listen.

(Text of Videotape presentation:)

President TRUMP. He's a Never Trumper. His lawyer is the head of the Never Trumper. They're a dying breed, but they are still there.

Mrs. Manager DEMINGS. Ambassador Taylor has since stepped down from his position as our chief diplomat in Ukraine.

In addition to his relentless attack on witnesses who testified in connection to the House's impeachment inquiry, [Slide 444] the President also repeatedly threatened and attacked the member of the intelligence community who filed the anonymous whistleblower complaint. In more than 100 statements about the whistleblower over a period of just 2 months, the President publicly questioned the whistleblower's motives and disputed the accuracy of the whistleblower's account.

But most disturbing, President Trump issued a threat against the whistleblower and those who provided information to the whistleblower. Let's listen.

(Text of Videotape presentation:)

President TRUMP. I want to know who's the person, who's the person who gave the whistleblower the information. Because that's close to a spy. You know what we used to do in the old days when we were smart? Right? The spies and treason, we used to handle it a little differently than we do now.

Mrs. Manager DEMINGS. The President's need to conceal his actions was so extreme that he even attacked the credibility of those witnesses who served our country in combat. This included Active Duty military personnel and veterans who earned the Purple Heart and Bronze Star, [Slide 445] among other battlefield recognition. But President Trump showed utter disregard for such patriotism. For example, President Trump attacked Lieutenant Colonel Vindman during his testimony on November 19, seeking to question his loyalty to the United States. The President retweeted that Lieutenant Colonel Vindman was offered the position of Defense Minister for the Ukrainian Government three times. Lieutenant Colonel Vindman, the national security director for Ukraine, has been an Activity Duty Army officer for more than 20 years. Lieu-

tenant Colonel Vindman earned a Purple Heart for wounds he sustained in an improvised explosive attack or device in Iraq.

President Trump's campaign of intimidation is reprehensible, debases the Presidency, and was part of his effort to obstruct the impeachment inquiry. The fact that it is the President of the United States making these threats tells us something. It tells us that the President desperately wanted to keep witnesses from testifying and thus further obstruct Congress's inquiry.

Senators, we cannot, and we must not, condone President Trump's attacks on whistleblowers and witnesses—people who truly have the ability to put our country first.

Mr. Manager NADLER. Now that we have carefully reviewed the facts and have described the President's categorical obstruction of Congress, we address questions of law. This discussion need not be abstract. The President's obstruction impacts the Senate directly. It impacts the constituents you represent. It impacts you because your job as a Member of Congress is to hold the executive branch in check. This is true no matter who occupies the White House [Slide 446] or which party controls the House or Senate. And the further the President—any President—departs from the law in the Constitution, the more important it is for you to do your job.

I suspect that there is common ground here. We all know that in order for Congress to do its work, we must have information. What is reasonable policy? What is the administration doing? Do we support it? Should we oppose it? Should we enact legislation to correct the problem? Asking questions, gathering information, making decisions based on the answers—this is one of the fundamental functions of Congress.

I suspect that we agree on this as well: Our ability to do that work depends on gathering information. It depends on the power of the congressional subpoena. Even when you make a polite request for information from a friendly administration, that request is backed by the threat of a subpoena.

And although the power of the congressional subpoena has been affirmed repeatedly by the courts, enshrined in the rules of the House and Senate, and respected by executive branch agencies for centuries, if the President chooses to ignore our subpoenas, our powers as a branch of government—our ability to do our jobs, our ability to keep an administration in check, our ability to make sure that the American people are represented by a Congress, not just by a President—are diminished.

Please know that we are not talking about a disagreement over the last few documents at the end of a long production schedule. We are talking about a direct order from the President of the United States to completely disregard all our subpoenas, to deny us all information the President wants to keep secret. This is in order to deprive Congress of our ability to hold an administration accountable. It is a bid to neuter Congress, to render the President all powerful since Congress could not have any information the President didn't want us to have. Without information, we cannot act.

We must ask: Is there a consequence for a President who defies our subpoenas absolutely; who says to all branches of the administration "Do not obey a single congressional subpoena"—categori-

cally, without knowing the subject of the subpoena—just “Never answer a congressional subpoena”; who denies Congress the right to any information necessary to challenge his power?

Would Madison, Hamilton, and Washington support removing a President who declares that the Constitution lets him do whatever he wants and who brazenly adds that he can ignore any effort to investigate, even when backed by subpoenas that the law requires him to obey? The answer to all these questions is a resounding yes.

Before diving in, I would like to set the historical scene. The Framers were wise. And so they worried that Presidents would abuse their power for personal gain. They feared that someday a President might mistake himself for a King—whose decisions cannot be questioned, whose conduct cannot be investigated, whose power transcends the rule of law. Such a would-be King would certainly think things like [Slide 447] “I have the right to do whatever I want as president.” He might believe that it is “illegitimate” for anyone to investigate him. Of course, not even the Framers could have imagined a President would say these things out loud.

A President with this view of raw power would attack anyone who tried to hold him to account, branding them “human scum” and “the Enemy of the People.” He would argue that courts had no power to enforce subpoenas against him.

He would conscript his allies to ridicule Congress. He would harass witnesses who testified against him, declaring it was disloyal to question his conduct. He would use the powers of his high office to sabotage our system of checks and balances. All of this we have seen in the last few years—indeed, in the last few months.

The Framers wrote the impeachment clause to protect the American people from such a President. The impeachment clause exists to protect our freedom and our democracy in between elections. It exists to remind Presidents that they serve the public, not the other way around. It is a reminder to Presidents that they answer to something greater than themselves. It confirms that nobody in America is above the law, not even the President.

As we have discussed, the impeachment power does not magically protect us when a President commits high crimes and misdemeanors. In Benjamin Franklin’s words, the Framers left us a Republic—if we can keep it.

One way we can uphold that promise is to do our duty as elected Members of Congress to hold the executive branch in check. That responsibility is part of the constitutional design. The burden is ours, regardless of our political party, no matter who sits in the Oval Office.

In the ordinary course, when we do our jobs, we do our Nation a service by holding the executive branch—both its political leadership and its professional core—accountable to the people for its actions.

When the President’s conduct exceeds the usual constitutional safeguards, it falls on the House to investigate Presidential wrongdoing and, if necessary, to approve Articles of Impeachment. It then falls on the Senate to judge, convict, and remove Presidents who threaten the Constitution.

This entire framework depends on Congress’s ability to discover and then to thoroughly investigate Presidential malfeasance. If

Presidents could abuse their power and then conceal all the evidence from Congress, the impeachment clause would be a nullity. We the people would lose a vital protection.

That is why officials throughout history have repeatedly recognized that subpoenas served in an impeachment inquiry must be obeyed, including by the President. It is why, before President Trump, only a single official in American history has ever defied an impeachment subpoena. And that is why that official, Richard Nixon, faced Articles of Impeachment for doing so.

As the House Judiciary Committee reasoned in its analysis of Nixon's obstruction: [Slide 448] "[U]nless the defiance of the [House] subpoenas . . . is considered grounds for impeachment, it is difficult to conceive of any President acknowledging that he is obligated to supply the relevant evidence necessary for Congress to exercise its constitutional responsibility in an impeachment proceeding."

Representative Robert McClory, a Republican from Illinois, explained the importance of this Article of Impeachment for our separation of powers. He said:

. . . if we refuse to recommend that the President should be impeached because of his defiance of the Congress with respect to the subpoenas that we have issued, the future respondents will be in the position where they can determine themselves what they are going to provide in an impeachment inquiry and what they are not going to provide, and this would be particularly so in the case of an inquiry directed toward the President of the United States. So, it not only affects this President but future Presidents.

That is where we find ourselves now but with even greater force. [Slide 449]

President Nixon authorized other executive branch officials and agencies to honor their legal obligations. He also turned over many of his own documents. President Trump, in contrast, directed his entire administration—every agency, every office, and every official—not to cooperate with the impeachment inquiry. As in Nixon's case, President Trump's obstruction is merely an extension of his coverup.

As in Nixon's case, President Trump's obstruction reveals consciousness of guilt. Innocent people do not act this way. They do not hide all the evidence. And like Nixon, President Trump has offered an assortment of arguments to excuse his obstruction. But as was true in Nixon's case, none of these excuses can succeed.

At bottom, these arguments amount to a claim that the President can dictate the terms of his own impeachment inquiry. President Trump's lawyers may insist his grounds for defying Congress are unique and limited; that they only apply here, just this one time; that it was the House, not the President, that broke from precedent; that he would gladly comply with subpoenas if only the House would do as he insists.

That is pure fantasy. The President's arguments are not a one-ride ticket. They are not unique to these facts. Unless they are firmly and finally rejected here, these bogus excuses will reappear every time Congress investigates any President for serious abuses of power—every single time. They will constitute a playbook for ignoring oversight, available to all future Presidents—Democratic and Republican.

These arguments are not consistent with the Constitution. They are lawyerly window dressing for an unprecedented, dangerous power grab.

Plenty of Presidents and judges have complained about impeachment inquiries, declaring their own innocence, attacking the House's motives, and insisting that due process entitled them to all sorts of things. But no President or judge—except Richard Nixon—has ever defied subpoenas on that basis. And no President or judge—none—has ever directed others to defy subpoenas categorically across the board. They have all eventually recognized their obligations under the law. President Trump stands alone.

If President Trump is permitted to defy our subpoenas here in an impeachment inquiry, when the courts have said the congressional power of inquiry is at its highest, imagine what future Presidents will do when we attempt to conduct routine oversight.

President Trump is the first leader of this Nation to declare that nobody can investigate him for official misconduct, except on his own terms. In word and in deed, President Trump has declared himself above the law. He has done so because he is guilty and wishes to conceal as much of the evidence from the American people and from this body as he can. In that, he must not succeed. If President Trump is allowed to remain in office after this conduct, historians will mark the date that this Senate allowed this President to break one of our mightiest defenses against tyranny. They will wonder why Congress so readily surrendered one of its core constitutional powers. They will wonder why Congress admitted that a President can get away with anything, can violate any constitutional rule, any liberty, any request for information, and get away with it simply by saying: I don't have to answer your questions. Congress has no power to make me answer questions about my conduct.

That is what is at stake. In the future, people will despair that future Presidents will abuse their power without fear of consequences or constraint.

Let's begin with a legal premise of the second Article of Impeachment.

Congress has the power to investigate Presidents for official misconduct. This premise is indisputable. In article I of the Constitution: [Slide 450]

All legislative powers herein granted shall be vested in the Congress of the United States, which shall consist of a Senate and House of Representatives.

Each House may determine the rules of its own proceedings.

Our investigations are grounded in article I of the Constitution, which grants Congress all legislative powers and authorizes each House to determine its own rules. As the Supreme Court has explained, the Constitution thus vests the House and the Senate with the power of inquiry, that it is "penetrating and far-reaching."

Moreover, Congress can effectuate that power of inquiry by issuing subpoenas commanding the recipient to provide documents or to testify under oath. Compliance with subpoenas is mandatory. It is not at the option of the executive or the President. As the Supreme Court has explained: [Slide 451]

[I]t is unquestionably the duty of all citizens to cooperate with the Congress in its efforts to obtain the facts needed for intelligent legislative action. It is their

unremitting obligation to respond to subpoenas, to respect the dignity of the Congress and its committees, and to testify fully with respect to matters within the province of proper investigation.

More recently, U.S. District Judge Ketanji Brown Jackson has elaborated: [Slide 452]

[B]latant defiance of Congress' centuries-old power to compel the performance of witnesses is not an abstract injury, nor is it a mere banal insult to our democracy. It is an affront to the mechanism for curbing abusers of powers that the Framers carefully crafted for our protection, and, thereby, recalcitrant witnesses actually undermine the broader interests of the people of the United States.

In recognition of the important role that congressional inquiries play in protecting our democracy and in guarding the American people, it is unlawful to obstruct them.

Of course, while Congress investigates many issues, one of the most important is misconduct in the executive branch.

There is a long history of congressional investigations into the executive branch. To name a few especially famous cases, Congress has investigated claims that President Lincoln mishandled Civil War military strategy; [Slide 453] the infamous Teapot Dome scandal under President Harding; President Nixon's involvement in the Watergate scandal; President Reagan's involvement in the Iran-Contra affair; President Clinton's real estate dealings and the Monica Lewinsky scandal; warrantless wiretapping under President George W. Bush; and attacks on personnel in Benghazi under President Obama.

Since the dawn of the Republic, Presidents have recognized Congress's power to investigate the executive branch. Even in sensitive investigations involving national security and foreign policy, Presidents have provided Congress with access to senior officials and important documents.

For example, in the Iran-Contra inquiry, President Reagan's former National Security Advisor, [Slide 454] Oliver North, and the former Assistant to the President for National Security Affairs, John Poindexter, testified before Congress. President Reagan also produced "relevant excerpts of his personal diaries to Congress."

During the Clinton administration, Congress obtained testimony from top advisers, including the President's Chief of Staff Mack McLarty, his Chief of Staff Erskine Bowles, White House Counsel Bernie Nussbaum, and White House Counsel Jack Quinn.

In the Benghazi investigation, President Obama made many of his top aides available for transcribed interviews, including National Security Advisor Susan Rice and Deputy National Security Advisor for Strategic Communications Benjamin Rhodes. The Obama administration, in that case, also produced more than 75,000 pages of documents, including 1,450 pages of White House emails, with communications of senior officials on the National Security Council.

To be sure, certain House Republicans complained loudly that the Obama administration's response to the Benghazi investigation was insufficient. Just imagine how they would have reacted if Obama had ordered total defiance of all subpoenas. They would have been outraged. Why? Because Congress unquestionably has the authority to investigate Presidential conduct.

Not only does Congress have the power to investigate the Executive, but, as we have discussed, [Slide 455] article I of the Constitution gives the House the sole power of impeachment. The Framers intended this power to be the central check on out-of-control Presidents. But it does not work automatically. The House must investigate, question witnesses, and review documents. Only then can it decide whether to approve or not approve Articles of Impeachment. Therefore, when the House determines that the President may have committed high crimes and misdemeanors, it has the constitutional duty to investigate his conduct.

In such cases, the House acts not only pursuant to its ordinary legislative authority but also serves as a “grand inquest of the Nation” because an impeachment inquiry wields one of the greatest powers of the Constitution—a power that exists specifically to constrain Presidents.

Its subpoenas are backed with the full force of the impeachment clause. They cannot be thwarted by ordinary executive privileges or ordinary objections. [Slide 456] It is therefore presumed—as President Polk conceded over 150 years ago—that “all the archives and papers of the Executive Departments, public or private, would be subject to . . . inspection” and “every facility in the power of the Executive [would] be afforded to enable [the House] to prosecute the investigation.” What investigation? The impeachment investigation of President Polk.

President’s Polk’s statement, which we will return to, was no outlier. Presidents have long understood that they must comply with impeachment inquiries. Consistent with this understanding, in the history of the Republic, no President has ever claimed the unilateral prerogative to categorically defy a House impeachment inquiry. On the contrary, every President facing this issue has agreed that Congress possesses a broad and penetrating power of inquiry when investigating grounds for impeachment.

This directly refutes President Trump’s claim that he obstructed Congress to protect the Office of the President. Every prior occupant of his office has disavowed the limitless power that he asserts. That matters.

As the Supreme Court explained just a few years ago: [Slide 457]

[L]ong settled and established practice is a consideration of great weight in a proper interpretation of constitutional provisions regulating the relationship between Congress and the President.

Let’s take a quick tour of the historical record. To begin at the beginning—a sweltering summer in Philadelphia, 1787—the Framers discussed at length the balance between Presidents and Congress. Remember, they had just fought a bloody war to rid themselves of a tyrant, and they were very conscious they didn’t want another tyrant. When impeachment came up, they agreed it would limit the President’s authority. But a strong majority of Framers saw that as a virtue, not a vice. They wanted to empower the President but also to keep his power from getting out of hand.

Yet impeachment could not serve that role if the House was unable to investigate the President for suspected high crimes and misdemeanors. This was recognized early on, starting with our very first President. In 1796, the House requested that President Washington provide it sensitive diplomatic materials relating to

the hugely unpopular Jay Treaty with Great Britain. President Washington declined since this request intruded upon his executive functions. But Washington agreed that impeachment would change his calculus. In the ensuing debates, it was noted on the House floor that Washington had admitted [Slide 458] “that where the House expresses an intention to impeach, the right to demand from the Executive all papers and information in his possession belongs to it.”

“All papers and information.” This was only the first of many references to that point in our constitutional tradition. For example, less than 40 years later, in 1833, Justice Joseph Story remarked upon the dangers of Presidential obstruction. He wrote: [Slide 459]

The power of impeachment will generally be applied to persons holding high offices under the government; and it is of great consequence that the President should not have the power of preventing a thorough investigation of their conduct.

Consistent with this teaching, President Polk later offered his clear and insightful explanation of why Presidents must honor all impeachment subpoenas. As I mentioned just moments ago, he said: [Slide 460]

It may be alleged that the power of impeachment belongs to the House of Representatives, and that with a view to the exercise of this power, that House has the right to investigate the conduct of all public officers under the government. This is cheerfully admitted.

Decades later, during our first Presidential impeachment inquiry, [Slide 461] President Andrew Johnson recognized Congress’s power to thoroughly investigate him and his executive branch subordinates.

In 1857, for example, the House Judiciary Committee obtained executive and Presidential records. The committee interviewed Cabinet officers and Presidential aides about Cabinet meetings and private conversations with the President by his top aides and Cabinet officials. Multiple witnesses, moreover, answered questions about the opinions of the President’s, statements made by the President, and the advice given to the President. There is no evidence that Johnson ever asserted any privilege to prevent disclosure of Presidential conversations to the committee or failed to comply with any of the committee’s requests.

Thus, in the first 80 years of the Republic, Presidents Washington, Polk, and Johnson, along with members of committees of the House and a Supreme Court Justice, all recognized that Congress is authorized by the Constitution to investigate grounds for impeachment and that Presidents are obligated to give all information requested. President Trump’s attempt to stonewall Congress would have shocked those Presidents.

With only a few exceptions, invocations of the impeachment power subsided from 1868 to 1972. Yet, even in that period, while objecting to ordinary legislative oversight, Presidents Ulysses S. Grant, Grover Cleveland, and Theodore Roosevelt each noted that Congress could obtain key executive branch documents in an impeachment inquiry. They thus confirm yet again that impeachment is different. Under the Constitution, it requires full compliance.

Then came Watergate, when President Nixon abused the power of his office to undermine his political opponents. But even Nixon—even Nixon—understood that he must comply with subpoenas for

information relating to his misconduct. Thus, he stated in March 1973, regarding the Senate's Watergate investigation: [Slide 462]

All members of the White House staff will appear voluntarily when requested by the committee. They will testify under oath, and they will answer fully all proper questions.

As a result, many senior White House officials testified, including White House Counsel John Dean, White House Chief of Staff H. R. Haldeman, and Deputy Assistant to the President Alexander Butterfield.

In addition, Nixon produced many documents in response to congressional subpoenas, including notes from meetings with the President.

As the House Judiciary Committee explained at the time, [Slide 463] 69 officials had been subjected to impeachment investigations throughout American history. Yet, "with the possible exception of one minor official who invoked the privilege against self-incrimination, not one of them challenged the power of the committee conducting the investigation to compel the production of evidence it deemed necessary."

President Nixon's production of records was incomplete, however, in a very important respect: He did not produce tape recordings of key Oval Office conversations. In response, the House Judiciary Committee approved an Article of Impeachment against the President for obstruction of Congress.

Twenty-four years later, the House undertook impeachment proceedings against President Clinton. Consistent with precedent and entirely unlike President Trump, Clinton "pledged to cooperate fully with the [impeachment] investigation." Ultimately, he provided written responses to 81 interrogatories from the Judiciary Committee, and 3 witnesses provided testimony during the Senate trial.

As this review of the historic record proves, Presidents have long recognized that the Constitution compels them to honor subpoenas served by the House in an impeachment inquiry.

Stated simply, President Trump's categorical blockade of the House—his refusal to honor any subpoenas, his order that all subpoenas be defied without even knowing what they were—has no analog in the history of the Republic. Nothing even comes close. He has engaged in obstruction that several of his predecessors have expressly said is forbidden and that led to an Article of Impeachment against Nixon.

President Trump is an outlier. He is the first and only President ever to declare himself unaccountable and to ignore subpoenas backed by the Constitution's impeachment power. If he is not removed from office and if he is permitted to defy the Congress entirely, categorically, and to say that subpoenas from Congress in an impeachment inquiry are nonsense, then we will have lost—the House will have lost, and the Senate, certainly, will have lost—all power to hold any President accountable.

This is a determination by President Trump that he wants to be all powerful. He does not have to respect the Congress—he does not have to respect the representatives of the people. Only his will goes. He is a dictator. This must not stand. That is another reason he must be removed from office.

Ms. Manager LOFGREN. Mr. Chief Justice, Senators, we have now shown how the extreme measures President Trump took to conceal evidence and block witnesses defies the Constitution and centuries of historical practice; but there is more to this story, and it only further undermines President Trump's case. The position he has taken is not only baseless as a historical matter; it is also inconsistent with the Justice Department's stated reason for refusing to indict or prosecute Presidents.

The Department of Justice's unwillingness to indict a sitting President creates a danger that the President can't be held accountable by anyone, even for grave misconduct. To its credit, the Department of Justice recognized that risk. [Slide 464] In its view, "the constitutionally specified impeachment process ensures that the immunity would not place the President 'above the law.'"

This argument by the Justice Department is really important. In justifying its view that a President can't be held criminally liable while in office, the DOJ relies on Congress's ability to impeach and remove a President, but the Justice Department's rationale falls apart if the "constitutionally specified impeachment process" can't function because the President himself has obstructed it.

The Supreme Court correctly noted in *Nixon v. Fitzgerald*—and that is not Richard Nixon; it is Judge Nixon—"vigilant oversight by Congress" is necessary to "make credible the threat of impeachment."

The President should not be treated as immune from criminal liability because he is subject to impeachment but then be allowed to sabotage the impeachment process itself. That is what this President did. That places him dangerously above the law and beyond the separation of powers. Presidents can't be above the law. Presidents, like everyone else, must obey subpoenas served in an impeachment inquiry.

In 1880, the Supreme Court explained: [Slide 465] "Where the question of such impeachment is before either [House of Congress] acting in its appropriate sphere on that subject, we see no reason to doubt the right to compel the attendance of witnesses, and their answer to proper questions, in the same manner and by the use of the same means that courts of justice can in like cases."

Almost a century later, Judge John Sirica's influential opinion on the Watergate "roadmap" in 1974 emphasized the special weight assigned to Congress in an impeachment.

He wrote: [Slide 466]

[I]t should not be forgotten that we deal in a matter of the most critical moment to the Nation, an impeachment investigation involving the President of the United States. It would be difficult to conceive of a more compelling need than that of this country for an unswervingly fair inquiry based on all the pertinent information.

That same year, the Supreme Court decided the famous case of *Nixon v. United States*. That is President Nixon. I was standing just across the street from the Court when the case was handed down, and I remember seeing the reporters running down those marble steps, clutching the Court's unanimous decision. That decision forced the release of key Oval Office tapes that President Nixon had tried to cover up by invoking executive privilege. In short order, it led to the resignation of President Nixon.

The plaintiff in that case was actually the special prosecutor, Leon Jaworski, who had been appointed to investigate the Watergate burglary and who had issued subpoenas for the Nixon tapes. The Supreme Court upheld these subpoenas against President Nixon's claim of executive privilege. It reasoned that his asserted interest in confidentiality could not overcome the constitutionally grounded interest in the fair administration of criminal justice.

In reaching that conclusion, the Court said:

The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts. The very integrity of the judicial system and public confidence in the system depend on full disclosure of all the facts, within the framework of the rules of evidence.

That reasoning, which was a unanimous decision by the Supreme Court in the Nixon tapes case, applies with full force—indeed, greater force—to impeachments.

The House Judiciary Committee recognized this when it approved an Article of Impeachment against President Nixon for obstruction of Congress.

It reasoned as follows:

If a generalized Presidential interest in confidentiality cannot prevail over “the fundamental demand of due process of law in the fair administration of justice,” neither can it be permitted to prevail over the fundamental need to obtain all the relevant facts in the impeachment process. Whatever the limits of legislative power in other contexts—and whatever need may otherwise exist for preserving the confidentiality of Presidential conversations—in the context of an impeachment proceeding the balance was struck in the favor of the power of inquiry.

Accordingly, President Trump's conduct is unprecedented and, actually, offensive to the precedents, and it is inconsistent with his duty—his oath—to faithfully execute the laws. That obligation to see that the laws are faithfully executed is not just about enforcing statutes; it is a duty to be faithful to the Constitution—every part of it—as stated in the text and understood across history, and it is a duty that he has violated by obstructing Congress here.

I want to make one additional point regarding the judiciary.

Presidents have an obligation to comply with Congress's impeachment inquiry regardless of whether a court has reviewed the request. We make this point even though, I think, President Trump's lawyers would be making a mistake to raise it. After all, the President's lawyers can't have it both ways. They can't argue here that we must go to court and then argue in court that our case can't be heard.

Anyway, the House's “sole Power of impeachment” wouldn't be “sole” or much of a “power” if the House could not investigate the President at all without first spending years litigating before the third branch of government. It would frustrate the Constitution for the House to depend entirely on the judiciary to advance its impeachment-related investigatory powers.

Consistent with this understanding, before President Trump, the House had never before filed a lawsuit to require testimony or documents in a Presidential impeachment. We didn't have to. No President had ever issued a blanket ban on compliance with House subpoenas or challenged the House to find a way around his unlawful order. In this strange and unprecedented situation, it is appropriate for Congress to reach its own judgment that the President is obstructing the exercise of its constitutional power.

As then-Representative LINDSEY GRAHAM explained in 1998 during the Clinton proceedings, where we served together on the Judiciary Committee: [Slide 467] “The day Richard Nixon failed to answer that subpoena is the day he was subject to impeachment because he took the power from Congress over the impeachment process away from Congress, and he became the judge and jury.”

There is still another reason it would be wrong and dangerous to insist that the House cannot take action without involving the courts, and that reason is delay.

Consider just three lawsuits filed by House committees over the past two decades to enforce subpoenas against senior executive branch officials. I served on the Judiciary Committee when we decided that we needed to hear from former White House Counsel Harriet Miers.

In *Committee on the Judiciary v. Miers*, [Slide 468] the Judiciary Committee tried to enforce a subpoena that required her to give testimony about the contentious firing of nine U.S. attorneys. The committee served the subpoena in 2007. We negotiated—as the courts indicate you should—with the White House, and we finally filed suit in March of 2008. We won a favorable district court order in July 2008, but we didn’t receive testimony from Miers until June of 2009. That was 2 years.

In *Committee on Oversight and Government Reform v. Holder*, the Committee on Oversight and Government Reform tried to force Attorney General Eric Holder to produce additional documents relating to the so-called Operation Fast and Furious. The committee served the subpoena in October 2011. They filed suit in August 2012. They won a series of orders requiring the production of documents, but the first such order did not issue until August of 2014—nearly 3 years.

In *Committee on the Judiciary v. McGahn*, [Slide 468] the House Judiciary Committee sought to enforce a subpoena to require White House Counsel Don McGahn to give testimony regarding matters relating to the special counsel’s investigation. We served that subpoena in April of last year. We filed suit in August of last year. We won a favorable district court order in November of last year. The court of appeals stayed that ruling and didn’t hear arguments until early this month—with an opinion and, potentially, a Supreme Court application likely to follow. We will likely not have an answer this year.

Sometimes courts move quickly, but, here, they have not—not at all. Even when the House urges expedited action, it usually takes years, not months, to get evidence through judicial proceedings.

The President can’t put off impeachment for years by ordering total defiance of the House and then insist that the House go to court even as he argues that it can’t go to court. That is especially true when the President doesn’t just raise one or two objections to specific subpoenas but orders a blanket, governmentwide coverup of all evidence.

That kind of order makes this clear. The President sees himself completely immune from any accountability—above the law. It reveals his pretensions, really, to absolute power. It confirms he must be removed from office.

Here is the key point: President Trump's obstruction of Congress is not merely unprecedented and wrong; it is also a high crime and misdemeanor, as the Framers used and understood that phrase, warranting his immediate removal from office. To see why, let's return to first principles.

As the Framers deliberated in Philadelphia, George Mason posed a profound question: "Shall any man be above justice?"

That question wasn't a hypothetical. The Framers had just rebelled against England, where one man, the King, was in fact above justice.

By authorizing Congress to remove Presidents for egregious misconduct, the Framers rejected that model. Unlike Britain's King, the President would answer to Congress and, thus, to the Nation, if he engaged in serious wrongdoing, because the impeachment power exists not to punish the President but to check Presidents. It can't function if Presidents are free to ignore all congressional investigation and oversight.

An impeachment scholar, Frank Bowman, said this: [Slide 469]

Without the power to compel compliance with subpoenas and the concomitant right to impeach a president for refusal to comply, the impeachment power would be nullified.

So the consequences of Presidential obstruction go beyond any particular impeachment inquiry. They go to the heart of the impeachment power itself. They weaken our shield against a dangerous or corrupt President.

Now, of course, Presidents are still free to raise privacy, national security, or other concerns in the course of an impeachment inquiry. There is room for good-faith negotiations over what evidence will be disclosed, although there is a strong presumption in favor of full compliance with congressional subpoenas.

But when a President abuses his office, abuses his power to completely defy House investigators in an impeachment inquiry, when he does that without lawful cause or excuse, he attacks the Constitution itself. When he does that, he confirms that he sees himself as above the law.

President Nixon's case is informative. As noted, President Nixon let his senior officials testify, he produced many documents. He did not direct anything like a blanket indiscriminate block of the House's impeachment inquiry. Still, he did defy subpoenas seeking records and recordings of the Oval Office.

Now, President Nixon claimed that his noncompliance was legally defensible. He invoked the doctrine of executive privilege. The judiciary rejected that excuse.

The committee emphasized that [Slide 470] "the doctrine of separation of powers cannot justify the withholding of information from an impeachment inquiry." After all, "the very purpose of such an inquiry is to permit the House, acting on behalf of the people, to curb the excesses of another branch, in this instance the Executive."

"Whatever the limits of legislative power in other contexts—and whatever need may otherwise exist for preserving the confidentiality of Presidential conversations—in the context of an impeachment proceeding the balance was struck in favor of the power of

inquiry when the impeachment provision was written into the Constitution.

Now, ultimately, the committee approved an article against Nixon because he sought to prevent the House from exercising its constitutional duty.

Article III charged Nixon with abusing his power by interfering with the discharge of the Judiciary Committee's responsibility to investigate fully and completely whether he had committed high crimes and misdemeanors. President Nixon's third Article of Impeachment explained it this way: [Slide 471]

In refusing to produce these papers and things, Richard M. Nixon, substituting his judgment as to what materials were necessary for the inquiry, interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to the exercise of the sole power of impeachment vested by the Constitution in the House of Representatives.

In all of this, Richard M. Nixon has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States. . . .

President Nixon's case powerfully supports the conclusion that Presidential defiance of a House impeachment inquiry constitutes high crimes and misdemeanors.

You know, I have been thinking a lot about the Founders and have been rereading the Constitution and the notes from the Constitutional Convention. It was just a little over 230 years ago that they met in Philadelphia, not too far from here. They had been at it for a long time. They didn't know whether the constitution they were going to write would sustain freedom, but they were trying to create a completely different type of government.

On July 20, Governor Morris said this:

The magistrate is not the king. The people are the king.

George Mason, of Virginia, on that same day said:

Shall any man be above Justice? Above all, shall that man be above it who can commit the most extensive injustice?"

And Elbridge Gerry argued that he hoped that the maxim that the chief magistrate could do no wrong "would never be adopted here."

Now, finally, on September 8, they adopted the impeachment clause in the U.S. Constitution, but I hope that we will remember the admonition that we should never accept the fact that the magistrate—the President—can do no wrong.

They crafted the Constitution to protect our liberty and the liberty of those who will follow us.

Professor Noah Feldman talked about the Constitution in his testimony before the House.

(Text of Videotape presentation:)

Professor FELDMAN. A President who says, as this President did say, I will not cooperate in any way, shape, or form with your process, robs a coordinate branch of government, he robs the House of Representatives of its basic constitutional power of impeachment.

Ms. Manager LOFGREN. You know, a President who does that also endangers the American people by stripping away the Constitution's final safeguard against Presidents who abuse power and

harm the Nation. Such a President acts like a King, which the Founders were fighting against. That is what they wrote out of the Constitution. A President cannot be immune from oversight, accountability, and even simple justice in the exercise of the powers entrusted to him.

We can't let that stand in this case. The President must forfeit the powers that he has abused and be removed from office.

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, counsel for the President, my colleagues, the American people who are assembled here today, I think we have our next break scheduled for within the hour, and so I find myself in the unenviable position of being the only thing standing between you and our dinner. But be not discouraged because I am going to try to follow the advice of a former Sunday school teacher of mine. I grew up in the Cornerstone Baptist Church in Brooklyn. She said: Jeffries, on the question of public presentations, be brief, be bright, and be gone.

And so I am going to try to do my best.

Presidents are required to comply with impeachment subpoenas. This President has completely defied them. That conduct alone is a high crime and misdemeanor.

The facts here are not really in dispute. President Trump's defense appears to be: I can do whatever I want to do. Only I can fix it. I am the chosen one.

(Text of Videotape presentation:)

President TRUMP. Then I have an Article II, where I have the right to do whatever I want as president. Nobody knows the system better than me. Which is why I alone can fix it. Somebody had to do it. I am the chosen one. Somebody had to do it.

Mr. Manager JEFFRIES. Is that who we are as a democracy?

President Trump can't address the substance of our case. He therefore complains about process, but these procedural complaints are baseless excuses, and they do not justify his attempts to hide the truth from Congress and from the American people.

The President's arguments fail for four simple reasons. First, the House, not the President, has the "sole Power of Impeachment" and the sole power "to determine the Rules of its Proceedings." [Slide 472] That is article I, section 2, of the Constitution.

Second, President Trump's "due process" argument has no basis in law, no basis in fact, no basis in the Constitution. President Trump may not preemptively deny any and all cooperation to the House and then assert that the House's procedures are illegitimate because they lack his cooperation.

Third, President Trump's claim that he is being treated differently completely lacks merit. Despite what he contends, the House provided President Trump with greater protection than what was given to both President Nixon and President Clinton. The fact that President Trump failed to take advantage of these procedural protections does not mean they did not exist.

President Trump is not the first President to complain about House procedures. He won't be the last. He is not the first one to challenge the motives of any investigation or certainly an impeachment inquiry. Such complaints are standard operating procedure from the article II executive branch.

President Johnson, President Nixon, President Clinton had plenty of complaints, but no President—no President, no President—has treated such objections as a basis for withholding evidence, let alone categorically defying every single subpoena—none—except Donald John Trump.

Finally, the obligation to comply with an impeachment subpoena is unyielding. It does not dissipate because the President believes House committees should invite different witnesses, give his defenders unfettered subpoena power, or involve his personal lawyers at the deposition stage of the process, when that has never been done.

And if a President can defy Congress on such fragile grounds, then, it is difficult to imagine why any future President would ever comply with an impeachment or investigative subpoena again.

Now, throughout our history, impeachments have been rare, and the Supreme Court has made clear that it is wary of intruding on matters of impeachment. This, of course, leaves room for inter-branch negotiation, but it does not allow the President to engage in blanket defiance.

President Trump's objections are not genuinely rooted in the law. They are not good-faith legal arguments. We know that because President Trump said early on he would fight all subpoenas. We know that because he declared the impeachment inquiry illegitimate before it even adopted any procedures; we know that because he has denounced every single effort to investigate him as a witch hunt; and we know that because he never even claimed executive privilege during the entire impeachment proceeding.

President Trump's first excuse for obstructing Congress is his asserted belief that he did nothing wrong—that his July 25 call with President Zelensky was “perfect.”

In the October 8 letter sent by his Counsel, [Slide 473] President Trump asserted the prerogative to defy all House subpoenas because he has declared his own innocence. As Mr. Cipollone put it, at President Trump's behest, “the President did nothing wrong,” and “there is no basis for an impeachment inquiry.” Yes, the White House Counsel includes this in a formal letter to the House, defying every single subpoena.

As we have shown in our discussion of the first Article of Impeachment, these claims of innocence are baseless. They lack merit. We have provided overwhelming evidence of President Trump's guilt.

The President cannot unlawfully obstruct a House impeachment inquiry because he sees no need to be investigated. One of the most sacred principles of justice is that no man should be the judge in his own case, and yet that is exactly what President Trump has been determined to do. But this is America. He cannot be judge, jury, and executioner. Moreover, the President cannot simply claim innocence and then walk away from a constitutionally mandated process.

Even President Nixon did not do that, [Slide 474] as we have previously established. Congress has a constitutional responsibility to serve as a check and balance on an out-of-control executive branch. Our responsibility is not to this President; it is to the American people.

Blanket Presidential defiance would bring a swift halt to all congressional oversight of the Executive. That principle would have authorized categorical obstruction in the impeachments of President Johnson, President Nixon, and President Clinton. In each of those cases, the House was controlled by a different party than the Presidency, and the President attacked those inquiries as partisan. Yet those Presidents did not view their concerns with excessive partisanship as a basis for defying every single subpoena.

The purpose of an impeachment inquiry is for the House to collect evidence to determine, on behalf of the American people, whether the President may have committed an impeachable offense because the Constitution vests the House alone with the “sole Power of Impeachment.”

A President who serves as the judge of his own innocence is not acting as a President. That is a dictator. That is a despot. That is not democracy.

The President also believes, it appears, that blanket obstruction is justified because the House did not expressly adopt a resolution authorizing an impeachment inquiry or properly delegate such investigatory powers to its committees.

The full House voted in January in advance of the inquiry to adopt rules authorizing committees to conduct investigations, issue subpoenas, gather documents, and hear testimony.

Beginning in the spring and summer of 2019, evidence came to light that President Trump and his associates might have been seeking the assistance of another foreign government, Ukraine, to influence the upcoming 2020 election.

On September 9, the House investigating committees announced they were launching a joint investigation. They requested records from the White House and the Department of State. This investigation was consistent with all rules approved by the full House. At the same time, evidence emerged that the President may have attempted to cover up his actions and prevent the transmission of a whistleblower complaint to the Intelligence Committees of the Senate and the House.

Given the gravity of these allegations and the immediacy of the threat to the next Presidential election, the Speaker of the House, a constitutional officer, explicitly named in article I, announced on September 24 that the House would begin a formal impeachment inquiry. There is nothing in the Constitution, nothing in Federal law, nothing in Supreme Court jurisprudence that required a formal vote at the time.

The President has put forth fake arguments about process because he cannot defend the substance of these allegations.

Following the announcement of the impeachment inquiry, the House investigating committees issued additional requests—and then subpoenas—for documents and testimony. The committees “made clear that this information would be collected as part of the House’s impeachment inquiry and shared among the Committees, as well as with the Committee on the Judiciary as appropriate.

Then, on October 31, the full House voted to approve H. Res. 660, which directed the House committees to “continue their ongoing investigations as part of the existing . . . inquiry into whether

sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump.”

In addition to affirming the ongoing House impeachment inquiry, H. Res. 660 set forth procedures for open hearings in the Intelligence Committee and for additional proceedings in the Judiciary Committee.

Every step in this process was fully consistent with the Constitution, the rules of the House, and House precedent.

The House’s autonomy to structure its own proceedings for an impeachment inquiry is grounded in the Constitution. The President’s principal argument to the contrary is that no committee of the House is permitted to investigate any Presidential misconduct until the full House acted.

As a Federal district court recently confirmed, the notion that a full House vote is required to authorize an impeachment inquiry “has no textual support in the U.S. Constitution [or] the governing rules of the House.”

The investigations into misconduct by Presidents Andrew Johnson, Nixon, and Clinton all began prior to the House’s consideration and approval of a resolution authorizing the investigations.

Recently, under Republican control, the Judiciary Committee considered the impeachment of the Commissioner of the Internal Revenue Service following a referral from another committee and absent a full vote of the House for an impeachment inquiry.

There is no merit to President Trump’s argument that the full House had to vote. The sequence of events in this particular case largely tracks those in the Nixon proceedings. There, the House Judiciary’s proceedings began in October of 1973, when resolutions calling for President Nixon’s impeachment were introduced in the House and referred to the Judiciary Committee.

Over the next several months, the committee investigated the Watergate break-in and coverup, among other matters, using its existing investigatory authorities. The committee also hired a special counsel and other attorneys to assist in these efforts. Most importantly, all of this occurred before the House approved a resolution directing the Judiciary Committee to investigate whether grounds to impeach Richard Nixon existed.

In this instance, the committees began the investigation with their existing powers authorized by the full House. That course of events is entirely consistent with the Richard Nixon precedent. It is also common sense. After all, before voting to conduct an impeachment inquiry, the House must ascertain the nature and seriousness of the allegations and the scope of the inquiry that may follow their actions.

President Trump’s second excuse also fails. Let’s now address the President’s so-called due process and fairness argument. The President has phrased his complaints in the language of “due process.” He has complained that the procedures were not fair, even though they reflect prior practice and strike a reasonable balance between Presidential involvement on the one hand and the House’s obligation to find the truth on the other.

Presidents come and Presidents go. They have all sharply criticized House procedures, but no President has ever treated those ob-

jections as a basis for complete defiance. No President has ever done that.

In the context of a House impeachment inquiry, it is fair to say that the President is a suspect—a suspect who may have committed a high crime or misdemeanor. He cannot tell the detectives investigating the possible constitutional crime what they should do in the context of their investigation.

In the President's October 8 letter, Mr. Cipollone complains that he was denied "the most basic protections demanded by due process under the Constitution and by fundamental fairness," including "the right to cross-examine witnesses, to call witnesses, to receive transcripts of testimony, to have access to evidence," and "to have counsel present."

It sounds terrible, but it is not accurate.

The President appears to have mistaken the initial phases of the impeachment inquiry for a full-blown trial. The trial phase of the impeachment inquiry is taking place right now.

Chairman Peter Rodino of the Judiciary Committee once observed, as it related to the impeachment proceedings against President Nixon, that "it is not a right but a privilege or a courtesy" for the President to participate through counsel.

An impeachment inquiry is not a trial; rather, it entails a collection and evaluation of facts before a trial occurs. In that respect, the House acts like a grand jury or a prosecutor investigating the evidence to determine whether charges are warranted or not. Federal grand juries and prosecutors do not allow targets of their investigation to coordinate witness testimony. The protections that the President labeled as "due process" do not apply here because those entitlements that he sought, many of which were actually afforded to him—but those entitlements that he sought would not necessarily be available to any American in a grand jury investigation.

Moreover, it should be clear that the House, notwithstanding this framework, has typically provided a level of transparency in impeachment inquiries, particularly as it relates to Presidents.

In past impeachment inquiries, this has typically meant that the principal evidence relied upon by the House Judiciary Committee is disclosed to the President and to the public, though some evidence in past proceedings has actually remained confidential.

The President has typically been given an opportunity to participate in the proceedings at a stage when evidence has been fully gathered and is presented to the Judiciary Committee. President Trump was given the chance to do that in this case, but he declined.

Presidents have been entitled to present evidence that is relevant to the inquiry and to request that relevant witnesses be called. President Trump was given the chance to do that in the House impeachment inquiry before the Judiciary Committee, but he declined.

Under H. Res. 660, President Trump received procedural protections not just equal to but in some instances greater than that afforded to Presidents Nixon and Clinton. So let's be clear. The privileges described in the October 8 letter were in fact offered to President Trump as they had been in prior impeachment inquiries. The

President was able to review all evidence relied on by the House investigating committees, including evidence that the minority's public report identified as favorable to President Trump.

During the Judiciary Committee proceedings, the President had opportunities to present evidence, call witnesses, have counsel present to raise objections, cross-examine witnesses, and respond to the evidence raised against him.

As the Rules Committee report accompanying H. Res. 660 noted, [Slide 475] these privileges are "commensurate with the inquiry process followed in the cases of" Nixon and Clinton. President Trump simply chose not to avail himself of what had been afforded to him.

The fact that President Trump declined to take advantage of these protections does not excuse his blanket, unconstitutional obstruction. Unlike the Nixon and Clinton impeachments, in this particular instance, the argument that the President has made—the argument that he has made as it relates to the investigative process—is not analogous.

In this case, the House conducted a significant portion of the factual investigation itself because no independent prosecutor was appointed to investigate the allegations of wrongdoing against President Trump. Attorney General William Barr refused to authorize a criminal investigation into the serious allegations of misconduct against the President. They tried to whitewash the whole sordid affair. Left to their own devices, the House investigating committees followed standard best practices for investigations, consistent with the law enforcement investigation into Presidents Nixon and Clinton, in advance of their impeachments.

The committees released transcripts of all interviews and depositions conducted during the investigation. During the investigation, more than 100 Members of the House participated in the so-called closed-door proceedings—more than 100 Members of the House, 47 of whom were Republicans. They all had the opportunity to ask questions. They all had the opportunity to ask questions with equal time.

The Intelligence Committee held public hearings with 12 of the key witnesses testifying, including several requested by the House Republicans. It is important to note that the very same procedures in H. Res. 660 were supported by Acting White House Chief of Staff Mick Mulvaney when he served as a member of the Oversight Committee and by Secretary of State Mike Pompeo when he served as a member of the Select Committee on Benghazi.

(Text of Videotape presentation:)

Mr. GOWDY. I can just tell you in the private interviews there is never any of what you saw Thursday. It is one hour on the Republican side, one hour on the Democrat side—which is why you are going to see the next two dozen interviews done privately. Look at the other investigations being done right now. The Lois Lerner investigation that was just announced, was that public or private?

Mr. Manager JEFFRIES. If this process was good enough for other Presidents, why isn't it good enough for President Trump?

Representative Gowdy finished that statement by saying: "The private ones have always produced the best results." "The private ones," according to Trey Gowdy, "have always produced the best results."

President Trump complained that his counsel was not afforded the opportunity to participate during the Intel Committee's proceedings. But neither President Nixon nor President Clinton were permitted to have counsel participate in the initial fact-gathering stages when they were investigated by special counsel, independent counsel.

President Nixon certainly had no attorney present when the prosecutors and grand juries began collecting evidence about Watergate and related matters. President Nixon did not have an attorney present in this distinguished body when the Senate Select Committee on Watergate began interviewing witnesses and holding public hearings. Nor did President Clinton have an attorney present when prosecutors from the Office of Independent Counsel Kenneth Starr deposed witnesses and elicited their testimony before a grand jury.

President Trump's attorney could have cross-examined the Intel Committee's counsel during his presentation of evidence before the House Judiciary Committee. That would have functioned as the equivalent opportunity afforded to President Clinton to have his counsel cross-examine Kenneth Starr, which he did, at length.

President Trump was provided a level of transparency and the opportunity to participate consistent with the highest standards of due process and fairness given to other Presidents who found themselves in the midst of an impeachment inquiry.

The President—and I am winding down—the President's next procedural complaint is that it was unconstitutional to exclude agency counsel from participating in congressional depositions. The basis for the rule excluding agency counsel is straightforward. It prevents agency officials who are directly implicated in the abuses Congress is investigating from trying to prevent their own employees from coming forward to tell Congress and the American people the truth. It is common sense. The rule protects the rights of witnesses by allowing them to be accompanied in depositions by personal counsel, a right that was afforded to all of the witnesses who appeared in this matter.

Agency attorneys have been excluded from congressional depositions of executive branch officials for decades under both Republicans and Democrats, including Republican Chairman Dan Burton, Republican Chairman Darrell Issa, Republican Chairman Jason Chaffetz, Republican Chairman Trey Gowdy, Republican Chairman KEVIN BRADY, and Republican Chairman Jeb Hensarling, just to name a few.

Again, the Constitution provides the House with the sole power of impeachment and the sole authority to determine the rules of its proceedings, which were fair to all involved. Given the Constitution's clarity on this point, the President's argument that he can engage in blanket obstruction is just dead wrong.

President Trump also objects that the House minority lacked sufficient subpoena rights. But the subpoena rules that were applied in the Trump impeachment inquiry were put into place by my good friends and colleagues on the other side of the aisle, House Republicans, when they were in the majority. We are playing by the same rules devised by our Republican colleagues.

President Nixon did not engage in blanket obstruction. President Clinton did not engage in blanket obstruction. No President of the United States has ever acted this way.

Lastly, we should reject President Trump's suggestion that he can conceal all evidence of misconduct based on unspecified confidentiality interests. Those are his exact words, "confidentiality interests." Not once in the entire impeachment inquiry did he ever actually invoke executive privilege.

Perhaps that is because executive privilege cannot be invoked to conceal evidence of wrongdoing. Perhaps that is because executive privilege does not permit blanket obstruction that includes blocking documents and witnesses from the entire executive branch. Perhaps President Trump didn't invoke executive privilege because it has never been accepted as a sufficient basis for completely and totally defying all impeachment inquiries and subpoenas. Or perhaps President Trump didn't invoke executive privilege because when President Nixon did so, he lost decisively, unanimously, clearly before the Supreme Court. Whatever the explanation, President Trump never invoked executive privilege. So it is not a credible defense to his obstruction of Congress.

President Trump has lastly suggested that his obstruction is justified because his top aides are "absolutely immune" from being compelled to testify before Congress. Every Federal court to consider the so-called doctrine of "absolute immunity" has rejected it.

In 2008, a Federal court rejected an assertion by the 43rd President of the United States that White House Counsel Harriet Miers was immune from being compelled to testify, noting that the President had failed to point to a single judicial opinion to justify that claim.

And on November 25 of last year, another Federal judge rejected President Trump's claim of absolute immunity for former White House Counsel Don McGahn. The court concluded: [Slide 476]

Executive branch officials are not absolutely immune from compulsory congressional process—no matter how many times the Executive branch has asserted as much over the years—even if the President expressly directs such officials [not to comply].

The court added: [Slide 477] "[Simply stated], the primary takeaway from the past 250 [-some-odd] years of recorded American history is that Presidents are not kings."

The President is not a King.

President Trump tried to cheat. He got caught, and then he worked hard to cover it up. He must be held accountable for abusing his power. He must be held accountable for obstructing Congress. He must be held accountable for breaking his promise to the American people.

(Text of Videotape presentation:)

President TRUMP. My foreign policy will always put the interests of the American people and American security above all else. Has to be first, has to be. That will be the foundation of every single decision that I will make.

Mr. Manager JEFFRIES. What does it mean to put America First? America is a great country, but, above all else, I think America is an idea—a precious idea. It is an idea that has withstood the test of time—an enduring idea—year after year, decade after decade, century after century, as we continue a long, necessary, and

majestic march toward a more perfect Union. America is an idea: one person, one vote; liberty and justice for all; equal protection under the law; government of the people, by the people, and for the people; the preeminence of the rule of law. America is an idea. We can either defend that idea or we can abandon it. God help us all if we choose to abandon it.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, we will take a 30-minute break for dinner.

The CHIEF JUSTICE. Without objection, it is so ordered.

There being no objection, at 6:45 p.m. the Senate, sitting as a Court of Impeachment, recessed until 7:32 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. I have spoken with Congressman SCHIFF and his team, and it looks like we have a couple more hours.

Mr. Manager CROW. Mr. Chief Justice, Members of the Senate, counsel for the President, impeachment exists not to inflict personal punishment for past wrongdoing but, rather, to protect against future Presidential misconduct that would endanger democracy and the rule of law.

President Trump remains a threat in at least three fundamental ways:

First, he continues to assert in court and elsewhere that nobody in the U.S. Government can investigate him for wrongdoing, making him unaccountable.

Second, his conduct here is not a one-off; it is a pattern of soliciting foreign interference in our elections to his own advantage and then using the powers of his office to stop anyone who dares to investigate.

Finally, the President's obstruction is very much a constitutional crime in progress, harming Congress, as it deliberates these very proceedings, and the American people, who deserve to know the facts.

A President who believes he can get away with anything and can use his office to conceal evidence of abuse threatens us all.

President Trump is the first President in U.S. history to say he is immune from any effort to examine his conduct or check his power. [Slide 478] He claims he is completely immune from criminal indictment and prosecution while serving as President. He claims he can commit any crime—even shoot someone on Fifth Avenue, as he has joked about—with impunity. The President's own lawyers have argued in court that he cannot even be investigated for violating the law under any circumstance. No President of either party has ever made claims like this.

If an investigation somehow does uncover misconduct by the President, as this investigation has done, the President believes he can simply quash it. He claims the right to end Federal law enforcement investigations for any reason—or none at all—even when there is credible evidence of his own wrongdoing.

Added together, the President's positions amount to a license to do anything he wants. No court has ever accepted this view and for

good reason: Our Founders created a system in which all people—even Presidents—are bound by the law and accountable for their actions.

In addition to claiming that he is immune from criminal process, President Trump contends that he is not accountable to either Congress or the judiciary. He has invoked bizarre legal theories to justify defying congressional investigations. He has argued that Congress is forbidden from having the courts intervene when executive branch officials disregard its subpoenas. He has sued to block third parties from complying with congressional subpoenas.

Perhaps most remarkably, President Trump has claimed that Congress cannot investigate his misconduct outside of an impeachment inquiry, while simultaneously claiming that Congress cannot investigate his misconduct in an impeachment inquiry. Of course, President Trump considers any inquiry to be illegitimate if he thinks he did nothing wrong, doubts the motives of Congress, or decides that he would prefer a different set of rules.

Let's review the President's position. He can't be investigated for crimes. He can end any Federal law enforcement investigation into him. He is immune from any State law enforcement investigation. Neither he nor his aides can be subpoenaed. He can reject subpoenas based on broad, novel, and even rejected theories. When he does reject subpoenas, Congress is not allowed to sue him, but he is allowed to sue to block others from complying with congressional subpoenas. Congress definitely can't investigate him outside of an impeachment inquiry, and, again, it can't investigate him as part of one.

The bottom line is that the President truly believes that he is above the law. This is not our system, and it never has been. The President is a constitutional officer. Unlike a King, he is accountable to the Constitution. But this President doesn't believe that, and that is why we are here.

Remember, the precedent that you set in this trial will shape American democracy for the future. It will govern this President, and it will govern those who follow. If you let the President get away with his obstruction, you risk grave and irreparable harm to the separation of powers itself.

Representative Lawrence Hogan, a Republican from Maryland, made this point during the Nixon impeachment hearing.

(Text of Videotape presentation:)

Mr. HOGAN. The historical precedent we are setting here is so great because in every future impeachment of a President, it is inconceivable that the evidence relating to that impeachment will not be in the hands of the executive branch which is under his controls. So I agree with the gentleman from Ohio, Mr. Seiberling, if we do not pass this article today, the whole impeachment power becomes meaningless.

Mr. Manager CROW. This leads us to a second consideration: the President's pattern of obstructing.

Article II describes President Trump's impeachable conduct in obstructing Congress. On its own, that warrants removal from office. Yet it must be noted that the President's obstruction fits a disturbing pattern.

As stated in article II, President Trump's obstruction is "consistent with [his] previous efforts to undermine United States Gov-

ernment investigations into foreign interference in United States elections.” [Slide 479]

Another example is President Trump’s attempts to impede the special counsel’s investigation into Russian interference with the 2016 election, as well as the President’s sustained efforts to obstruct the special counsel after learning that he was under investigation for obstruction of justice.

The special counsel’s investigation addressed an issue of extraordinary importance to our national security and democracy: the integrity of our elections themselves. Rather than aid the special counsel’s investigation, however, President Trump sought to thwart it and used the powers of his office to do it.

After learning that he himself was under investigation, President Trump ordered the firing of the special counsel, sought to curtail the special counsel’s investigation, instructed the White House Counsel to create a false record and make false public statements, and tampered with at least two key witnesses in the investigation.

The pattern is as unmistakable as it is unnerving.

In one moment, President Trump welcomed and invited a foreign nation to interfere in an election to his advantage, and the next, he solicited and pressured a foreign nation to do so.

In one moment, President Trump used the powers of his office to obstruct the special counsel, and the next, he used the powers of his office to obstruct the House impeachment inquiry.

In one moment, the President stated that he remained free to invite foreign interference in our elections. In the next, he, in fact, invited additional foreign interference in our elections.

(Text of Videotape presentation:)

President TRUMP. By the way, likewise, China should start an investigation into the Bidens.

Mr. Manager CROW. Indeed, President Trump placed his fateful July 25 call to President Zelensky just 1 day after the special counsel testified in Congress about his findings.

As Professor Gerhardt testified before the Judiciary Committee: [Slide 480]

The power to impeach includes the power to investigate, but, if the president can stymie this House’s impeachment inquiry, he can eliminate the impeachment powers as a means for holding him and future presidents accountable for serious misconduct. If left unchecked, the president will likely continue his pattern of soliciting foreign interference on his behalf in the next election.

I must emphasize that President Trump’s obstruction persists to this day.

The second Article of Impeachment charges a high crime in progress. As a result, the President’s wrongdoing did not just harm the House as we have performed our own constitutional duty; it is also harming the Senate, which is being deprived of information you need before the votes you will soon take. And, of course, the true victim is the American people, who deserve the full truth.

As we have discussed, the President claims that all the evidence he is hiding and covering up would actually prove his innocence. To borrow a phrase from the late Justice Scalia, that claim “taxes the credulity of the credulous.”

President Trump has used all the authority of his office to block the full truth from coming to light. He has defied subpoenas and

ordered others to do so. He has publicly intimidated and threatened witnesses. He has attacked the House for daring to investigate him. And he has lobbed an endless volley of personal attacks on witnesses and meritless complaints about procedure to sow confusion and distract the American people.

The President's abuses are unfolding before our eyes, and they must be stopped.

Before I conclude, I think you all deserve an explanation from me as to why I am standing here. There has been a lot of conversation in the last few years about what makes America great, and I have some ideas about that. I happen to think that what makes America great is that generation after generation, there have been Americans who have been willing to stand up and put aside their self-interest to make great sacrifices for the public good, for our country. I know because I have seen people do that. Like some of the people in this Chamber, I have seen people give everything for this country so we could sit here today.

Now, this isn't politically expedient. It certainly isn't for me. It is hard. It requires sacrifice. It is uncomfortable. But that is the very definition of "public service"; that we are here to give of ourselves for the country, for others, at sacrifice to ourselves. Those who have given so much for this country deserve nothing less from us now than to try to honor those sacrifices. I have tried to do that the last few days. My time is done, and it is now your turn.

Mr. Manager SCHIFF. Chief Justice, Senators, counsel for the President, you will be pleased to know this is the last presentation of the evening. And as I started last night, I made reference to some good advice I got from an encouraging voice that said: Keep it up but not too long.

Tonight I got some equally good advice: To be immortal, you don't need to be eternal. I will do my best not to be eternal.

The first point I would like to make is I am tired. I don't know about you, but I am exhausted, and I can only imagine how you feel. But I am also very deeply grateful for just how you have attended to these presentations and discussions over the last few days. I am deeply grateful. I can tell how much consideration you have given to our point of view and the President's point of view, and that is all we can ask. At the end of the day, all we can ask is that you hear us out and make the best judgment that you can, consistent with your conscience and our Constitution.

Now, I wanted to start out tonight with where we began when we first appeared before you about a week ago, and that is with the resolution itself, with what the President is charged with in the articles and how that holds up now that you have heard the evidence from the House.

Donald Trump was impeached in article I for abuse of power, and that article provides that:

In his conduct of the office of the President of the United States—and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed—Donald J. Trump has abused the powers of the Presidency, in that:

Using the powers of his high office, President Trump solicited the interference of a foreign government, Ukraine, in the 2020 United States Presidential election.

“President Trump solicited interference of a foreign government, Ukraine, in the 2020 election.”

That has been proved.

He did so through a scheme or course of conduct that included soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 Presidential election to his advantage.

That has been proved.

President Trump also sought to pressure the Government of Ukraine to take these steps by conditioning official United States Government acts of significant value to Ukraine on its public announcement of the investigations.

That has been proved.

President Trump engaged in this scheme or course of conduct for corrupt purposes in pursuit of personal political benefit.

That has been proved.

In so doing, President Trump used the powers of the Presidency in a manner that compromised the national security of the United States and undermined the integrity of the United States democratic process.

That has been proved.

He thus ignored and injured the interests of the Nation.

That has been proved.

President Trump engaged in this scheme or course of conduct through the following means:

(1) President Trump—acting both directly and through his agents within and outside the United States Government—corruptly solicited the Government of Ukraine to publicly announce investigations into—

(A) a political opponent, former Vice President Joseph R. Biden, Jr.; and

That has been proved.

(B) a discredited theory promoted by Russia alleging that Ukraine—rather than Russia—interfered in the 2016 United States Presidential election.

That has been proved.

(2) With the same corrupt motives, President Trump—acting both directly and through his agents within and outside the United States Government—conditioned two official acts on the public announcements that he had requested—

(A) the release of \$391 million of United States taxpayer funds that Congress had appropriated on a bipartisan basis for the purpose of providing vital military and security assistance to Ukraine to oppose Russian aggression and which President Trump had ordered suspended.

That has been proved.

(B) a head of state meeting at the White House, which the President of Ukraine sought to demonstrate continued United States support for the Government of Ukraine in the face of Russian aggression.

That has been proved.

(3) Faced with the public revelation of his actions, President Trump ultimately released the military and security assistance to the Government of Ukraine, but has persisted in openly and corruptly urging and soliciting Ukraine to undertake investigations for his personal political benefit.

That has been proved.

These actions were consistent with President Trump’s previous invitations of foreign interference in United States elections.

That has been proved.

In all of this, President Trump abused the powers of the Presidency by ignoring and injuring national security and other vital national interests to obtain an improper personal political benefit.

That has been proved.

He also betrayed the Nation by abusing his high office to enlist a foreign power in corrupting democratic elections.

That has been proved.

Wherefore President Trump, by such conduct, has demonstrated that he will remain a threat to national security and the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-governance and the rule of law.

That has been proved.

President Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

That will be for you to decide. But the facts have been proved. Those facts are not contested. We have met our burden.

Article II: Obstruction of Congress.

The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and the President “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.” In his conduct of the office of President of the United States—and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed—Donald J. Trump has directed the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to its “sole Power of Impeachment”.

That has been proved.

President Trump has abused the powers of Presidency in a manner offensive to, and subversive of, the Constitution, in that:

The House of Representatives has engaged in an impeachment inquiry focused on President Trump’s corrupt solicitation of the Government of Ukraine to interfere in the 2020 United States Presidential election.

That has been proved.

As part of this impeachment inquiry, the Committees undertaking investigation served subpoenas seeking documents and testimony deemed vital to the inquiry for various Executive Branch agencies and offices, and current and former officials.

That has been proved.

In response, without lawful cause or excuse, President Trump directed Executive Branch agencies, offices, and officials not to comply with those subpoenas.

That has been proved.

President Trump thus interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, and assumed to himself functions and judgments necessary to the exercise of the “sole Power of Impeachment” vested by the Constitution in the House of Representatives.

That has been proved.

President Trump abused the powers of his high office through the following means:

(1) Directing the White House to defy a lawful subpoena by withholding the production of documents sought therein by the Committees.

That has been proved.

(2) Directing other Executive Branch agencies and offices to defy lawful subpoenas and withhold the production of documents and records from the Committees—in response to which the Department of State, Office of Management and Budget, De-

partment of Energy, and Department of Defense refused to produce a single document or record.

That has been proved.

(3) Directing current and former Executive Branch officials not to cooperate with the Committees—in response to which nine Administration officials defied subpoenas for testimony, namely John Michael “Mick” Mulvaney, Robert B. Blair, John A. Eisenberg, Michael Ellis, Preston Wells Griffith, Russell T. Vought, Michael Duffey, Brian McCormack, and T. Ulrich Brechbuhl.

That has been proved.

These actions were consistent with President Trump’s previous efforts to undermine United States Government investigations into foreign interference in United States elections.

That has been proved.

Through these actions, President Trump sought to arrogate to himself the right to determine the propriety, scope, and nature of an impeachment inquiry into his own conduct, as well as the unilateral prerogative to deny any and all information to the House of Representatives in the exercise of its “sole Power of Impeachment.”

That has been proved.

In the history of the Republic, no President has ever ordered the complete defiance of an impeachment inquiry or sought to obstruct and impede so comprehensively the ability of the House of Representatives to investigate “high Crimes and Misdemeanors”.

That has been proved.

This abuse of office served to cover up the President’s own repeated misconduct and to seize and control the power of impeachment—and thus to nullify a vital constitutional safeguard vested solely in the House of Representatives.

This has been proved.

In all of this, President Trump has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

That has been proved.

Wherefore, President Trump, by such conduct, has demonstrated that he will remain a threat to the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-government and the rule of law.

That has been proved.

President Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

That will be for you to determine.

Let me say something about this second article. The facts of the President’s defiance of Congress are very simple because they were so uniform, because they were so categorical, because they are so uncontested; yet do not mistake for a moment the fact that it was simple and quick to present that course of conduct compared with the sophisticated campaign to coerce Ukraine into thinking that that second article is any less significant than the first. Do not believe that for a moment. If there is no article II, let me tell you something: There will never be an article I. If there is no article II, there will never of any kind or shape or form be an article I.

And why is that? Because, if you and we lack the power to investigate a President, there will never be an article I. Whether that article I is an abuse of power or that article I is treason or that

article I is bribery, there will never be an article I if the Congress can't investigate an impeachable offense. If the Congress cannot investigate the President's own wrongdoing because the President prevents it, there will never be an article I because there will be no more impeachment power. It will be gone. It will be gone.

As I said before, our relationship with Ukraine will survive. God willing, our relationship with Ukraine will survive, and Ukraine will prosper. We will get beyond this ugly chapter of our history.

Yet, if we are to decide here that a President of the United States can simply say, Under article II, I can do whatever I want, and I don't have to treat a coequal branch of government like it exists, and I don't have to give it any more than the back of my hand, that will be an unending injury to this country—Ukraine will survive, and so will we—but that will be an unending injury to this country because the balance of power that our Founders set out will never be the same if a President can simply say: I am going to fight all subpoenas.

I will tell you something else. Truism in the courts is just as true here in the Senate. When they say, "Justice delayed is justice denied," if you give this President or any other the unilateral power to delay as long as he or she likes—to litigate matters for years and years in the courts—do not fool yourself into thinking it is anything less.

In April, it will be a year since we subpoenaed Don McGahn, and there is no sign of an end to that case. I will tell you, when it gets to the Supreme Court, you might think that is the end, but it is just the end of the first chapter because Don McGahn is in court, saying: I am absolutely immune from testifying.

Now, that has been rejected by every court that has looked at it. We will see what the court of appeals says, and then we will see if it goes to an en banc court of appeals, and then we will see what the Supreme Court says. When we prevail in the Supreme Court, do you know what happens? That is not the end of the matter. It goes back to the trial court, and then—well, they can't claim absolute immunity anymore. They can't claim that. They don't even have to bother showing up.

So now we are going to turn to plan B, executive privilege, where "we can't and won't answer any of the questions that are really pertinent to your impeachment inquiry." Let's start out in district court and then go to the court of appeals and then go to the en banc and then go to the Supreme Court.

You can game the system for years. Justice delayed is justice denied, and so it is true about Presidential accountability. When you suggest or I suggest or anyone suggests or the White House suggests "why didn't the Congress—why didn't the House—just exhaust their remedies?"—as if in the Constitution, where it says "the House shall have the sole Power of Impeachment" there is an asterisk that reads: "after exhausting all court remedies and seeking relief in the district court and seeking relief in the court of appeals and, after that, going to the Supreme Court"—let's not kid ourselves about what that really is.

What that really means is you allow the President to control the timing of his own impeachment or if it will ever be permitted to

come before this body. That is not an impeachment power. That is the absence of an impeachment power.

Article II is every bit as important as article I. Without article II, there is no article I ever again, no matter how egregious this President's conduct or any other's. It is fundamental to the separation of powers. If you can't have the ability to enforce an impeachment power, you might as well not put it in the Constitution.

Shortly, the President's lawyers will have a chance to make their presentation. As we will not have the ability to respond to what they say, I want to give you a little preview of what I think they are going to have in store for you so that, when you do hear it, you can put it into some perspective.

I expect that they will attack the process, and I don't think that is any mystery. I want to tell you both what I expect they will share with you and what it really means. When you cut through all of the chaff, what does it really mean that they are saying? This is what I expect they will tell you.

The process was so unfair. It was the most unfair in the history of the world because, in the House, they took depositions. How dare they take depositions? How dare they listen to Trey Gowdy? How dare they follow the Republican procedures that preceded their investigation? How dare they?

They were so secretive in the bunker in the basement, as if whether it is on the ground floor or in the basement or on the first floor makes any difference. There were those supersecret depositions in which only 100 Members of Congress—equivalent to the entire Senate—could participate. That is how secret they were. That is how exclusive they were. Every Democrat, every Republican on the three committees could participate. Of course, that wasn't enough, so you even had more storm the SCIF, right? So you have 100 people who can participate, but as you heard earlier, the Republicans were not allowed to participate.

OK. That is just false. Do you know how we did it in those supersecret depositions? You can look this up yourselves because we released the transcripts. We got an hour. They got an hour. We got 45 minutes. They got 45 minutes. We did that back and forth until everyone was done asking their questions.

You are going to hear that Chairman SCHIFF was so unfair, he wouldn't allow us to ask our questions. Well, there were certain questions I didn't allow, questions like "Who is the whistleblower? because we want to punish that whistleblower." Some of us in that House and in this House believe we ought to protect whistleblowers. So, yes, I did not allow the outing of the whistleblower.

When they say the chairman wouldn't allow certain questions, that is what they mean. It means that we protect people who have the courage to come forward and blow the whistle, and we don't think—though the President might—that they are traitors and spies. To believe that someone who blows the whistle on misconduct of the serious nature that you now know took place is a traitor or a spy, there is only one way you can come to that conclusion, and that is if you believe you are the state and that anything that contradicts you is treason. That is the only way that you could conceive of someone who exposes wrongdoing as being a traitor or a spy, but that is exactly how this President views those who ex-

pose his wrongdoing—because he is the state. Like any good monarch, he is the state.

You will hear the President wasn't allowed to participate in the Judiciary Committee. Well, that is false, too, as you know. The President had the same rights in our proceedings as President Nixon and President Clinton. Nonetheless, you will hear it was so unfair.

One other thing that was really unfair was that all of the subpoenas were invalid because the House didn't pass a resolution announcing its impeachment inquiry—never mind that we actually did. The problem was, they said, well, we had not, and then we did. Then the problem was, well, you did.

Of course, as you know, the Constitution says the House will "have the sole Power of Impeachment." If we want to do it by House resolution, we can do it by House resolution. If we want to do it by committee, we can do it by committee. It is not the President's place to tell us how to conduct an impeachment proceeding any more than it is the President's place to tell you how you should try it.

So, when you see that eight-page diatribe from the White House Counsel, saying we should have been able to have had a resolution in the House or we should have been able to have had "this," what you should hear—what they really mean—is Donald Trump had the right to control his own impeachment proceeding, and it is an outrage that Donald Trump didn't get to write the rules of his own impeachment proceeding in the House. If you give a President that right, there is no impeachment power. You will hear them say that.

You will hear them complain about depositions that were the same as the Republicans' or the right to participate that was the same as with Clinton and Nixon and that, by the way, they were not allowed to call witnesses, they said. Well, 3 of the 12 witnesses that we heard in our open hearings were the minority's witness requests. You will hear those arguments, that it was the most unfair in history. The fact is we have the same process.

In those other impeachments, the majority did not surrender its subpoena power to the minority. Do you know what it did? It said you can subpoena witnesses, and if the majority doesn't agree, you can force a vote. That is the same process we have here. The majority does not surrender its subpoena power. It didn't in the prior impeachments, and it didn't in this one. When they say the process was unfair, what they really mean is, Don't look at what the President did. For God's sake, don't look at what the President did.

I think the second thing you will hear from the President's team will be to attack the managers. Those managers are just awful. They are terrible people, especially that Schiff guy. He is the worst. He is the worst. In exhibit A, he mocked the President. He mocked the President. He mocked the President as if he was shaking down the leader of another country like he was an organized crime figure. He mocked the President. He said it was like the President said: Listen, Zelensky, because I am only going to say this seven times.

Well, I discovered something very significant by mocking the President, and that is, for a man who loves to mock others, he does not like to be mocked. As it turns out, he has got pretty thin skin.

Who would have thought? Never mind that I said I wasn't using his words before I said it and that I wasn't using his words after I said it and that I said I was making a parody of his words. It is an outrage, he mocked the President—that SCHIFF, terrible.

They will attack other colleagues, too, for things said in the heat of debate here on the floor as we were reaching the wee hours in the morning, and they will attack some of my colleagues who aren't even in this Chamber. Maybe they will attack The Squad. That is a perennial favorite with the President. If they attack The Squad, you should ask: What does that have to do with the price of beans?

You can expect attacks on all kinds of Members of the House that have nothing to do with the issues before you. When you hear those attacks, you should ask yourself: Away from what do they want to distract my attention? Nine times out of ten, it will be the President's misconduct. Look for it—attacks on the managers, attacks on other House Members, attacks on the Speaker, attacks on who knows what. It is all of the same ilk. Whatever you do, just don't consider the President's misconduct.

You will also hear attacks on the Constitution. Of course, it will not be framed as attacking the Constitution, but that is really what it represents, and that is: Abuse of power doesn't violate the Constitution.

Presidents of the United States have every right to abuse their power. That is the argument.

OK. I know it is a hard argument to make, right? Presidents have a constitutional right to abuse their power, and how dare the House of Representatives charge a President with abusing his power?

Now, I am looking forward to that constitutional argument by Alan Dershowitz because I want to know why abusing power and trust is not impeachable now, but it was a few years ago. The last time I checked, I don't think there was significant change to the Constitution between the time he said it was impeachable and the time he is saying now that, apparently, it is not impeachable. So I am looking forward to that argument.

But I am also looking forward to Ken Starr's presentation because, during the Clinton impeachment, he maintained that a President not only could but must be impeached for obstructing justice, that Clinton—Bill Clinton—needed to be impeached because he lied under oath about sex, and to do so obstructed justice.

You can be impeached for obstructing justice, but you cannot be impeached for obstructing Congress.

Now, I have to confess I don't know exactly how that is supposed to work because the logical conclusion from that is Ken Starr is saying that Bill Clinton's mistake was in showing up under subpoena, that Bill Clinton's mistake was in not saying: I am going to fight all subpoenas. Bill Clinton's mistake was in not taking the position that under article II he could do whatever he wanted.

Does that really make any sense? You can be impeached for obstructing your own branch of government, but you cannot be impeached for obstructing a coequal branch of government. That would make no sense to the Framers. I have to think, over the centuries, as they have watched us, they would be astonished that

anyone would take that argument seriously or could so misapprehend how this balance of power is supposed to work.

So I look forward to that argument, and maybe, when they make that argument, they can explain to us why their position on abuse of power isn't even supported by their own Attorney General. So I hope they will answer why even their own Attorney General doesn't agree with them—not to mention, by the way, the constitutional law expert called by the Republicans in the House who also testified, as to abuse of power, that it is impeachable, that you don't need a crime. It is impeachable.

When you hear them make these arguments—cannot be impeached for abusing your power—this is what it really means: We cannot defend his conduct, so we want to make it all go away without even having to think about it. You don't even need to think about what the President did because the House charged it wrong, so don't even consider what the President did. That is what that argument means. We can't defend the indefensible, so we have to fall back on this: Even if he abused his office, even if he did all the things he is accused of, that is perfectly fine. Nothing can be done about it.

You will also hear, as part of the defense—and you heard this from Jay Sekulow. I think it was the last thing he said: “The whistleblower.” And then he stepped back to the table. “The whistleblower.”

I don't really know what that means, but I suspect you will hear more of that. “The whistleblower.” “The whistleblower.” It is his or her fault that we are here. “The whistleblower.”

You know, I would encourage you to read the whistleblower complaint again. When you read that complaint again, you will see just how remarkably accurate it is. It is astonishingly accurate.

You know, for all the times the President is out there saying that the complaint was all wrong, was all wrong, you read it—now that you have heard the evidence, you read it, and you will see how remarkably right the whistleblower is.

When that complaint was filed, it was obviously before we had our depositions and had our hearings, all of which obviated the need for the whistleblower.

In the beginning, we wanted the whistleblower to come and testify because all that we knew about was the complaint, but then we were able to hear from firsthand witnesses about what happened.

Then something else happened. The President and his allies began threatening the whistleblower, and the life of the whistleblower was at risk. And what was the point in exposing that whistleblower at the risk of his or her life when we had the evidence we needed? What was the point, except retribution? Retribution—and the President wants it still.

Do you know why the President is mad at the whistleblower? Because, but for the whistleblower, he wouldn't have been caught, and that is an unforgiveable sin. He is the state, and but for the whistleblower, the President wouldn't have been caught. For that he is a spy, and he is guilty of treason.

Now, what does he add to this? Nothing but retribution—a pound of flesh.

You will also hear the President's defense: They hate the President. They hate the President. You should not consider the President's misconduct because they hate the President.

Now, what I have said—I will leave you to your own judgments about the President. I only hate what he has done to this country. I grieve for what he has done to this country.

But when they make the argument to you that this is only happening because they hate the President, it is just another of the myriad forms of "Please do not consider what the President did."

Whether you like the President or you dislike the President is immaterial. It is all about the Constitution and his misconduct. If it meets the standard of impeachable conduct, as we have proved, it doesn't matter whether you like him; it doesn't matter whether you dislike him. What matters is whether he is a danger to the country because he will do it again, and none of us can have confidence, based on his record, that he will not do it again because he is telling us every day that he will.

You will hear the further defense that Biden is corrupt—that Joe Biden is corrupt, that Hunter Biden is corrupt. This is their defense. It is another defense because what they hope to achieve in a Senate trial is what they couldn't achieve through their scheme.

If they couldn't get Ukraine to smear the Bidens, they want to use this trial to do it instead. So let's call Hunter Biden. Let's smear the Bidens. Let's succeed in the trial with what we couldn't do with this scheme. That is the goal.

Now, I don't know whether Rudy Giuliani, who said he was going to present his report to some of the Senators, has presented his report. Maybe he has. Maybe you will get to see what is in Rudy Giuliani's report. Maybe you will get to see some documents smearing the Bidens produced by—who knows? Maybe these same Russian, corrupt former prosecutors.

But make no mistake about what that is about. It is about completing the object of the scheme through other means, through the means of this trial.

You may hear the argument that what the President is doing when he is obstructing Congress is protecting the office for future Presidents because there is nothing more important to Donald Trump than protecting the Office of the Presidency for future Presidents. And I suppose when he withheld military aid from Ukraine, he was trying to protect future Presidents. And when he sought to force a foreign power to intervene in our election, he was doing it on behalf of future Presidents because future Presidents might likewise wish to cheat in a further election.

I don't think that argument goes very far, but I expect you will hear it. I expect you will hear it.

You may hear an argument that the President was really concerned about corruption, and he was concerned about the burden-sharing. I won't spend much time on that because you have heard the evidence on that. There is no indication that this had anything to do with corruption and every, every bit of evidence that it had nothing to do with fighting corruption or burden-sharing. Indeed, nothing about the burden changed between the time he froze the aid and the time he released the aid. There was no new effort to

get others to contribute more, and Europe contributes a great deal as it is. This is an after-the-fact rationalization.

You probably saw the public reporting that there was an exhaustive effort after the fact to come up with a post hoc rationalization for this scheme. I would like to show you the product of that investigation, but I will need your help because it is among the documents they refuse to turn over. They will show you just what an after-the-fact invention this argument is.

Now, I expect you will hear the argument that Obama did it. Obama did it. That may take several different forms, but the form of “Obama did it” that I am referring to is “Obama also withheld aid.” Honestly, I think that argument is an insult to our intelligence because the argument is that Obama withheld aid from Egypt, and he made a condition with it.

Obama withheld aid from Egypt after they had a revolution and circumstances changed. And do you know something? He didn’t hide it from Congress. In fact, Congress supported it. Yes, there are times when we withhold aid for a good policy reason—not a corrupt effort to get help in your election.

The American people know the difference between right and wrong. They can recognize the difference between aid that is withheld for a malicious purpose and aid that is held in the best interests of our national security. But you will hear the “Obama did it” argument.

You will hear the call was perfect. You will hear the call was perfect. I suspect the reason they will make the argument that the call was perfect is because the President insists that they do. I don’t think they really want to have to make that argument. You wouldn’t either. But they have a client to represent, so they will make the argument that the call was perfect, and they will also make the argument that Ukraine thinks the call was perfect. Ukraine says there was no pressure.

What that really means is that Ukraine wants a future. Ukraine knows it is still beholden to us for aid. Ukraine still hasn’t gotten in through the door of the White House. Ukraine knows if they acknowledged that they were shaken down by the President of the United States, the President of the United States will make them pay. So when you hear them say that Ukraine felt no pressure and their proof is because the Ukraine President doesn’t want to call the President of the United States a bad name, you will know why—because they need America. They need America. The Framers did not expect you to leave your common sense at the door.

Now, you will also hear the defense that the President said there was “no quid pro quo.” The President said there was “no quid pro quo.” I guess that is the end of the story. This is a well-known principle of criminal law—that if the defendant says he didn’t do it, he couldn’t have done it.

If the defendant learns he has been caught and he says that he didn’t do it, he couldn’t have done it. That doesn’t hold up in any courtroom. It shouldn’t hold up here.

You also will hear a variation of “no harm no foul.” They got the money. They got the money, and they got the meeting—even though they didn’t. They got the meeting on the sideline of the U.N.—kind of a drive-by. But they got a meeting—no harm no foul,

right? The meeting on the sidelines is pretty much the same thing, right, as a head-of-state meeting in the Oval Office? Of course, it is not.

Why do you think, at the meeting at the United Nations, the President of Ukraine was still saying: Hey, when am I going to get to come to town? He certainly recognizes the difference, and we should too. What is more, there is every bit of harm and every bit of foul in withholding aid from an ally at war and releasing it only when you are caught.

Russia knows now about the wedge in our relations with Ukraine. The moment Russia found out about this—and I have to imagine, given how good their intel services are, they did not have to wait for POLITICO to break the story any more than Ukraine. In fact, there is so deep a penetration of Ukraine, I would have to expect that the Russians would have found out at least as early as the Ukrainians did, if not earlier.

The moment Ukraine learned and Russia learned, there was harm, because Ukraine knew they couldn't trust us and Russia knew they could take advantage of us. There was immediate harm, and just because someone is caught, because a scheme is thwarted, doesn't make that scheme any less criminal and corrupt. You get no pass when you get caught.

I expect one of the defenses you will see is they will play you certain testimony from the House where my colleagues on the other side of the aisle ask questions like these: Did the President ever say he was bribing Ukraine? Did you ever see him actually bribe Ukraine? Did you hear him say that he was going to bribe Ukraine? Did you personally see this yourself? If you didn't see it, if he didn't lay it out for you, then it could not have happened. Two plus two does not equal four. You are not allowed to consider anything except for a televised confession by the President, and, even then, don't consider it.

So I imagine you will hear some of that testimony where witnesses are asked—they work for the Defense Department: Did the President ever tell you that he was conditioning the aid? Never mind that these are people who don't necessarily even talk to the President, but I expect you will see some of that.

As I mentioned before, you will hear the defense say: We claim privilege. You can't impeach the President over the exercise of privilege. Never mind the fact that they never claimed privilege; they never asserted privilege. And do you know why? Do you know why they never actually invoked privilege in the House? It is because they know that if they did, they would have to produce the documents and they would have to show what they were redacting, and they didn't want to even do that. They knew for the overwhelming majority of the documents and witness testimony there was no even colorable claim of privilege. So they didn't even want to invoke it. All they were saying is "Maybe someday." But you will hear that you can't be impeached for a claim of privilege they never made.

So what do all these defenses mean? What do they mean? What do they mean collectively when you add them all up?

What they mean is, under article II, the President can do whatever he wants. That is really it. That is really it, stripped of all the

detail and all the histrionics. What they want us to believe is that the President can do whatever he wants under article II, and there is nothing that you or the House can do about it.

Robert Kennedy once said:

Moral courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential, vital quality for those who seek to change a world that yields most painfully to change.

“Moral courage is a rarer commodity than bravery in battle.” I have to say, when I first read that, I wasn’t sure I agreed. Moral courage is a rarer quality than courage in battle. It just doesn’t seem right. I wasn’t sure I really agreed, and for a Democrat not to agree with a Kennedy is kind of a heresy. I am sure my GOP colleagues feel the same way about the Kennedys from Louisiana. After all, what can be more brave than courage in battle? What could be more rare than courage in battle? But then I got to visit, as I know all of you have, our servicemembers around the world and see just how blessed we are with an abundance of heroes by the millions who have joined the service of this country—servicemembers who, every day, demonstrate the most incredible bravery. I just have the greatest respect for them, for people like JASON CROW and John McCain and Daniel Inouye and so many others who served in this body or the other or who never served in office, by the millions, around the country and around the world—the most incredible respect. It is an amazing thing, how common is their uncommon bravery.

My father is 92. He is probably watching. He is part of the “greatest generation.” He left high school early to join the service. He tried to enlist in the Marine Corps, and he failed the physical. At the end of World War II, he failed the physical for bad eyesight and flat feet—which was apparently enough to fail the physical. So 2 weeks later, he went and tried to enlist in the Army, thinking: Maybe it is a different physical standard, and even if it isn’t, maybe I will get a different physician. As it turned out—same standard, same physician. He recognized my father, and he said: Weren’t you here 2 weeks ago?

And my father said: Yeah.

And he said: Do you really want to get in that bad?

And my father said: Yeah.

And he was in the Army.

So the war was over, and he never left the United States. When he left the service, he went to the University of Alabama. About midway through, he wanted to get on with his life, and he left college and went out into the business world. It is something he will always regret—leaving college early—but I think in many ways he got a better education than I did.

I think I was lucky to get a good education, but I think those like JASON—and others who served in the military and also went to school—got the best education. But I think there are certain things you can only learn by being in the military. Certainly, you can’t really learn about war without going to war, and maybe there are things you just can’t learn about life without going to war. So those of you who have served have the most complete education I think there is.

Even so, is moral courage really more rare than that on a battlefield? And then I saw what Robert Kennedy meant by moral courage. He said: "Few men are willing to brave the disapproval of their peers, the censure of their colleagues, [and] the wrath of their society."

Then I understood by that measure just how rare moral courage is. How many of us are willing to brave the disapproval of our peers, the censure of our colleagues, and the wrath of our society?

Just as those who have not served in the military can't fully understand what service means, so, too, there is a different kind of paternity or sorority among those who have served in the House. I always tell my constituents that there are two kinds of jobs in Congress, and it is not Democrats or Republicans; it is those in a safe seat, and those in an unsafe seat. I am sure the same is true of those in a safe State or an unsafe State. It is why I think there is a certain chemistry between Members who represent those swing districts and States—because they can step into each other's shoes.

One of the things that we in this fellowship of officeholders understand that most people don't is that real political courage doesn't come from disagreeing with our opponents but from disagreeing with our friends and with our own party because it means having to stare down accusations of disloyalty and betrayal: He's a Democrat in name only or she's a Republican in name only.

What I said last night, if it resonated with anyone in this Chamber, didn't require courage. My views, as heartfelt as they are, reflect the views of my constituents. But what happens when our heartfelt views of right and wrong are in conflict with the popular opinion of our constituents?

What happens when the devotion to our oaths, to our values, to our love of country depart from the momentary passion of the large number of people backing us? Those are the times that try our souls.

CBS news reported last night that a Trump confidante said that GOP Senators were warned: "Vote against the President, and your head will be on a pike." I don't know if that is true.

"Vote against the President, and your head will be on a pike." I have to say when I read that—and again, I don't know if that is true, but when I read that, I was struck by the irony. I hope it is not true. I hope it is not true. I was struck by the irony of the idea, when we are talking about a President who would make himself a Monarch, that whoever that was would use the terminology of a penalty that was opposed by a Monarch—"head on a pike."

Just this week America lost a hero, Thomas Railsback, who passed away on Monday, the day before this trial began. Some of you may have known or even served with Congressman Thomas Railsback. He was a Republican from Illinois and the second ranking Member on the House Judiciary Committee when that committee was conducting its impeachment inquiry into President Nixon.

In July of 1974, as the inquiry was coming to a close, Congressman Railsback began meeting with a bipartisan group of Members of the House—three other Republicans and three Democrats. Here in the Senate they might have called them the Gang of 7.

They gathered and they talked and they labored over language and ultimately helped develop the bipartisan support for the articles that led a group of Republican Senators, including Barry Goldwater and Howard Baker, to tell President Nixon that he must resign.

Some say that the Nixon impeachment might not have moved forward were it not for those four courageous Republicans led by Congressman Railsback, and it pained the Congressman because he credited Nixon with giving him his seat and with getting him elected. He did it, he said, because "seeing all the evidence, it was something we had to do because the evidence was there." One of his aides, Ray LaHood, eulogized him saying: He felt an obligation to the Constitution to do what is right.

Now, soon, Members of this body will face the most momentous of decisions—not, as I said at the outset, between guilt and innocence, but a far more foundational issue: Should there be a fair trial? Shall the House be able to present its case with witnesses and documents through the use of subpoenas as has been the case in every impeachment trial in history?

Now, the President's lawyers have been making their case outside of this Chamber, threatening to stall these proceedings with the assertion of false claims of privilege. Having persuaded this body to postpone consideration of the witnesses and documents, they now appear to be preparing the ground to say it will be too late to consider them next week.

But consider this: Of the hundreds of documents that we have subpoenaed, there is no colorable claim and none has been asserted. To the degree that you could even make a claim, that claim has been waived. To the degree that even superficially the claim would attach, it does not conceal misconduct. And what is more, to the degree that there were a dispute over whether a privilege applied, we have a perfectly good judge sitting behind me empowered by the rules of this body to resolve those disputes.

When the Chief Justice decides where a narrow application of privilege ought to apply, you will still have the power to overrule him. How often do you get the chance to overrule a Chief Justice of the Supreme Court? You have to admit, it is every legislator's dream.

So let us not be fooled by the argument that it will take too long or persuaded that the trial must be over before the State of the Union. This is no parking ticket we are contesting and no shoplifting case we are prosecuting. It is a matter of high crimes and misdemeanors.

How long is too long to have a fair trial—fair to the President and fair to the American people? The American people do not agree on much, but they will not forgive being deprived of the truth and certainly not because it took a back seat to expediency.

In his pamphlet of 1777, "The American Crisis," Thomas Paine wrote:

Those who expect to reap the blessings of freedom must . . . undergo the fatigue of supporting it.

Is it too much fatigue to call witnesses and have a fair trial? Are the blessings of freedom so meager that we will not endure the fatigue of a real trial with witnesses and documents?

President Lincoln, in his closing message to Congress in December 1862, said this:

Fellow citizens, we cannot escape history. We of this Congress and this administration will be remembered in spite of ourselves. No personal significance, or insignificance, can spare one or another of us. The fiery trial through which we pass, will light us down, in honor or dishonor, to the latest generation.

I think he was the most interesting President in history. He may be the most interesting person in our history. This man, who started out dirt poor—dirt poor. Like hundreds of thousands of other people at the time, he had nothing—no money and no education. He educated himself. He educated himself. But he had a brain in that head, a brilliance in that mind that made him one of the most incredible, not just Presidents, but people in history.

I think he is the most interesting character in our history. Out of the hundreds and hundreds of thousands of other Americans at the time, why him? Why him?

I think a lot about history, as I know you do. Sometimes I think about how unforgiving history can be of our conduct.

We can do a lifetime's work, draft the most wonderful legislation, help our constituents, and yet we may be remembered for none of that. But for a single decision, we may be remembered, affecting the course of our country.

I believe this may be one of those moments—a moment we never thought we would see, a moment when our democracy was gravely threatened and not from without but from within.

Russia, too, has a constitution. It is not a bad constitution. It is just a meaningless one. In Russia, they have trial by telephone. They have the same ostensible rights we do to a trial. They hear evidence and witnesses, but before the verdict is rendered, the judge picks up the telephone and calls the right person to find out how it is supposed to turn out. Trial by telephone. Is that what we have here—a trial by telephone, someone on the other end of the phone dictating what this trial should look like?

The Founders gave us more than words. They gave us inspiration. They may have receded into mythology, but they inspire us still. And more than us, they inspire the rest of the world. They inspire the rest of the world.

From their prison cells in Turkey, journalists look to us. From their internment camps in China, they look to us. From their cells in Egypt, those who gathered in Tahrir Square for a better life look to us. From the Philippines, those who were the victims and their families of mass extrajudicial killings, they look to us. From Elgin prison, they look to us. From all over the world, they look to us.

Increasingly, they don't recognize what they see. It is a terrible tragedy for them. It is a worse tragedy for us, because there is nowhere else for them to turn. They are not going to turn to Russia. They are not going to turn to China. They are not going to turn to Europe with all of its problems. They look to us because we are still the indispensable Nation. They look to us because we have a rule of law. They look to us because no one is above that law.

One of the things that separates us from those people in Elgin prison is the right to a trial. It is a right to a trial. Americans get a fair trial.

So I am asking you. I implore you. Give America a fair trial. Give America a fair trial. She is worth it.

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 10 a.m., Saturday, January 25, and that this order also constitute the adjournment of the Senate.

There being no objection, at 8:54 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Saturday, January 25, 2020, at 10 a.m.

[From the CONGRESSIONAL RECORD, January 25, 2020]

The Senate met at 10:03 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will lead us in prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

Eternal God, the way, the truth, and the life, unite our Senators in their striving to do Your will.

Lord, You have been our help in ages past. You are our hope for the years to come. We trust the power of Your prevailing providence to bring this impeachment trial to the conclusion You desire.

Lord, we acknowledge that Your thoughts are not our thoughts and Your ways are not our ways; for as the heavens are higher than the Earth, so are Your thoughts higher than our thoughts and Your ways higher than our ways.

Lord, we love You. Empower our Senators. Renew their strength. We pray in Your dependable Name. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, colleagues, we should expect 2 to 3 hours of session today. We will take a quick break if needed.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 483, the counsel for the President have 24 hours to make the presentation of their case.

The Senate will now hear you.

The Presiding Officer recognizes Mr. Cipollone to begin the presentation of the case for the President.

OPENING STATEMENT

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Senators, Leader McCONNELL, Democratic Leader SCHUMER, thank you for your time and thank you for your attention. I want to start out, just very briefly, giving you a short plan for today. We are going to be very respectful of your time. As Leader McCONNELL said, we anticipate going about 2 to 3 hours at most and to be out of here by 1 at the latest.

We are going to focus today on two points. You heard the House managers speak for nearly 24 hours over 3 days. We don't anticipate using that much time. We don't believe that they have come anywhere close to meeting their burden for what they are asking you to do. In fact, we believe that, when you hear the facts—and that is what we intend to cover today, the facts—you will find that the President did absolutely nothing wrong. What we intend to do today—and we will have more presentations in greater detail on Monday, but what we intend to do today—is go through their record that they established in the House, and we intend to show you some of the evidence that they adduced in the House that they decided, over their 3 days and 24 hours, that they didn't have enough time or made a decision not to show you.

And every time you see one of these pieces of evidence, ask yourself: Why didn't I see that in the first 3 days? They had it. It came out of their process. Why didn't they show that to the Senate? I think that is an important question because, as House managers, really, their goal should be to give you all of the facts, because they are asking you to do something very, very consequential and, I would submit to you—to use a word that Mr. SCHIFF used a lot—very, very dangerous.

That is the second point that I would ask you to keep in mind today. They are asking you not only to overturn the results of the last election, but as I have said before, they are asking you to remove President Trump from the ballot in an election that is occurring in approximately 9 months. They are asking you to tear up all of the ballots across this country, on your own initiative—take that decision away from the American people. And I don't think they spent 1 minute of their 24 hours talking to you about the con-

sequences of that for our country—not 1 minute. They didn't tell you what that would mean for our country—today, this year, and forever into our future.

They are asking you to do something that no Senate has ever done, and they are asking you to do it with no evidence. That is wrong, and I ask you to keep that in mind. I ask you to keep that in mind. So what I would do is point out one piece of evidence for you, and then I am going to turn it over to my colleagues, and they will walk you through their record, and they will show you things that they didn't show you.

Now, they didn't talk a lot about the transcript of the call, which I would submit is the best evidence of what happened on the call. And they said things over and over again that are simply not true. One of them was: There is no evidence of President Trump's interest in burden-sharing; that wasn't the real reason. But they didn't tell you that burden-sharing was discussed in the call, in the transcript of the call. They didn't tell you that.

Why? Let me read it to you. Here is the President. And we will go through the entire transcript. I am not going to read the whole transcript. We will make it available. I am sure you have it, but we will make available copies of the transcript so you can have it.

The President said—and they read this line:

I will say that we do a lot for Ukraine. We spend a lot of effort and a lot of time.

But they stopped there. They didn't read the following: [Slide 481]

Much more than European countries are doing and they should be helping you more than they are. Germany does almost nothing for you. All they do is talk and I think it's something that you should really ask them about. When I was speaking to Angela Merkel she talks Ukraine, but she doesn't do anything. A lot of European countries are the same way so I think it's something you want to look at but the United States has been very, very good to Ukraine.

That is where they picked up again with the quote, but they left out the entire discussion of burden-sharing.

Now, what does President Zelensky say? Does he disagree? No, he agrees. They didn't tell you this. They didn't tell you this. Didn't have time in 24 hours to tell you this: [Slide 482]

Yes you are absolutely right. Not only 100%, but actually [100%] and I can tell you the following; I did talk to Angela Merkel and I did meet with her. I also met and talked with Macron and I told them that they are not doing quite as much as they need to be doing on the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that even though logically, the European Union should be our biggest partner but technically the United States is a much bigger partner than the European Union and I'm very grateful to you for that because the United States is doing quite a lot for Ukraine. Much more than the European Union especially when we are talking about sanctions against the Russian Federation.

You heard a lot about the importance of confronting Russia, and we are going to talk about that. And you will hear that President Trump has a strong record on confronting Russia. You will hear that President Trump has a strong record of support for Ukraine. You will hear that from the witnesses in their record that they didn't tell you about.

That is one very important example. They come here to the Senate and ask you: remove a President, tear up the ballots in all of your States. And they don't bother to read the key evidence of the

discussion of burden-sharing that is in the call itself. That is emblematic of their entire presentation.

I am going to turn the presentation over to my colleague, Mike Purpura. He is going to walk you through many more examples of this. With each example, ask yourself: Why am I just hearing about this now after 24 hours of sitting through arguments? Why? The reason is, we can talk about the process; we will talk about the law; but today we are going to confront them on the merits of their argument.

They have the burden of proof, and they have not come close to meeting it. I want to ask you to think about one issue regarding process, beyond process. If you were really interested in finding out the truth, why would you run a process the way they ran it? If you were really confident in your position on the facts, why would you lock everybody out of it from the President's side? Why would you do that?

We will talk about the process arguments, but the process arguments also are compelling evidence on the merits because it is evidence that they themselves don't believe in the facts of their case.

The fact that they came here for 24 hours and hid evidence from you is further evidence that they don't really believe in the facts of their case; that this is—for all their talk about election interference, that they are here to perpetrate the most massive interference in an election in American history, and we can't allow that to happen.

It would violate our Constitution; it would violate our history; it would violate our obligations to the future; and, most importantly, it would violate the sacred trust the American people have placed in you and have placed in them. The American people decide elections. They have one coming up in 9 months.

We will be very efficient. We will begin our presentation today. We will show you a lot of evidence that they should have showed you, and we will finish efficiently and quickly so that we can all go have an election.

Thank you, and I yield to my colleague, Michael Purpura.

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, good morning.

Again, my name is Michael Purpura. I serve as Deputy Counsel to the President. It is my honor and privilege to appear before you today on behalf of President Donald J. Trump.

(Text of Videotape presentation:)

Chairman SCHIFF. And what is the President's response? Well, it reads like a classic organized crime shakedown.

Shorn of its rambling character and in not so many words, this is the essence of what the President communicates. We've been very good to your country. Very good. No other country has done as much as we have. But you know what? I don't see much reciprocity here.

I hear what you want. I have a favor I want from you, though. And I'm going to say this only seven times, so you better listen good. I want you to make up dirt on my political opponent. Understand? Lots of it, on this and on that.

I'm going to put you in touch with people, and not just any people. I'm going to put you in touch with the attorney general of the United States, my attorney general, Bill Barr. He's got the whole weight of the American law enforcement behind him. And I'm going to put you in touch with Rudy.

You're going to love him. Trust me. You know what I'm asking? And so I'm only going to say this a few more times in a few more ways. And by the way, don't call me again. I'll call you when you've done what I asked.

This is in sum and character what the President was trying to communicate.

Mr. Counsel PURPURA. That is fake. That is not the real call. That is not the evidence here. That is not the transcript that Mr. Cipollone just referenced. We can shrug it off and say we were making light or a joke, but that was in a hearing in the U.S. House of Representatives, discussing the removal of the President of the United States from office.

There are very few things, if any, that can be as grave and as serious. Let's stick with the evidence. Let's talk about the facts and the evidence in this case.

The most important piece of evidence we have in the case, and before you, is the one that we began with nearly 4 months ago—the actual transcript of the July 25, 2019, telephone call between President Trump and President Zelensky—the real transcript.

If that were the only evidence we had, it would be enough to show the Democrats' entire theory is completely unfounded, but the transcript is far from the only evidence demonstrating that the President did nothing wrong.

Once you sweep away all of the bluster and innuendo, the selective leaks, the closed-door examinations of the Democrats' hand-picked witnesses, the staged public hearings, what we are left with are six key facts that have not, and will not, change:

First, [Slide 483] the transcript shows that the President did not condition either security assistance or a meeting on anything. The paused security assistance funds aren't even mentioned on the call.

Second, [Slide 484] President Zelensky and other Ukrainian officials have repeatedly said that there was no quid pro quo and no pressure on them to review anything.

Third, [Slide 485] President Zelensky and high-ranking Ukrainian officials did not even know—did not even know—the security assistance was paused until the end of August, over a month after the July 25 call.

Fourth, [Slide 486] not a single witness testified that the President himself said that there was any connection between any investigations and security assistance, a Presidential meeting, or anything else.

Fifth, [Slide 487] the security assistance flowed on September 11, and a Presidential meeting took place on September 25, without the Ukrainian Government announcing any investigations.

Finally, [Slide 488] the Democrats' blind drive to impeach the President does not and cannot change the fact, as attested to by the Democrats' own witnesses, that President Trump has been a better friend and stronger supporter of Ukraine than his predecessor.

Those are the facts. We plan to address some of them today and some of them next week. Each one of these six facts standing alone is enough to sink the Democrats' case. Combined, they establish what we have known since the beginning: The President did absolutely nothing wrong.

The Democrats' allegation that the President engaged in a quid pro quo is unfounded and contrary to the facts. The truth is simple, and it is right before our eyes. The President was, at all times, acting in our national interest and pursuant to his oath of office.

Before I dive in and speak further about the facts, let me mention something that my colleagues will discuss in greater detail. The facts that I am about to discuss today are the Democrats' facts. This is important because the House managers spoke to you for a very long time, over 21 hours, and they repeatedly claimed to you that their case is and their evidence is overwhelming and uncontested. It is not.

I am going to share a number of facts with you this morning that the House managers didn't share with you during more than 21 hours. I will ask you, as Mr. Cipollone already mentioned, that when you hear me say something the House managers didn't present to you, ask yourself: Why didn't they tell me that? Is that something I would have liked to have known? Why am I hearing it for first time from the President's lawyers?

It is not because they did not have enough time; that is for sure. They only showed you a very selective part of the record—their record. And they—remember this—have the very heavy burden of proof before you.

The President is forced to mount a defense in this Chamber against a record that the Democrats developed. The record that we have to go on today is based entirely on House Democratic facts precleared in a basement bunker—not mostly, entirely. Yet even those facts absolutely exonerate the President.

Let's start with the transcript. The President did not link security assistance to any investigations on the July 25 call. Let's step back. On July 25, President Trump called President Zelensky. This was their second phone call. Both were congratulatory.

On April 21, President Trump called to congratulate President Zelensky on winning the Presidential election. On July 25, the President called because President Zelensky's party had just won a large number of seats in Parliament.

On September 24, before Speaker PELOSI had any idea what President Trump and President Zelensky actually said on the July 25 call, she called for an impeachment inquiry into President Trump.

In the interest of full transparency and to show that he had done nothing wrong, President Trump took the unprecedented—unprecedented—step of declassifying the call transcript so that the American people could see for themselves exactly what the two Presidents discussed.

What did President Trump say to President Zelensky on the July 25 call? President Trump raised two issues. I am going to be speaking about those two issues a fair amount this morning. They are the two issues that go to the core of how President Trump approaches foreign aid.

When it comes to sending U.S. taxpayer money overseas, the President is focused on burden-sharing and corruption. First, the President, rightly, had real concerns about whether European and other countries were contributing their fair share to ensuring Ukraine security.

Second, corruption. Since the fall of the Soviet Union, Ukraine has suffered from one of the worst environments for corruption in the world. A parade of witnesses testified in the House about the pervasive corruption in Ukraine and how it is in America's foreign

policy and national security interests to help Ukraine combat corruption. Turning to the call, right off the bat.

President Trump mentioned burden-sharing to President Zelensky. [Slide 481] President Trump told President Zelensky that Germany does almost nothing for you, and a lot of European countries are the same way. President Trump specifically mentioned speaking to Angela Merkel of Germany, who he said talks Ukraine but she doesn't do anything.

President Zelensky agreed; you are absolutely right. He said that he spoke with the leaders of Germany and France and told them they are not doing quite as much as they need to be doing.

Right at the beginning of the call, President Trump was talking about burden-sharing. President Trump then turned to corruption in the form of foreign interference in the 2016 Presidential election.

There is absolutely nothing wrong with asking a foreign leader to help get to the bottom of all forms of foreign interference in an American Presidential election. You will hear more about that later from one of my colleagues.

What else did the President say? The President also [Slide 489] warned President Zelensky that he appeared to be surrounding himself with some of the same people as his predecessor and suggested that a very fair and very good prosecutor was shut down by some very bad people. Again, one of my colleagues will speak more about that.

The content of the July 25 call was in line with the Trump administration's legitimate concerns about corruption and reflected the hope that President Zelensky, who campaigned on a platform of reform, would finally clean up Ukraine.

So what did President Trump and President Zelensky discuss in the July 25 call? Two issues: burden-sharing and corruption.

Just as importantly, what wasn't discussed on the July 25 call? There was no discussion of the paused security assistance on the July 25 call. House Democrats keep pointing to President Zelensky's statement that "I would also like to thank you for your great support in the area of defense." [Slide 490] But he wasn't talking there about the paused security assistance. He tells us in the very next sentence exactly what he was talking about—Javelin missiles. "We are ready," President Zelensky continues, "to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes."

Javelins are the anti-tank missiles only made available to the Ukrainians by President Trump. President Obama refused to give Javelins to the Ukrainians for years. Javelin sales were not part of the security assistance that had been paused at the time of the call. Javelin sales have nothing to do with the paused security assistance. Those are different programs entirely. But don't take my word for it. [Slide 491] Both former Ambassador to Ukraine Marie Yovanovitch and NSC Director Timothy Morrison confirmed that the Javelin missiles and security assistance were unrelated.

The House managers didn't tell you about Ambassador Yovanovitch's and Tim Morrison's testimony. Why not? They could have taken 2 to 5 minutes out of 21 hours to make sure you understood that the Javelin sales being discussed were not part of the

paused security assistance. This puts the following statement by President Trump in a whole new light, doesn't it? "I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it."

As everyone knows by now, President Trump asked President Zelensky "to do us a favor." And he made clear that "us" referred to our country and not himself. More importantly, the President was not connecting "do us a favor" to the Javelin sales that President Zelensky mentioned; that makes no sense in the language there. But even if he had been, the Javelin sales were not part of the security assistance that had been temporarily paused.

I want to be very clear about this. When the House Democrats claim that the Javelin sales discussed in the July 25 call are part of the paused security assistance, it is misleading. They are trying to confuse you and just sort of wrap everything in, instead of unpacking it the right way. There was no mention of the paused security assistance on the call and certainly not from President Trump.

As you know, head-of-state calls are staffed by a number of aides on both sides. Lieutenant Colonel Alexander Vindman, detailee at the National Security Council, raised a concern about the call, and that was just a policy concern. Lieutenant Colonel Vindman admitted he did not know if there was a crime or anything of that nature, but he had deep policy concerns. So there you have it.

But the President sets the foreign policy. In a democracy such as ours, the elected leaders make foreign policy while the unelected staff, such as Lieutenant Colonel Vindman, implement the policy. Other witnesses were on the July 25 call and had very different reactions than that of Lieutenant Colonel Vindman. Lieutenant General Keith Kellogg, national security advisor to the Vice President, former Acting National Security Advisor, and a long-serving and highly decorated veteran attended the call.

According to General Kellogg: [Slide 492]

I was on the much-reported July 25 call between President Donald Trump and President Zelensky. As an exceedingly proud member of President Trump's administration and as a 34-year highly experienced combat veteran who retired at the rank of Lieutenant General in the Army, I heard nothing wrong or improper on the call. I had and have no concerns.

The House managers said that other witnesses were also troubled by the July 25 call and identified those witnesses as Jennifer Williams and Tim Morrison.

Jennifer Williams, who works for Lieutenant General Kellogg, now claims that she has concerns about the call. You heard that from the House managers. They were very careful in the way they worded that. What they didn't tell you is that Ms. Williams was so troubled at the time of the call that she told exactly zero people of her concern. She told no one for 2 months following the call—not one person. [Slide 493] Ms. Williams didn't raise any concerns about the call when it took place, not with Lieutenant General Kellogg, not with counsel, not with anyone.

Ms. Williams waited to announce her concerns until Speaker PELOSI publicly announced her impeachment inquiry. The House managers didn't tell you that. Why not?

Tim Morrison, who is Lieutenant Colonel Vindman's boss, was also on the call. Mr. Morrison reported the call to the National Se-

curity Council lawyers, not because he was troubled by anything on the call but because he was worried about leaks and, in his words, “how it would play out in Washington’s polarized environment.”

“I want to be clear,” Mr. Morrison testified, “I was not concerned that anything illegal was discussed.”

Mr. Morrison further testified that there was nothing improper and nothing illegal about anything that was said on the call. [Slide 494] In fact, Mr. Morrison repeatedly testified that he disagreed with Lieutenant Colonel Vindman’s assessment that President Trump made demands of President Zelensky or that he said anything improper at all.

Here is Mr. Morrison:

(Text of Videotape presentation:)

Chairman SCHIFF. In that transcript, does the President not ask Zelensky to look into the Bidens?

Mr. MORRISON. Mr. Chairman, I can only tell you what I was thinking at the time. That is not what I understood the President to be doing.

Mr. TURNER. Do you believe, in your opinion, that the President of the United States demanded that President Zelensky undertake these investigations?

Mr. MORRISON. No, sir.

Mr. WENSTRUP. And you didn’t hear the President make a demand, did you?

Mr. MORRISON. No, sir.

Mr. RATCLIFFE. Again, there were no demands from your perspective, Mr. Morrison?

Mr. MORRISON. That is correct, sir.

Mr. RATCLIFFE. Is it fair to say that as you were listening to the call, you weren’t thinking “Wow, the President is bribing the President of Ukraine”? That never crossed your mind?

Mr. MORRISON. It did not, sir.

Mr. RATCLIFFE. Or that he was extorting the President of Ukraine?

Mr. MORRISON. No, sir.

Mr. RATCLIFFE. Or doing anything improper?

Mr. MORRISON. Correct, sir.

Mr. Counsel PURPURA. Significantly, the Ukrainian Government never raised any concerns about the July 25 call. Just hours after the call, Ambassador William Taylor, head of the U.S. mission in Ukraine, had dinner with then-Secretary of the Ukrainian National Security and Defense Council, who seemed to think that the call went fine.

The call went well. He wasn’t disturbed by anything.

The House managers didn’t tell you that. Why not?

Ambassador Kurt Volker, the U.S. Special Representative for Ukraine, was not on the call, but Ambassador Volker spoke regularly with President Zelensky and other top officials in the Ukraine Government and even met with President Zelensky the day after the call. He testified that in no way, shape, or form in either the readouts for the United States or Ukraine did he receive any indication whatsoever for anything that resembles a quid pro quo on the July 25 call.

Here is Ambassador Volker.

(Text of Videotape presentation:)

Ms. STEFANIK. In fact, the day after the call, you met with President Zelensky. This would be on July 26.

Ambassador VOLKER. Correct.

Ms. STEFANIK. In that meeting, he made no mention of quid pro quo?

Ambassador VOLKER. No.

Ms. STEFANIK. He made no mention of withholding the aid?

Ambassador VOLKER. No.

Ms. STEFANIK. He made no mention of bribery?

Ambassador VOLKER. No.

Ms. STEFANIK. So the fact is that Ukrainians were not even aware of this hold on aid. Is that correct?

Ambassador VOLKER. That's correct.

Mr. Counsel PURPURA. They didn't tell you about this testimony from Ambassador Volker. Why not? President Zelensky himself has confirmed on at least three separate occasions that his July 25 call with President Trump was a "good phone call" and "normal" and "nobody pushed me." [Slide 495]

When President Zelensky's adviser, Andriy Yermak, was asked if he ever felt there was a connection between military aid and the request for investigations, he was adamant that "We never had that feeling" and "We did not have the feeling that this aid was connected to any one specific issue." [Slide 496]

Of course, the best evidence that there was no pressure or quid pro quo is the statements of the Ukrainians themselves. The fact that President Zelensky himself felt no pressure on the call and did not perceive there to be any connection between security assistance and investigations would, in any ordinary case in any court, be totally fatal to the prosecution. The judge would throw it out. The case would be over. What more do you need to know? The House team knows that. They know the record inside out, upside down, left and right.

So what do they do? How do they try to overcome the direct words from President Zelensky and his administration that they felt no pressure? They tell you that the Ukrainians must have felt pressure regardless of what they have said. They try to overcome the devastating evidence against them by, apparently, claiming to be mind readers. They know what is in President Zelensky's mind better than President Zelensky does. President Zelensky said he felt no pressure. The House managers tell you they know better. This is really a theme of the House case.

I want you to remember this. Every time the Democrats say that President Trump made demands or issued a quid pro quo to President Zelensky on the July 25 call, they are saying that President Zelensky and his top advisers are being untruthful, and they acknowledge that is what they are saying. They have said it over the past few days.

Tell me how that helps U.S. foreign policy and national security to say that about our friends. We know there was no quid pro quo on the call. We know that from the transcripts. But the call is not the only evidence showing that there was no quid pro quo. [Slide 497] There couldn't possibly have been a quid pro quo because Ukrainians did not even know the security assistance was on hold until it was reported in the media by POLITICO at the end of August, more than a month after the July 25 call.

Think about this. The Democrats accused the President of leveraging security assistance to supposedly force President Zelensky to announce investigations, but how can that possibly be when the Ukrainians were not even aware that the security assistance was paused? There can't be a threat without the person knowing he is being threatened. There can't be a quid pro quo without the quo.

Ambassador Volker testified that the Ukrainians did not know about the hold until reading about it in POLITICO. Ambassador Taylor and Tim Morrison both agree. Deputy Assistant Secretary of State George Kent testified that no Ukrainian official contacted him about the paused security assistance until that first intense week in September.

Let's hear from the four of them.

(Text of Videotape presentation:)

Ambassador VOLKER. I believe that the Ukrainians became aware of the hold on August 29 and not before. That date is the first time any of them asked me about the hold by forwarding an article that had been published in POLITICO.

Ambassador TAYLOR. It was only after August 29 that I got calls from several of the Ukrainian officials.

Mr. CASTOR. You mentioned the August 28 POLITICO article. Is that the first time that you believed the Ukrainians may have had a real sense that the aid was on hold?

Mr. MORRISON. Yes.

Mr. HURD. Mr. Kent, had you had any Ukrainian official contacting you concerned about—when was the first time a Ukrainian official contacted you with concern about potential withholding of U.S. aid?

Mr. KENT. It was after the article in POLITICO came out in that first intense week of September.

Mr. CASTOR. It wasn't until the POLITICO article?

Ambassador VOLKER. That is correct. I received a text message from one of my Ukrainian counterparts forwarding that article, and that is the first they raised it with me.

Mr. Counsel PURPURA. The House managers didn't show you this testimony from any of these four witnesses. Why not? Why didn't they give you the context of this testimony? Think about this as well. If the Ukrainians had been aware of the review on security assistance, they, of course, would have said something. There were numerous high-level diplomatic meetings between senior Ukrainian and U.S. officials during the summer after the review on the security assistance began, but before President Zelensky learned of the hold through the POLITICO article. If the Ukrainians had known about the hold, they would have raised it in one of those meetings. Yet the Ukrainians didn't say anything about the hold at a single one of those meetings, not on July 9, not on July 10, not on July 25, not on July 26, not on August 27. At none of those meetings—none of those meetings—did the Ukrainians mention the pause on security assistance.

Ambassador Volker testified that he was regularly in touch with the senior, highest level officials in the Ukrainian Government and that the Ukrainian officials would confide things and would have asked if they had any questions about the aid. Nobody said a word to Ambassador Volker until the end of August.

Then, within hours of the POLITICO article's being published, [Slide 498] Mr. Yermak texted Ambassador Volker with a link to the article and to ask about the report. In other words, as soon as the Ukrainians learned about the hold, they asked about it.

Mr. SCHIFF said something during the 21 hours—or more than 21 hours—that he and his team spoke that I actually agree with, which is when he talked about common sense. Many of us at the tables and in the room are former prosecutors at the State, Federal, or military level. Prosecutors talk a lot about common sense. Common sense comes into play right here.

The top Ukrainian officials said nothing—nothing at all—to their U.S. counterparts during all of these meetings about the pause on security assistance, but then—boom. As soon as the POLITICO article comes out, suddenly, in that first intense week of September, in George Kent’s words, security assistance was all they wanted to talk about.

What must we conclude if we are using our common sense?—that they didn’t know about the pause until the POLITICO article on August 28. There was no activity before. The article comes out, and there is a flurry of activity.

That is common sense, and it is absolutely fatal to the House managers’ case. The House managers are aware that the Ukrainians’ lack of knowledge on the hold is fatal to their case, so they desperately tried to muddy the water.

The managers told you the Deputy Assistant Secretary of Defense, Laura Cooper, presented two emails that people on her staff received from people at the State Department regarding conversations with people at the Ukraine Embassy that could have been about U.S. security assistance to Ukraine. What [Slide 499] they did not tell you is that Ms. Cooper testified that she could not say for certain whether the emails were about the pause on security assistance. She couldn’t say one way or another.

She also testified that she didn’t want to speculate about the meaning of the words in the emails. The House managers also didn’t tell you that Ms. Cooper testified: “I reviewed my calendar, and the only meeting where I can recall a Ukrainian official raising the issue of security assistance with me is on September 5 at the Ukrainian Independence Day celebration.” The House managers didn’t tell you that.

The House managers also mentioned that one of Ambassador Volker’s advisers, Catherine Croft, claimed that the Ukrainian Embassy officials learned about the pause earlier than the POLITICO article; but when asked when she heard from Ukraine Embassy officials, Ms. Croft admitted that she can’t remember those specifics and did not think that she took notes.

Ms. Croft also did not remember when news of the hold became public. Remember though, that Ambassador Volker, her boss, who was in regular contact with President Zelensky and the top Ukrainian aides, was very clear: “I believe the Ukrainians became aware of the hold on August 29 and not before.”

This is all the House managers have in contrast to the testimony of Volker, Taylor, Morrison, and Kent, the text from Yermak, the words of the high-ranking Ukrainians themselves, and the flurry of activity that began on August 28. That is the evidence that they want you to consider as a basis to remove the duly elected President of the United States.

The bottom line is, it is not possible for the pause on security assistance to have been used as leverage when President Zelensky and other top Ukrainian officials did not know about it. That is what you need to know. That is what the House managers didn’t tell you.

The House managers know how important this issue is. When we briefly mentioned it a few days ago, they told us we needed to check our facts. We did. We are right. President Zelensky and his

top aides did not know about the pause on security assistance at the time of the July 25 call and did not know about it until August 28, when the POLITICO article was published.

We know there was no quid pro quo on the July 25 call. We know the Ukrainians did not know the security assistance had been paused at the time of the call. There is simply no evidence anywhere that President Trump ever linked security assistance to any investigations.

Most of the Democrats' witnesses have never spoken to the President at all, let alone about Ukraine security assistance. The two people in the House's record who asked President Trump about whether there was any linkage between security assistance and investigations were told, in no uncertain terms, that there was no connection between the two.

When Ambassador to the European Union Gordon Sondland asked the President in, approximately, the September 9 timeframe, the President told him, "I want nothing. I want no quid pro quo."

Even earlier, on August 31, Senator RON JOHNSON asked the President if there was any connection between security assistance and investigations. The President answered:

No way. I would never do that. Who told you that?

Two witnesses, Ambassador Taylor and Tim Morrison, said they came to believe security assistance was linked to investigations, but both witnesses based this belief entirely on what they had heard from Ambassador Sondland before Ambassador Sondland spoke to the President. Neither Taylor nor Morrison ever spoke to the President about the matter.

How did Ambassador Sondland come to believe that there was any connection between security assistance and investigations? Again, the House managers didn't tell you. Why not? In his public testimony, Ambassador Sondland used variations of the words "assume," "presume," "guess," "speculate," and "belief" over 30 times.

Here are some examples.

(Text of Videotape presentation:)

Ambassador SONDLAND. That was my presumption, my personal presumption. That was my belief.

That was my presumption.

I presumed that might have to be done in order to get the aid released.

It was a presumption.

I have been very clear as to when I was presuming, and I was presuming on the aid.

It would be pure, you know, guesswork on my part, speculation. I don't know.

That was the problem, Mr. Goldman. No one told me directly that the aid was tied to anything. I was presuming it was.

Mr. Counsel PURPURA. They didn't show you any of this testimony—not once—during their 21-hour presentation. It was 21 hours—more than 21 hours—and they couldn't give you the context to evaluate Ambassador Sondland. All the Democrats have to support the alleged link between security assistance and investigations is Ambassador Sondland's assumptions and presumptions.

We remember this exchange.

(Text of Videotape presentation:)

Mr. TURNER. Is it correct no one on this planet told you that Donald Trump was tying this aid to the investigations? Because, if your answer is yes, then the chair-

man is wrong, and the headline on CNN is wrong. No one on this planet told you that President Trump was tying aid to investigations, yes or no?

Ambassador SONDLAND. Yes.

Mr. TURNER. So you really have no testimony today that ties President Trump to a scheme to withhold aid from Ukraine in exchange for these investigations?

Ambassador SONDLAND. Other than my own presumption.

Mr. Counsel PURPURA. When he was done presuming, assuming, and guessing, Ambassador Sondland finally decided to ask President Trump directly. What does the President want from Ukraine?

Here is the answer.

(Text of Videotape presentation:)

Ambassador SONDLAND. President Trump, when I asked him the open-ended question, as I testified previously, "What do you want from Ukraine?" his answer was "I want nothing. I want no quid pro quo. Tell Zelensky to do the right thing." That is all I got from President Trump.

Mr. Counsel PURPURA. The President was unequivocal. Ambassador Sondland stated that this was the final word he heard from the President of the United States, and once he learned this, he text-messaged Ambassadors Taylor and Volker: "The President has been crystal clear—no quid pro quos of any kind."

If you are skeptical of Ambassador Sondland's testimony, it was corroborated by the statement of one of your colleagues, Senator JOHNSON. Senator JOHNSON had also heard from Ambassador Sondland that the security assistance might be linked to the investigations. [Slide 500] So, on August 31, Senator JOHNSON asked the President directly whether there was some kind of arrangement where Ukraine would take some action and the hold would be lifted.

Again, President Trump's answer was crystal clear.

No way. I would never do that. Who told you that?

As Senator JOHNSON wrote: "I have accurately characterized his reaction as adamant, vehement, and angry."

They didn't tell you about Senator JOHNSON's letter. Why not?

The Democrats' entire quid pro quo theory is based on nothing more than the initial speculation of one person—Ambassador Sondland. That speculation is wrong. Despite the Democrats' hopes, the Ambassador's mistaken belief does not become true merely because he repeated it many times and, apparently, to many people.

Under Secretary of State David Hale, George Kent, and Ambassador Volker all testified that there was no connection whatsoever between security assistance and investigations.

Here is Ambassador Volker.

(Text of Videotape presentation:)

Mr. TURNER. You had a meeting with the President of the United States, and you believe that the policy issues that he raised concerning Ukraine were valid, correct?

Ambassador VOLKER. Yes.

Mr. TURNER. Did the President of the United States ever say to you that he was not going to allow aid from the United States to go to Ukraine unless there were investigations into Burisma, the Bidens, or the 2016 elections?

Ambassador VOLKER. No, he did not.

Mr. TURNER. Did the Ukrainians ever tell you that they understood that they would not get a meeting with the President of the United States, a phone call with the President of the United States, military aid, or foreign aid from the United

States unless they undertook investigations of Burisma, the Bidens, or the 2016 elections?

Ambassador VOLKER. No, they did not.

Mr. Counsel PURPURA. The House managers never told you any of this. Why not? Why didn't they show you this testimony? Why didn't they tell you about this testimony? Why didn't they put Ambassador Sondland's testimony in its full and proper context for your consideration? Because none of this fits their narrative, and it wouldn't lead to their predetermined outcome.

Thank you for your attention.

I yield to Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Majority Leader MCCONNELL, Democratic Leader SCHUMER, House managers, Members of the Senate, let me begin by saying that you cannot simply decide this case in a vacuum.

Mr. SCHIFF said yesterday—I believe it was his father who said it—you should put yourself in someone else's shoes. Let's, for a moment, put ourselves in the shoes of the President of the United States right now.

Before he was sworn into office, he was subjected to an investigation by the Federal Bureau of Investigation, called Crossfire Hurricane. The President, within 6 months of his inauguration, found a special counsel being appointed to investigate a Russia collusion theory. In their opening statement, several Members of the House managers tried to, once again, relitigate the Mueller case.

Here is the bottom line: This is part 1 of the Mueller report. This part alone is 199 pages. The House managers, in their presentation, a couple of times referenced a "this for that." Let me tell you something. This cost \$32 million. This investigation took 2,800 subpoenas. This investigation had 500 search warrants. This had 230 orders for communication records. This had 500 witness interviews—all to reach the following conclusion.

I am going to quote from the Mueller report itself—it can be found on page 173—as relates to this whole matter of collusion and conspiracy: "Ultimately," in the words of Bob Mueller in his report, "the investigation did not establish that the campaign coordinated or conspired with the Russian Government in its election interference activities."

Let me say that again. This, the Mueller report, resulted in this—that for this: "Ultimately, the investigation did not establish that the campaign coordinated or conspired with the Russian Government in its election [-related] interference activities"—this for that.

In his summation on Thursday night, Manager SCHIFF complained that the President chose not to go with the determination of his intelligence agencies regarding hard interference and instead decided that he would listen to people he trusted and he would inquire about the Ukraine issue himself. Mr. SCHIFF did not like the fact that the President did not apparently blindly trust some of the advice he was being given by the intelligence agencies.

First of all, let me be clear. Disagreeing with the President's decision on foreign policy matters or whose advice he is going to take is in no way an impeachable offense.

Second, Mr. SCHIFF and Mr. NADLER, of all people—because they chaired significant committees—really should know this, and they should know what is happening.

Let me remind you of something: Just six-tenths of a mile from this Chamber sits the Foreign Intelligence Surveillance Court, also known as the FISA Court. It is the Federal court established and authorized under the Foreign Intelligence Surveillance Act to oversee requests by Federal agencies for surveillance orders against foreign spies inside the United States, including American citizens.

Because of the sensitive nature of its business, the court is a more secret court. Its hearings are closed to the public. In this court, there are no defense counsel, no opportunity to cross-examine witnesses, and no ability to test evidence. The only material the court ever sees are those materials that are submitted on trust—on trust—by members of the intelligence community, with the presumption that they would be acting in good faith.

On December 17, 2019, the FISA Court issued a scathing order in response to the Justice Department inspector general's report on the FBI's Crossfire Hurricane investigation into whether or not the Trump campaign was coordinating with Russia. We already know the conclusion. That report detailed the FBI's pattern of practice, systematic abuses of obtaining surveillance order requests, and the process they utilized.

In its order—this is the order from the court. I am going to read it. "This order responds to reports that personnel of the Federal Bureau of Investigation provided false information to the National Security Division of the Department of Justice, and withheld material information from the NSD which was detrimental to the FBI's case in connection with four applications to the Foreign Intelligence Surveillance Court."

When the FBI personnel misled NSD in the ways that are described in these reports, they equally misled the Foreign Intelligence Surveillance Court.

This order has been followed up. There has been another order. It was declassified just a couple of days ago.

Thanks in large part—

The court said—

to the . . . Office of the Inspector General, U.S. Department of Justice, the Court has received notice of material misstatements and omissions in the applications filed by the government in the above-captioned documents. . . . DOJ assesses that with respect to the applications in—

And it lists two specific docket numbers—

. . . 17-375 and 17-679, "if not earlier, there was insufficient predication to establish probable cause to believe that [Carter] Page was acting as an agent of a foreign power."

The President had reason to be concerned about the information he was being provided. Now, we could ignore this. We could make believe this did not happen. But it did.

As we begin introducing our arguments, I want to correct a couple of things in the record as well. That is what we are doing today. We really intend to show for the next several days that the evidence is actually really overwhelming that the President did nothing wrong.

Mr. SCHIFF and his colleagues repeatedly told you about the intelligence community assessment that Russia was acting alone, responsible for the election interference, implying that this somehow debunked the idea that there might be, you know, interference from other countries, including Ukraine. Mr. NADLER deployed a similar argument, saying that President Trump thought “Ukraine, not Russia, interfered in our last Presidential election.” And this is basically what we call a straw man argument.

Let me be clear. The House managers, over a 23-hour period, kept pushing this false dichotomy that it was either Russia or Ukraine but not both. They kept telling you that the conclusion of the intelligence community and Mr. Mueller was Russia alone with regard to the 2016 elections.

Of course, that is not—the report that Bob Mueller wrote focused on Russian interference, although there is some information in letters regarding Ukraine, and I am going to point to those in a few moments. In fact, let me talk about those letters right now.

This is a letter dated May 4, 2018, to Mr. Yuriy Lutsenko, the general prosecutor for the Office of the Prosecutor General of Ukraine. It was a letter requesting that his office cooperate with the Mueller investigation involving issues involving the Ukraine Government and law enforcement officials. It is signed by Senator MENENDEZ, Senator LEAHY, and Senator DURBIN.

I am doing this to put this in an entire perspective. House managers tried to tell you that the importance—remember the whole discussion—and my colleague Mr. Purpura talked about this—between President Zelensky and President Trump and the bilateral meeting in the Oval Office of the White House, as if an Article of Impeachment could be based upon a meeting not taking place in the White House but taking place someplace else, like the United Nations General Assembly, where it, in fact, did take place.

Dr. Fiona Hill was quite clear in saying that a White House meeting would supply the new Ukrainian Government with the “legitimacy it needed, especially vis-a-vis the Russians,” and that Ukraine viewed the White House meeting as a recognition of their legitimacy as a sovereign state. But here is what they did not play. Here is what they did not tell you. And I am going to quote from Dr. Hill’s testimony on page 145 of her transcript. These are her words. This is what she said under oath:

It wasn’t always a White House meeting per se, but definitely a Presidential-level, you know, meeting with Zelensky and the President. I mean, it could’ve taken place in Poland, in Warsaw. It could have been, you know, a proper bilateral in some other context. But, in other words, a White House-level Presidential meeting.

That can be found on page 145.

Contrary to what Manager SCHIFF and some of the other managers told you, this meeting did, in fact, occur. It occurred at the U.N. General Assembly on September 25, 2019.

Those were the words of Dr. Hill’s that you did not hear.

This case is really not about Presidential wrongdoing. This entire impeachment process is about the House managers’ insistence that they are able to read everybody’s thoughts, they can read everybody’s intentions even when the principal speakers, the witnesses themselves, insist that those interpretations are wrong.

Manager SCHIFF, Managers GARCIA and DEMINGS relied heavily on selected clips from Ambassador Sondland's testimony. I am not going to replay those. My colleague Mr. Purpura played those for you. It is clear. We are not going to play the same clips seven times. He said it. You saw it. That is the evidence.

Ms. LOFGREN said that, you know, numerous witnesses testified that—and this is the quote—“that they were not provided with any reason for why the hold was lifted on September 11,” again suggesting that the President's reason for the hold—Ukrainian corruption and burden-sharing—were somehow created after the fact. But, again, as my colleague just showed you, burden-sharing was raised in the transcript itself.

Mr. SCHIFF stated here that, just like the implementation of the hold, President Trump provided no reason for the release. This also is wrong.

In their testimony, Ambassadors Sondland and Volker said that the President raised his concerns about Ukrainian corruption in the May 23, 2019, meeting with the Ukraine delegation.

Deputy Defense Secretary Laura Cooper testified that she received an email in June of 2019 listing followups from a meeting between the Secretary of Defense Chief of Staff and the President relating specifically to Ukrainian security assistance, including asking about what other countries are contributing. Burden-sharing. That can be found in Laura Cooper's deposition, pages 33 and 34.

The President mentioned both corruption and burden-sharing to Senator JOHNSON, as you already heard.

It is also important to note that, as Ambassador David Hale testified, foreign aid generally was undergoing a review in 2019. From page 84 of his November 6, 2019, testimony, he said the administration “did not want to take a, sort of, business-as-usual approach to foreign assistance, a feeling that once a country has received a certain assistance package, it's a—it's something that continues forever.”

They didn't talk about that in the 23-hour presentation.

Dr. Fiona Hill confirmed this review and testified on November 23, 2019—I am going to again quote from page 75 of her testimony—that “there had been a directive for a whole-scale review of our foreign policy—foreign policy assistance, and the ties between our foreign policy objectives and that assistance. This had been going on actually for many months.”

So multiple witnesses testified that the President had longstanding concerns and specific concerns about Ukraine. The House managers understandably—understandably—ignore the testimony that took place before their own committees.

In her testimony of October 14, 2019, Dr. Hill testified at pages 118 and 119 of her transcript that she thinks the President has actually quite publicly said that he was very skeptical about corruption in Ukraine. And then she said, again in her testimony, “And, in fact, he's not alone, because everyone has expressed great concerns about corruption in Ukraine.”

Similarly, Ambassador Yovanovitch testified that they all had concerns about corruption in Ukraine, and, as noted on page 142 of her deposition transcript, when asked what she knew about the

President's deep-rooted skepticism about Ukraine's business environment, she answered that President Trump delivered an anti-corruption message to former Ukrainian President Poroshenko in their first meeting in the White House on June 20, 2017.

NSC Senior Director Morrison confirmed on November 19, 2019, at page 63 in his testimony transcript, that—this was during the Volker, Morrison public hearing—that he was aware that the President thought Ukraine had a corruption problem—his words, again—and he continued, “as did many others familiar with Ukraine.”

According to her October 30, 2019, testimony, Special Advisor for Ukraine Negotiations at the State Department, Catherine Croft, also heard the President raise the issue of corruption directly with then-President Poroshenko of Ukraine during a bilateral meeting at the United Nations General Assembly, this time in September of 2017.

Special Advisor Croft testified she also understood the President's concern that “Ukraine is corrupt” because she has been—these are her words—tasked to write a paper to help then NSA head McMaster, General McMaster, make the case to the President in connection with prior—prior—security assistance.

These concerns were entirely justified. When asked—again, a quote from Dr. Hill's October 14, 2019, hearing transcript, “. . . certainly eliminating corruption in Ukraine was one of if not the central goal of [U.S.] foreign policy.”

Does anybody think that one election of one President that ran on a reform platform who finally gets a majority in their legislative body that corruption in Ukraine just evaporates?

That is like looking at this—it goes back to the Mueller report. You can't look at these issues in a vacuum. Virtually every witness agreed that confronting corruption should be at the forefront of U.S. policy.

Now, I think there are some other things we have to understand about the timing. This again is according to the testimony of Tim Morrison in his testimony. This is when President Zelensky was first elected, and these are his words. There was real “concern about whether [he] would be a genuine reformer” and “whether he would genuinely try to root out corruption.”

It was also at this time—this was before the election—unclear whether President Zelensky's party would actually be able to get a workable majority. I think we are all glad that they did, but to say that that has been tested or determined that corruption in Ukraine has been removed, the Anticorruption Court of Ukraine did not commence its work until September 5, 2019, 121 days ago—4 months ago. We are acting as if there was a magic wand, that there was a new election and everything was now fine.

I will not—because we are going to hear more about it—get into some of the meetings the Vice President had. You will hear that in the days ahead.

Manager CROW said this. What is most interesting to me about this was that President Trump was only interested in Ukraine's aid—nobody else. The U.S. provides aid to dozens of countries around the world, lots of partners and allies. He didn't ask about any of them, just Ukraine.

I appreciate your service to our country, I really do. I didn't serve in the military, and I appreciate that, but let's get our facts straight.

That is what Manager CROW said. Here is what actually happened. President Trump has placed holds on aid a number of times. It would just take basic due diligence to figure this out. In September 2019, the administration announced that it was withholding over \$100 million in aid to Afghanistan over concerns about government corruption. In August 2019, President Trump announced that the administration and Seoul were in talks to substantially increase South Korea's share—burden sharing—of the expenses of U.S. military aid support for South Korea.

In June, President Trump cut or paused over \$550 million in foreign aid to El Salvador, Honduras, and Guatemala because those countries were not fairly sharing the burden of preventing mass migrations to the United States.

In June, the administration temporarily paused \$105 million in aid to Lebanon. The administration lifted that hold in December, but one official explained that the administration continually reviews and thoroughly evaluates the effectiveness of all U.S. foreign assistance to ensure that funds go toward activities that further U.S. foreign policy and also further our national security interests, like any administration would.

In September 2018, the administration canceled the \$300 million in military aid to Pakistan because it was not meeting its counter-terrorism obligations.

You didn't hear about any of that from my Democratic colleagues, the House managers. None of that was discussed.

Under Secretary Hale, again, in his transcript said that, quote, aid has been withheld from several countries "across the globe" for various reasons.

Dr. Hill similarly explained that there was a freeze put on all kinds of aid, also a freeze put on assistance because, in the process at the time, there were an awful lot of reviews going on, on foreign assistance. That is the Hill deposition transcript.

She added—this was one of the star witnesses of the managers—she added that, in her experience, stops and starts are sometimes common in foreign assistance and that the Office of Management and Budget holds up dollars all the time, including the path for dollars going to Ukraine in the past. Similarly, Ambassador Volker affirmed that aid gets held up from time to time for a whole assortment of reasons.

Manager CROW told you that the President's Ukraine policy was not strong against Russia, noting that we help our partner fight Russia over there so we don't have to fight Russia here, our friends on the frontlines in trenches and with sneakers. This was following the Russian invasion of Ukraine in 2014, "the United States has stood by Ukraine." Those are your words.

Well, it is true that the United States has stood by Ukraine since the invasion of 2014. Only one President since then took a very concrete step. Some of you supported it. That step included actually providing Ukraine with lethal weapons, including Javelin missiles. That is what President Trump did. Some of you in this very room—some of you managers—actually supported that.

Here is what Ambassador Taylor said that you didn't hear in the 23 hours. You didn't hear this: Javelin missiles are ". . . serious weapons. They will kill Russian tanks."

Ambassador Yovanovitch agreed, stating that Ukraine policy under President Trump actually got stronger, stronger than it was under President Obama.

There were talks about sanctions. President Trump has also imposed heavy sanctions on Russia. President Zelensky thanked him.

The United States has imposed heavy sanctions on Russia. President Zelensky thanked him.

Manager JEFFRIES said that the idea that Trump cares about corruption is laughable. This is what Dr. Hill said. They didn't play this—" . . . eliminating corruption in Ukraine was one of, if not the central goal of U.S. foreign policy" in Ukraine.

Let me say that again. Dr. Hill testified that "eliminating corruption in Ukraine was one of, if [not] the central goal of U.S. foreign policy [in Ukraine]." If you are taking notes, you can find that in the Hill deposition transcript 34:7 through 13.

Dr. Hill also said that she thinks:

. . . [T]he President has actually quite publicly said that he was very skeptical about corruption in Ukraine. And, in fact, he's not alone, because everyone has expressed great concerns about corruption in Ukraine.

Ambassador Yovanovitch—they didn't play this. She also said "we all had concerns."

National Security Director Morrison confirmed that he "was aware that the President thought Ukraine had a corruption problem, as did many other people familiar with it."

I am not going to continue to go over and over and over again the evidence that they did not put before you because we would be here for a lot longer than 24 hours, but to say that the President of the United States was not concerned about burden sharing, that he was not concerned about corruption in Ukraine, the facts from their hearing established exactly the opposite.

The President wasn't concerned about burden sharing? Read all of the records.

And then there was Mr. SCHIFF saying yesterday, maybe we can learn a lot more from our Ukrainian ally.

Let me read you what our Ukrainian ally said. President Zelensky, when asked about these allegations of quid pro quo, he said:

I think you read everything. I think you read the text. We had a good phone call.

These are his words.

It was normal. We spoke about many things. And so, I think, and you read it, that nobody pushed me.

They think you can read minds. I think you look at the words.

I would yield the balance of my time to my colleague, the deputy White House counsel Pat Philbin. He is going to address two issues.

We are going to try to do this in a very systematic way in the days ahead. No. 1, involving issues related to obstruction—because this came at the end of theirs, so I want to do this in a sequence, as it relates to some of the subpoenas that were issued. He is also

going to touch on some of the due process issues, since it was at the end of theirs and is fresh in everybody's minds.

Mr. Chief Justice.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, Majority Leader McCONNELL, Democratic Leader SCHUMER: Good morning. As Mr. Sekulow said, I am going to touch upon a couple of issues related to obstruction and due process, just to hit on some points before we go into more detail in the rest of our presentation.

I would like to start with one of the points that Manager JEFFRIES focused a lot on toward the end of the presentation yesterday relating to the obstruction charge in the second Article of Impeachment because he tried to portray a picture of what he called "blanket defiance," that there was a response from the Trump administration that was simply: We won't cooperate with anything, we won't give you any documents, we won't do anything, and it was blanket defiance really without explanation. That was all there was. It was just an assertion that we wouldn't cooperate.

And he said, and I pulled this from the transcript, that President Trump's objections are not generally rooted in the law and are not legal arguments.

That is simply not true. That is simply not true. In every instance, when there was resistance to a subpoena, resistance to a subpoena for a witness or for documents, there is a legal explanation and justification for it.

For example, they focused a lot on an October 8 letter from the Counsel for the President, Pat Cipollone, but they didn't show you the October 18 letter, which is up on the screen now, [Slide 501] that went through in detail why subpoenas that had been issued by Manager SCHIFF's committees were invalid because the House had not authorized their committees to conduct any such inquiry or to subpoena information in furtherance of it. That is because the House had not taken a vote to authorize the committee to exercise the power of impeachment to issue any compulsory process. I am going to get into that issue in just a moment.

Not only was there a legal explanation—a specific reason for every resistance, not just blanket defiance—every step that the administration took was supported by an opinion from the Department of Justice in the Office of Legal Counsel. Those are explained in our brief, and the major opinion from the Office of Legal Counsel is actually attached in our trial memorandum as an appendix.

Mr. JEFFRIES and other managers also suggested that the Trump administration took the approach of no negotiation, a blanket refusal, and no attempt to accommodate. That is also not true. That is also not true. In the October 8 letter that Mr. Cipollone sent to Speaker PELOSI, it said explicitly: "If the Committees wish to return to the regular order of oversight requests, we stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections and a respect for the separation of powers enshrined in our Constitution."

It was Manager SCHIFF and his committees that did not want to engage in any accommodation process. We had said that we were willing to explore that.

The House managers have also asserted a number of times—this came up in the first long night when we were here until 2 as well—that the Trump administration never asserted executive privilege—never asserted executive privilege. I explained at the time that that is technically true but misleading—misleading because the rationale on which the subpoenas were resisted never depended on an assertion of executive privilege.

Each of the rationales that we have offered—and I will go into one of them today: that the House subpoenas were not authorized—does not depend on making that formal assertion of executive privilege. It is a different legal rationale. The subpoenas weren't authorized because there was no vote, or the subpoenas were to senior advisers to the President who are immune from congressional compulsion, or the subpoenas were forcing executive branch officials to testify without the presence of agency counsel, which is a separate legal infirmity again supported by an opinion from the Office of Legal Counsel at the Department of Justice.

Let me turn to the specific issue of the invalidity of the subpoenas because they weren't supported by a vote of the House authorizing Manager SCHIFF's committee to exercise the power of impeachment to issue compulsory process.

Manager JEFFRIES said that there were no Supreme Court precedents suggesting such a requirement and that every investigation into a Presidential impeachment in history has begun without a vote from the House, and those statements simply aren't accurate.

There is Supreme Court precedent explaining very clearly the principle that a committee of either House of Congress gets its authority only by a resolution from the parent body. *United States v. Rumely* and *Watkins v. United States* make this very clear. And it is common sense. The Constitution assigns the sole power of impeachment to the House of Representatives—to the House, not to any Member and not to a subcommittee—and that authority can be delegated to a committee to use only by a vote of the House.

It would be the same here in the Senate. The Senate has the sole power to try impeachments. But if there were no rules that had been adopted by the Senate, would you think that the majority leader himself could simply decide that he would have a committee receive evidence, handle that, submit a recommendation to the Senate, and that would be the way the trial would occur, without a vote from the Senate to give authority to that committee? I don't think so. It doesn't make sense. That is not the way the Constitution assigns that authority, and it is the same in the House.

Here, there was no vote to authorize the committee to exercise the power of impeachment. And this law has been boiled down by the DC Circuit in *Exxon Corp. v. FTC* to explain it this way: "To issue a valid subpoena, . . . a committee or subcommittee must conform strictly to the resolution establishing its investigatory powers."

There must be a resolution voted on by the parent body to give the committee that power. And the problem here is, there is no standing rule. There was no standing authority giving Manager SCHIFF's committee the authority to use the power of impeachment to issue compulsory process. Rule X of the House discusses legislative authority. It doesn't mention impeachment. That is why, in

every Presidential impeachment in history, the House has initiated the inquiry by voting to give a committee the authority to pursue that inquiry.

Contrary to what Manager JEFFRIES suggested, there has always been, in every Presidential impeachment inquiry, a vote from the full House to authorize the committee, and that is the only way the inquiry begins.

There were three different votes for the impeachment of President Andrew Johnson—in January 1867, in March 1867, and in February 1868.

For President Nixon, Chairman Rodino of the House Judiciary Committee explained—[Slide 502] there was a move to have them issue subpoenas after the Saturday Night Massacre, and they determined that they did not have that authority in the House Judiciary Committee without a vote from the House, and he determined, as he explained, that “such a resolution has always been passed by the House. . . . It is a necessary step if we are to meet our obligations.”

There has been reference to investigatory activities starting in the House Judiciary Committee in the Nixon impeachment prior to the vote from the House, but all that the committee was doing was assembling publicly available information and information that had been gathered by other congressional committees. There was never an attempt to issue compulsory process until there had been a vote by the House to give the House Judiciary Committee that authority.

Similarly, in the Clinton impeachment, there were two votes from the full House to give the House Judiciary Committee authority to proceed: first a vote on resolution 525 just to allow the committee to examine the independent counsel report and make recommendations on how to proceed and then a separate resolution, H. Res. 581, that gave the House Judiciary Committee subpoena authority.

At the time, in the House report, the House Judiciary Committee explained:

Because the issue of impeachment is of such overwhelming importance, the committee decided that it must receive authorization from the full House before proceeding on any further course of action. Because impeachment is delegated solely to the House of Representatives by the Constitution, the full House of Representatives should be involved in critical decisionmaking regarding various stages of impeachment.

Here, the House Democrats skipped over that step completely. What they had instead was simply a press conference with Speaker PELOSI announcing that she was directing committees to proceed with an impeachment inquiry against the President of the United States.

Speaker PELOSI didn't have the authority to delegate the power of the House to those committees on her own. So why does it matter? It matters because the Constitution places that authority in the House and ensures that there is a democratic check on the exercise of that authority and that there will have to be a vote by the full House before there can be a proceeding to start inquiring into impeaching the President of the United States.

One of the things that the Framers were most concerned about in impeachment was the potential for a partisan impeachment—a partisan impeachment that was being pushed merely by a faction—and a way to ensure a check on that is to require democratic accountability from the full House, to have a vote from the entire House before an inquiry can proceed. That didn't happen here. It was only after 5 weeks of hearings that the House decided to have a vote.

What that meant, at the outset, was that all of the subpoenas that were issued under the law of the Supreme Court cases I discussed—all those subpoenas were invalid, and that is what the Trump administration pointed out specifically to the House. That was the reason for not responding to them, because under long-settled precedent, there had to be a vote from the House to give authority, and the administration would not respond to subpoenas that were invalid.

The next point I would like to touch on briefly has to do with due process because we heard from the House managers that they offered the President due process at the House Judiciary Committee. Manager NADLER described it as that he sent the President a letter—the President's counsel a letter—offering to allow the President to participate, and the President's counsel just refused, as if that was the only exchange, and there was just a blanket refusal to participate.

Let me explain what actually happened. I should note before I get into those details that there was a suggestion also that due process is not required in the House proceeding and that it is simply a privilege, but that wasn't the position Manager NADLER has taken in the past. In 2016, he said:

The power of impeachment is a solemn responsibility, assigned to the House by the Constitution, and to this committee by our peers. That responsibility demands a rigorous level of due process.

In the Clinton impeachment in 1998, he explained:

What does due process mean? It means, among other things, the right to confront the witnesses against you, to call your own witnesses, and to have the assistance of counsel.

Now, I think we all know that all of those rights were denied to the President in the first two rounds of hearings—the first round of secret hearings in the basement bunker where Manager SCHIFF had three committees holding hearings and then in a round of public hearings to take the testimony that had been screened in the basement bunker and have it in a public televised setting, which was totally unprecedented in any Presidential impeachment inquiry—in both the Clinton and the Nixon inquiries. For every public hearing, the President was allowed to be represented by counsel and cross-examine witnesses.

But the House managers say that is all right because when we got to the third round of hearings, after people had testified twice, then we were going to allow the President to have some due process. But the way that played out was this: First, they scheduled a hearing for December 4 that was going to hear solely from law professors. By the time they wanted the President to commit whether he would participate, it was unclear—they couldn't specify how many law professors or who the law professors were going to be,

and the President's counsel wrote back and declined to participate in that.

But at the same time, Manager NADLER had asked what other rights under the House Resolution 660—the rules governing the House inquiry—the President would like to exercise. The President's counsel wrote back asking specific questions in order to be able to make an informed decision and asked whether you intend to allow fact witnesses to be called, including the witnesses who had been requested by HPSCI Ranking Member NUNES; whether you intend to allow members of the Judiciary Committee and the President's counsel a right to cross-examine fact witnesses; and whether your Republican colleagues on the Judiciary Committee will be allowed to call witnesses of their choosing. Manager NADLER didn't respond to that letter. There wasn't information provided.

We had discussions with the staff on the Judiciary Committee to try to find out what were the plans and what were the hearings going to be like. The way the week played out, on December 4, there was the hearing with the law professors—the first hearing before the Judiciary Committee—and on December 5, the morning of December 5, Speaker PELOSI announced the conclusion of the entire Judiciary Committee process because she announced that she was directing Chairman NADLER to draft Articles of Impeachment. So the conclusion of the whole process was already set.

Then, after the close of business on the 5th, we learned from the staff that the committee had no plans, other than a hearing on December 9, to hear from staffers who had prepared HPSCI committee reports. They had no plans to have other hearings, no plans to hear from fact witnesses, and no plans to do any factual investigation.

So the President was given a choice of participating in a process that was going to already have the outcome determined—the Speaker had already said Articles of Impeachment were going to be drafted—and there were no plans to hear from any fact witnesses. That is not due process. That is why the President declined to participate in that process, because the Judiciary Committee had already decided they were going to accept an ex parte record developed in Manager SCHIFF's process, and there was no point in participating in that. So the idea that there was due process offered to the President is simply not accurate.

The entire proceedings in the House, from the time of the September 4 press conference until the Judiciary Committee began marking up Articles of Impeachment on December 11, lasted 78 days. It is the fastest investigatory process for a Presidential impeachment in history.

For 71 days of that process, for 71 days of the hearing and taking of depositions and hearing testimony, the President was completely locked out. He couldn't be represented by counsel. He couldn't cross-examine witnesses. He couldn't present evidence. He couldn't present witnesses for 71 of the 78 days. That is not due process.

It goes to a point that Mr. Cipollone raised earlier. Why would you have a process like that? What does that tell you about the process?

As we pointed out a couple of times, cross-examination in our legal system is regarded as the greatest legal engine ever invented for the discovery of truth. It is essential. The Supreme Court has said in *Goldberg v. Kelly*, for any determination that is important, that requires determining facts, cross-examination has been one of the keys for due process.

Why did they design a mechanism here where the President was locked out and denied the ability to cross-examine witnesses? It is because they weren't really interested in getting at the facts and the truth. They had a timetable to meet. They wanted to have impeachment done by Christmas, and that is what they were striving to do.

Now, as a slight shift in gears, I want to touch on one last point before I yield to one of my colleagues, and that relates to the whistleblower—the whistleblower, whom we haven't heard that much about—who started all of this. We know from a letter that the inspector general of the intelligence community sent that he thought the whistleblower had political bias. We don't know exactly what the political bias was because the inspector general testified in the House committee in an executive session, and that transcript is still secret. It wasn't transmitted up to the House Judiciary Committee. We haven't seen it. We don't know what is in it. We don't know what he was asked and what he revealed about the whistleblower.

Now, you would think that before going forward with an impeachment proceeding against the President of the United States, that you would want to find out something about the complaint that had started this, because motivations, bias, reasons for wanting to bring this complaint could be relevant. But there wasn't any inquiry into that.

Recent reports, public reports suggest that, potentially, the whistleblower was an intelligence community staffer who worked with then-Vice President Biden on Ukraine matters, which, if true, would suggest an even greater reason for wanting to know about potential bias or motive for the whistleblower.

At first, when things started, it seemed like everyone agreed that we should hear from the whistleblower, including Manager SCHIFF.

I think we have what he said.

(Text of Videotape presentation:)

Mr. SCHIFF. But, yes, we would love to talk directly to the whistleblower.

We will get the unfiltered testimony from the whistleblower.

We don't need the whistleblower.

Mr. Counsel PHILBIN. Now, what changed? At first, Manager SCHIFF agreed we should hear the unfiltered testimony from the whistleblower, but then he changed his mind, and he suggested that it was because now we had the transcript. But the second clip there was from September 29, which was 4 days after the transcript had been released. But there was something that came into play, and that was something Manager SCHIFF had said earlier when he was asked about whether he had spoken to the whistleblower.

(Text of Videotape presentation:)

Mr. SCHIFF. We have not spoken directly with the whistleblower. We would like to.

Mr. Counsel PHILBIN. It turned out that that statement was not truthful.

Around October 2 or 3, it was exposed that Manager SCHIFF's staff, at least, had spoken with the whistleblower before the whistleblower filed the complaint and potentially had given some guidance of some sort to the whistleblower, and after that point, it became critical to shut down any inquiry into the whistleblower.

During the House hearings, of course, Manager SCHIFF was in charge. He was chairing the hearings. That creates a real problem from a due-process perspective and from a search-for-the truth perspective because he was an interested fact witness at that point. He had a reason—since he had been caught out saying something that wasn't truthful about that contact—to not want that inquiry, and it was he who ensured that there wasn't any inquiry into that.

I think this is relevant here because, as you have heard from my colleagues, a lot of what we have heard over the past 23 hours, over the past 3 days, has been from Chairman SCHIFF. He has been telling you things like what is in President Trump's head and what is in President Zelensky's head. It is all his interpretation of the facts and the evidence, trying to pull inferences out of things.

There is another statement that Chairman SCHIFF made that I think we have on video.

(Text of Videotape presentation:)

REPORTER. But you admit all you have right now is a circumstantial case?

Mr. SCHIFF. Actually, no, Chuck. I can tell you that the case is more than that. And I can't go into the particulars, but there is more than circumstantial evidence now. So, again, I think—

REPORTER. So you have seen direct evidence of collusion?

Mr. SCHIFF. I don't want to go into specifics, but I will say that there is evidence that is not circumstantial and is very much worthy of investigation.

Mr. Counsel PHILBIN. So that was in March of 2017, when Chairman SCHIFF, as ranking member of HPSCI, was telling the public—the American public—that he had more than circumstantial evidence, through his position on HPSCI, that President Trump's campaign had colluded with Russia.

Now, of course, as Mr. Sekulow pointed out, after \$32 million and over 500 search warrants—roughly 500 search warrants—the Mueller report determined that there was no collusion, that that wasn't true.

We wanted to point these things out simply for this reason: Chairman SCHIFF has made so much of the House's case about the credibility of interpretations that the House managers want to place on not hard evidence but on inferences. They want to tell you what President Trump thought. They want to tell you: Don't believe what Zelensky says; we can tell you what Zelensky actually thought. Don't believe what the other Ukrainians actually said about not being pressured; we can tell you what they actually thought.

This is very relevant to know whether the assessments of evidence that he presented in the past are accurate. We would submit they have not been, and that that is relevant for your consideration.

With that, I yield to my colleague, Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Members of the Senate, I have good news: just a few more minutes from us today. But I want to point out a couple of points.

No. 1, just to follow up on what Mr. Philbin just told you, do you know who else didn't show up in the Judiciary Committee to answer questions about his report in the way Ken Starr did in the Clinton impeachment? Ken Starr was subjected to cross-examination by the President's counsel. Do you know who didn't show up in the Judiciary Committee? Chairman SCHIFF. He did not show up. He did not give Chairman NADLER the respect of appearing before his committee and answering questions from his committee. He did send staff, but why didn't he show up? That is another good question you should think about.

They have come here today, and they basically said: Let's cancel an election over a meeting with Ukraine. And, as my colleagues have shown, they failed to give you key facts about a meeting and lots of other evidence that they produced themselves.

Let's talk about the meeting. They said it was all about an invitation to a meeting. If you look at the first transcript—at the first transcript—the President said to President Zelensky: [Slide 503]

When you're settled and you're ready, I'd like to invite you to the White House. We'll have a lot of things to talk about, but we are with you all the way.

President Zelensky said:

Well, thank you for the invitation. We accept the invitation, and look forward to the visit. Thank you again.

Then, President Zelensky got a letter on May 29 inviting him, again, to come to the White House. Then, going back to the transcript of the July 25 call—again, a part of the call that they didn't talk to you about—President Trump said:

Whenever you would like to come to the White House, feel free to call. Give us a date, and we'll work that out. I look forward to seeing you.

President Zelensky replied: [Slide 504]

Thank you very much. I would be very happy to come and would be happy to meet with you personally and get to know you better. I am looking forward to our meeting and I also would like to invite you to visit Ukraine and come to the city of Kyiv which is a beautiful city. We have a beautiful country which would welcome you.

Then he said:

On the other hand, I believe that on September 1 we will be in Poland and we can meet in Poland hopefully.

Now, they didn't read to you that part of the transcript, and they didn't tell you what happened. A meeting in Poland was scheduled. President Trump was scheduled to go to Poland. He was scheduled to meet with President Zelensky.

What happened? President Trump couldn't go to Poland. Why? Because there was a hurricane in the United States. He thought it would be better for him to stay here to help deal with the hurricane. So the Vice President went.

Why didn't they tell you that? Why didn't they tell you that President Zelensky suggested: Hey, how about we meet in Poland?

Why didn't they tell you that that meeting was scheduled and had to be canceled for a hurricane. Why? That was our first question that we asked you. You heard a lot of facts that they didn't

tell you—facts that are critical, facts that they know completely collapse their case on the facts.

Now, you heard a lot from them: You are not going to hear facts from the President's lawyers. They are not going to talk to you about the facts.

That is all we have done today. Ask yourself—ask yourself: Given the facts you have heard today that they didn't tell you, who doesn't want to talk about the facts? Who doesn't want to talk about the facts?

The American people paid a lot of money for those facts. They paid a lot of money for this investigation. And they didn't bother to tell you. Ask yourself why. If they don't want to be fair to the President, at least out of respect for all of you, they should be fair to you. They should tell you these things. And when they don't tell you these things, it means something. So think about that. Impeachment shouldn't be a shell game. They should give you the facts.

That is all we have for today. We ask you, out of respect, to think about it. Think about whether what you have heard would really suggest to anybody anything other than it would be a completely irresponsible abuse of power to do what they are asking you to do—to stop an election, to interfere in an election, and then to remove the President of the United States from the ballot.

Let the people decide for themselves. That is what the Founders wanted. That is what we should all want.

With that, I thank you for your attention, and I look forward to seeing you on Monday.

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT UNTIL MONDAY, JANUARY 27, 2020, AT 1 P.M.

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m., Monday, January 27, and that this order also constitute the adjournment of the Senate.

There being no objection, the Senate, at 12:01 p.m., adjourned until Monday, January 27, 2020, at 1 p.m.

[From the CONGRESSIONAL RECORD, January 27, 2020]

The Senate met at 1:05 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will lead us in prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Lord, through all the generations, You have been our mighty God. As millions mourn the deaths of Kobe and Gianna Bryant and those who died with them, we think about life's brevity, uncertainty, and legacy. Remind us that we all have a limited time on Earth to leave the world better than we found it.

As this impeachment process unfolds, give our Senators the desire to make the most of their time on Earth. Teach them how to live, O God, and lead them along the path of honesty. May they hear the words of Jesus of Nazareth reverberating down the corridors of the centuries: "And you shall know the truth, and the truth shall make you free."

And Lord, thank You for giving our Chief Justice another birthday. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Without objection, it is so ordered.

The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. Mr. Chief Justice, as the Chaplain has indicated, on behalf of all of us, happy birthday. I am sure this is exactly how you had planned to celebrate the day.

The CHIEF JUSTICE. Thank you very much for those kind wishes, and thank you to all the Senators for not asking for the yeas and nays.

(Laughter.)

ORDER OF PROCEDURE

Mr. McCONNELL. For the information of all Senators, we should expect to break every 2 or 3 hours and then at 6 o'clock a break for dinner.

And with that, Mr. Chief Justice, I yield the floor.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 483, the counsel for the President have 22 hours and 5 minutes remaining to make the presentation of their case. The Senate will now hear you.

The Senate will now hear you, Mr. Sekulow.

OPENING STATEMENT—CONTINUED

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, managers, what we have done on Saturday is the pattern that we are going to continue today, as far as how we are going to deal with the case. We deal with transcript evidence. We deal with publicly available information. We do not deal with speculation, allegations that are not based on evidentiary standards at all.

We are going to highlight some of those very facts we talked about very quickly on Saturday. You are going to hear more about that. I want to give you a little bit of an overview of what we plan to do today in our presentation.

You will hear from a number of lawyers. Each one of these lawyers will be addressing a particular aspect of the President's case. I will introduce the issues that they are going to discuss, and, then, that individual will come up and make their presentation. We want to do this on an expeditious but yet thorough basis.

Let me start with, just for a very brief few moments, taking a look at where we were. One of the things that became very clear to us as we looked at the presentation from the House managers was the lack of focus on that July 25 transcript. That is because the transcript actually doesn't say what they would like it to say. We have heard—and you will hear more—about that in the days ahead. We know about Mr. SCHIFF's version of the transcript. You heard it. You saw it.

I want to keep coming back to facts—facts that are undisputed. The President, in his conversation, was clear on a number of points, but so was President Zelensky. I mentioned that at the close of my arguments earlier, that it was President Zelensky who said: No pressure, I didn't feel any pressure.

And, again, as this kind of reading of minds of what people were saying, I think we need to look at what they actually said and how it is backed up.

It is our position as the President's counsel that the President was at all time acting under his constitutional authority, under his legal authority, in our national interest, and pursuant to his oath of office. Asking a foreign leader to get to the bottom of issues of corruption is not a violation of an oath.

It was interesting because there was a lot of discussion the other day about Lieutenant Colonel Vindman, and one of the things that we reiterate is that he himself said that he did not know if there was anything of crime or anything of that nature. He had deep policy concerns. I think that is what this is really about—deep policy concerns, deep policy differences.

We live in a constitutional Republic where you have deep policy concerns and deep differences. That should not be the basis of an impeachment. If the bar of impeachment has now reached that level, then, for the sake of the Republic, the danger that puts not just this body but our entire constitutional framework in is unimaginable. Every time there is a policy difference of significance or an approach difference of significance about a policy, are we going to start an impeachment proceeding?

As I said earlier, I don't think this was about just a phone call. There was a pattern and practice of attempts over a 3-year period

to not only interfere with the President's capability to govern—which, by the way, they were completely unsuccessful at; just look at the state of where we are as a country—but also interfere with the constitutional framework.

I am going to say this because I want to be brief. We are going to have a series of lawyers address you. So it will not be one lawyer for hours and hours. We are going to have a series of lawyers address you on a variety of issues. This is how we envision the President's defense going. We thought it would be appropriate to start with an overview, if you will, of some of the significant historical issues, constitutional issues, involving impeachment proceedings, since we don't have a long history of that. I think that is a good thing for the country that we don't, and I think that we would all agree. But if this becomes the new standard, the future is going to look a lot different.

We are going to hear next from my cocounsel Judge Kenneth Starr. Judge Starr is a former judge for the U.S. Court of Appeals for the District of Columbia. He served as the 39th Solicitor General of the United States, arguing cases before the Supreme Court of the United States on behalf of the United States.

I had the privilege of arguing a case alongside Judge Starr—we were talking about this earlier—many years ago. He also served as the independent counsel during the Clinton Presidency and author of the Starr report. He testified for almost 12 hours before the Judiciary Committee with regard to that report. Judge Starr is very familiar with this process. He is going to address a series of deficiencies, which are legal issues with regard to articles I and II—constitutional implications, historical implications, and legal implications of where this case now stands.

I would like to yield my time right now to, if it please the Chief Justice, Ken Starr.

The CHIEF JUSTICE. Mr. Starr.

Mr. Counsel STARR. Thank you.

Mr. Chief Justice, House Managers, and staff, Members of the Senate, the majority leader, and the minority leader, at the beginning of these proceedings on January 16, the Chief Justice administered the oath of office to the Members of this body and then again on Tuesday. In doing so, the Chief Justice was honoring the words of our Constitution, article I, section 3. We all know the first sentence of that article by heart: [Slide 505] "The Senate shall have the sole Power to try all Impeachments." But then the constitutional text goes on to say this: "When sitting for that Purpose, they shall be on Oath Or Affirmation." That oath or affirmation, in turn, requires each Member of the Senate to do impartial justice.

This constitutionally administered oath or affirmation has been given in every proceeding in this body since 1798. Indeed, to signify the importance of the occasion, the Senate's more recent traditions call for you, as you did, to sign the book. And that book is not simply part of the record; it is entrusted to the National Archives. In contrast, Members of the House of Representatives do not take an oath in connection with impeachment. The Framers of our Constitution well knew when an oath or affirmation should be required—the Senate, yes; the House, no. Thus, each Member of the world's greatest deliberative body now has special—indeed

unique—duties and obligations imposed under our founding document.

During the Clinton impeachment trial 21 years ago in this Chamber, the Chief Justice of the United States ruled in response to an objection that was interposed by Senator Tom Harkin of Iowa. The Senators are not sitting as jurors, Senator Harkin noted, and the Chief Justice agreed with that proposition. Rather, the Senate is a court. In fact, history teaches us that for literally decades, this body was referred to in this context as the High Court of Impeachment. So we are not a legislative Chamber during these proceedings. We are in a tribunal. We are in court.

Alexander Hamilton has been quoted frequently in these proceedings, but in Federalist 78, he was describing the role of courts—your role—and in doing so, he distinguished between what he called the exercise of judgment on the one hand, which is what courts do, and the exercise of will or policy preferences, if you will, on the other hand. That is what legislative bodies do.

According to Hamilton, courts were to be, in his word, “impartial.” There is that word again. You know, that is a daunting task for judges struggling to do the right thing, to be impartial—equal justice under law. It is certainly hard in life to be impartial. In politics, it is not even asked of one to be impartial. But that is the task that the Constitution chose to impose upon each of you.

Significantly, in this particular juncture in America’s history, the Senate is being called to sit as the High Court of Impeachment all too frequently. Indeed, we are living in what I think can aptly be described as the “age of impeachment.” In the House, resolution after resolution, month after month, has called for the President’s impeachment.

How did we get here, with Presidential impeachment invoked frequently in its inherently destabilizing, as well as acrimonious way? Briefly told, the story begins 42 years ago.

In the wake of the long national nightmare of Watergate, Congress and President Jimmy Carter collaboratively ushered in a new chapter in America’s constitutional history. Together, in full agreement, they enacted the independent counsel provisions of the Ethics in Government Act of 1978. But the new chapter was not simply the age of independent counsels; it became, unbeknownst to the American people, the age of impeachment.

During my service in the Reagan administration as Counsel and Chief of Staff to Attorney General William French Smith, the Justice Department took the position that, however well-intentioned, the independent counsel provisions were unconstitutional. Why? In the view of the Department, those provisions intruded into the rightful domain and prerogative of the executive branch of the Presidency.

The Justice Department’s position was eventually rejected by the Supreme Court, but most importantly, in helping us understand this new era in our country’s history, Justice Antonin Scalia was in deep dissent. Among his stinging criticisms of that law, Justice Scalia wrote this: [Slide 506] “The context of this statute is acrid with the smell of threatened impeachment.” Impeachment.

Justice Scalia echoed the criticism of the court in which I was serving at the time, the District of Columbia Circuit, which had ac-

tually struck down the law as unconstitutional in a very impressive opinion by renowned Judge Laurence Silberman.

Why would Justice Scalia refer to impeachment? This was a reform measure. There would be no more Saturday Night Massacres—the firing of Special Prosecutor, as he was called, Archibald Cox by President Nixon. Government would now be better, more honest, greater accountability, and the independent counsel would be protected. But the word “impeachment” haunts that dissenting opinion, and it is not hard to discover why—because the statute, by its terms, expressly directed the independent counsel to become, in effect, an agent of the House of Representatives. And to what end? To report to the House of Representatives when a very low threshold of information was received that an impeachable offense, left undefined, may have been committed.

To paraphrase President Clinton’s very able counsel at the time, Bernie Nussbaum, this statute is a dagger aimed at the heart of the Presidency. President Clinton, nonetheless, signed the reauthorized measure into law, and the Nation then went through the long process known as Whitewater, resulting in the findings by the office which I led, the Office of Independent Counsel, and a written report to the House of Representatives. That referral to Congress was stipulated in the Ethics in Government Act of 1978.

To put it mildly, Democrats were very upset about what had happened. They then joined Republicans across the aisle who, for their part, had been outraged by an earlier independent counsel investigation, that of a very distinguished former judge, Lawrence Walsh.

During the Reagan administration, Judge Walsh’s investigation into what became known to the country as Iran-Contra spawned enormous criticism on the Republican side of the aisle, both as to the investigation itself but also as to statute.

The acrimony surrounding Iran-Contra and then the impeachment and the trial and President Clinton’s acquittal by this body led inexorably to the end of the independent counsel era. Enough was enough. Living through that wildly controversial, 21-year, bold experiment with the independent counsel statute, Congress, in a bipartisan way, had a change of heart. It allowed the law to expire in accordance with its terms in 1999.

That would-be and well-intentioned reform measure died a quiet and uneventful death, and it was promptly replaced by Justice Department internal regulations promulgated by Attorney General Janet Reno during the waning months of the President Clinton administration. One can review those regulations and see no reference to impeachment—none. No longer were the poison pill provisions of Presidential impeachment part of America’s legal landscape. They were gone. The Reno regulation seemed to signal a return to traditional norms. Impeachment would no longer be embedded in the actual laws of the land but returned to the language of the Constitution.

In the meantime, America’s constitutional DNA and its political culture had changed. Even with the dawn of the new century, the 21st century, “impeachment” remained on the lips of countless Americans and echoed frequently in the people’s House. The impeachment habit proved to be hard to kick.

Ironically, while this was happening here at home, across the Atlantic, the use of impeachment as a weapon disappeared. In the United Kingdom, from which, of course, we inherited the process, impeachment was first used more than two centuries before those first settlers crossed the Atlantic. But upon thoughtful examination, a number of modern-day parliamentary committees looked and found impeachment to be obsolete.

Among other criticisms, Members of Parliament came to the view that the practice which had last been attempted in Britain in 1868 failed to meet modern procedural standards of fairness—fairness.

As Sir William McKay recently remarked: “Impeachment in Britain is dead.”

Yet, here at home, in the world’s longest standing constitutional Republic, instead of a once-in-a-century phenomenon, which it had been, Presidential impeachment has become a weapon to be wielded against one’s political opponent.

In her thoughtful Wall Street Journal op-ed a week ago, Saturday, Peggy Noonan wrote this:

Impeachment has now been normalized. It will not be a once-in-a-generation act but an every-administration act. The Democrats will regret it when the Republicans are handing out the pens [for the signing ceremony].

When we look back down the corridors of time, we see that for almost our first century as a constitutional republic the sword of Presidential impeachment remained sheathed. Had there been controversial Presidents? Oh, yes, indeed. Think of John Adams and the Alien and Sedition Acts. Think of Andrew Jackson and Henry Clay. Were partisan passions occasionally inflamed during that first century? Of course.

And lest there be any doubt, the early Congresses full well knew how to summon impeachment to the floor, including against a Member of this body—Senator William Blount, of Tennessee. During the Jefferson administration, the unsuccessful impeachment of Justice Samuel Chase—a surly and partial jurist, who was, nonetheless, acquitted by this Chamber—became an early landmark in maintaining the treasured independence of our Federal judiciary.

It took the national convulsion of the Civil War, the assassination of Mr. Lincoln, and the counter-reconstruction measures aggressively pursued by Mr. Lincoln’s successor, Andrew Johnson, to bring about the Nation’s very first Presidential impeachment. Famously, of course, your predecessors in this High Court of Impeachment acquitted the unpopular and controversial Johnson but only by virtue of Senators from the party of Lincoln breaking ranks.

It was over a century later that the Nation returned to the tumultuous world of Presidential impeachment, necessitated by the rank criminality of the Nixon administration. In light of the rapidly unfolding facts, including uncovered by the Senate select committee, [Slide 507] in an overwhelmingly bipartisan vote of 410 to 4, the House of Representatives authorized an impeachment inquiry; and, in 1974, the House Judiciary Committee, after lengthy hearings, voted again in a bipartisan manner to impeach the President of the United States. Importantly, President Nixon’s own party was slowly but inexorably moving toward favoring the removal of their chosen leader from the Nation’s highest office, who had just won reelection by a landslide.

It bears emphasis before this high court that this was the first Presidential impeachment in over 100 years. It also bears emphasis that it was powerfully bipartisan. And it was not just the vote to authorize the impeachment inquiry. Indeed, the House Judiciary chair, Peter Rodino, of New Jersey, was insistent that, to be accepted by the American people, the process had to be bipartisan.

Like war, impeachment is hell or, at least, Presidential impeachment is hell. Those of us who lived through the Clinton impeachment, including Members of this body, full well understand that a Presidential impeachment is tantamount to domestic war. Albeit thankfully protected by our beloved First Amendment, it is a war of words and a war of ideas, but it is filled with acrimony, and it divides the country like nothing else. Those of us who lived through the Clinton impeachment understand that in a deep and personal way.

Now, in contrast, wisely and judicially conducted, unlike in the United Kingdom, impeachment remains a vital and appropriate tool in our country to serve as a check with respect to the Federal judiciary. After all, in the Constitution's brilliant structural design, Federal judges know, as this body full well knows from its daily work, of a pivotally important feature—independence from politics—exactly what Alexander Hamilton was talking about in Federalist 78: during the Constitution's term, good behavior; in practical effect, life tenure. Impeachment is, thus, a very important protection for we the people against what could be serious article III wrongdoing within that branch.

And so it is that, when you count, of the 63 impeachment inquiries authorized by the House of Representatives over our history, only 8 have actually been convicted in this high court and removed from office, and each and every one has been a Federal judge.

This history leads me to reflect on the nature of your weighty responsibilities here in this high court as judges in the context of Presidential impeachment—the fourth Presidential impeachment. I am counting the Nixon proceedings in our Nation's history, but the third over the past half century.

And I respectfully submit that the Senate, in its wisdom, would do well in its deliberations to guide the Nation in this world's greatest deliberative body to return to our country's traditions when Presidential impeachment was truly a measure of last resort. Members of this body can help and in this very proceeding restore our constitutional and historical traditions, above all, by returning to the text of the Constitution itself. It can do so by its example here in these proceedings in weaving the tapestry of what can rightly be called the common law of Presidential impeachment. That is what courts do. They weave the common law. There are indications within the constitutional text—I will come to our history—so that this fundamental question is appropriate to be asked—you are familiar with the arguments: Was there a crime or other violation of established law alleged?

So let's turn to the text.

Throughout the Constitution's description of impeachment, the text speaks always—always—without exception, in terms of crimes. It begins, of course, with treason—the greatest of crimes against the state and against we the people, but so misused as a bludgeon

and parliamentary experience, to lead the Founders to actually define the term in the Constitution itself. Bribery—an iniquitous form of moral and legal corruption and the basis of so many of the 63 impeachment proceedings over the course of our history—again, almost all of them against judges. And then the mysterious terms—other high crimes and misdemeanors. Once again, the language is employing the language of crimes. The Constitution is speaking to us in terms of crimes.

Each of those references, when you count them—count seven, count eight—supports the conclusion that impeachments should be evaluated in terms of offenses against established law but especially with respect to the Presidency, where the Constitution requires the Chief Justice of the United States and not a political officer—no matter how honest, no matter how impartial—to preside at trial. Guided by history, the Framers made a deliberate and wise choice to cabin, to constrain, to limit the power of impeachment.

And so it was, on the very eve of the impeachment of President Andrew Johnson, that the eminent scholar and dean of Columbia Law School, Theodore Dwight, wrote this: “The weight of authority is that no impeachment will lie except for a true crime—a breach of the law—which would be the subject of indictment.” I am not making that argument. I am noting what he is saying. He didn’t over-argue the case. He said “the weight of authority,” “the weight of authority.”

And so this issue is a weighty one. Has the House of Representatives, with all due respect, in these two Articles of Impeachment charged a crime or a violation of established law or not? This is—I don’t want to over-argue—an appropriate and weighty consideration for the Senate but especially as I am trying to emphasize in the case not of a Federal judge but of the President. Courts consider prudential factors, and there is a huge prudential factor that this trial is occurring in an election year, when we the people, in a matter of months, will go to the polls.

In developing the common law of Presidential impeachment, this threshold factor, consistent with the constitutional text, consistent with the Nation’s history and Presidential impeachments, as I will seek to demonstrate, serves as a clarifying and stabilizing element. It increases predictability—to do what?—to reduce the profound danger that a Presidential impeachment will be dominated by partisan considerations—precisely the evil that the Framers warned about.

And so to history.

History bears out the point. The Nation’s most recent experience—the Clinton impeachment—even though severely and roundly criticized, charged crimes. These were crimes proven in the crucible of the House of Representatives’ debate beyond any reasonable observer’s doubt.

So too the Nixon impeachment. The articles charged crimes. What about article II in Nixon, which is sometimes referred to as abuse of power? Was that the abuse of power article—the precursor to article I that is before this court? Not at all. When one returns to article II in Nixon—approved by a bipartisan House Judiciary Committee—article II of Nixon sets forth a deeply troubling story

of numerous crimes—not one, not two, numerous crimes—carried out at the direction of the President himself.

And so the appropriate question: Were crimes alleged in the articles of the common law of Presidential impeachment? In Nixon, yes. In Clinton, yes. Here, no—a factor to be considered as the judges of the high court.

Come, as you will, individually to your judgment.

Even in the political cauldron of the Andrew Johnson impeachment, article XI charged a violation of the controversial Tenure of Office Act. You are familiar with it. And that act warned expressly the Oval Office that its violation would institute a high misdemeanor, employing the very language of constitutionally cognizable crimes.

This history represents, and I believe, may it please the court, it embodies the common law of Presidential impeachment. These are facts gleaned from the constitutional text and from the gloss of the Nation's history.

And under this view, the commission of an alleged crime, the violation of established law, can appropriately be considered, again, a weighty and an important consideration and element of a historically supportable Presidential impeachment.

Will law professors agree with this? No, but with all due respect to the academy, this is not an academic gathering. We are in court. We are not just in court. With all due respect to the Chief Justice and the Supreme Court of the United States, we are in democracy's ultimate court.

And the better constitutional answer to the question is provided by a rigorous and faithful examination of the constitutional text and then looking faithfully and respectfully to our history.

The very divisive Clinton impeachment demonstrates that, while highly relevant, the commission of a crime is by no means sufficient to warrant the removal of our duly elected President. Why?

This body knows. We appoint judges and you confirm them and they are there for life. Not Presidents. And the Presidency is unique. The Presidency stands alone in our constitutional framework.

Before he became the Chief Justice of the United States, John Marshall, then sitting as a Member of the people's House, made a speech on the floor of the House, and there he said this:

The President is the sole organ of the Nation in its external relations, and its sole representative with foreign nations.

If that sounds like hyperbole, it has been embraced over decades by the Supreme Court of the United States, by Justices appointed by many different Presidents. The Presidency is unique. There is no other system quite like ours, and it has served us well.

And so as to the Presidency, impeachment and removal not only overturns a national election and perhaps profoundly affects an upcoming election, in the words of Yale's Akhil Amar, it entails a risk, and these are Akhil's words, Professor Amar's, "a grave disruption of the government." Professor Amar penned those words in connection with the Clinton impeachment. "Grave disruption of the government." Regardless of what the President has done, "grave disruption."

We will all agree that the Presidents, under the text of the Constitution and its amendments, are to serve out their term absent a genuine national consensus, reflected by the two-thirds majority requirement of this court, that the President must go away. Two-thirds. In politics and in impeachment, that is called a landslide.

Here, I respectfully submit to the court that all fairminded persons will surely agree there is no national consensus. We might wish for one, but there isn't. To the contrary, for the first time in America's modern history, not a single House Member of the President's party supported either of the two Articles of Impeachment—not one, not in committee, not on the House floor.

And that pivotal fact puts in bold relief the Peter Rodino principle—call it the Rodino rule—impeachment must be bipartisan in nature.

Again, sitting as a court, this body should signal to the Nation the return to our traditions—bipartisan impeachments.

What is the alternative? Will the President be King? Do oversight. The tradition of oversight—an enormous check on Presidential power throughout our history, and it continues available today.

In Iran-Contra, no impeachment was undertaken. The Speaker of the House, a Democrat, Jim Wright from Texas, from Fort Worth, where the West begins, knew better. He said no. But as befits the age of impeachment, a House resolution to impeach President Ronald Reagan was introduced. It was filed, and the effort to impeach President Reagan was supported by a leading law professor whose name you would well recognize, and you will hear it again this evening from Professor Dershowitz. I will leave to it him to identify the learned professor. But the Speaker of the people's House, emulating Peter Rodino, said no.

So I, respectfully, submit that the Senate should close this chapter, this idiosyncratic chapter, on this increasingly disruptive act, this era, this age of resorting to the Constitution's ultimate democratic weapon for the Presidency. Let the people decide.

There was a great Justice who sat for 30 years, Justice John Harlan, in the mid-century of the 20th century. And in a lawsuit involving a very basic question: Can citizens whose rights have clearly been violated by Federal law enforcement agencies and agents bring an action for damages when Congress has not so provided—no law that gave the wounded citizen a right to redress through damages?

And Justice Harlan, in a magnificent concurring opinion in *Bivens v. Six Unnamed Federal Agents*, suggested that courts—here you are—should take into consideration in reaching its judgment—their judgment—what he called factors counseling restraint.

He was somewhat reluctant to say that we, the Supreme Court, should grant this right, that we should create it when Congress hasn't acted and Congress could have acted, but it hadn't. But he reluctantly came to the conclusion that the Constitution itself empowered the Federal courts to create this right for our injured citizens, to give them redress, not just an injunctive relief but damages, money recovery, for violations of their constitutional rights. Factors counseling restraint. And he addressed them, and he came to the view—it was so honest—and said: I came to the case with

a different view, but I changed my mind and voted in favor of the Bivens family having redress against the Federal agents who had violated their rights, judging in its most impartial, elegant sense.

I am going to draw from Justice Harlan's matrix of factors counseling restraint and simply identify these. I think there may be others.

The articles do not charge a crime for violations established. I am suggesting it is a relevant factor. I think it is a weighty factor, when we come to Presidential impeachment, not judicial impeachment.

Secondly, the articles come to you with no bipartisan support. They come to you as a violation of what I am dubbing the Rodino rule.

And third, as I will now discuss, the pivotally important issue of process, the second Article of Impeachment: Obstruction of Congress.

This court is very familiar with *United States v. Nixon*. Its unanimity in recognizing the President's profound interest in confidentiality, regardless of the world view or philosophy of the justice, the Justices were unanimous. This isn't just a contrivance; it is built into the very nature of our constitutional order. So let me comment, briefly.

This constitutionally based recognition of executive privilege and then companion privileges—the deliberative process privilege, the immunity of close Presidential advisers from being summoned to testify—these are all firmly established in our law.

If there is a dispute between the people's House and the President of the United States over the availability of documents or witnesses—and there is in each and every administration—then go to court. It really is as simple as that. I don't need to belabor the point.

But here is the point I would like to emphasize. Frequently, the Justice Department advises the President of the United States that the protection of the Presidency calls—whatever the President might want to do as a political matter, as an accommodation in the spirit of comity—to protect privileged conversations and communications.

I have heard it, in my two tours of duty at the Justice Department: Don't release the documents, Mr. President. If you do, you are injuring the Presidency. Go to court.

We have heard concerns about the length of time that the litigation might take. Those of us who have litigated know that sometimes litigation does take longer than we would like. Justice delayed is justice denied. We could all agree with that.

But our history—Churchill's maxim, study history—our history tells us that is not necessarily so. Take by way of example the Pentagon Papers case—orders issued preventing and sanctioning a gross violation of the First Amendment's guarantee of freedom of the press, an order issued out of the district court June 15, 1971. That order was reversed in an opinion by the Supreme Court of the United States 2 weeks later. June 15.

The House of Representatives could have followed that well-trodden path. It could have sought expedition. The E. Barrett Prettyman Courthouse is 6 blocks down. The judges are there.

They are all very able. They are hard-working people of integrity. Follow the path. Follow the path of the law. Go to court.

There would have been at least one problem had the House seen fit to go to court and remain in court. The issue is before you.

But among other flaws, the Office of Legal Counsel determined—and I have read the opinion, and I believe it is correct—that with all respect, all House subpoenas issued prior to the adoption of H.R. 660, which for the first time authorized the impeachment inquiry as a House, all subpoenas were invalid. They were void. With all due respect to the Speaker of the House of Representatives, with all her abilities and her vast experience, under our Constitution, she was powerless to do what she purported to do. As has been said now time and again, especially throughout the fall, the Constitution does entrust the sole power of impeachment to the House of Representatives, but that is the House, its 435 Members elected from across the constitutional Republic—not one, no matter how able she may be. In the people's House, every Congressperson gets a vote. We know the concept: one person, one vote.

More generally, the President, as I reviewed the record, has consistently and scrupulously followed the advice and counsel of the Justice Department and, in particular, the Office of Legal Counsel. He has been obedient. As you know, that important office—many of you have had your own experiences professionally with that office—is staffed with lawyers of great ability. It has a reputation for superb work. It has done such thoughtful work with both Democratic and Republican administrations. The office is now headed by a brilliant lawyer who served as a law clerk to Justice Anthony Kennedy.

The House may disagree with the guidance provided to the President by that office; the House frequently does disagree. But for the President to follow the guidance of the Department of Justice with respect to an interbranch legal and constitutional dispute cannot reasonably be viewed as an obstruction and, most emphatically, not as an impeachable offense.

History, once again, is a great teacher. In the Clinton impeachment, the House Judiciary Committee rejected a draft article asserting that President Clinton—and here are the words that were drafted: “fraudulently and corruptly asserted executive privilege.” Strong words, “fraudulently and corruptly.” That was the draft article.

In my view, having lived through the facts and with all due respect to the former President, he did. He did it time and again, month after month. We would go to court, and we would win. Many members—not everybody—on the House Judiciary Committee agreed that the President had, indeed, improperly claimed executive privilege, rebuffed time and again by the Judiciary. But at the end of the day, that Committee, the Judiciary Committee of the House, chaired by Henry Hyde, wisely concluded that President Clinton's doing so should not be considered an impeachable offense.

Here is the idea. It is not an impeachable offense for the President of the United States to defend the asserted legal and constitutional prerogatives of the Presidency.

This is, and I am quoting here from page 55 of the President's trial brief, "a function of his constitutional and policy judgments," not just a policy judgment, but a constitutional judgment.

I would guide this court, as it is coming through the deliberation process, to read the President's trial brief with respect to process. It was Justice Felix Frankfurter, confidante of FDR, brilliant jurist, who reminded America that the history of liberty is in large measure the history of process, procedure.

In particular, I would guide the high court to the discussion of the long history of the House of Representatives—over two centuries—in providing due process protections in its impeachment investigations. It is a richly historical discussion.

The good news is, you can read the core of it in four pages, pages 62 to 66, of the trial brief. It puts in bold relief, I believe, an irrefutable fact. This House of Representatives, with all respect, sought to turn its back on its own established procedures—procedures that have been followed faithfully decade after decade, regardless of who was in control, regardless of political party. All those procedures were torn asunder and all over the vigorous objections of the unanimous and vocal minority.

I need not remind this high court that in this country, minority rights are important. Minority rights should be protected. Equal justice.

But, then again, the House Members took no oath to be impartial. The Constitution didn't require them to say by oath or affirmation: We will do impartial judgment—justice. When they chose to tear asunder their procedures, they were oathless. They could toss out their own rule book through raw power.

Here we have—tragically for the country and, I believe, tragically for the House of Representatives—in article II of these impeachment articles a runaway House. It has run away not only from its longstanding procedures; it has run away from the Constitution's demand of fundamental fairness captured in those hallowed terms, "due process of law." We have cared about this as an English-speaking people since the Magna Carta.

By doing so, however, the House has inadvertently pointed this court to an exit ramp. It is an exit ramp provided by the Constitution itself. It is an exit ramp built by the most noble of builders, the founding generation. Despite the clearest precedent requiring due process for the accused in an impeachment inquiry but, surely, all the more so in a Presidential impeachment, House Democrats chose to conduct a wholly unprecedented process in this case, and they did so knowingly and deliberately because they were warned at every turn: Don't do it. Don't do it that way.

And process—the process of being denied the basic rights that have been afforded to every single accused President in the history of the Republic, even to the racist Andrew Johnson seeking to undo Mr. Lincoln's great legacy—he got those rights—but not here. Due process could have been honored; basic rights could have been honored. The House rules, the House's traditions could have been honored, but what is done is done. These two articles come before this court, this High Court of Impeachment, dripping with fundamental process violations.

The courts—and you are the court—are confronted with this kind of phenomenon, a train of fairness violations. Courts of this country do the right thing. They do impartial justice. They invoke, figuratively or literally, the words of the preamble to America's Constitution. The very first order of our government after “to form a more perfect Union” is to “establish Justice”—to “establish justice.” Even before getting to the words to “provide for the common Defense, to promote the general Welfare, to insure domestic Tranquility,” the Constitution speaks in terms of justice—establishing justice.

Courts would not allow this. They would not allow this because—why? They knew, and they know, that the purpose of our founding instrument is to protect our liberties, to safeguard us, but to safeguard us as individuals against the powers of government. Why? In the benedictory words of the preamble, to “secure the Blessings of Liberty to ourselves and our Posterity.” Liberty under law.

I thank the court.

The CHIEF JUSTICE. Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, House managers: Judge Starr laid out before you the solemn nature of these proceedings. I want to contrast the solemn nature of these proceedings and what has been laid out before us from both a historical and constitutional perspective.

I want you to think about this, to history, the importance and solemnity of what we are engaged in in this body, with what took place in the House of Representatives upon the signing of Articles of Impeachment—pens distributed to the impeachment managers. A celebratory moment—think about that; think about this—a poignant moment.

We are next going to address a factual analysis. To briefly reflect, my colleague, the Deputy White House Counsel, Mike Purpura, will be joining us in a moment to discuss more of the facts, to continue the discussion that we had on Saturday. But let me just recap very quickly what was laid out on Saturday.

First, [Slide 508] the transcript shows that the President did not condition either security assistance or a meeting on anything. The paused security assistance funds aren't even mentioned on the call.

Second, [Slide 509] President Zelensky and other Ukrainian officials repeatedly said there was no quid pro quo and no pressure on them to review anything.

Third, [Slide 510] President Zelensky and high-ranking Ukrainian officials did not even know the security assistance was paused until the end of August, over a month after the July 25 call.

Fourth, [Slide 511] not a single witness testified that the President himself said that there was any connection between any investigation, security assistance, a Presidential meeting, or anything else.

Fifth, [Slide 512] the security assistance flowed on September 11, and a Presidential meeting took place on September 25 without the Ukrainian Government—without the Ukrainian Government—announcing any investigations.

Finally, [Slide 513] in the blind drive to impeach the President, President Trump, in reality, strategically, has been the best friend

and supporter of Ukraine, certainly, in our recent history. These are the facts. That is what is before you.

Deputy White House Counsel Mike Purpura will now address additional facts related to these proceedings.

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, good afternoon. I would inform the leader that I believe we will be ready to take a break at the conclusion of my remarks, if it meets with his approval.

On Saturday, we walked through some of the evidence that the House managers put forward and didn't put forward during their 21-plus hours of presentation. The evidence that we recounted was drawn directly from the House managers' own record, the case they chose to submit to this Chamber.

To echo my colleague Mr. Sekulow briefly, the House managers' own evidence shows that President Trump did not condition anything on investigations during the July 25 call with President Zelensky and did not even mention the pause on the security assistance on the call. President Zelensky said that he felt no pressure on the call.

President Zelensky and the top Ukrainian officials did not learn of the pause on the security assistance until more than a month after the July 25 call, and the House managers' own record—their record that they developed and brought before this Chamber—reflects that anyone who spoke with the President said that the President made clear that there was no linkage between security assistance and investigations.

There is another category of evidence that demonstrated that the pause on security assistance was distinct and unrelated to investigations. The President released the aid without the Ukrainians ever announcing any investigations or undertaking any investigations.

Here is Ambassador Sondland.
(Text of Videotape presentation:)

Ms. STEFANIK. And the fact is the aid was given to Ukraine without any announcement of new investigations?

Ambassador SONDLAND. That's correct.

Ms. STEFANIK. And President Trump did in fact meet with President Zelensky in September at the United Nations, correct?

Ambassador SONDLAND. He did.

Ms. STEFANIK. And there was no announcement of investigations before this meeting?

Ambassador SONDLAND. Correct.

Ms. STEFANIK. And there was no announcement of investigations after this meeting?

Ambassador SONDLAND. That's right.

Mr. Counsel PURPURA. So while the security assistance was paused, the administration did precisely what you would expect. It addressed President Trump's concerns about the two issues that I mentioned on Saturday: burden-sharing and corruption.

A number of law- and policymakers also contacted the President and the White House to provide input on the security assistance issue during this period, including Senator LINDSEY GRAHAM. The process culminated on September 11, 2019. On that day, the President spoke with Vice President PENCE and Senator ROB PORTMAN. The Vice President, in NSC Senior Director Tim Morrison's words, was "armed with his conversation with President Zelensky from

their meeting just days earlier in Warsaw, Poland, and both the Vice President and Senator PORTMAN related their view of the importance of the assistance to Ukraine and convinced the President that the aid should be disbursed immediately. After the meeting, President Trump terminated the pause, and the support flowed to Ukraine.”

I want to take a step back now and talk for a moment about why the security assistance was briefly paused—again, in the words of the House managers’ own witnesses. Witness after witness testified that confronting Ukrainian corruption should be at the forefront of U.S. foreign policy towards Ukraine. They also testified that the President had longstanding and sincere concerns about corruption in Ukraine. The House managers, however, told you that it was laughable to think that the President cared about corruption in Ukraine, but that is not what the witnesses said.

According to Ambassador Volker, President Trump demonstrated that he had a very deeply rooted negative view of Ukraine based on past corruption, and that is a reasonable position, according to Ambassador Volker. Most people who know anything about Ukraine would think that.

Dr. Hill testified: [Slide 514]

I think the President has actually quite publicly said that he was very skeptical about corruption in Ukraine. And, in fact, he is not alone, because everyone has expressed great concerns about corruption in Ukraine.

The House managers have said the President’s concern with corruption is disingenuous. They said that President Trump didn’t care about corruption in 2017 or 2018 and he certainly didn’t care about it in 2019. Those were their words. [Slide 515] Not according to Ambassador Yovanovitch, however, who testified that President Trump shared his concern about corruption directly with President Poroshenko—President Zelensky’s predecessor—in their first meeting in the Oval Office. When was that meeting? In June of 2017—2017.

The President also has well-known concerns about foreign aid generally. Scrutinizing and in some cases curtailing foreign aid was a central plank of his campaign platform. President Trump is especially wary of sending American taxpayer dollars abroad when other countries refuse to pitch in.

Mr. Morrison and Mr. Hale both testified at length about President Trump’s longstanding concern with burden-sharing in foreign aid programs. Here is what they said.

(Text of Videotape presentation:)

Mr. MORRISON. The President was concerned that the United States seemed to bear the exclusive brunt of security assistance to Ukraine. He wanted to see the Europeans step up and contribute more security assistance.

Mr. HALE. We’ve often heard at the State Department that the President of the United States wants to make sure that foreign assistance is reviewed scrupulously and make sure that it is truly in the U.S. national interests and that we evaluate it continuously and that it meets certain criteria the President has established.

Mr. RATCLIFFE. And has the President expressed that he expected our allies to give their fair share of foreign aid as evidenced by the point that he raised during the July 25th phone call to President Zelensky to that effect?

Mr. HALE. The principle of fair burden-sharing by allies and other like-minded states is an important element of the foreign assistance review.

Mr. Counsel PURPURA. The President expressed these precise concerns to Senator RON JOHNSON, who wrote: [Slide 516]

He reminded me how thoroughly corrupt Ukraine was and again conveyed his frustration that Europe doesn't do its fair share of providing military aid.

The House managers didn't tell you about this. Why not? And President Trump was right to be concerned that other countries weren't paying their fair share. As Laura Cooper testified, U.S. contributions to Ukraine are far more significant than any individual country, and she also said EU funds tend to be on the economic side rather than for defense and security. Senator JOHNSON also confirmed that other countries refused to provide the lethal defensive weapons that Ukraine needs in its war with Russia.

Please keep in mind also that the pause of the Ukraine security assistance program was far from unusual or out of character for President Trump. The American people know that the President is skeptical of foreign aid and that one of his top campaign promises and priorities in office has been to avoid wasteful spending of American taxpayer dollars abroad.

Meanwhile, the same people who today claimed that President Trump was not genuinely concerned about burden-sharing were upset when, as a candidate, President Trump criticized free-riding by NATO members.

This past summer, the administration paused, reviewed, and in some cases canceled hundreds of millions of dollars in foreign aid to Afghanistan, El Salvador, Honduras, Guatemala, and Lebanon. These are just some of the reviews of foreign aid undertaken at the very same time that the Ukraine aid was paused.

So what happened during the brief period of time while the Ukraine security assistance was paused? People were gathering information and monitoring the facts on the ground in Ukraine as the new Parliament was sworn in and began introducing anti-corruption legislation.

Notwithstanding what the House managers would have you believe, the reason for the pause was no secret within the White House and the agencies. According to Mr. Morrison, in a July meeting attended by officials throughout the executive branch agencies, the reason provided for the pause by a representative of the Office of Management and Budget was that the President was concerned about corruption in Ukraine and he wanted to make sure Ukraine was doing enough to manage that corruption. In fact, as Mr. Morrison testified, by Labor Day, there had been definitive developments to demonstrate that President Zelensky was committed to the issues he campaigned on: anti-corruption reforms.

Mr. Morrison also testified that the administration was working on answering the President's concerns regarding burden-sharing. Here is Mr. Morrison.

(Text of Videotape presentation:)

Mr. CASTOR. Was there any interagency activity by either the State Department or the Defense Department coordinated by the National Security Council to look into that a little bit for the President?

Mr. MORRISON. We were surveying the data to understand who was contributing what and sort of in what categories.

Mr. CASTOR. And so the President evinced concerns. The interagency tried to address them?

Mr. MORRISON. Yes.

Mr. Counsel PURPURA. How else do we know that the President was awaiting information on burden-sharing and anti-corruption efforts in Ukraine before releasing the security assistance? Because that is what Vice President PENCE told President Zelensky.

On September 1, 2019, Vice President PENCE met with President Zelensky. President Trump was scheduled to attend the World War II commemoration in Poland but instead remained in the United States to manage the emergency response to Hurricane Dorian. Remember, this was 3 days—3 days—after President Zelensky learned through the POLITICO article about the review of the security assistance. Just as Vice President PENCE and his aides anticipated, Jennifer Williams testified that once the cameras left the room, the very first question that President Zelensky had was about the status of the security assistance. The Vice President responded by asking about two things: burden-sharing and corruption.

Here is how Jennifer Williams described it: [Slide 517]

And the VP responded by really expressing our ongoing support for Ukraine, but wanting to hear from President Zelensky, you know, what the status of his reform efforts were that he could then convey back to the President, and also wanting to hear if there was more that European countries could do to support Ukraine.

Vice President PENCE knows President Trump, and he knew what President Trump wanted to hear from President Zelensky. The Vice President was echoing the President's two recurring themes: corruption and burden-sharing. It is the same, consistent themes every time.

Ambassador Taylor received a similar readout of the meeting between the Vice President and President Zelensky, including the Vice President's focus on corruption and burden-sharing. Here is Ambassador Taylor.

(Text of Videotape presentation:)

Ambassador TAYLOR. On the evening of September 1st, I received a readout of the Pence-Zelensky meeting over the phone from Mr. Morrison during which he told me that President Zelensky had opened the meeting by immediately asking the Vice President about the security cooperation. The Vice President did not respond substantively but said that he would talk to President Trump that night. The Vice President did say that President Trump wanted the Europeans to do more to support Ukraine and that he wanted the Ukrainians to do more to fight corruption.

Mr. Counsel PURPURA. On September 11, based on the information collected and presented to President Trump, the President lifted the pause on the security assistance. As Mr. Morrison explained, [Slide 518] "our process gave the President the confidence he needed to approve the release of the security-sector assistance."

The House managers say that the talk about corruption and burden-sharing is a ruse. No one knew why the security assistance was paused, and no one was addressing the President's concerns with Ukrainian corruption and burden-sharing. The House managers' own evidence—their own record—tells a different story, however. They didn't tell you about this, not in 21 hours. Why not?

The President's concerns were addressed in the ordinary course. The President wasn't caught, as the House managers allege. The managers are wrong. All of this, together with what we discussed on Saturday, demonstrates that there was no connection between security assistance and investigations.

When the House managers realized their “quid pro quo” theory on security assistance was falling apart, they created a second alternative theory. According to the House managers, President Zelensky desperately wanted a meeting at the White House with President Trump, and President Trump conditioned that meeting on investigations.

What about the managers’ backup accusations? Do they fare any better than their quid pro quo for security assistance? No. No, they don’t.

A Presidential-level meeting happened without any preconditions at the first available opportunity in a widely televised meeting at the United Nations General Assembly in New York on September 25, 2019. The White House was working to schedule the meeting earlier at the White House or in Warsaw, but those options fell through due to normal scheduling and a hurricane. The two Presidents met at the earliest convenience without President Zelensky ever announcing or beginning any investigations.

The first thing to know about the alleged quid pro quo for a meeting is that by the end of the July 25 call, the President had invited President Zelensky to the White House on three separate occasions, each time without any preconditions.

President Trump invited President Zelensky to an in-person meeting on their initial April 21 call. [Slide 519] He said: “When you’re settled in and ready, I’d like to invite you to the White House.”

On May 29, the week after President Zelensky’s inauguration, President Trump sent a congratulatory letter, again, inviting President Zelensky to the White House. He said:

As you prepare to address the many challenges facing Ukraine, please know that the American people are with you and are committed to helping Ukraine realize its vast potential. To help show that commitment, I would like to invite you to meet with me at the White House in Washington, D.C., as soon as we can find a mutually convenient time.

Then, on July 25, President Trump personally invited President Zelensky to participate in a meeting for a third time. He said: “Whenever you would like to come to the White House, feel free to call. Give us a date, and we’ll work that out. I look forward to seeing you.”

Those are three separate invitations for a meeting, all made without any preconditions.

During this time, and behind the scenes, the White House was working diligently to schedule a meeting between the Presidents at the earliest possible date. Tim Morrison, whose responsibilities included helping to arrange head-of-state visits to the White House or other head-of-state meetings, testified that he understood that arranging the White House visit with President Zelensky was a do-out that came from the President.

The House managers didn’t mention the work that the White House was doing to schedule the meeting between President Trump and President Zelensky; did they? Why not?

Scheduling a Presidential meeting takes time. Mr. Morrison testified that his directorate, which was just one of several, had a dozen schedule requests in with the President for meetings with

foreign leaders that we were looking to land and Ukraine was but one of those requests.

According to Mr. Morrison, due to both Presidents' busy schedule, [Slide 520] "it became clear that the 'earliest opportunity for the two Presidents to meet would be in Warsaw' at the beginning of September."

The entire notion that a bilateral meeting between President Trump and President Zelensky was somehow conditioned on a statement about investigations is completely defeated by one straightforward fact: A bilateral meeting between President Trump and President Zelensky was planned for September 1 in Warsaw—the same Warsaw meeting we were just discussing—without the Ukrainians saying a word about investigations.

As it turned out, President Trump was not able to attend the meeting in Warsaw because of Hurricane Dorian. President Trump asked Vice President PENCE to attend in his place, but even that scheduling glitch did not put off their meeting for long. President Trump and President Zelensky met at the next available date, September 25, on the sidelines of the United Nations General Assembly.

As President Zelensky, himself, has said, there were "no preconditions" for his meeting with President Trump. Those are his words: "No conditions."

You are probably wondering how the House managers could claim there was a quid pro quo for a meeting with President Trump when the two Presidents actually did meet without President Zelensky announcing any investigations? Well, the House managers moved the goalpost again. They claim that the meeting couldn't be just an in-person meeting with President Trump. What it had to be was a meeting at the Oval Office and in the White House. That is nonsense.

Putting to one side the absurdity of the House managers trying to remove a duly-elected President of the United States from office because he met with a world leader in one location versus another, this theory has no basis in fact.

As Dr. Hill testified, what mattered was that there was a bilateral Presidential meeting, not the location of the meeting. She said: [Slide 521]

[I]t wasn't always a White House meeting per se, but definitely a Presidential-level, you know, meeting with Zelensky and the President. I mean, it could've taken place in Poland, in Warsaw. It could've been, you know, a proper bilateral in some other context. But, in other words, a White House-level Presidential meeting.

The House managers didn't tell you about Dr. Hill's testimony. Why not? In fact, just last week they said that President Zelensky still hasn't gotten his White House meeting. Why didn't they tell you about Dr. Hill's testimony so you would have the full context and information? They spoke for over 21 hours. They couldn't take a couple of minutes to give you that context? How else do we know that Dr. Hill was right? Because President Zelensky said so on the July 25 call.

Remember, when President Trump invited President Zelensky to Washington on the July 25 call, [Slide 522] President Zelensky said he would be "happy to meet with you personally" and offered to host President Trump in Ukraine or, on the other hand, meet with

President Trump on September 1 in Poland. That is exactly what the administration planned to do.

If it weren't for Hurricane Dorian, President Trump would have met with President Zelensky in Poland on September 1, just as President Zelensky had requested and without any preconditions.

As it happened, President Zelensky met with the Vice President instead and just a few weeks later met with President Trump in New York—all without anyone making any statement about any investigations. And, once again, not a single witness in the House record that they compiled and developed under their procedures that we have discussed and will continue to discuss, provided any firsthand evidence that the President ever linked the Presidential meeting to any investigations.

The House managers have seized upon Ambassador Sondland's claim that Mr. Giuliani's requests were a quid pro quo for arranging a White House visit for President Zelensky. But, again, Ambassador Sondland was only guessing based on incomplete information. He testified that the President never told him there was any sort of a condition for a meeting with President Zelensky. Why, then, did he think there was one?

In his own words, [Slide 523] Ambassador Sondland said that he could only repeat what he heard "through Ambassador Volker from Giuliani." So he didn't even hear from Mr. Giuliani himself. But Ambassador Volker, who is the supposed link between Mr. Giuliani and Ambassador Sondland, thought no such thing. Ambassador Volker testified unequivocally that there was no linkage between the meeting with President Zelensky and Ukrainian investigations.

I am going to read the full questions and answers because this passage is key. This is from Ambassador Volker's deposition testimony. [Slides 524 and 525]

Question. Did President Trump ever withhold a meeting with President Zelensky or delay a meeting with President Zelensky until the Ukrainians committed to investigate the allegations that you just described concerning the 2016 Presidential election?

Answer. The answer to the question is no, if you want a yes-or-no answer. But the reason the answer is no is we did have difficulty scheduling a meeting, but there was no linkage like that.

Question. You said that you were not aware of any linkage between delaying the Oval Office meeting between President Trump and President Zelensky and the Ukrainian commitment to investigate the two allegations as you described them, correct?

Answer. Correct.

Over the past week, on no fewer than 15 separate occasions, the House managers played a video of Ambassador Sondland saying that the announcement of the investigations was a prerequisite for a meeting or call with the President—15 times. They never once read to you the testimony that I just did. They never once read to you the testimony in which Ambassador Volker refuted what Ambassador Sondland claimed he heard from Ambassador Volker.

Here is what we know. President Trump invited President Zelensky to meet three times without preconditions. The White House was working behind the scenes to schedule the meeting. The two Presidents planned to meet in Warsaw, just as President Zelensky had asked, and ultimately met 3 weeks later without Ukraine announcing any investigations.

No one testified in the House record that the President ever said there was a connection between a meeting and investigations. Those are the facts, plain and simple. So much for a quid pro quo for a meeting with the President.

Before I move on, let me take a brief moment to address a side allegation that was raised in the original whistleblower complaint and that the House managers are still trying to push.

The managers claim that President Trump ordered Vice President PENCE not to attend President Zelensky's inauguration in favor of a lower ranking delegation in order—according to them—to signal a downgrading of the relationship between the United States and Ukraine.

That is not true. As I am sure everyone in this room can greatly appreciate, numerous factors had to align for the VP to attend.

First, dates of travel were limited. For national security reasons, the President and Vice President generally avoid being out of the country at the same time for more than a few hours.

The President had scheduled trips to Europe and Japan during the period when our Embassy in Ukraine anticipated the Ukrainian inauguration would occur, at the end of May or in early June. Jennifer Williams testified that the Office of the Vice President advised the Ukrainians that, [Slide 526] if the Vice President were to participate in the inauguration, the ideal dates would be around May 29, May 30, May 31, or June 1, when the President would be in the United States. She said “if it wasn't one of those dates, it would be very difficult or impossible” for the Vice President to attend.

Second, the House managers act as if no other priorities in the world could compete for the administration's time. The Vice President's Office was simultaneously planning a competing trip for May 30 in Ottawa, Canada, to participate in an event supporting passage of the United States-Mexico-Canada Agreement. Ultimately, the Vice President traveled to Ottawa on May 30 to meet with Prime Minister Justin Trudeau and to promote the passage of the USMCA. This decision, as you know, advanced the top administration priority and an issue President Trump vigorously supported.

What you did not hear from the House managers was that the Ukrainian inauguration dates did not go as planned. On May 16—May 16—the Ukrainians surprised everyone and scheduled the inauguration for just 4 days later, on May 20—Monday, May 20. So think about that: May 16, May 20. Get everybody—security, advance, everyone—to Ukraine. Jennifer Williams testified that it was very short notice, so it would have been difficult for the Vice President to attend, particularly since they hadn't sent out the advance team.

George Kent testified that the short notice left almost no time for either proper preparations or foreign delegations to visit and that the State Department scrambled on Friday the 17th to try and figure out who was available. Mr. Kent suggested that Secretary of Energy Perry be the anchor for the delegation, as “someone who was a person of stature and whose job had relevance to our agenda.” Secretary Perry led the delegation, which also included Ambassador Sondland, Ambassador Volker, and Senator JOHNSON. Ambassador Volker testified that it was the largest delegation from

any country there, and it was a high-level one. The House managers didn't tell you this. Why not?

The claim that the President instructed the Vice President not to attend President Zelensky's inauguration is based on House manager assumptions with no evidence that the President did something wrong.

Finally, as I am coming to the end, if the evidence doesn't show a quid pro quo, what does it show? Unfortunately for the House managers, one of the few things that all of the witnesses agreed on was that President Trump has strengthened the relationship between the United States and Ukraine and that he has been a more stalwart friend to Ukraine and a more fierce opponent of Russian aggression than President Obama. The House managers repeatedly claimed that President Trump doesn't care about Ukraine. They are attributing views to President Trump that are contrary to his actions. More importantly, they are contrary to the House managers' own evidence.

But don't take my word for it. Ambassadors Yovanovitch, Taylor, and Volker all testified to the Trump administration's positive new policy toward Ukraine based especially on President Trump's decision to provide lethal aid to Ukraine. Ambassador Taylor testified that President Trump's policy toward Ukraine was a substantial improvement over President Obama's policy. Ambassador Volker agreed that America's policy toward Ukraine has been strengthened under President Trump, whom he credited with approving each of the decisions made along the way.

Ambassador Yovanovitch testified that President Trump's decision to provide lethal weapons to Ukraine meant that our policy actually got stronger over the last 3 years. She called the policy shift that President Trump directed very significant. Let's hear from Ambassador Taylor, Ambassador Volker, and Ambassador Yovanovitch.

(Text of Videotape presentation:)

Ms. STEFANIK. The Trump administration has indeed provided substantial aid to Ukraine in the form of defensive lethal aid, correct?

Ambassador TAYLOR. That is correct.

Ms. STEFANIK. And that is more so than the Obama administration, correct?

Ambassador TAYLOR. The Trump administration—

Ms. STEFANIK. Defensive lethal aid.

Ambassador TAYLOR. Yes.

Ambassador VOLKER. President Trump approved each of the decisions made along the way, providing lethal defensive equipment.

Ambassador YOVANOVITCH. And the Trump administration strengthened our policy by approving the provision to Ukraine of antitank missiles known as Javelins.

They are obviously tank busters. And so, if the war with Russia all—all of a sudden accelerated in some way and tanks come over the horizon, Javelins are a very serious weapon to deal with that.

Mr. Counsel PURPURA. Ukraine is better positioned to fight Russia today than it was before President Trump took office. As a result, the United States is safer too. The House managers did not tell you about this testimony from Ambassadors Taylor, Volker, and Yovanovitch. Why not?

These are the facts, as drawn from the House managers' own record on which they impeached the President. This is why the House managers' first Article of Impeachment must fail, for the six reasons I set forth when I began on Saturday:

There was no linkage between investigations and security assistance or a meeting on the July 25 call. The Ukrainians said there was no quid pro quo and they felt no pressure. The top Ukrainians did not even know that security assistance was paused until more than a month after the July 25 call. The House managers' record reflects that anyone who spoke with the President said that the President made clear that there was no linkage. The security assistance flowed, and the Presidential meeting took place, all without any announcement of investigations. And President Trump has enhanced America's support for Ukraine in his 3 years in office.

These facts all require that the first Article of Impeachment fail. You have already heard and will continue to hear from my colleagues on why the second article must fail. Once again, this is the case that the House managers chose to bring. This is the evidence they brought before the Senate.

The very heavy burden of proof rests with them. They say their case is overwhelming and uncontested. It is not. They say they have proven each of the articles against President Trump. They have not. The facts and evidence of the case the House managers have brought exonerate the President.

Thank you for your attention.

Mr. Chief Justice, I think we are ready for a break.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, colleagues, we will take a 15-minute break.

There being no objection, at 2:52 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:17 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. It is my understanding that, having consulted with the President's lawyers, we are looking at around 6 p.m. for dinner, and we will plow right through until 6 p.m.

The CHIEF JUSTICE. Thank you.

President's counsel can continue with their case.

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice.

Mr. Chief Justice, Members of the Senate, House managers, there has been a lot of talk in both the briefs and in the discussions over the last week about one of our colleagues, former mayor of New York, Rudy Giuliani. Mayor Giuliani served as one of the leaders of the President's defense team during the Mueller investigation. He is mentioned 531 times—20 in the brief and about 511, give or take, in the arguments, including the motion day.

We had a robust team that worked on the President's defense during the Mueller probe, consisting of Mayor Giuliani, Andrew Ekonomou, Stuart Roth, Jordan Sekulow, Ben Sisney, Mark Goldfeder, Mayor Giuliani, of course, and Marty Raskin, as well as Jane Raskin. Jane Serene Raskin was one of the leading attorneys on the Mueller investigation for the defense of the President.

The issue of Mayor Giuliani has come up here in this Chamber a lot. We thought it would be appropriate now to turn to that issue, the role of the President's lawyer, his private counsel, in this pro-

ceeding. I would like to yield my time, Mr. Chief Justice, to Jane Serene Raskin.

Ms. Counsel RASKIN. Mr. Chief Justice, Majority Leader McCONNELL, Members of the Senate.

I expect you have heard American poet Carl Sandburg's summary of the trial lawyer's dilemma:

If the facts are against you, argue the law. If the law is against you, argue the facts. If the facts and the law are against you, pound the table and yell like hell.

Well, we have heard the House managers do some table-pounding and a little yelling, but, in the main, they have used a different tactic here, a tactic familiar to trial lawyers, though not mentioned by Mr. Sandburg. If both the law and the facts are against you, present a distraction, emphasize a sensational fact or perhaps a colorful or controversial public figure who appears on the scene, then distort certain facts, ignore others, even when they are the most probative, make conclusory statements, and insinuate the shiny object is far more important than the actual facts allow; in short, divert attention from the holes in your case.

Rudy Giuliani is the House managers' colorful distraction. He is a household name. He is a legendary Federal prosecutor who took down the Mafia, corrupt public officials, Wall Street racketeers. He is the crime-busting mayor who cleaned up New York and turned it around, a national hero, America's mayor after 9/11, and, after that, an internationally recognized expert on fighting corruption. To be sure, Mr. Giuliani has always been somewhat of a controversial figure for his hard-hitting, take-no-prisoners approach, but it is no stretch to say that he was respected by friend and foe alike for his intellect, his tenacity, his accomplishments, and his fierce loyalty to his causes and his country.

And then, the unthinkable happened. He publicly supported the candidacy of President Trump—the one who was not supposed to win. And then, in the spring of 2018, he stood up to defend the President—successfully, it turns out—against what we all now know is the real debunked conspiracy theory; that the Trump campaign colluded with Russia during the 2016 campaign. The House managers would have you believe that Mr. Giuliani is at the center of this controversy. They have anointed him the proxy villain of the tale, the leader of a rogue operation. Their presentations were filled with ad hominem attacks and name-calling: cold-blooded political operative, political bagman.

But I suggest to you that he is front and center in their narrative for one reason and one reason alone: to distract from the fact that the evidence does not support their claims.

So what is the first tell that Mr. Giuliani's role in this may not be all that it is cracked up to be? They didn't subpoena him to testify. In fact, Mr. SCHIFF and his committee never even invited him to testify. They took a stab at subpoenaing his documents back in September, and when his lawyer responded with legal defenses to the production, the House walked away. But if Rudy Giuliani is everything they say he is, don't you think they would have subpoenaed and pursued his testimony? Ask yourselves, why didn't they?

In fact, it appears the House committee wasn't particularly interested in presenting you with any direct evidence of what Mayor Giuliani did or why he did it. Instead, they ask you to rely on hear-

say, speculation, and assumption—evidence that would be inadmissible in any court.

For example, the House managers suggest that Mr. Giuliani, at the President's direction, demanded that Ukraine announce an investigation of the Bidens and Burisma before agreeing to a White House visit. They base that on a statement to that effect by Ambassador Sondland.

But what the House managers don't tell you is that Sondland admitted he was speculating about that. He presumed that Mr. Giuliani's requests were intended as a condition for a White House visit. Even worse, his assumption was on thirdhand information. As he put it, the most he could do is repeat what he heard through Ambassador Volker from Giuliani, whom he presumed spoke to the President on the issue. And by the way, as Mr. Purpura has explained, the person who was actually speaking to Mr. Giuliani, Ambassador Volker, [Slide 525] testified clearly that there was no linkage between the meeting with President Zelensky and Ukrainian investigations.

The House managers also make much of a May 23 White House meeting during which the President suggested to his Ukraine working group, including Ambassadors Volker and Sondland, that they should talk to Rudy. The managers told you that President Trump gave a directive and a demand that the group needed to work with Giuliani if they wanted him to agree with the Ukraine policy they were proposing, but those words, "directive" and "demand," are misleading. They misrepresent what the witnesses actually said.

Ambassador Volker testified that he understood, [Slide 527] based on the meeting, that Giuliani was only one of several sources of information for the President, and the President simply wanted officials to speak to Mr. Giuliani because he knows all these things about Ukraine. As Volker put it, the President's comment was not an instruction but just a comment. Ambassador Sondland agreed. He testified that he didn't take it as an order, and he added that the President wasn't even specific about what he wanted us to talk to Giuliani about.

So it may come as no surprise to you that after the May 23 meeting, the one during which the House managers told you the President demanded that his Ukraine team talk to Giuliani, neither Volker nor Sondland even followed up with Mr. Giuliani until July, and the July followup by Mr. Volker happened only because the Ukrainian Government asked to be put in touch with him. Volker testified that President Zelensky's senior aide, Andriy Yermak, approached him to ask to be connected to Mr. Giuliani.

House Democrats also rely on testimony that Mayor Giuliani told Ambassadors Volker and Sondland that, in his view, to be credible, a Ukrainian statement on anti-corruption should specifically mention investigations into 2016 election interference and Burisma.

But when Ambassador Volker was asked whether he knew if Giuliani was [Slide 528] "conveying messages that President Trump wanted conveyed to the Ukrainians," Volker said that he did not have that impression. He believed that Giuliani was doing his own communication about what he believed he was interested in.

But even more significant than the reliance on presumptions, assumptions, and unsupported conclusions is the managers' failure to place in any fair context Mr. Giuliani's actual role in exploring Ukrainian corruption. To hear their presentation, you might think that Mayor Giuliani had parachuted into the President's orbit in the spring of 2019 for the express purpose of carrying out a political hit job. They would have you believe that Mayor Giuliani was only there to dig up dirt against former Vice President Biden because he might be President Trump's rival in the 2020 election.

Of course, Mr. Giuliani's intent is no small matter here. It is a central and essential premise of the House managers' case that Mr. Giuliani's motive in investigating Ukrainian corruption and interference in the 2016 election was an entirely political one, undertaken at the President's direction. But what evidence have the managers actually offered you to support that proposition? On close inspection, it turns out virtually none. They just say it over and over and over.

And they offer you another false dichotomy. Either Mr. Giuliani was acting in an official capacity to further the President's foreign policy objectives or he was acting as the President's personal attorney, in which case, they conclude, *ipse dixit*, his motive would only be to further the President's political objectives.

The House managers then point to various of Mr. Giuliani's public statements in which he is clear and completely transparent about the fact that he is, indeed, the President's personal attorney. There you have it. Giuliani admits he is acting as the President's personal attorney, and therefore he had to have been acting with a political motive to influence the 2020 election. No other option, right? Wrong. There is, of course, another obvious answer to the question, what motivated Mayor Giuliani to investigate the possible involvement of Ukrainians in the 2016 election? The House managers know what the answer is. It is in plain sight, and Mr. Giuliani has told any number of news outlets exactly when and why he became interested in the issue.

It had nothing to do with the 2020 election. Mayor Giuliani began investigating Ukraine corruption and interference in the 2020 election way back in November of 2018—a full 6 months before Vice President Biden announced his candidacy and 4 months before the release of the Mueller report, when the biggest false conspiracy theory in circulation that the Trump campaign had colluded with Russia during the 2016 campaign was still in wide circulation.

As The Hill reported: [Slide 529] “As President Trump's highest profile defense attorney, the former New York City mayor, often known simply as ‘Rudy,’ believed the Ukrainians' evidence could assist in his defense against the Russia collusion investigation and former Special Counsel Robert Mueller's final report.”

So Giuliani began to check things out in late 2018 and early 2019. [Slide 530]

The genesis of Mayor Giuliani's investigation was also reported by numerous other media outlets, including CNN, [Slide 531] which related that Giuliani's role in Ukraine could be traced back to November 2018, when he was contacted by someone he describes as

a well-known investigator. The Washington Post and many other news outlets reported the same information.

So, yes, Mayor Giuliani was President Trump's personal attorney, but he was not on a political errand. As he has stated repeatedly and publicly, he was doing what good defense attorneys do. He was following a lead from a well-known private investigator. He was gathering evidence regarding Ukrainian election interference to defend his client against the false allegations being investigated by Special Counsel Mueller, but the House managers didn't even allude to that possibility. Instead, they just repeated their mantra that Giuliani's motive was purely political. That speaks volumes about the bias with which they have approached their mission.

The bottom line is, Mr. Giuliani defended President Trump vigorously, relentlessly, and publicly throughout the Mueller investigation and in the nonstop congressional investigations that followed, including the attempted Mueller redo by the House Judiciary Committee, which the managers would apparently like to sneak in the back door here.

The House managers may not like his style—you may not like his style—but one might argue that he is everything Clarence Darrow said a defense lawyer must be—outrageous, irreverent, blasphemous, a rogue, a renegade. The fact is, in the end, after a 2-year siege on the Presidency, two inspector general reports, and a \$32 million special counsel investigation, it turns out Rudy was spot-on.

It seems to me we are keeping score on who got it right on allegations of FISA abuse, egregious misconduct at the highest level of the FBI, alleged collusion between the Trump campaign and Russia, and supposed obstruction of justice in connection with the special counsel's investigation. The score is Mayor Giuliani 4, Mr. SCHIFF 0. But in this trial, in this moment, Mr. Giuliani is just a minor player—that shiny object designed to distract you.

Senators, I urge you most respectfully: Do not be distracted.

Thank you, Mr. Chief Justice.

I yield back to Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, and House managers, we are going to now move to a section dealing with the law. There are two issues in particular that my colleague Pat Philbin, the Deputy White House Counsel, will be addressing, issues involving due process and legal issues specifically dealing with the second Article of Impeachment: Obstruction of Congress. So I yield my time now, Mr. Chief Justice, to Mr. Philbin.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, Majority Leader MCCONNELL, Minority Leader SCHUMER, the other day, as we opened our presentation, I touched on two areas: some of the due process violations that characterized the proceedings in the House and some of the fundamental mischaracterizations and errors that underpinned the House Democrats' charge for obstruction. I will complete the presentation today on those points to round out some of the fundamentally unfair procedures that were used in the House and their implications in this proceeding before you now and also address in detail the purported charges of obstruction in the second Article of Impeachment.

On due process, there are three fundamental errors that affected the proceedings in the House. The first is, as I explained on Saturday, the impeachment inquiry was unauthorized and unconstitutional from the beginning.

No committee of the House has the power to launch an inquiry under the House's impeachment power unless the House itself has taken a vote to give that authority to a committee. I noted that, in cases such as *Rumely v. United States* and *United States v. Watkins*, the Supreme Court has set out these principles, general principles derived from the Constitution, which assign authority to each Chamber of the legislative branch—to the House and to the Senate—but not to individual members or to subcommittees. For an authority of the House to be transferred to a committee, the House has to vote on that.

The DC Circuit has distilled the principles from those cases this way: [Slide 532] "To issue a valid subpoena, a committee or a subcommittee must conform strictly to the resolution establishing its investigatory powers." That was the problem here. There was no such resolution. There was no vote from the House authorizing the issuance of subpoenas under the impeachment power. So this inquiry began with nearly two dozen invalid subpoenas. The Speaker had the House proceed on nothing more than a press conference in which she purported to authorize committees to begin an impeachment power. Under the Constitution, she lacked that authority.

As the chairman of the House Judiciary Committee, Peter Rodino, pointed out during the Nixon impeachment inquiry: [Slide 533]

Such a resolution [from the House] has always been passed by the House. . . . It is a necessary step if we are to meet our obligation.

So we began this process with unauthorized subpoenas that imposed no compulsion on the executive branch to respond with documents or witnesses. I will be coming back to that point, that threshold foundational point, when we get to the obstruction charge.

The second fundamental due process error is that the House Democrats denied the President basic due process required by the Constitution and by the fundamental principles of fairness in the procedures that they used for the hearings. I am not going to go back in detail over those. As we heard from Judge Starr, the House Democrats essentially abandoned the principles that have governed impeachment inquiries in the House for over 150 years. I will touch on just a few points and respond to a couple of points that the House managers have made.

The first is that, in denying due process rights, the House proceedings were a huge reversal from the positions the House Democrats themselves had taken in the recent past, particularly in the Clinton impeachment proceeding.

I believe we have Manager NADLER's description of what was required. Perhaps not. Manager NADLER was explaining that due process requires at a minimum notice of the charges against you, the right to be represented by counsel, the right to cross-examine witnesses against you, and the right to present evidence. All of those rights were denied to the President.

Now, one of the responses that the managers have made to the defect that we pointed out in the secret proceedings, where Manager SCHIFF began these hearings in the basement bunker, is that, well, that was really just best investigative practice; they were operating like a grand jury. Don't be fooled by that. Those hearings operated nothing like a grand jury.

A grand jury has secrecy primarily for two reasons: to protect the direction of the investigation so others won't know what witnesses are being called in and what they are saying—to keep that secret for the prosecutor to be able to keep developing the evidence—and to protect the accused because the accused might not ever be indicted.

In this case, all of that information was made public every day. The House Democrats destroyed any legitimate analogy to a grand jury, because that was all public. They made no secret that the President was the target. They issued vile calumnies about him every day. They didn't keep the direction of their investigation secret. Their witness lists were published daily, and the direction of the investigation was open. The testimony that took place was selectively leaked to a compliant media to establish a false narrative about the President.

If that sort of conduct had occurred in a real grand jury, that would have been a criminal violation. Prosecutors can't do that. Under rule 6(e) of the Federal criminal rules, it is a criminal offense to be leaking what takes place in a grand jury.

Also, the grand jury explanation provides no rationale whatsoever for this second round of hearings. Remember, after the basement bunker—after the secret hearings where the testimony was prescreened—then the same witnesses who had already been deposed were put on in a public hearing where the President was still excluded.

Ask yourself, what was the reason for that? In every prior Presidential impeachment in the modern era where there have been public hearings, the President has been represented by counsel and could cross-examine witnesses. Why did there have to be public, televised hearings where the President was excluded? That was nothing more than a show trial.

I also addressed the other day the House managers' contention that they had offered the President due process; that when things reached the third round of hearings in front of the House Judiciary Committee, Manager NADLER offered the President due process. I explained why that was illusory. There was no genuine offer there because, before any hearings began, other than the law professor's seminar on December 4, the Speaker had already determined the outcome, had already said there were going to be Articles of Impeachment, and the Judiciary Committee had informed the counsel's office that they had no plans to call any fact witnesses or have any factual hearings whatsoever. It was all done. It was locked in. It was baked.

There was something else hanging over that when they had purportedly offered to allow the President some due process rights, and that was a special provision in the rules for the House Judiciary Committee proceedings—also unprecedented—that allowed the House Judiciary Committee to deny the President any due process

rights at all if he continued to refuse to turn over documents or not allow witnesses to testify, so that if the President didn't give up his privileges and immunities that he had been asserting over executive branch confidentiality—if he didn't comply with what the House Democrats wanted—then it was up to Chairman NADLER, potentially, to say: No rights at all. There is a term for that in the law. It is called an unconstitutional condition. You can't condition someone's exercise of some rights on his surrendering other constitutional rights. You can't say: We will let you have due process in this way if you waive your constitutional privilege on another issue.

The last point I will make about due process is this: It is important to remember that due process is enshrined in the Bill of Rights for a reason. It is not that process is just an end in itself. Instead, it is a deep-seated belief in our legal tradition that fair process is essential for accurate decision making.

Cross-examination of witnesses, in particular, is one of the most important procedural protections for any American. The Supreme Court has explained that, for over 250 years, our legal tradition has recognized cross-examination as the greatest legal engine ever invented for the discovery of truth.

So why do House Democrats jettison every precedent and every principle of due process in the way they devise these hearing procedures? Why did they devise a process that kept the President blocked out of any hearings for 71 of the 78 days of the so-called investigation?

I would submit because their process was never about finding truth. Their process was about achieving a predetermined outcome on a timetable and having it done by Christmas, and that is what they achieved.

Now, the third fundamental due process error is that the whole foundation of these proceedings was also tainted beyond repair because an interested fact witness supervised and limited the course of the factual discovery, the course of the hearings. I explained the other day that Manager SCHIFF had a reason, potentially, because of his office's contact with the so-called whistleblower and what was discussed and how the complaint was framed, which all remained secret, to limit inquiry into that, which is relevant.

The whistleblower began this whole process. His bias, his motive, why he was doing it, what his sources were—that is relevant to understand what generated this whole process, but there was no inquiry into that.

So what conclusion does this all lead to—all of these due process errors that have infected the proceeding up to now?

I think it is important to recognize the right conclusion is not that this body, this Chamber, should try to redo everything—to start bringing in new evidence, bring in witnesses because the President wasn't allowed witnesses below and redo the whole process. And that is for a couple of reasons.

One is, first, as my colleagues have demonstrated, despite the one-sided, unfair process in the House, the record that the House Democrats collected through that process already shows that the President did nothing wrong. It already exonerates the President.

But the second and more important reason is because of the institutional implications it would have for this Chamber. Whatever precedent is set, whatever this body accepts now as a permissible way to bring an impeachment proceeding and to bring it to this Chamber becomes the new normal. And if the new normal is going to be that there can be an impeachment proceeding in the House that violates due process, that doesn't provide the President or another official being impeached due process rights, that fails to conduct a thorough investigation, that doesn't come here with facts established, that then this body should become the investigatory body and start redoing what the House didn't do and finding new witnesses and doing things over and getting new evidence, then, that is going to be the new normal, and that will be the way that this Chamber has to function, and there will be a lot more impeachments coming because it is a lot easier to do an impeachment if you don't have to follow due process and then come here and expect the Senate to do the work that the House didn't do.

I submit that is not the constitutional function of this Chamber sitting as a Court of Impeachment, and this Chamber should not put its imprimatur on a process in the House that would force this Chamber to take on that role.

Now, I will move on to the charge of obstruction in the second Article of Impeachment.

Accepting that Article of Impeachment would fundamentally damage separation of powers under the Constitution by permanently altering the relationship between the executive and the legislative branches. In the second article, House Democrats are trying to impeach the President for resisting legally defective demands for information by asserting established legal defenses and immunities based on legal advice from the Department of Justice's Office of Legal Counsel. In essence, the approach here is that House Democrats are saying: When we demand documents, the executive branch must comply immediately, and the assertions of privilege or defenses to our subpoenas are further evidence of obstruction. We don't have to go through the constitutionally mandated accommodations process to work out an acceptable solution with the executive branch. We don't have to go to the courts to establish the validity of our subpoenas.

At one point, Manager SCHIFF said that anything that makes the House even contemplate litigation is evidence of obstruction. Instead, the House claims it can jump straight to impeachment.

What this really means, in this case, is that they are saying for the President to defend the prerogatives of his office, to defend the constitutionally grounded principles of executive branch privileges of immunities is an impeachable offense.

If this Chamber accepts that premise, that what has been asserted here constitutes an impeachable offense, it will forever damage the separation of powers. It will undermine the independence of the executive and destroy the bounds between the legislative and executive branches that the Framers crafted in the Constitution.

As Professor Turley testified before the House Judiciary Committee, "basing impeachment on this obstruction theory would itself be an abuse of power . . . by Congress."

And I would like to go through that and unpack and explain something. I will start by outlining what the Trump administration actually did in response to subpoenas, because there are three different actions—three different legally based assertions for resisting different subpoenas that the Trump administration made.

I pointed out on Saturday that there has been this constant refrain from the House Democrats that there was just blanket defiance, blanket obstruction, as if it were unexplained obstruction—just, we won't cooperate with that warrant. And that is not true. There were very specific legal grounds provided, and each one was supported by an opinion from the Department of Justice's Office of Legal Counsel.

So the first is executive branch officials declined to comply with subpoenas that had not been authorized, and that is the point I made at the beginning. There was no vote from the House. Without a vote from the House, the subpoenas that were issued were not authorized. [Slide 534] And I pointed out that in an October 18 letter from White House Counsel that specific ground was explained.

And it wasn't just from the White House counsel. There were other letters. On the screen now is an October 15 letter from OMB, which explains:

Absent a delegation by a House rule or a resolution of the House, none of your committees have been delegated jurisdiction to conduct an investigation pursuant to the impeachment power under article I, section 2 of the Constitution.

The letter went on to explain that legal rationale—not blanket defiance. There were specific exchanges of letters explaining these legal grounds for resisting.

The second ground, the second principle that the Trump administration asserted was that some of these subpoenas purported to require the President's senior advisers, his close advisers, to testify.

Following at least 50 years of precedent, the Department of Justice's Office of Legal Counsel advised that three senior advisers to the President—the Acting White House Chief of Staff, the Legal Advisor to the National Security Council, and the Deputy National Security Advisor—were absolutely immune from compelled congressional testimony. And based on that advice from the Office of Legal Counsel, the President directed those advisers not to testify.

Administrations of both political parties have asserted this immunity since the 1970s. [Slide 535] President Obama asserted it as to the Director of the Office of Political Strategy and Outreach. President George W. Bush asserted it as to his former counsel and to his White House Chief of Staff. President Clinton asserted it as to two of his counsel. President Reagan asserted it as to his counsel, Fred Fielding, and President Nixon asserted it. This is not something that was just made up recently. There is a decades-long history of the Department of Justice providing the opinion that senior advisers to the President are immune from compelled congressional testimony, and it is the same principle that was asserted here.

There are important rationales behind this immunity. One is that the President's most senior advisers are essentially his alter egos, and allowing Congress to subpoena them and compel them to come testify would be tantamount to allowing Congress to subpoena the President and force him to come testify, but that in sepa-

ration of powers would not be tolerated. Congress could no more do that with the President than the President could force Members of Congress to come to the White House and answer to him.

There is also a second and important rationale behind this immunity, and that relates to executive privilege. The immunity protects the same interests that underlie executive privilege. The Supreme Court has recognized executive privilege that protects the confidentiality of the communications with the President and deliberations within his executive branch. [Slide 536] As the Court put it in *United States v. Nixon*, "The privilege is fundamental to the operation of government and inextricably rooted in the separation of powers under the Constitution."

So the Supreme Court has recognized the executive needs this privilege to be able to function. It is rooted in the separation of powers.

As Attorney General Janet Reno advised President Clinton, "immunity such advisers enjoy from testimonial compulsion by a congressional committee is absolute and may not be overborne by competing congressional interests."

So that is Attorney General Janet Reno advising President Clinton. This is not a partisan issue. This is not a Republican or Democrat issue. Administrations of both parties have asserted this principle of immunity for senior advisers.

And why does it matter? It matters because the Supreme Court has explained that the fundamental principle behind executive privilege is that it is necessary to have confidentiality in communications and deliberations in order to have good and worthwhile deliberations, in order to have people provide their candid advice to the President. Because if they knew that what they were going to say was going to be on the front page of the *Washington Post* the next day or the next week, they wouldn't tell the President what they actually thought. If you want to have good decision making, there has to be that zone of confidentiality.

This is the way the Supreme Court put it: "Human experience teaches that those who expect public dissemination of their remarks may well temper candor with a concern for appearances and for their own interests to the detriment of the decision-making process."

That was also from *United States v. Nixon*.

So those are exactly the interests that are protected by having senior advisers to the President be immune from compelled congressional testimony. Because once someone is compelled to sit in the witness seat and start answering questions, it is very hard for them to protect that privilege, to make sure that they don't start revealing something that was discussed.

So for a small circle of those close to the President, for the past 40 to 50 years, administrations of both parties have insisted on this principle.

Now, the other night, House managers, when we were here very late last week, suggested that executive privilege was a distraction, and Manager NADLER called it "nonsense."

Not at all—it is a principle recognized by the Supreme Court—a constitutional principle grounded in separation of powers.

They also asserted that this immunity has been rejected by every court that has addressed it, as if to make it seem that lots of courts have addressed this. They have all said that this theory just doesn't fly. That is not accurate. That is not true.

In fact, in most instances, once the President asserts immunity for a senior adviser, the accommodations process between the executive branch and the legislature begins, and there is usually some compromise to allow, perhaps, some testimony, not in open hearing but in a closed hearing or a deposition, perhaps to provide some other information instead of live testimony. There is a compromise.

But in the only two times it has been litigated, district courts, it is true, rejected the immunity. One was in a case involving former counsel to George W. Bush, Harriet Miers. The district court rejected the immunity, but immediately on appeal, the Court of Appeals of the DC Circuit stayed that decision. And that decision means—to stay that district court decision—that the appellate court thought there was a likelihood of success on appeal, that the executive branch might succeed, or, at a minimum, that the issue of immunity presented “questions going to the merits so serious, substantial, difficult, and doubtful as to make them a fair ground for litigation.” The first decision was stayed.

The second district court decision is still being litigated right now. It is the McGahn case that the House has brought, trying to get testimony from former counsel to President Trump, Donald McGahn. That case was just argued in the DC Circuit on January 3. So there is no established law suggesting that this immunity somehow has been rejected by the court. It is still being litigated right now. It is an immunity that is a standard principle asserted by every administration in both parties for the past 40 years. Asserting that principle cannot be treated as obstruction of Congress.

The third action that the President took—the administration took—related to the fact that House Democrats’ subpoenas tried to shut out executive branch counsel, agency counsel from the depositions of executive branch employees. Now, the Office of Legal Counsel concluded that congressional committees may not bar agency counsel from assisting an executive branch witness without contravening the legitimate prerogatives of the executive branch and that attempting to enforce a subpoena while barring agency counsel would be “unconstitutional.”

The President relied on that legal advice here. As Judge Starr pointed out, the President was consulting with the Department of Justice, receiving advice from the very respected Office of Legal Counsel, and following that advice about the constitutional prerogatives of his office and the constitutional prerogatives of the executive branch. Again, administrations of both political parties have recognized the important role that agency counsel plays.

In the Obama administration, the Office of Legal Counsel stated that the exclusion of agency counsel “could potentially undermine . . . the President’s constitutional authority to consider and assert executive privilege where appropriate.”

So why is agency counsel important?

As I tried to explain, the executive privilege of confidentiality for communications with the President for internal deliberative communications of the executive branch—those are important legal

rights. They are necessary for the proper functioning of the executive branch, and the agency counsel is essential to protect those legal rights.

When an individual employee goes in to testify, he or she might not know—probably would not know—where is the line for what is covered by executive privilege or deliberative process privilege—not things the employees necessarily know, and their personal counsel, even if they are permitted to have their personal counsel with them—same thing. Most personal attorneys for employees don't know the finer points of executive branch confidentiality interests or deliberative process privilege. It is also not their job to protect those interests. They are the personal lawyer for the employee who is testifying, trying to protect that employee from potential legal consequences.

We usually have lawyers to protect legal rights, so it makes sense when there is an important legal and constitutionally based right at stake—the executive privilege—that there should be a lawyer there to protect that right for the executive branch, and that is the principle that the Office of Legal Counsel enjoys.

This also doesn't raise any insurmountable problems for congressional investigations for finding information. In fact, just as recently as April of 2019, the House Committee on Oversight and Government Reform reached an accommodation with the Trump administration after the administration had declined to make someone available for a deposition because of the lack of agency counsel. That issue was worked out and accommodation was made, and there was some testimony provided in other circumstances. So it doesn't always result in the kind of escalation that was seen here—straight to impeachment. The accommodation process can work things out.

House Democrats have pointed to a House rule that excludes agency counsel, but, of course, that House rule cannot override a constitutional privilege.

So those are the three principles that the Trump administration asserted. Now I would like to turn to the claim that somehow the assertion of these principles created an impeachable offense.

The idea that asserting defenses and immunity—legal defenses and immunity in response to subpoenas, acting on advice of the Department of Justice—is an impeachable offense is absurd and is dangerous for our government. Let me explain why.

House Democrats' obstruction theory is wrong first and foremost because, in a government of laws, asserting privileges and rights to resist compulsion is not obstruction; it is a fundamental right. In *Bordenkircher v. Hayes*, [Slide 537] the Supreme Court explains that to "punish a person because he has done what the law plainly allows him to do is a due process violation of the most basic sort, and for an agent of the State to pursue a course of action whose objective is to penalize a person's reliance on his legal rights is patently unconstitutional."

This is a principle that in the past, in the Clinton impeachment, was recognized across the board, that it would be improper to suggest that asserting rights is an impeachable offense. Harvard law professor Laurence Tribe said: "The allegation that invoking privileges and otherwise using the judicial system to shield information

. . . is an abuse of power that should lead to impeachment and removal from office is not only frivolous, but also dangerous.”

Manager NADLER said that the use of a legal privilege is not illegal or impeachable itself—a legal privilege, executive privilege. Minority Leader SCHUMER, in the Clinton impeachment, expressed the same view:

(Text of Videotape presentation:)

Mr. SCHUMER. To suggest that any subject of an investigation, much less the President with obligations to the institution of the presidency, is abusing power and interfering with an investigation by making legitimate legal claims, using due process and asserting constitutional rights, is beyond serious consideration.

Mr. Counsel PHILBIN. That was exactly correct then and it is exactly correct now.

More important than simply the principle that asserting rights can't be considered obstruction, when the rights the President has asserted are based on executive privilege, when they are constitutionally grounded principles that are essential for the separation of powers and for protecting the institution of the Office of the Presidency, to call that obstruction is to turn the Constitution on its head. Defending the separation of powers cannot be deemed an impeachable offense without destroying the Constitution. Accepting that approach would do permanent damage to the separation of powers and would allow the House of Representatives to turn any disagreement with the Executive over informational demands into a supposed basis for removing the President from office. It would effectively create for us the very parliamentary system that the Framers sought to avoid because, by making any demand for information and goading the Executive to a refusal and treating that, then, as impeachable, the House would effectively be able to function with a no-confidence vote power. That is not the Framers' design. The legislative and executive branches frequently clash on questions of constitutional interpretation, including about congressional demands for information. These conflicts have happened since the founding.

In 1796, George Washington, our first President, resisted demands from Congress for information about the negotiation of the Jay Treaty, and there have been conflicts between the Executive and the Congress in virtually every administration since then about congressional demands for information.

The Founding Fathers expected the branches to have these conflicts. James Madison pointed out that “the legislative, executive, and judicial departments . . . must, in the exercise of its functions, be guided by the text of the Constitution according to its own interpretation of it.” It was recognized that there would be friction.

Similarly in Federalist 51, [Slide 538] Madison pointed out that “the great security against a gradual concentration of the several powers in the same department consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachment of the others.” This is checks and balances, this friction, this clashing between the branches. It is not evidence of an impeachable offense. It is the separation of powers in its practical operation. It is part of the constitutional design.

Now, the proper and historically accepted way that these disagreements have been resolved is through the constitutionally mandated accommodations process. Courts have explained that the branches are required to engage in an accommodation process to resolve disagreements where there is a clash over a demand for information. As the DC Circuit has explained, when Congress asks for information from the executive branch that triggers “an implicit constitutional mandate to seek optimal accommodation . . . of the needs of the conflicting branches,” the goal is to accommodate the needs of both branches to reach a compromise.

If that accommodation process fails, Congress has other tools at its disposal to address the disagreement. The House traditionally has proceeded to contempt—to vote on a contempt resolution. In recent times, the House has taken the position that it may sue in the courts to determine the validity of its subpoenas and secure an injunction to enforce them.

The House managers have pointed out that the Trump administration, when sued in the McGahn case, has taken the view that those cases are not justiciable in article III courts. That is correct. That is the view of the Trump administration; that was the view of the Obama administration. So there is that resistance in the court cases to the jurisdiction of the courts to address those. But I think the House managers are missing the point when they identify that position that the administration has taken because the House cannot claim that they have a mechanism for going to court—they are in court right now asserting that mechanism in the McGahn case—and then simultaneously saying that, well, they don’t have to bother with that mechanism; they can jump to impeachment.

Impeachment under the Constitution is the thermonuclear weapon of interbranch friction, and where there is something like a rifle or a bazooka at the House’s disposal to address some friction with the executive branch, that is the next step. It is incrementalism in the Constitution—not jumping straight to impeachment—that is the solution.

If the House could jump straight to impeachment, that would alter the relationship between the branches. It would suggest that the House could make itself superior over the Executive to dangle the threat of impeachment over any demand for information made to the Executive.

That is contrary to the Framers’ plan. Madison explained that where the executive and legislative branches come into conflict, in Federalist No. 49, “[neither] of them, it is evident, can pretend to an exclusive or superior right of settling the boundaries between their respective powers.” But that is exactly what the House managers have asserted in this case. They have said that the House becomes supreme. There is no need for them to go to court. The Executive must be wrong. Any resistance to their subpoena is obstruction. If you claim that our subpoena is invalid, we don’t have to do anything to address that concern; we will just impeach you because resistance is obstruction of Congress.

The House put it this way in their report to the Judiciary Committee. They effectively said that the House is the judge of its own powers, because what they said was “the Constitution gives the

House the final word.” That is on page 154 of the House Judiciary Committee report.

What that is essentially saying—they point to the fact that article I, section 2, gives the House “the sole Power of Impeachment,” and they claim because it has the sole power of impeachment, the courts have no role; the House is the final word; it is the judge of its own powers. But that is contrary to constitutional design. There is no power that is unchecked in the Constitution. The sole power of impeachment given to the House simply means that power is given solely to the House, not anywhere else.

The Constitution does not say that the power of impeachment is the paramount power that makes all other constitutional rights and privileges and prerogatives of the other branches fall away.

The Framers recognized that there could be partisan impeachments and there could be impeachments for the wrong reasons, and they did not strip the executive branch of any of its needs for protecting its own sphere of authority and its own prerogatives under the Constitution. Those principles of executive privilege and those immunities still survive, even in the context of impeachment.

The power of impeachment is not like the House can simply flip a switch and say now we are in impeachment, and they have constitutional kryptonite that makes the powers of the Executive eliminated. So when there are these conflicts, even in the context of impeachment inquiry, the Executive can continue to assert its privileges and prerogatives under the Constitution, and, indeed, it must in order to protect the institutional interests of the Office of the Presidency and to preserve the proper balance between the branches under the Constitution.

Professor Turley, rightly, pointed out that by claiming Congress can demand any testimony or documents and impeach any President who dares to go to the courts, House Democrats were advancing a position that was “entirely untenable and abusive of an impeachment.” Other scholars agree.

In the Clinton impeachment, Professor Susan Low Bloch testified that “impeaching a President for invoking lawful privileges is a dangerous and ominous precedent.” It would achieve exactly the result that Gouverneur Morris, one of the Framers, warned against at the Constitutional Convention. He explained that “when we make him [referring to the President] amenable to Justice however we should take care to provide some mode that will not make him dependent on the Legislature.”

That is exactly what this Article of Impeachment would do. It would make the President dependent on the legislative because any demand for information, made by Congress, could be used as a threat of impeachment to enforce compliance by the Executive. The very theory that the House Democrats have asserted is that there can be no assertions of privileges and no constitutionally based prerogatives of the Executive to stand in the way.

If that theory were true, virtually every President could have been impeached. Virtually every President has asserted, at one time or another, these constitutional prerogatives. President Obama famously, in the Fast and Furious investigation, refused to turn over documents that led to his Attorney General being held in contempt, but that didn’t lead to impeachment. It could be a

long list. Professor Turley testified there could be a very long list of Presidents who would have to be distinguished if the principles being asserted now in this case were applied to all past Presidents in history.

Now, House Democrats have given a few different justifications for this approach, but I submit none can be reconciled with the Constitution. They say that if we cannot impeach the President for this obstruction, then the President is above the law. Not so. I think I pointed out that the President is staying within the law, asserting the law, and relying on the legal advice from the Department of Justice to make his arguments based on long-recognized constitutional principles, and, indeed, is making the fundamental point, with respect to the subpoenas, that it is Congress that is not above the law. It is the House. The House has to follow the law as well. It has to issue valid subpoenas. And if the law isn't followed, those subpoenas are null and void, and the Executive doesn't have to comply with them.

The House Democrats say that they shouldn't go to the courts because the courts have no role in impeachment. I think I pointed out that the House Democrats can't say that they have the—just because of the provision of the sole power of impeachment, that it is a paramount power, and that no other branch plays any role in providing a check on how the power is exercised. And in addition, the House Democrats have gone to court.

In the McGahn case that they are litigating right now, they have asserted that is part of the impeachment inquiry. The Trump administration has explained that it was not validly part of the impeachment inquiry, but that is the ground on which they are litigating under.

They say that they have no time for the courts. I think what that really means is they have no time for the rule of law in the way that they are pursuing the inquiry. The other day, one of the House managers actually said on the floor of the Senate that they had to get it moving. They couldn't wait for litigation. They had to impeach the President before the election. That is not a valid reason to not pursue litigation in the courts.

I think it is relevant to bear in mind what sort of delay are we talking about? In the McGahn case that the House managers referred to a number of times—which they have pointed out, they presented as being very long and drawn out—they issued a subpoena in April, but they did not file a lawsuit until August. By November—November 25—they had a decision from the district court, and it was argued on appeal in the DC Circuit on January 3. For litigation, that is pretty fast, and it can go faster.

In the Nixon case, during Watergate, the special prosecutor issued a subpoena on April 18, 1974. On May 20—so in less than a month—the district court denied a motion to quash the subpoena. On May 31, the Supreme Court agreed to hear the case, granting cert before judgment in the Court of Appeals, and on July 24, the Supreme Court issued the decision. That is lightning fast.

So when there is urgency to the case, when there is a reason for it, there can be expedition in the courts, and a decision can be had in a timely manner.

In the one case that actually arose from these impeachment proceedings, it was the House that derailed the case. This was the case involving Deputy National Security Advisor Charlie Kupperman, because when he received a subpoena, he went to court and asked the court for a declaratory judgment explaining what his obligations were: Should he take the directive from the President that he was immune and not go or should he obey the subpoena? Now, in that case, he filed suit on October 25. The court, within a few days, set an expedited briefing schedule, but the House withdrew the subpoena on November 5, just 11 days later, in order to moot the case.

So I think litigation is a viable avenue, along with the accommodation process, as a first step. Then, if the House believes it can go to court and wants to litigate the jurisdiction and litigate the validity of its subpoenas, that is also available to them, but impeachment as the first step doesn't make any sense.

I should point out, in part, when the House managers say they didn't have time to litigate, they didn't have time to go to the courts, but they now come to this Chamber and say this Chamber should issue some more subpoenas, this Chamber should get some witnesses that we didn't bother to fight about, what do you think will happen then? That there will not be similar assertions of privilege and immunity? That there wouldn't be litigation about that?

Again, this goes back to the point that I made. If you put your imprimatur on a process that was broken and say, yes, that was a great way to run things, this was a great package to bring here, and we will clean up the mess and issue subpoenas and try to do all the work that wasn't done, then that becomes the new normal, and that doesn't make sense for this body.

A proper way to have things handled is to have the House—if it wants to bring an impeachment here ready for trial—do the investigation. The information it wants to get, if there is going to be resistance, that has to be resolved, and it has to be ready to proceed, not transfer the responsibility to this Chamber to do the work that hasn't been done.

They also assert that President Trump's assertion of these privileges is somehow different because it is unprecedented, and it is categorical. Well, it is unprecedented, perhaps, in the sense that there was a broad statement that a lot of subpoenas wouldn't be complied with, but that is because it was unprecedented for the House to begin these proceedings without voting to authorize the committee to issue the subpoenas. That was the first unprecedented step. That is what had never happened before in history. So, of course, the response to that would be, in some sense, unprecedented. The President simply pointed out that without that vote, there were no valid subpoenas.

There have also been categorical refusals in the past. President Truman, when the House Committee on Un-American Activities, in 1948, issued subpoenas to his administration, issued a directive to the entire executive branch that any subpoena or demand or request for information, reports, or files in the nature described in those subpoenas shall be respectfully declined on the basis of this directive, and he referred also to inquiries of the Office of the President for such response as the President may determine to be in the

public interest. The Truman administration responded to none of them.

A last point on the House Democrats' claim that privileges simply disappear because this is impeachment power of the House. They have referred a number of times to *United States v. Nixon*, the Supreme Court decision, suggesting that that somehow determines that when you are in an impeachment inquiry, executive privilege falls away. That is not true. In fact, *United States v. Nixon* was not even actually addressing a congressional subpoena. It was a subpoena from the special prosecutor, and even in that context, the Court did not state that executive privilege simply disappears. Instead, the Court said: "It is necessary to resolve these competing interests"—they are the interests of the judicial branch in administering a criminal prosecution in a case where the evidence was needed—"these competing interests in a manner that preserves the essential functions of each branch."

And it even held out the possibility that in the field of foreign relations and national security, there might be something approaching an absolute executive privilege. That is exactly the field we are in, in this case—foreign relations and national security matters.

Another thing you have heard is that President Clinton voluntarily cooperated with the investigation that led to his impeachment—produced tens of thousands of documents. That is not really accurate. That was only after long litigation again and again about assertions of privilege. He asserted numerous privileges. The House Judiciary Committee then explained "during the Lewinsky investigation, President Clinton abused his power through repeated privilege assertions of executive privilege by at least five of his aides."

Unlike the House in this case, Independent Counsel Starr first negotiated with the White House and then litigated those claims and got them resolved. Ultimately, the House managers argued that all of the problems with their obstruction theory should be brushed aside and the President's assertions of immunities and defenses have to be treated as something nefarious because, as Mr. NADLER said: Only guilty people try to hide the evidence. That is what he said from last Tuesday night. And Mr. SCHIFF, similarly, in discussing the assertion of the executive branch's constitutional rights, said: "The innocent do not act this way."

Really? Is that the principle in the United States of America that if you assert legal privileges or rights, that means you are guilty? If the innocent don't assert their rights, that the President can't defend the constitutional prerogatives of his office?

That doesn't make any sense. At bottom, the second Article of Impeachment comes down to a dispute over a legal issue relating to constitutional limits on the ability of the House to compel information from the Executive. No matter how House Democrats try to dress up their charges, a difference of legal opinion does not rise to the level of impeachment.

Until now, the House has repeatedly rejected attempts to impeach the President based on legal disputes over assertions of privilege. As Judge Starr pointed out, in the Clinton proceedings, the House Judiciary Committee concluded that the President had

improperly exercised executive privilege, yet still concluded that it did not have the ability to second-guess the rationale behind the President or what was in his mind asserting executive privilege, and it could not treat that as an impeachable offense. It rejected an Article of Impeachment based on Clinton's assertions of privilege.

And as the House Democrat's own witness, Professor Gerhardt, has explained, in 1843, President Tyler similarly was investigated for potential impeachment—his attempts to protect and assert what he regarded as the prerogatives of his office as he resisted demands for information from Congress. Professor Gerhardt explained Tyler's attempt to protect and assert what he regarded as the prerogatives of his office were the function of his constitutional and policy judgments, and they could not be used by Congress to impeach him. President Trump's resistance to congressional subpoenas was no less a function of his constitutional and policy judgment, and it provides no basis to impeach him.

I would like to close with a final thought. One of the greatest issues—and perhaps the greatest issue—for your consideration in this case is how the precedent set in this case will affect the future.

The Framers recognized that there would be partisan and illegitimate impeachments. In Federalist No. 65, Hamilton expressly warned about impeachments that reflected what he called “the persecution of an intemperate or designing majority in the House of Representatives.” That is exactly what this case presents.

Justice Story recognized that the Senate provides the proper tribunal for trying impeachments because it was believed by the Framers to have a greater sense of obligation to the future, to future generations, not to be swayed by the passions of the moment.

One of the essential questions here is, Will the Chamber adopt a standard for impeachment—a diluted standard—that fundamentally disrupts, damages, and alters the separation of powers in our constitutional structure of government? Because that is what both the first article—for reasons that Judge Starr and Professor Dershowitz have covered—and the second article, the obstruction charge, would do.

I will close with a quotation from one of the Republican Senators who crossed the aisle and voted against convicting President Andrew Johnson during his impeachment trial. It was Lyman Trumbull who I think explained the great principle that applies here. He said:

“Once [we] set the example of impeaching a President for what, when the excitement of the hour shall have subsided will be regarded as insufficient causes, no future President will be safe . . . and what then becomes of the checks and balances of the constitution, so carefully devised and so vital to its perpetuity? They are all gone.

Thank you, Mr. Chief Justice.

I will yield to Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, House managers, Mr. Philbin just concluded on the importance of executive privilege.

Professor Turley, who testified before the House, said we have three branches of government, not two. If you impeach a President,

if you make a high crime and misdemeanor out of going to court, it is an abuse of power. It is your abuse of power.

With regard to executive privilege, it was Mr. NADLER who called it “executive privilege and other nonsense.”

When Attorney General Holder refused to comply with subpoenas, President Obama invoked executive privilege, arguing “compelled disclosure would be inconsistent with the separation of powers established in the Constitution”—“executive privilege and other nonsense.”

Manager SCHIFF wrote that the White House assertion of executive privilege was backed by decades of precedent that has been recognized and has recognized the need for the President and his senior advisers to receive candid advice and information from their top aides—“executive privilege and other nonsense.”

We talked about this the other night. The nonsense is to treat the separation of powers and constitutional privileges as if they are asbestos in the ceiling tiles. You can’t touch them. That is not the way the Constitution is designed.

We are going to now turn our attention to a separate topic. It is one that has been discussed a lot on the floor here and will be discussed now.

Presenting for the President is the former attorney general for the State of Florida, Pam Bondi. She is also a career prosecutor. She has handled countless cases. She is going to discuss an issue that the House managers have put pretty much at the center of their case, and that is the issue of corruption in Ukraine, particularly with regard to a company known as Burisma.

Mr. Chief Justice, I yield my time to former Attorney General Pam Bondi.

Ms. Counsel BONDI. Mr. Chief Justice, Senators, Members of the Senate, when the House managers gave you their presentation, when they submitted their brief, they repeatedly referenced Hunter Biden and Burisma.

They spoke to you for over 21 hours, and they referenced Biden or Burisma over 400 times. And when they gave these presentations, they said there was nothing—nothing—to see. It was a sham. This is fiction.

In their trial memorandum, the House managers described this as baseless. [Slide 539] Why did they say that? Why did they invoke Biden or Burisma over 400 times? The reason they needed to do that is because they are here saying that the President must be impeached and removed from office for raising a concern, and that is why we have to talk about this today.

They say sham. They say baseless. They say this because if it is OK for someone to say, “hey, you know what, maybe there is something here worth raising,” then, their case crumbles. They have to prove beyond a reasonable doubt that there is no basis to raise this concern, but that is not what public records show.

Here are just a few of the public sources that flagged questions surrounding this very same issue. The United Kingdom’s Serious Fraud Office, Deputy Assistant Secretary of State George Kent, Hunter Biden’s former business associate, ABC White House reporter, ABC’s Good Morning America, the Washington Post, the

New York Times, Ukrainian law enforcement, and the Obama State Department itself—they all raised this issue.

We would prefer not to be talking about this. We would prefer not to be discussing this. But the House managers have placed this squarely at issue. So we must address it.

Let's look at the facts. In early 2014, Joe Biden, our Vice President of the United States, led the U.S. foreign policy in Ukraine with the goal of rooting out corruption. According to an annual study published by Transparency International, during this time, Ukraine was one of the most corrupt countries in the entire world.

There is a natural gas company in Ukraine called Burisma. Burisma has been owned by an oligarch named Mykola Zlochevsky. Here is what happened very shortly after Vice President Biden was made U.S. point man for Ukraine. His son Hunter Biden ends up on the board of Burisma, working for and paid by the oligarch Zlochevsky.

In February 2014, in the wake of anti-corruption uprising by the people of Ukraine, Zlochevsky flees the country, flees Ukraine. Zlochevsky, the oligarch, is well-known.

George Kent, the very first witness that the Democrats called during their public hearings, testified that Zlochevsky stood out for his self-dealings, even among other oligarchs. House managers didn't tell you that.

Ambassador Kurt Volker explained that Burisma had "a very bad reputation as a company for corruption and money laundering." [Slide 540] House managers didn't tell you that.

Burisma was so corrupt that George Kent said he intervened to prevent USAID from cosponsoring an event with Burisma. Do you know what this event was? It was a child's contest, and the prize was a camera. They were so bad—Burisma—that our country wouldn't even cosponsor a children's event with Burisma.

In March 2014, the United Kingdom's Serious Fraud Office opened a money laundering investigation into the oligarch, Zlochevsky, and the company Burisma. The very next month, April 2014, according to a public report, Hunter Biden quietly joins the board of Burisma.

Remember, early 2014 was when Vice President Biden began leading Ukraine policy.

Here is how Hunter Biden came to join Burisma's board in 2014. He was brought on the board by Devon Archer, his business partner. Devon Archer was college roommates with Chris Heinz, the stepson of Secretary of State John Kerry. All three men—Hunter Biden, Devon Archer, and Chris Heinz—had all started an investment firm together.

Public records show that on April 16, 2014, Devon Archer meets with Vice President Biden at the White House. Just 2 days later, on April 18, 2014, Hunter Biden quietly joins Burisma. That is according to public reporting.

Remember, this is just 1 month after the United Kingdom's Serious Fraud Office opened a money laundering case into Burisma, and Hunter Biden joins their board.

And not only 10 days after Hunter Biden joins the board, British authorities seized \$23 million in British bank accounts connected

to the oligarch Zlochevsky, the owner of Burisma. Did Hunter Biden leave the board then? No.

The British authorities also announced that they had started a criminal investigation into potential money laundering. Did Hunter Biden leave the board? No.

What happened was, then—and only then—did the company chose to announce that Hunter Biden had joined the board after the assets of Burisma and its oligarch owner, Zlochevsky, were frozen and a criminal investigation had begun. [Slide 541] Hunter Biden's decision to join Burisma raised flags almost immediately.

One article from May 2014 stated that, "the appointment of Joe Biden's son to the board of the Ukrainian gas firm Burisma has raised eyebrows the world over."

Even an outlet with bias for Democrats pointed out Hunter Biden's activities created a conflict of interest for Joe Biden. The article stated: [Slide 542] "The move raises questions about a potential conflict of interest for Joe Biden."

Even Chris Heinz, Hunter Biden's own business partner, had grave concerns. He thought that working with Burisma was unacceptable. This is Chris Heinz. He was worried about the corruption, the geopolitical risk, and how bad it would look. So he wisely distances himself from Hunter Biden and Devon Archer's appointments to Burisma.

He didn't simply call his stepfather, the Secretary of State, and say: I have a problem with this. He didn't tell his friends: Hey, guys, I am not getting on the board. I want nothing to do with this.

He went so far as to send an email to senior State Department officials about this issue. This is Chris Heinz. He wrote: [Slide 543]

Apparently, Devon and Hunter have joined the board of Burisma, and a press release went out today. I can't speak [to] why they decided to, but there is no investment by our firm in their company.

What did Hunter Biden do? He stayed on the board. What did Chris Heinz do? He subsequently stopped doing business with his college roommate Devon Archer and his friend Hunter Biden. [Slide 544] Chris Heinz' spokesperson said the lack of judgment in this matter was a major catalyst for Mr. Heinz ending his business relationship with Mr. Archer and Mr. Biden.

Now, the media also noticed. The same day, an ABC News reporter asked Obama White House Press Secretary Jay Carney about it. Here is what happened.

(Text of Videotape presentation:)

REPORTER. Hunter Biden has now taken a position with the largest oil and gas company—holding company in Ukraine. Is there any concern about at least the appearance of a conflict there—the Vice President's son—

Mr. CARNEY. I would refer you to the Vice President's Office. I saw those reports. You know, Hunter Biden and other members of the Biden family are obviously private citizens, and where they work does not reflect an endorsement by the administration or by the Vice President or President. But I would refer you to the Vice President's Office.

Ms. Counsel BONDI. The next day, [Slide 545] the Washington Post ran a story about it. It said: "The appointment of the Vice President's son to a Ukrainian oil board looks nepotistic at best, nefarious at worst." Again, "The appointment of the Vice President's son to a Ukrainian oil board looks nepotistic at best, nefarious at worst."

And the media didn't stop asking questions here. It kept going. Here is ABC.

(Text of Videotape presentation:)

Vice President BIDEN. You have to fight the cancer of corruption.

REPORTER. But then something strange happened. Just three weeks later a Ukrainian natural gas company, Burisma, accused of corruption appoints Hunter Biden, seen here in their promotional videos, to their board of directors, paying his firm more than a million dollars a year.

Ms. Counsel BONDI. Here is more from ABC, continued on.

(Text of Videotape presentation:)

REPORTER. And Ukraine wasn't the only country where Hunter Biden's business and his father's diplomacy as Vice President intersected. It also happened in China. This video shows Chinese diplomats greeting Vice President Biden as he arrived in Beijing in December of 2013. Right by his side, his son Hunter. Less than 2 weeks later, Hunter's firm had new business, creating an investment fund in China involving the government-controlled Bank of China, with reports they hoped to raise \$1.5 billion.

Ms. Counsel BONDI. In fact, every witness who was asked about Hunter Biden's involvement with Burisma agreed there was a potential appearance of a conflict of interest. Multiple House Democratic witnesses, including those from the Department of State, the National Security Council, and others, unanimously testified there was a potential appearance of a conflict of interest. These were their witnesses.

How much money did Hunter Biden get for being on the board? Well, if we start looking at these bank records, [Slide 546] according to reports, between April 2014 and October 2015, Burisma paid more than \$3.1 million to Devon Archer and Hunter Biden. That is over the course of a year and a half. How do we know this? Some of Devon Archer's bank records were disclosed during an unrelated Federal criminal case having nothing to do with Hunter Biden. These bank records show 17 months that [Slide 547] Burisma wired two payments of \$83,333—not just for 1 month, for 2 months, for 3 months, but for 17 months. According to Reuters, sources report that of the two payments of \$83,333 each, one was for Hunter Biden and one, Devon Archer.

Hunter Biden was paid significantly more than board members for major U.S. Fortune 100 companies such as Goldman Sachs, Comcast, and Citigroup. The typical board member of these Fortune 100 companies, we know, are the titans of their industry. They are highly qualified, and as such, they are well compensated. Even so, Hunter Biden was paid significantly more. This is how well he was compensated: Hunter Biden was paid over \$83,000 a month, while the average American family of four, during that time, each year made less than \$54,000. That is according to the U.S. Census Bureau during that time.

This is what has been reported about his work on the board. The Washington Post said: "What specific duties Hunter Biden carried out for Burisma are not fully known." The New Yorker reported: "Once or twice a year, he attended Burisma board meetings and energy forums that took place in Europe."

When speaking with ABC News about his qualifications to be on Burisma's board, Hunter Biden didn't point to any of the usual qualifications of a board member. Hunter Biden had no experience in natural gas, no experience in the energy sector, and no experi-

ence with Ukrainian regulatory affairs. As far as we know, he doesn't speak Ukrainian. So naturally the media has asked questions about his board membership. Why was Hunter Biden on this board?

(Text of Videotape presentation:)

REPORTER. If your last name wasn't Biden, do you think you would've been asked to be on the board of Burisma?

Mr. Hunter BIDEN. I don't know. I don't know. Probably not.

Ms. Counsel BONDI. So let's go back and talk about his time on the board.

Remember, he joined Burisma's board in April 2014, while the United Kingdom had an open money laundering case against Burisma and its owner, the oligarch Zlochevsky. On August 20, 2014, 4 months later, the Ukrainian prosecutor general's office initiates a money laundering investigation into the same oligarch, Zlochevsky. This is one of 15 investigations into Burisma and Zlochevsky, according to a recent public statement made by the current prosecutor general.

On January 16, 2015, prosecutors put Zlochevsky, the owner of Burisma, on whose board Hunter Biden sat, on the country's wanted list for fraud—while Hunter Biden is on the board.

Then a British court orders that Zlochevsky's \$23 million in assets be unfrozen. Why was the money unfrozen? Deputy Assistant Secretary Kent testified to it.

(Text of Videotape presentation:)

Mr. KENT. Somebody in the General Prosecutor's Office of Ukraine shut the case, issued a letter to his lawyer, and that money went poof.

Mr. CASTOR. So essentially paid a bribe to make the case go away.

Mr. KENT. That is our strong assumption, yes, sir.

Ms. Counsel BONDI. He also testified that the Ukrainian prosecutor general's office actions led to the unfreezing of the assets.

After George Kent's confirmation, that prosecutor was out. Viktor Shokin becomes prosecutor general. This is the prosecutor you will hear about later, the one Vice President Biden has publicly said he wanted out of office.

In addition to flagging questions about previous prosecutors' actions, George Kent also specifically voiced other concerns—this time to the Vice President's Office—about Hunter Biden. In February 2015, he raised concerns about Hunter Biden to Vice President Biden's Office.

(Text of Videotape presentation:)

Mr. KENT. In a briefing call with the National Security staff in the Office of the Vice President in February 2015, I raised my concern that Hunter Biden's status as a board member could create the perception of a conflict of interest.

Ms. Counsel BONDI. But House managers didn't tell you that.

This is all while Hunter Biden sat on Burisma's board. Did Hunter Biden stop working for Burisma? No. Did Vice President Biden stop leading the Obama administration's foreign policy efforts in Ukraine? No. In the meantime, Vice President Biden is still at the forefront of the U.S.-Ukraine policy. He pledges a billion-dollar loan guarantee to Ukraine contingent on its progress in rooting out corruption.

Around the same time as the \$1 billion announcement, other people raised the issue of a conflict. As the Obama administration spe-

cial envoy for energy policy told the New Yorker, he raised Hunter Biden's participation on the board of Burisma directly with the Vice President himself. This is a special envoy to President Obama.

The media had questions too. On December 8, 2015, the New York Times publishes an article that Prosecutor General Shokin was investigating Burisma and its owner, Zlochevsky. Here is their quote: "The credibility of the vice president's anticorruption message may have been undermined by the association of his son, Hunter Biden," with Burisma and its owner, Zlochevsky.

And it wasn't just one reporter who asked questions about the line between Burisma and the Obama administration. As we learned recently through reporting on FOX News, on January 19, 2016, there was a meeting between Obama administration officials and Ukrainian prosecutors.

Ken Vogel, journalist for the New York Times, asked the State Department about this meeting. He wanted more information about the meeting "where U.S. support for prosecutions of Burisma Holdings in the United Kingdom and Ukraine were discussed." But the story never ran.

Around the time of the reported story—January 2016—a meeting between the Obama administration and Ukrainian officials took place, and a Ukrainian press report, as translated, says: The U.S. Department of State made it clear to the Ukrainian authorities that it was linking the \$1 billion in loan guarantees to the dismissal of Prosecutor General Viktor Shokin.

Now, we all know the Obama administration, from the words of Vice President Biden himself—he advocated for the prosecutor general's dismissal.

There was ongoing investigation into the oligarch Zlochevsky, the owner of Burisma, at the time. We know this because on February 2, 2016, the Ukrainian prosecutor general obtained a renewal of a court order to seize the Ukrainian oligarch's assets. A Kyiv Post article published on February 4, 2015, says the oligarch Zlochevsky is "suspected of committing a criminal offense of illicit enrichment."

Over the next few weeks, the Vice President had multiple calls with Ukraine's President Poroshenko.

Days after the last call, on February 24, 2016, a DC consultant reached out to the State Department to request a meeting to discuss Burisma. We know what she said because the email was released under the Freedom of Information Act. The consultant explicitly invoked Hunter Biden's name as a board member.

In an email summarizing the call, the State Department official says that the consultant noted that two high-profile citizens are affiliated with the company, including Hunter Biden as a board member. She added that the consultant would like to talk with Under Secretary of State Novelli about getting a better understanding of how the United States came to the determination that the country is corrupt.

To be clear, this email documents that the U.S. Government had determined Burisma to be corrupt, and the consultant was seeking a meeting with an extremely senior State Department official to discuss the U.S. Government's position. Her pitch for the meeting specifically used Hunter Biden's name, and according to the email, the meeting was set for a few days later.

Later that month, on March 29, 2016, the Ukrainian Parliament finally votes to fire the prosecutor general. This is the prosecutor general investigating the oligarch, owner of Burisma, on whose board Hunter Biden sat.

Two days after the prosecutor general is voted out, Vice President Biden announces that the United States will provide \$335 million in security assistance to Ukraine. He soon announces that the United States will provide \$1 billion in loan guarantees to Ukraine.

Let's talk about one of the Democrats' central witnesses: Ambassador Yovanovitch. In May 2016, Ambassador Yovanovitch was nominated to be Ambassador to Ukraine. Here is what happened when she was preparing for her Senate confirmation hearing.

(Text of Videotape presentation:)

Mr. RATCLIFFE. Congresswoman Stefanik had asked you how the Obama-Biden State Department had prepared you to answer questions about Burisma and Hunter Biden specifically. Do you recall that?

Ambassador YOVANOVITCH. Yes.

Mr. RATCLIFFE. Out of thousands of companies in the Ukraine, the only one that you recall the Obama-Biden State Department preparing you to answer questions about was the one where the Vice President's son was on the board, is that fair?

Ambassador YOVANOVITCH. Yes.

Ms. Counsel BONDI. So she is being prepared to come before all of you—all of you—and talk about world issues, going to be in charge of Ukraine, and what did they feel the only company—the company—that it was important to brief her on in case she got a question? Burisma.

Ambassador Yovanovitch was confirmed July 2016 as the Obama administration was coming to a close. In September 2016, a Ukrainian court cancels the oligarch Zlochevsky's arrest warrant for lack of progress in the case.

In mid-January 2017, Burisma announces that all legal proceedings against it and Zlochevsky have been closed. Both of these things happened while Hunter Biden sat on the board of Burisma. Around this time, Vice President Biden leaves office.

Years later now, former Vice President Biden publicly details what we know happened: his threat to withhold more than \$1 billion in loan guarantees unless Shokin was fired.

Here is the Vice President.

(Text of Videotape presentation:)

Vice President BIDEN. I said I'm not—we are not going to give you the billion dollars. They said: You have no authority. You're not the President. The President said—I said: Call him. I said: I'm telling you, you are not getting the billion dollars. I said: You are not getting the billion. I'm going to be leaving here in, I think it was about 6 hours. I looked at them and said: I'm leaving in six hours. If the prosecutor is not fired, you're not getting the money. Well, son of a bitch. (Laughter.) He got fired. And they put in place someone who was solid at the time.

Ms. Counsel BONDI. What he didn't say on the video—according to the New York Times, this was the prosecutor investigating Burisma, Shokin.

What he also didn't say on the video was that his son was being paid significant amounts by the oligarch owner of Burisma to sit on that board.

Only then does Hunter Biden leave the board. He stays on the board until April 2019. In November 2019, Hunter Biden signs an

affidavit saying he “has been unemployed” and has no other “monthly income since May 2019.”

This was in November of 2019, so we know, from after April 2019 to May 2019 through November 2019, he was unemployed, by his own statement—April 2019 to November 2019.

Despite his resignation from the board, the media continued to raise the issue relating to a potential conflict of interest.

On July 22, 2019, the Washington Post wrote that fired Prosecutor General Shokin “believes his ouster was because of his interest in the company,” referring to Burisma. The Post further wrote that “had he remained in his post, he would have questioned Hunter Biden.

On July 25, 2019, 3 days later, President Trump speaks with President Zelensky. He said:

The other thing, There’s a lot of talk about Biden’s son, that Biden stopped the prosecution and a lot of people want to find out about that so whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it . . . It looks horrible to me.

The House managers talked about the Bidens and Burisma 400 times, but they never gave you the full picture. But here are those who did: The United Kingdom’s Serious Fraud Unit; Deputy Assistant Secretary of State George Kent; Chris Heinz, the ABC White House reporter; ABC “Good Morning America”; the Washington Post; the New York Times; Ukrainian law enforcement; and the Obama State Department itself. They all thought there was cause to raise the issue about the Bidens and Burisma.

The House managers might say, without evidence, that everything we just have said has been debunked, that the evidence points entirely and unequivocally in the other direction. That is a distraction.

You have heard from the House managers. They do not believe that there was any concern to raise here, that all of this was baseless. And all we are saying is that there was a basis to talk about this, to raise this issue, and that is enough.

I yield my time.

The CHIEF JUSTICE. Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Majority Leader MCCONNELL, Democratic Leader SCHUMER, House managers, Members of the Senate, this will be our last presentation before dinner.

The next lawyer representing the President is Eric Herschmann. He is a partner in the Kasowitz firm, the law firm which has been representing the President for over two decades. He is a former prosecutor and trial lawyer, and he ran a natural gas company in the United States.

He is going to discuss additional evidence the House managers ignored or misstated and how other Presidents might have measured up under this new impeachment standard.

Mr. Counsel HERSCHMANN. Mr. Chief Justice, Members of the Senate, I am Eric Herschmann. I have the honor and privilege of representing the President of the United States in these proceedings. I have been carefully listening to and reviewing the House managers’ case. That case pretty much boils down to one straightforward contention—that the President abused his power to promote his own personal interests and not our country’s interests.

The House managers say that the President did not take the steps that they allege for the benefit of our country but only for his own personal benefit. If that is wrong, if what the President had wanted would have benefited our country, then the managers have not met their burden, and these Articles of Impeachment must be rejected. As we will see, the House managers do not come close to meeting the burden.

Last week, Manager SCHIFF said that the investigations President Trump supposedly asked President Zelensky about on the July 25 call could not have been in the country's interest because he said they were "discredited entirely." The House managers say that the investigations had been debunked; they were sham investigations. Now we have the question: Were they really?

The House managers, in the over 21 hours of the repetitive presentation, never found the time to support those conclusory statements. Was it, in fact, true that any investigation had been debunked? The House managers do not identify for you who supposedly conducted any investigations, who supposedly did the debunking, who discredited it. Where and when were any such investigations conducted? When were the results published? And much more is left unanswered.

Attorney General Bondi went through for you some of what we know about Burisma and its millions of dollars in payments to Vice President Biden's son and his son's business partner.

There is no question that any rational person would like to understand what happened. I am going to go through some additional evidence, which was easily available to the House managers but which they never sought or considered.

Based on what Attorney General Bondi told you in this additional evidence, you can judge for yourself whether the conduct was suspect. As you know, one of the issues concerned Hunter Biden's involvement with the Ukrainian natural gas company, which paid him millions of dollars while his father was Vice President and was in charge of the Ukrainian portfolio during the prior administration. I will get to those supposedly discredited allegations identified by the House managers in a few minutes.

The other issue was what Manager SCHIFF called "the baseless conspiracy theory that Ukraine, not Russia, interfered in the 2016 election."

Manager SCHIFF said that President Trump wanted to "erase from history his previous political misconduct." But there was no previous political misconduct. If any theory has actually been discredited, it is the theory that President Trump colluded with Russia in 2016. It was that theory that was discredited, and discredited entirely, by Mr. Mueller's massive investigation—the same investigation the Democrats demanded since President Trump took office; the same investigation they knew, they were absolutely sure, would expose such collusion; the same investigation, which, after 22 months of exhaustive work at a cost to the taxpayers of \$32 million, found no conspiracy and no evidence of Russian collusion with the Trump campaign.

As we will see, the Democrats are as wrong now about the Articles of Impeachment as they were in 2016 about the Russian collusion.

As to the other incident President Trump mentioned—the one concerning the Ukrainian gas company Burisma—I actually think this is something that is undisputed, that Ukraine had a particularly bad corruption problem. It was so corrupt that dealing with corruption and solving the corruption was a priority for our U.S. foreign policy. Here is how one knowledgeable observer of Ukraine put it in 2015:

It's not enough to set up a new anti-corruption bureau and establish a special prosecutor fighting corruption. The Office of the General Prosecutor desperately needs reform. The judiciary should be overhauled. The energy sector needs to be competitive, ruled by market principles—not sweetheart deals. It's not enough to push through laws to increase transparency with regard to official sources of income. Senior elected officials have to remove all conflicts between their business interests and their government responsibilities.

As Attorney General Bondi said, here are the facts we do know about Hunter Biden's involvement with Ukraine. Burisma, a Ukrainian natural gas company, paid Hunter Biden millions of dollars to serve on its board of directors. He did not have any relevant expertise or experience. He had no expertise or experience in the natural gas industry. He had no known expertise in corporate governance nor any expertise in Ukrainian law. He doesn't, so far as we know, speak Ukrainian. So why—why—did Burisma want Hunter Biden on its board? Why did they want to pay him millions of dollars? Well, he did have one qualification. He was the son of the Vice President of the United States. He was the son of the man in charge of the Ukrainian portfolio for the prior administration. And we are to believe there is nothing to see here, that for anyone to investigate or inquire about this would be a sham—nothing to see here.

But tellingly, Hunter Biden's attorney, on October 13, 2019, issued a statement on his behalf. He indicated that in April 2014, Hunter was asked to join the board of Burisma, then states Hunter stepped off Burisma's board in April 2019.

Now listen to the commitment that Hunter Biden is supposedly willing to make to all of us. Hunter makes the following commitment: Under a Biden administration, Hunter will readily comply with any and all guidelines or standards a President Biden may issue to address purported conflicts of interest or the appearance of such conflicts, including any restrictions related to overseas business interests.

That statement almost tells us all we need to know. That is the rule that should have been in place in 2014 because there already was an Obama-Biden administration. What changed? What changed?

Remember a couple of minutes ago when I quoted an expert on Ukraine, the one who said that Ukraine must clean up its energy sector, the one who said that Ukraine's senior elected officials have to remove all conflicts between their business interests and their government responsibilities? You know who said that about Ukraine? Vice President Joe Biden in December of 2015.

Vice President Biden went to Ukraine approximately 12 to 13 times. He spoke with legislators, business people, and officials. He was purportedly fighting corruption in Ukraine. He was urging Ukraine to investigate and uproot corruption.

One thing he apparently did not do, however, was to tell his son not to trade on his family connections. He did not tell his son to especially stay away from the energy sector in the very corruption-ridden country Vice President Biden was responsible for.

And Manager SCHIFF says: Move along; there is nothing to see here. What are the House managers afraid of finding out? In an interview with ABC in October of last year, Hunter Biden said he was on the board of Burisma to focus on principles of corporate governance and transparency.

(Text of Videotape presentation:)

Mr. Hunter BIDEN. Bottom line is that I know I was completely qualified to be on the board, to head up the corporate governance and transparency committee on the board. And that's all that I focused on.

Mr. Counsel HERSCHMANN. But when asked how much money Burisma was paying him, he responded he doesn't want to "open his kimono" and disclose how much. He does refer to public reports about how much he was being paid, but as we now know, he was being paid far more than what was in the public record.

(Text of Videotape presentation:)

REPORTER. You were paid \$50,000 a month for your position?

Mr. Hunter BIDEN. Look, I'm a private citizen. One thing that I don't have to do is sit here and open my kimono as it relates to how much money I make or made or did or didn't. But it's all been reported.

Mr. Counsel HERSCHMANN. So what was the real reason that Hunter Biden, the Vice President's son, was being paid by Burisma? Was it based on his knowledge and understanding of the natural gas industry in Ukraine? Was he going to discuss how our government regulates the energy industry here? Was he going to discuss how we set gas rates? Was he going to discuss pipeline development construction or environmental impact statements? Did he know anything about the natural gas industry at all? Of course not.

So what was the reason? I think you do not need to look any further than the explanation that Hunter Biden gave during the ABC interview when he was asked why.

Here is what he had to say.

(Text of Videotape presentation:)

REPORTER. If your last name wasn't Biden, do you think you would have been asked to be on the board of Burisma?

Mr. Hunter BIDEN. I don't know. Probably no. I don't think there are a lot of things that would have happened in my life if my last name wasn't Biden.

Mr. Counsel HERSCHMANN. And as if to confirm how suspect this conduct was that it should be a concern to our country, Hunter Biden and his lawyer could not even keep their story straight. Compare the press release that was issued by Burisma on May 12, 2014, [Slide 548] with Hunter Biden's lawyer's statement on October 13 of 2019. The May 2014 press release begins: "R. [Robert] Hunter Biden will be in charge of holding's legal unit." He was going to be in charge of a Ukrainian gas company owned by an oligarch's legal unit. However, in his lawyer's statement in October of 2019, after his involvement with Burisma came under renewed public scrutiny, he now claims: "At no time was Hunter in charge of the company's legal affairs."

Which is it? What was Hunter Biden doing at Burisma in exchange for millions of dollars? Who knows? What were they looking to hide so much for his corporate governance and transparency?

But let's take a step back and realize what actually transpired, because the House managers would have us believe this had nothing at all to do with our government, nothing at all to do with our country's interests, nothing at all to do with our Vice President, nothing at all to do with the State Department. It was simply private citizen Hunter Biden doing his own private business. It was purely coincidental that it was in his father's portfolio in Ukraine, in the exact sector—the energy sector—that his father said was corrupt.

But we have a document here—again, something that House managers did not show you or even put before the House before voting on these baseless Articles of Impeachment. [Slide 543] If you look at that email, it is an email from Chris Heinz. And as Attorney Bondi already told you, he is the stepson of the then-Secretary of State John Kerry, and he was the other business partner with Hunter Biden and Devon Archer. Our Secretary of State's stepson and our Vice President's son are in business together.

It was sent on May 13, 2014, to the official government email addresses of two senior people at the State Department. These two people are the Chief of Staff to the Secretary of State and the Special Advisor to the Secretary of State. The subject line in the email is not “corporate transparency.” It is not “corporate governance.” It is not “here's a heads-up.” The subject line is “Ukraine.”

Chris Heinz certainly understood the sensitivity to our U.S. foreign policy. What does the Secretary of State's stepson say about Hunter Biden and Devon Archer? He says this:

Apparently Devon and Hunter both joined the board of Burisma and a press release went out today. I can't speak to why they decided to, but there was no investment by our firm in their company.

What is the most telling thing about this? It is clear that the Chief of Staff and the Special Assistant to the Secretary already knew who Devon was because Mr. Heinz did not include his last name. It is just “Devon.” They obviously knew who Hunter was because, again, it is Hunter Biden. This is Chris Heinz saying: “I can't speak to why they decided to join the board of Burisma.” He is their business partner—not that there were good corporate reasons that they are going there for corporate governance, not that they are there to enhance corporate transparency, not that they are there to further U.S. policy, not that they are there to help fight corruption in Ukraine, not that they are there to ensure boards of directors' compensation and benefits are publicly disclosed—nothing like that. He cannot say those things because he knows Devon and Hunter well and he knows they have no particular qualifications, whatsoever, to do those things, especially for a Ukrainian gas company.

Instead, Mr. Heinz is planning to go on the record to report what Hunter and Devon were doing through official channels to take pains to disassociate himself from what they were doing. And what did the State Department do with this information that the Secretary of State's stepson thought they needed to know? Apparently, nothing. They did not tell Mr. Heinz to stay away. They did not tell

Mr. Heinz there is no problem—nothing. But all this, the House managers want us to believe, does not even merit any inquiry. Anyone asking for one, anyone discussing one is now corrupt.

Does it matter in an inquiry why a corrupt company in a corrupt country would be paying our Vice President's son a million dollars per year, plus, it appears, some additional expenses, and paying his business partner an additional million dollars per year? Secretary of State Kerry's stepson thought it was important enough to report. Why aren't the House managers concerned?

And I ask you, why would it not merit an investigation? You know something else about Vice President Biden? Well, back in January of 2018, as you heard, former Vice President Biden bragged that he had pressured the Ukrainians—threatened them, indeed, coerced them—into firing the state prosecutor who reportedly was investigating the very company that paid millions of dollars to his son. He bragged that he gave them 6 hours to fire the prosecutor or he would cut off \$1 billion in U.S. loan guarantees. (Text of Videotape presentation:)

Vice President BIDEN. I said: We're not going to give you the billion dollars.

They said: You have no authority. You're not the President. The President said—I said: Call him. I said: I'm telling you, you're not getting the billion dollars. I said: You're not getting the billion. I'm going to be leaving here in—I think it was, what—6 hours. I looked at him and said: I'm leaving in 6 hours. If the prosecutor is not fired, you're not getting the money.

Well, son of a bitch, he got fired, and they put in place someone who was solid at the time.

Mr. Counsel HERSCHMANN. Are we really to believe it was the policy of our government to withhold \$1 billion of guarantees to Ukraine unless they fired a prosecutor on the spot? Was that really our policy? We have all heard continuously from the managers and many agree about the risks to the Ukrainians posed by the Russians. We have heard the managers say that a slight delay in providing funding to Ukraine endangers our national security and jeopardizes our interests and, therefore, the President must immediately be removed from office. Yet, they also argue that it was the official policy of our country to withhold \$1 billion unless one individual was fired within a certain matter of hours. Was that really or could it ever be our United States policy?

According to the House managers' theory, we were willing to jeopardize Ukrainians unless somebody who happened to be investigating Burisma was promptly fired. Are we going to jeopardize a Ukrainian economy because a prosecutor was not fired in the 6-hour time period Vice President Biden demanded? Does anyone really believe that was or ever could be our U.S. foreign policy? And, just in case, the managers or others tried to argue: No, no, no, he wasn't serious about that; he was just bluffing. What kind of message would that send to the Russians about our support for the Ukrainians that we would bluff and bluff with the Ukrainian economy?

From 2014 to 2017, Vice President Biden claimed to be on a crusade against corruption in Ukraine. He repeatedly spoke about how the cancer of corruption was endemic in Ukraine, hobbled Ukraine, how Ukraine faced no more consequential mission than confronting corruption, and he encouraged Ukraine to close the space for corrupt middlemen who rip off the Ukrainian people. The Vice Presi-

dent railed against monopolistic behavior where a select few profit from so many sweetheart deals that has characterized that country for so long.

On his last official visit to Ukraine, 4 days before he left office, he spoke out against corruption and oligarchy, that eats away like a cancer, and against corruption, which continues to eat away at Ukraine's democracy within. Why was Vice President doing this? Was he so concerned about corruption in Ukraine—even singling out that country's energy sector—because corruption in Ukraine is a critical policy concern for our country?

But during this whole time, what else was happening? His son and his son's business partner were raking in over \$1 million a year from what was regarded as one of the most corrupt Ukrainian companies in the energy sector, owned and controlled by one of the most corrupt oligarchs. Were Vice President Biden's words and advice to Ukraine just hollow? According to the House managers, the answer apparently is yes, they were empty words, at least when it came to anyone questioning his son's own sweetheart deal, his own son's deal with Ukraine's corruption and oligarchy.

Again, to raise Manager SCHIFF's own question: What kind of message did this send to future U.S. Government officials? Your family can accept money from foreign corrupt companies? No problem. You can pay family members of our highest government officials, and no one is allowed to even ask questions.

What was going on? We have to just accept now the House managers' conclusory statements, like "sham," "discrediting," even though no one has ever investigated why. And can you imagine what House Manager SCHIFF and his fellow Democratic Representatives would say if it were President Trump's children on an oligarch's payroll?

And when it finally appeared that a true Ukrainian corruption fighter had assumed the country's Presidency, President Trump was not supposed to—he was not permitted to—follow up on Vice President Biden's own words about fighting corruption and try to make those words something other than empty?

According to the House managers, Ukrainian corruption is now only a private interest. It no longer is a serious important concern for our country.

Now I want to take a moment to cover a few additional points about the July 25 telephone call in which the House managers believe that the President of the United States, in their words, was shaking down and pressuring the President of Ukraine to do his personal bidding.

First of all, this was not the first telephone call that the President of the United States had with other foreign leaders. Think about this for a moment. The call was routed through the Situation Room. It was a scheduled call. There were other people on the call. There were other people taking notes. Obviously, the President was aware of that fact.

The House managers talked about the fact that the President did not follow the approved talking points as if the President—any President—is obligated to follow approved talking points. The last time I checked—and I think this is clear to the American people—President Trump knows how to speak his mind.

Do you remember the fake transcript that Manager SCHIFF read when he was before the Intelligence Committee—his mob, gangster-like, fake rendition of the call? Well, I prosecuted organized crime for years. The type of description of what goes on—what House Manager SCHIFF tried to create for the American people—is completely detached from reality. It is as if we were supposed to believe that mobsters would invite people they do not know into an organized crime meeting to sit around and take notes to establish their corrupt intent.

Manager SCHIFF, our jobs as prosecutors—and I know you were one—would have been a lot easier if that were how it worked.

Think about what he is saying. Think about the managers' position: that our President decided with corrupt intent to shake down, in their words, another foreign leader, and he decided to do it in front of everyone, in a documented conversation, in the presence of people he did not even know, just so he could get this personal benefit that was not in our country's interest. This logic is flawed—it is completely illogical—because that is not what happened, and that is why Manager SCHIFF ran away from the actual transcript. That is why he created his own, fake conversation.

I would like to just address another point, for the transcript, of the July 25 phone call.

The House managers alleged that an Oval Office meeting with the President was critical to the newly elected Ukrainian President because it would signal to Russia, which had invaded Ukraine in 2014 and still occupied Ukrainian territory, that Ukraine could count on American support. They actually argued that it was a quid pro quo, that the President withheld this critical Oval Office meeting that would deter the Russians and save the Ukrainians because he wanted something personal.

Now, if that were, in fact, critical to President Zelensky for the safety of his own citizens, he would have immediately jumped at the opportunity to come to the Oval Office, especially when President Trump offered him that invitation during the July 25 call. Let's see what President Zelensky actually said when he was invited to Washington on that call.

He does not say: Oh, this is what I would like to do. It is critical for my people. We will arrange it in a meeting.

His response is:

I would be very happy to come and would be happy to meet you personally and get to know you better . . . On the other hand, I believe that, on September 1, we will be in Poland, and we could meet in Poland, hopefully.

If an Oval Office meeting were critical to President Zelensky, that was the time to say so, not to suggest another venue.

When we look at the evidence that is before us, it is clear that the only people who talked about having an Oval Office meeting were lower level government employees who thought it was a good idea. But for the principals involved, those who actually make the decisions—President Zelensky, President Trump—to them, it was not critical, it was not material, and it was definitely never a quid pro quo. What was important to President Zelensky was not an Oval Office meeting but the lethal weapons that President Trump supplied to Ukraine and the sanctions that President Trump en-

forced against the Russians. That is what the transcript of the July 25 call demonstrates.

Let us now consider what President Zelensky knew about the support that President Trump had provided to Ukraine compared to the support—or more accurately, the lack thereof—that the prior administration had provided to Ukraine.

In February 2004, Russia began its military campaign against Ukraine. Against the advice and urgings of Congress and of many in his own administration, President Obama refused then and throughout the remainder of his Presidency to provide lethal assistance to Ukraine.

In the House, Manager SCHIFF joined many of his colleagues in a letter-writing campaign to President Obama, urging “the U.S. must supply Ukraine with the means to defend itself” against Russian aggression, urging President Obama to quickly approve additional efforts to support Ukraine’s efforts to defend the sovereign territory, including the transfer of lethal defense weapons to the Ukraine military.

On March 23, the House of Representatives overwhelmingly passed a resolution urging President Obama to immediately exercise the authority by Congress to provide Ukraine with a lethal defensive weapons system.

The very next day, this Senate passed a unanimous resolution urging the President to prioritize and expedite the provision of defensive lethal and nonlethal military assistance to Ukraine, consistent with U.S. national interests and policies.

As one Senator here stated in March 2015, “Providing nonlethal equipment like night vision goggles is all well and good, but giving the Ukrainians the ability to see the Russians coming but not the ability to stop them is not the answer.”

Yet President Obama refused. He refused even in the face of support by senior career professionals recommending he provide lethal weapons to the Ukrainians.

By contrast, what did President Zelensky and the Russians know? They knew that President Trump did—did—provide that support. That, clearly, was the most material thing to him, much more important than a meeting in the Oval Office.

The House managers also made much of the contention that President Trump supposedly wanted President Zelensky only to announce an investigation, not conduct it, but that contention makes no sense. President Trump’s call with President Zelensky was in July of 2019—almost a year and a half before our next election. Would only a bare announcement so far in advance, with no followup, really have had any effect on the election, as the managers claim? Would anyone have remembered the announcement a year or more later?

Ironically, it is the House managers who have put Burisma and its connection to the Bidens front and center in this proceeding, and now the voters will know about it and probably will remember it. Be careful what you wish for.

Manager SCHIFF—well, there he goes again. He is putting words in the President’s mouth that were never there. Again, look at the transcript of the July call. President Trump never asked about any

announcement of any type of investigation, and President Zelensky told President Trump:

I guarantee, as the President of Ukraine, that all the investigations will be done openly and candidly. That I can assure you.

What happened next?

The House managers say President Zelensky did not want to get mixed up in U.S. politics, but it is precisely the Democrats who politicized the issue.

Last August, they began circling the wagons in trying to protect Vice President Biden, and they are still doing it in these proceedings. They contend that any investigation into the millions of dollars of payments by a corrupt Ukraine company—owned by a corrupt Ukraine oligarch—to the son of the second highest officeholder in our land, who was supposed to be in charge of fighting corruption in Ukraine, to be a sham, debunked. But there has never been an investigation, so how could it be a sham—simply because the House managers say so?

Which brings me to yet another one of the House managers' baseless contentions—that President Trump raised the matter with President Zelensky because Vice President Biden had just announced his candidacy for President. But, of course, it was far from a secret that Vice President Biden was planning to run.

What had, in fact, changed?

First, President Zelensky had been elected in April on an anti-corruption platform. In July, running on the same platform, his party took control of the Ukrainian Parliament. That made it the opportune time to raise the issue because finally there was a receptive government in Ukraine that was committed to fighting precisely the kind of highly questionable conduct displayed by Burisma in its payments to Hunter Biden and his partner, just as Joe Biden had raised years before.

There are two other things.

In late June, ABC News ran a story entitled "Hunter Biden's foreign deals. Did Joe Biden's son profit off of his father's position as Vice President?"

Then, just a couple of weeks before President Trump's telephone call with President Zelensky, the New Yorker magazine—not exactly a supporter of President Trump's—ran an expose—"Will Hunter Biden Jeopardize His Father's Campaign?"—and went through some of the facts that we do know about Hunter Biden's involvement with Burisma and his involvement with the Chinese company.

The New Yorker reporter—again, this was in July, just a couple of weeks before the phone call—said that some of Vice President Biden's advisers were worried that Hunter would expose the Vice President to criticism.

A former senior White House aide told the New Yorker reporter that Hunter's behavior invited questions about whether he was "leveraging access for his benefit." The reporter wrote: "When I asked members of Biden's staff whether they did raise their concern with the Vice President, several of them said they had been too intimidated to do so."

"Everyone who works for him has been screamed at," a former adviser told the reporter. "I don't know whether anyone has been

intimidated by Vice President Biden or has been screamed at by him about Burisma or his son's involvement."

Do we want the type of government where questions about facially suspect conduct are suppressed or dismissed as illegitimate because someone is intimidating or screams or is just too important? No. That is precisely when an investigation is most important.

Last Thursday night, Manager JEFFRIES provided us with the Democrats' standard for abuse of power.

He said: "Abuse of power occurs when the President exercises his official power to obtain a corrupt personal benefit while ignoring or injuring the national interest."

Mr. JEFFRIES and the House managers contend that, under this standard, President Trump has committed an impeachable offense and must be immediately removed from office. But if Manager JEFFRIES' standard applies, then where were these same Democrats' calls for impeachment when uncontroverted, smoking-gun evidence emerged that President Obama had violated their standard?

The American people understand this basic notion as equal justice under the law. It is as American as apple pie. Yet the House managers want to apply their own version of selective justice here, which applies only to their political opponents. They want one system of justice for Democrats and another system of justice for everyone else. You do not need to take my word for it; let's walk through the facts.

On March 26, 2012, on the eve of the 2012 Nuclear Security Summit in Seoul, South Korea, President Obama met with Russian President Dmitry Medvedev to discuss one of the pressing issues in the U.S. national security interests—missile defense.

How important was the issue of missile defense to the strategic relationship between the United States and Russia?

As President Obama's Defense Secretary Robert Gates said in June 2010, upgraded missile interceptors in development "would give us the ability to protect our troops, our bases, our facilities and our allies in Europe."

Gates continued:

There is no meeting of the minds on missile defense. The Russians hate it. They have hated it since the late 1960s. They will always hate it, mostly because we will build it, and they won't.

During the Nuclear Security Summit, President Obama had a private exchange with Russian President Medvedev that was picked up on a hot microphone.

(Text of Videotape presentation:)

President OBAMA. This is my last election. After my election, I have more flexibility.

President MEDVEDEV. I understand. I will transmit this information to Vladimir, and I stand with you.

Mr. Counsel HERSCHMANN. President Obama said:

On all these issues, but particularly missile defense, this can be solved, but it's important for him to give me space.

President Medvedev responded:

Yeah, I understand. I understand your message about space. Space for you.

President Obama:

This is my last election. After my election, I will have more flexibility.

President Medvedev responds:

I understand. I will transmit this information to Vladimir.

As we all know, it is Vladimir Putin.

As you just saw in 2012, President Obama asked the Russians for space until after the upcoming 2012 election, after which he would have more flexibility.

Now, let me apply Mr. JEFFRIES' and the House managers' three-part test for abuse of power.

One, the President exercises his official power. President Obama's actions clearly meet the test for exercising official power because in his role as head of state during the nuclear security summit, after asking President Medvedev for space, he promised him that "missile defense can be solved." What else did that mean but solved in a way favorable to the Russians, who were dead set against the expansion of a U.S. missile defense system in Europe?

Two, to obtain a corrupt personal benefit. President Obama's actions were clearly for his own corrupt personal benefit because he was asking an adversary for space for the express purpose of furthering his own election chances.

Again, President Obama said:

This is my last election. After my election, I have more flexibility.

President Obama knew the importance of missile defense in Europe but decided to use that as a bargaining chip with the Russians to further his own election chances in 2012.

Three, while ignoring or injuring our national interest. As President Obama's Defense Secretary said, "Missiles would give us the ability to protect our troops, our bases, our facilities, and our allies in Europe."

Surely, sacrificing the ability to protect our troops and our allies would injure the national interest. Yet President Obama was willing to barter away the safety of our troops and the safety of our allies in exchange for space in the upcoming election.

In short, President Obama leveraged the power of his office to the detriment of U.S. policy on missile defense in order to influence the 2012 election solely to his advantage. And we never would have known had President Obama realized that the microphone was on; that there was a hot mic.

One could easily substitute President Obama's 2012 exchange with President Medvedev into article I of the House's Impeachment Articles against President Trump.

Using the powers of his high office, President Obama solicited interference of a foreign government, Russia, in the 2012 U.S. Presidential election. He did so through a scheme or course of conduct that included soliciting the Government of Russia to give him "space" on missile defense that would benefit his reelection and influence the 2012 U.S. Presidential election to his advantage.

In doing so, President Obama used the powers of the Presidency in a manner that compromised the national security of the United States and undermined the integrity of the U.S. democratic process. He thus ignored and injured the interest of the Nation.

Does it sound familiar, House managers? It should, as the case against President Obama would have been far stronger than the allegations against President Trump.

President Obama's abuse of power to benefit his own political interests was there and is here now for everyone to hear. It was a direct, unquestionable quid pro quo. No mind reading was needed there. Where were the House managers then?

And that points out the absurdity of the House managers' case against President Trump. It was President Obama, not President Trump, who was weak on Russia and weak on support to Ukraine.

President Obama caved to Russia and Putin on missile defense when he decided to scrap the U.S. plans to install missile bases in Poland. Yet he criticized Senator ROMNEY during the 2012 Presidential campaign when Senator ROMNEY said Russia was the greatest geopolitical threat to the U.S.

(Text of Videotape presentation:)

PRESIDENT OBAMA. I'm glad that you recognize that al-Qaida's a threat because a few months ago when you were asked what's the biggest geopolitical threat facing America, you said Russia. Not al-Qaida, you said Russia, and the 1980s are now calling to ask for their foreign policy back because, you know, the Cold War's been over for 20 years.

MR. COUNSEL HERSCHMANN. Now, when it is politically convenient, the Democrats are saying the same thing that President Obama criticized Senator ROMNEY for saying. In fact, they are basing their entire politicized impeachment on this inversion of reality, this claim that President Trump is not supporting Ukraine far more than the prior administration.

President Obama caved on missile defense in late 2009. His hot mic moment occurred in March 2012. His reelection was 8 months later. Two years later, in March 2014, Russia invaded Ukraine and annexed Crimea. President Obama refused to provide lethal aid to Ukraine to enable it to defend itself. Where were the House managers then?

The House managers would have the American people believe that there is a threat—an imminent threat—to the national security of our country for which the President must be removed immediately from the highest office in the land because of what? Because he had a phone call with a foreign leader and discussed corruption? Because he paused for a short period of time giving away our tax dollars to a foreign country? That is their theory.

It is absurd on its face. Not one American life was in jeopardy or lost by this short delay, and they know it.

And how do we know that they know it? Because they went on vacation after they adopted the Articles of Impeachment. They did not cancel their recess. They did not rush back to deliver the Articles of Impeachment to the Senate because of this supposed terrible imminent threat to our national security. What did they do?

(Text of Videotape presentation:)

SPEAKER PELOSI. Urgency.

MR. SCHIFF. Timing is really driven by the urgency.

MR. SWALWELL. The urgency.

MR. NADLER. Nothing could be more urgent.

MR. RICHMOND. The urgency.

SPEAKER PELOSI. And urgent. And urgent.

MR. SWALWELL. There is an urgency, you know, to this.

Mr. NADLER. Then we must move swiftly.

Mr. SWALWELL. We don't have time to screw around.

Speaker PELOSI. It's about urgency.

Mr. TAPPER. House Speaker Nancy Pelosi is still holding on to the Articles of Impeachment.

Mr. Counsel HERSCHMANN. Urgency? Urgency, for which you want to immediately remove the President of the United States? You sat on the articles for a month—the longest delay in the history of our country.

They adopted them on Friday, December 13, 2019—Friday the 13th—went on vacation, and finally decided after one of their Democratic Presidential debates had finished and after the BCS football championship game, that it was time to deliver them.

What happened to their national security interest argument? Wasn't that the reason that they said they had to rush to vote? It is urgent, they told us. No due process for this President. It is a crisis of monumental proportion. Our national security is at risk every additional day that he is in office, they tell us.

The House managers also used the same excuse for not issuing subpoenas for testimony. They had no time for the normal judicial review. They even complained about the judicial review process sitting in this Chamber before the Chief Justice of the U.S. Supreme Court—a judicial review in which the judge agreed to an expedited schedule. Even that was not good enough for them when they issued the subpoenas.

One of the lawyers for the subpoenaed witnesses wrote to the House general counsel: "We are dismayed that the House committees have chosen not to join us in seeking resolution from the judicial branch of this momentous constitutional question as expeditiously as possible."

He continued: "It is important to get a definitive judgment from the judicial branch determining their constitutional duty in the place of conflicting demands of the legislative and executive branches."

Isn't that the point? Isn't that how our system of government works? Isn't that how it has always worked? Isn't that how it is supposed to work?

These same Democrats defended other administrations who fought judicial review of congressional subpoenas, and I think we all remember Fast and Furious.

The same attorney, when he wrote to the House chair, said:

The House chairmen, Mr. SCHIFF and Mr. NADLER, are mistaken to say the lawsuit is intended to delay or otherwise obstruct the committees' vital investigatory work.

He continued:

Nor has this lawsuit been coordinated in any way with the White House any more than it has been coordinated with the House of Representatives. If the House chooses not to pursue through subpoenaed testimony, let the record be clear that is the House's decision, if they come before you and they blame the administration and they blame you if you don't subpoena witnesses and have them before you.

Yet even in the face of this overwhelming evidence, they claim that the President is to blame for their decision to withdraw their own subpoenas or not issue others. Their choice, but the President is responsible. That is one of their claims. It is ludicrous.

They are blaming the President because they decided on their own not to seek judicial review and enforcement of their own subpoenas and for some witnesses never even issued subpoenas. In their minds, that is impeachable.

Manager NADLER spoke eloquently back before the House Judiciary Committee hearing in December of 1998. He said:

There must never be a narrowly voted impeachment or an impeachment substantially supported by one of our major political parties and largely opposed by the other. Such an impeachment would lack legitimacy, would produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political institutions.

Manager NADLER was right then, and it is equally true today. Divisiveness and bitterness. Divisiveness and bitterness. Listen to his words.

Impeachments by one party cause divisiveness and bitterness in our country. That is what a partisan impeachment leads to.

Sadly, when Manager NADLER eloquently warned against divisiveness and bitterness, the House did not follow his admonition. They did not heed his advice, and that is one of the reasons we are sitting here today with Articles of Impeachment that are not found in our Constitution or the evidence and are brought simply for partisan politics.

This is a sad time for all of us. This is not a time to give out souvenirs, the pens used to sign two Articles of Impeachment, trying to improperly impeach our country's representative to the world.

This is not the time to try to get digs in that the President will always be impeached because we had the majority and we could do it to you and we did it to you. It is wrong. It is not what the American people deserve or want.

Sadly, the House managers do not trust their fellow Americans to choose their own President. They do not think that they can legitimately win an election against President Trump, so they need to rush to impeach him immediately. That is what they have continually told the American people, and that—that is a shame.

We, on the other hand, trust our fellow Americans to choose their President. Choose your candidate. Let the Senators who are here who are trying to become the Democratic nominee try to win that election, and let the American people choose.

Maybe—maybe they are concerned that the American people like historically low unemployment. Maybe the American people like that their 401(k) accounts have done extremely well. Maybe the American people like prison reform and giving people a second chance.

Tellingly, some of these House managers worked constructively with this administration to give Americans a second chance. That was the public interest. That is what the country demands. That is what society deserves.

Maybe the American people like an administration that is fighting the opioid epidemic. Maybe the American people like secure borders. Maybe the American people like better trade agreements with our biggest trading partners. Maybe the American people like other countries sharing in the burden when it comes to foreign aid. Maybe the American people actually like low taxes. In other words,

maybe the American people like their current President—a President who has kept his promises and delivered on them.

If you think Americans want to abandon our prosperity and our unprecedented successes under this President, then convince the electorate in November at the ballot box. Do not try to improperly interfere with an election that is only months away, based on these Articles of Impeachment.

In your trial memorandum that you submitted here before the Senate, you speak about the Framers of the Constitution believing that President Trump's alleged conduct is their "worst nightmare" and that they would be horrified.

In fact, sadly, sadly, it is the House managers' conduct in bringing these baseless Articles of Impeachment that would clearly be their and our worst nightmare.

Thank you.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, I think we are looking at a 45-minute break for dinner.

I ask unanimous consent that the Senate stand in recess.

There being no objection, at 6:01 p.m., the Senate, sitting as a Court of Impeachment, recessed until 6:48 p.m., and thereupon re-assembled when called to order by the Chief Justice.

The CHIEF JUSTICE. The Senate will come to order. Ready to proceed?

Mr. Counsel SEKULOW. Yes, sir.

Mr. Chief Justice, Members of the Senate, House managers, we are going to do two things this evening. We are going to first hear from former independent counsel Robert Ray. He is going to discuss issues of how he was involved in the investigation, the legal issues, some of the history of how that works, and then we will conclude this evening with a presentation from Professor Dershowitz.

With that, I yield my time, Mr. Chief Justice, to Robert Ray.

Mr. Counsel RAY. Mr. Chief Justice, Members of the Senate, distinguished House managers, and may it please this Court of Impeachment, I stand before you today in defense of my fellow Americans, who in November 2016 elected Donald Trump to serve the people as their President. Their reasons for that vote were as varied as any important decisions are, but their collective judgment, accepted as legitimate under our Constitution, is deserving of my respect and yours.

For only the third time in our Nation's history, the Senate is convened to try the President of the United States on Articles of Impeachment. Those articles do not allege crimes. The Constitution, the Framers' intent, and historical practice all dictate that well-founded Articles of Impeachment allege both that a high crime has been committed, and that, as such, removal from office is warranted only when such an offense also constitutes an abuse of the public trust; that is, in the case of the President, a violation of his oath of office. Both are required and neither one, by clear and unmistakable evidence, is shown here by these Articles of Impeachment.

I am here this evening in this Chamber distinctly privileged to represent and defend the President of the United States on the facts, on the law, and on the constitutional principles that must be paramount to you, Members of the Senate, in deciding the great question of whether these articles warrant, with or without witnesses, the removal of the President from office.

Because there is and can be no basis in these articles on which the Senate can or should convict a President on what is alleged, the President must not be removed from office. That judgment is reserved to the people in the ordinary course of elections, the next of which is just over 9 months away.

Now, 40 years ago, in 1980, I first came to Capitol Hill as a legislative intern for a Congressman who only 6 years earlier had played an important and critical role in the impeachment proceedings against President Richard Nixon. The Congressman of whom I speak, whom I came to respect immensely, served then, in 1974, in the House Judiciary Committee. He was tasked in the summer of 1974, together with his colleagues, in evaluating and voting on, as most of the House managers here have, Articles of Impeachment. Those articles included the crime of obstruction of justice, abuse of power, and obstruction of Congress. But unlike how House managers—and, indeed, the entire House—45 years later in December 2019 proceeded here, bipartisan consensus in 1974, among both House Democrats and House Republicans, was the order of the day. Indeed, it became apparent then, that narrow partisan views aside, the House Judiciary Committee would step into the breach only insofar as evidence of criminal Presidential conduct warranted.

The tapes of Oval Office conversations involving the President provided that evidence. The Supreme Court, in effect, overruled the claim of executive privilege and ordered the release of the tapes to the House Judiciary Committee.

As a result, 3 days later, the high crime of obstruction of justice, including suborning perjury tethered to a second Article of Impeachment 2 days after that, alleging abuse of power, was approved by the House Judiciary Committee by a vote of 27 to 11 and 28 to 10, respectively.

The second Article of Impeachment alleged, among other things, unlawful use of the CIA and its resources, including covert activity in the United States and interference with the law enforcement actions of the FBI to advance the coverup; that is, the criminal conspiracy to obstruct justice charge in the first Article of Impeachment.

The crimes alleged were serious, involving unlawful electronic surveillance of an opposing political party, paying hush money out of a White House safe to burglars and other coconspirators to silence cooperation with law enforcement, and attempts to alter testimony under oath.

Six Republican House committee members joined all 21 Democrats in supporting those two articles. My Congressman was among those six Republican House Members. Another one of the six was then a young Congressman from Maine, who later became a Member of this body, serving with distinction as a Senator and later as President Bill Clinton's Secretary of Defense. That young Congress-

man was Bill Cohen. A third of the six was Representative Caldwell Butler, a Republican from Virginia, whose papers are housed at Washington and Lee University in Lexington, VA, in the State where I grew up and where I later went to law school.

Together, these six Republicans made history. They did so with no sense of triumph—in today’s parlance, no fist bumps—but in the words of my Congressman, only “with deep reluctance” and only because the evidence was clear and unmistakable of unlawful activities by the President in a criminal coverup that was—in the concluding language of the first Article of Impeachment—“contrary to his trust as President.”

As to the third article in the Nixon impeachment, that article charging obstruction of Congress did not enjoy bipartisan support but instead was voted on by the House Judiciary Committee along party lines by a vote of 21 to 17. Republicans objected then to the third article in the face of the President’s good-faith prior claim to executive privilege by withholding certain evidence until such time as the matter was definitively resolved by the Supreme Court.

My point in mentioning these three votes by the House Judiciary Committee is simply this: Count votes, and do the math. I understand that you all have been deprived of your phones and, thus, a calculator app, so I will do it for you.

A 27-to-11 vote was not only bipartisan, as I have indicated, but overwhelmingly so—indeed, over 70 percent; that is to say, greater than a two-thirds supermajority.

That vote sent a powerful signal to the full House and indeed the Senate that impeachment was overwhelmingly bipartisan and, therefore, politically and legally legitimate.

President Nixon’s fate was sealed, and the result was inevitable. Thus, less than 2 weeks after that initial committee vote on impeachment, the President resigned.

During the course of those proceedings, my Congressman commented simply and plainly that it was, in his words, “a great American tragedy.” But the greater point was—and is—that impeachment was never designed or intended to be a partisan tool and was to be undertaken only as a last resort.

This then brings me to what was intended by the Framers of the Constitution relative to impeachment. That subject will be addressed at some length by my colleague Professor Dershowitz, but, for now, let me just say that much has been said by House managers in reliance on Alexander Hamilton’s oft-quoted statement in Federalist No. 65. That is the one repeatedly taken out of context and cited in favor of an expansive scope of jurisdiction by Congress over alleged offenses.

In Hamilton’s words, “which proceed from misconduct of [a] public [official constituting] the abuse of or violation of some public trust.” The irony that Hamilton—the greatest proponent in this country of executive and Presidential authority that perhaps ever lived—should be front and center in this partisan impeachment effort to remove a duly elected President from office is apparently lost on House impeachment managers. I dare say that Hamilton would roll over in his grave at the end of Wall Street in New York City to know that, contrary to what he explicitly acknowledged in Federalist No. 69, a President can only be removed from office

“upon conviction of treason, bribery, or other high crimes or misdemeanors.” We should just read the word “crime” right out of the impeachment clause of the Constitution and proceed merrily along the way toward an impeachment trial, with witnesses, no less, of a President duly elected by the people. And for what? Articles of Impeachment that do not even allege crimes.

President Trump is right. That course, if sustained, cheapens the impeachment process and, thus, is an American tragedy all its own.

Indeed, during the impeachment trial 21 years ago in January 1999, none other than President Clinton’s highly respected White House Counsel Charles Ruff stated it best: “To argue then, as the managers do, that the phrase ‘other high crimes and misdemeanors’ was really meant to encompass a wide range of offenses . . . simply flies in the face of the clear intent of the framers, who carefully chose their language, knew exactly what those words meant and knew exactly what risk they intended to promote against.”

Counsel Ruff went on to explain: One of those concerns and risks was that “impeachment be limited and well defined.”

For our purposes here, what is required is both that crimes be alleged and that those crimes be of the type that, in particular, are so serious that they—again, in Mr. Ruff’s words—“subvert our system of government and would justify overturning a popular election.” Otherwise, what you have—in Tocqueville’s words—is legislative tyranny.

I respectfully submit, Members of the Senate, taken in its proper context, that is what Alexander Hamilton well understood and meant, and so did my Congressman. That Congressman was, of course, Hamilton Fish, Jr. Actually, he was not really a junior but Hamilton Fish IV. His great-grandfather was also Hamilton Fish, who was born in 1808, later served as Governor of New York, a U.S. Senator immediately before the Civil War, and, notably, as President Ulysses Grant’s Secretary of State. But at the time back in 1980, what I didn’t realize—even though now, perhaps, it is so obvious—the original Hamilton Fish was named after his parents’ best friend, none other than Alexander Hamilton himself.

What Congressman Hamilton Fish, from the Watergate era, courageously understood is the same historical lesson that Jeffrey A. Engel, founding director of the Center for Presidential History at Southern Methodist University, has written about in a coauthored 2018 book on impeachment:

The charge must be treason, bribery or other high crimes and misdemeanors. It must be one for which clear and unmistakable proof can be produced. Only if the evidence actually produced against the President is indeed irrefutable such that his own constituents—in this case, the 63 million people, like me, who voted for President Trump—accept his guilt of the offense charged in order to overwhelmingly persuade a supermajority of Americans, and, thus, their Senators, of malfeasance, warranting his removal from office.

And, finally, because it is the President of the United States, after all, that we are talking about here, the repository of and entrusted under the Constitution with all of the executive power of

the United States—in other words, an entire branch of government—removal from office cannot be based upon an impeachable offense or offenses which are, in essence, nothing more than—paraphrasing President Gerald Ford now—whatever a partisan majority of the House of Representatives considers them to be.

To supplement that cited statement 50 years ago, in 1970, from then-Congressman Jerry Ford in connection with the prospect of potentially impeaching a Supreme Court Justice, Ford pointedly clarified that executive branch impeachments are different because voters can remove the President, the Vice President, and all persons holding office at their pleasure at least every 4 years. To remove a President in midterm—it has been tried before and never done—would indeed, he said, require crimes of the magnitude of treason and bribery.

Professor Akhil Amar of Yale Law School made largely the same point during the Clinton impeachment about the danger presented through Presidential impeachment of transforming an entire branch of government:

When they remove a duly elected President, they undo the votes of millions of ordinary Americans on Election Day. This is not something that Senators should do lightly, lest we slide toward a kind of parliamentary government that our entire structure of government was designed to repudiate.

In hammering home the constitutional uniqueness of Presidential impeachments, he emphasized the case of Richard Nixon and distinguished it from Andrew Johnson; that is to say, only when extremely high crimes and gross abuses of official power indeed pose a threat to our basic constitutional system, a threat as high and truly as malignant to democratic government as treason and bribery, he reasoned, would the Senate ever be justified in nullifying the votes of millions of Americans and removing a President from office.

My point is this: History—our American history—matters. To listen to how the House managers would have it, Articles of Impeachment are merely—as Chuck Ruff warned a generation ago—empty vessels into which can be poured any number of charges, even those considered and abandoned.

At least in the case of President Clinton's impeachment, the articles actually charged crimes. The Senate thereafter determined, by its vote in that case, in effect, that while those crimes—perjury and obstruction of justice—may have been committed, those crimes were not high enough crimes damaging to the body politic to warrant the President's removal from office.

That judgment was, of course, within this body's discretion to render, and it has been accepted as such by the country—whether you agreed with it or not—as legitimate. It is also one that is historically consistent with Hamilton's views and Madison's, too, concerning the proper scope of impeachment as applied to a President.

When I entered the scene and succeeded my colleague and co-counsel here, Judge Kenneth Starr, as independent counsel in October of 1999, it was left for me to decide whether prosecution of President Clinton following impeachment, nonetheless, was warranted, consistent with the Department of Justice's Principles of Federal Prosecution. That matter was exhaustively considered in the midst of a Federal grand jury investigation that I commis-

sioned in order to decide, first, whether crimes, in fact, had been committed. I found that they had, and I later said so publicly in the final report expressly authorized and mandated by Congress concluding the Lewinsky investigation.

Significantly, though, I also determined that the prosecution of the President, while in, or once he left office, would not be in the national interest, given alternative available means, short of prosecution, in order to hold the President accountable for his conduct. Those means included a written acknowledgement by the President 2 years after his Senate trial that his testimony under oath before the grand jury had, in fact, been false and a related agreement to suspend his law license.

The price paid by President Clinton was indeed high, and it stemmed, in the end, from the need to vindicate the principle, first raised most prominently during Watergate, that no person, including the President, is above the law.

Despite President Clinton's subsequent protestation in his memoirs that I was just another Federal prosecutor out to extract, in his words, a pound of flesh, I credit the President to this day with agreeing to do what was necessary in order to exercise my discretion not to prosecute; namely, that for the good of the country and recognizing the unique place that the President—indeed, any President—occupies in our constitutional government, accountability and discretion go hand in hand and permitted—indeed, demanded—such an appropriate resolution. It enabled the country to move on, and it was as much, if not more, a credit to Bill Clinton than to any credit I received or deserved that we were able to reach agreement and avoid any further partisan recriminations or interference with the will of the American people in electing and reelecting President Clinton in the first place—and his successor, President George W. Bush.

In short, I was absolutely mindful and exceedingly concerned throughout my tenure as independent counsel that, although crimes had been committed, Bill Clinton was the elected official placed in office by voters throughout the Nation and head of the executive branch, and I was not.

The lesson for me was a simple one that I am sure every American citizen, whatever their own experience or political perspective, can understand: Be humble and act with humility. Never be too sure that you are right.

Today, 20 years later, what have we learned from that experience? I fear that the answer to that question is nothing at all. If these Impeachment Articles now are sustained beyond summary resolution in favor of acquittal, impeachment in the future literally will mean not only that proof of high crimes is no longer necessary to sustain the effort but that no crime at all is sufficient so long as a partisan majority in the House says so.

Thus, during the past 4 months alone, we have witnessed the endless procession of legal theories used to sustain this partisan impeachment—from treason to *quid pro quo*, to bribery, to extortion, to obstruction of justice, to soliciting an illegal foreign campaign contribution, to a violation of the Impoundment Control Act—to who knows what all is next.

What you are left with, then, are constitutionally deficient articles abandoning any pretense of the need to allege crimes that are another vehicle or weapon, if you will, in order to damage the President politically in an election year.

It is, I submit, decidedly not in the country's best interest to have the prosecution of the grave issue of impeachment and the drastic prospect of removal from office become just politics by other means, any more than it would be appropriate for the huge power of prosecution of offenses under the Federal Criminal Code to be exercised not on the merits, without fear or favor, but instead as a raw, naked, and pernicious exercise of partisan power and advantage.

I have spent the better part of my professional life, for over 30 years—as a Federal prosecutor for 13 years through two independent counsel investigations and now as a defense lawyer for over 17 years—trying my level best always to ensure that politics and prosecution do not mix. It must not happen here. A standardless and partisan impeachment is illegitimate and should be rejected as such overwhelmingly by this body, I hope and submit, or alternatively and, if need be, by only a partisan Republican majority—for the good of the country.

Turning now to what the House managers have alleged, regarding the first article, the House Judiciary Committee report on impeachment contains a rather extraordinary statement. It says as follows: "Although President Trump's actions need not rise to the level of a criminal violation to justify impeachment, his conduct here was criminal." So, in short, we needn't bother in an Impeachment Article charging the President with a crime, implicitly recognizing that there is insufficient evidence to prove that such a crime was committed, but we are going to say that the President's conduct was criminal nonetheless. Aside from being exceedingly unfair to call something criminal and not stand behind the allegation and actually charge it, it just ain't so.

I have heard House Manager HAKEEM JEFFRIES argue before this body that he and his team have overwhelming evidence of an explicit—his word, not mine—quid pro quo by the President; that is, an explicit, purported, and proposed exchange by President Trump of something of personal benefit to himself in return for an official act by the U.S. Government.

As I have explained as far back as November of last year in a *TIME* magazine cover story, the problem with this legal theory is that an unlawful quid pro quo is limited to those arrangements that are corrupt; that is to say, only those that are clearly and unmistakably improper are therefore illegal. And, in the eyes of the law, the specific, measurable benefit that an investigation—or even the announcement of an investigation—against the Bidens might bring President Trump is, at best, nebulous.

I should add here also that any effort to contend that this purported thing of value also constitutes an illegal foreign campaign contribution to the President of the United States is fraught with doubt as a matter of law. Indeed, the Justice Department has said as much. So, too, have courts which have struggled since at least the early 1990s with application of the Federal anticorruption laws to situations like this when an in-kind benefit in the form of campaign interference or assistance is alleged to be illegal. None of this

would permit the requisite finding supported by clear and unmistakable evidence of a violation of law necessary to sustain impeachment as an abuse of power.

But back to Manager JEFFRIES' contention, proof of an explicit quid pro quo by the President—which, parenthetically, as previously noted by Mr. Cipollone, is nowhere to be found in the Articles of Impeachment—would have required a very different telephone call than the one President Trump actually had with Ukraine President Zelensky. As I tried to explain in the TIME magazine piece, an explicit quid pro quo for alleged improper campaign interference would have had President Trump saying to his counterpart in Ukraine, in words or substance, “Here is the deal,” and followed up by explicitly linking a demand for an investigation of the Bidens to the provision or release of foreign aid. None of that was said or ever happened. The call transcript itself demonstrates that beyond any doubt. In the President's words, read the transcript.

By the way, the demand characterization apparently creeps into this phone call largely as the result of Army Lieutenant Colonel Alexander Vindman's testimony where he equates a request based upon his military experience, and having listened in on the call, by a superior officer—in this case, the Commander in Chief—as the same thing as an order in the chain of command. While all of this may be true in the military, it goes without saying that President Zelensky, as the leader and head of a sovereign nation, was not and is not in our military chain of command.

I say that to you, Members of the Senate, as the son of a U.S. Army colonel and Vietnam war veteran buried in Arlington National Cemetery and as the father of a U.S. Army major currently serving with President Trump's Space Force Command in Aurora, CO, near Denver.

With all due respect, Lieutenant Colonel Vindman's testimony in this regard is at best, I submit to you, distorted and unpersuasive.

Next, the purported implicit link between foreign aid and the investigations, or the announcement of them, is weak. The most that Ambassador Gordon Sondland was able to give was his presumption that such a link likely existed, and that presumption was flatly contradicted by the President's express denial of the existence of a quid pro quo to Ambassador Sondland as well as to Senator RON JOHNSON.

The President was emphatic to Ambassador Sondland. The President said:

I want nothing. I want no quid pro quo. I just want Zelensky to do the right thing, to do what he ran on.

And to Senator JOHNSON, the same thing, just two words: “No way.”

Recognizing this flaw in the testimony, House managers have focused instead on an alternate quid pro quo rationale, that the exchange was conditioned on a foreign head-of-state meeting at the White House in return for Ukraine publicly announcing an investigation of the Bidens.

In the House Judiciary report, it states as follows: “It is beyond question that official White House visits constitute a ‘formal exercise of governmental power’ within the meaning of McDonnell.”

Not so fast. Actually, the Supreme Court in *McDonnell* helpfully boiled it down to only those acts that constitute the formal exercise of government power and that are more specific and focused than a broad policy objective. An exchange resulting in meetings, events, phone calls, as those terms are typically understood as being routine, according to the Supreme Court's definition of an official act, do not count.

The fact that the meeting involved was a formal one, with all of the trappings of a state visit by the President of Ukraine and hosted by the President of the United States, makes no difference. The Supreme Court is talking about an official act as a formal exercise of decision-making power, not the formality of the visit. Even if the allegation were true, this could not constitute a *quid pro quo*.

I should know. I argued, in effect, the contrary proposition in *United States v. Sun-Diamond* before the Supreme Court over 20 years ago in 1999. That proposition lost—unanimously. The vote was 9 to 0.

In any event, the coveted meeting—and it was, after all, just a meeting, whether at the White House or not—was not permanently withheld. It later happened between the two Presidents at the United Nations in New York City at the first available opportunity in September 2019.

Finally, the argument by Chairman JERRY NADLER that this call by President Trump with President Zelensky represented an “extortionate demand” is patently ridiculous. The essential element of the crime of extortion is pressure. No pressure was exercised or exerted during the call. Ukrainian officials, including President Zelensky himself, have since repeatedly denied that any such pressure existed. Indeed, to the contrary, the evidence strongly suggests Ukraine was perfectly capable of resisting any efforts to entangle itself in United States domestic party politics and partisanship.

What, then, remains of the first Article of Impeachment? No crimes were committed. Indeed, no crimes were even formally alleged. In that regard, what exactly is left? It is not treason. Ukraine is our ally, not our enemy or our adversary. And Russia is not our enemy, only our adversary. It is not bribery. There is no *quid pro quo*. It is not extortion—no pressure.

It is not an illegal foreign campaign contribution. The benefit of the announcement of an investigation is not tangible enough to constitute an in-kind campaign contribution warranting prosecution under Federal law.

It is also not a violation of the Impoundment Control Act. Let's take a look at that last one for a moment, shall we. The U.S. Government Accountability Office, an arm of the U.S. Congress, in its infinite wisdom, has decided, contrary to the position of the executive branch Office of Management and Budget, OMB, that while the President may temporarily withhold funds from obligation—but not beyond the end of the fiscal year—he may not do so with vague or general assertions of policy priorities contrary to the will of Congress.

The President's response to this interbranch dispute between Congress and the executive branch was to assert his authority over foreign policy to determine the timing of the best use of funds. Ulti-

mately, this is a dispute that has constitutional implications under separation of power principles, about which this body is well familiar. It pits the President's constitutional prerogatives to control foreign policy against Congress's reasonable expectation that the President will comply with the Constitution's faithful execution of the law requirement of his oath of office.

This issue has come up before with other Presidents. There is a huge constitutional debate among legal scholars about who is right. Law review articles have been written about it, one as recently as last June in the *Harvard Law Review*.

Congress, through its arm, the GAO, had an opposing view from that of the administration and OMB—big surprise.

I am reminded of one of President Kennedy's famous press conferences, where he was asked to comment about a report that the Republican National Committee had voted a resolution that concluded he was a total failure as President. He famously quipped: "I am sure that it was passed unanimously."

That is all that this is here: politics. No more, no less. And in the end, what are we talking about? The temporary hold was lifted and the funds were released, as they had to be under the law and as acknowledged was required by none other than Acting Chief of Staff Mick Mulvaney, 19 days before the end of the fiscal year on September 11, 2019.

In any event, an alleged violation of the Impoundment Act can no more sustain an Impeachment Article than can an assertion of executive privilege in opposition to a congressional subpoena, absent a final decision of a court ordering compliance with that subpoena.

Mere assertion of a privilege or objection in a legitimate inter-branch dispute is a constitutional prerogative. It should never result in an impeachable offense for abuse of power or obstruction of Congress. And, yet, in a last-ditch effort to reframe its first Article of Impeachment on abuse of power, House managers, as part of the House Judiciary Committee report, have gone back into history—always a treacherous endeavor for lawyers. They now argue that President Andrew Johnson's impeachment, from over 150 years ago following the end of the Civil War and during reconstruction, was not about a violation of the Tenure of Office Act, which, after all, was the violation of law charged as the principle Article of Impeachment but, instead, rested on his use of power with illegitimate motives.

In an ahistorical sleight of hand worthy only of the *New York Times* recent "1619" series—a series, by the way, roundly criticized by two of my Princeton Civil War and reconstruction history professors as inaccurate—House managers now claim that President Johnson's removal of Lincoln's Secretary of War Edwin Stanton without Congress's permission in violation of a congressional statute, later found to be unconstitutional, is best understood with the benefit of revisionist hindsight to be motivated not by his desire to violate the statute but on his illegitimate use of power to undermine reconstruction and subordinate African Americans following the Civil War.

That all may be true, but it is another thing altogether to claim that that motive actually was the basis of Johnson's impeachment.

Professor Laurence Tribe, who was the source for this misguided reinterpretation of the Johnson impeachment, simply substitutes his own self-described, far more compelling basis for Johnson's removal from office from the one that the House of Representatives actually voted on and the Senate considered at his impeachment trial.

There has been an awful lot of that going on in this impeachment—people substituting their own interpretations for the ones that the principles actually and explicitly insist on.

At any rate, a President's so-called illegitimate motives in wielding power can no more frame and legitimize the Johnson impeachment than recasting the Nixon impeachment as really about his motives in defying Congress over the country's foreign policy in Vietnam. Again, all of that may be true, but it has nothing to do with impeachment. Not only that, it is also bad history.

As recognized 65 years ago by then-Senator John F. Kennedy in his book "Profiles in Courage," President Johnson was saved from removal from office by one vote and thus by one courageous Senator who recognized the legislative overreach that the Tenure of Office Act represented.

Quoting now from Senator Edmund G. Ross in "Profiles in Courage," who explained his vote as follows:

The independence of the executive office as a coordinate branch of the government was on trial. . . . If . . . the President must step down . . . upon insufficient proofs and from partisan considerations, the office of President would be degraded.

So, too, here. Contrary, apparently to the fashion now, Senator Ross's action eventually was praised and accepted several decades after his service and again many years later by President Kennedy as a courageous stand against legislative mob rule. Professor Dershowitz will have more to say about one other courageous Senator from that impeachment. More on that later.

For now, the point is that our history demonstrates that Presidents should not be subject to impeachment based upon bad or ill motives, and any thought to the contrary should strike you, I submit, as exceedingly dangerous to our constitutional structure of government.

If that were the standard, what President would ever be safe by way of impeachment from what Hamilton decried as the "persecution of an intemperate or designing majority in the House of Representatives"?

The central import of the abuse of power Article of Impeachment—indeed, when added together with the obstruction of justice article—is a result not far off from what one citizen tweet I saw back in December described as article I, Democrats don't like President Trump; article II, Democrats can't beat President Trump.

President Trump is not removable from office just because a designing majority in the House, as represented by their managers, believes that the President abused the power of his office during the July 25 call with President Zelensky. The Constitution requires more. To ignore the requirement of proving that a crime was committed is to sidestep the constitutional design as well as the lessons of history.

I know that many of you may come to conclude, or may have already concluded, that the call was less than perfect. I have said on

any number of occasions previously—and publicly—that it would have been better, in attempting to spur action by a foreign government in coordinating law enforcement efforts with our government, to have done so through proper channels. While the President certainly enjoys the power to do otherwise, there is consequence to that action, as we have now witnessed. After all, that is why we are all here.

But it is another thing altogether to claim that such conduct is clearly and unmistakably impeachable as an abuse of power. There can be no serious question that this President, or any President, acts lawfully in requesting foreign assistance with investigations into possible corruption, even when it might potentially involve another politician.

To argue otherwise would be to engage in the specious contention that a Presidential candidate or, for that matter, any candidate enjoys absolute immunity from investigations during the course of a campaign.

I can tell you that is not the case from my own experience. I did so during 2000 in investigating Hillary Clinton while she was running for office to become a U.S. Senator from New York, to which she was elected.

My point simply is this: This President has been impeached and stands on trial here in the Senate for allegedly doing something indirectly about which he was entirely permitted to do directly. That cannot form a basis as an abuse of power article sufficient to warrant his removal from office.

Turning now to the second Article of Impeachment, as we argued in our written trial brief, at the outset, it must be noted that it is at least a little odd for House managers to be arguing that President Trump somehow obstructed Congress when he declassified and released what is the central piece of evidence in this case. And that is, of course, the transcript of the July 25 call, as well as the call with President Zelensky that preceded it on April 21, 2019.

Release of that full call record should have been the end of this claim of obstruction, but apparently not. Instead, again, relying on the *United States v. Nixon*, House managers have proffered a broad claim to documents and witnesses in an impeachment inquiry, notwithstanding the Nixon court's limited holding that an objection by the President based on executive privilege could only be overcome in the limited circumstances presented there where the information sought was also material to the preparation of the defense by his coconspirators in pending cases awaiting trial following indictments. In other words, a defendant's Sixth Amendment right to a fair trial in collateral proceedings was what the court actually found dispositive in rejecting the President's claim of privilege to prevent Congress from gaining access to the Watergate tapes.

All subsequent administrations have defended that narrow exception against any general claim of access to executive branch confidential communications, documents, and witnesses who are the President's closest advisers.

Thus, it should be a matter of accepted wisdom and historical premise that a President cannot be removed from office for invoking established legal rights, defenses, privileges, and immunities,

even in the face of subpoenas from House committees. Back in 1998, Professor Tribe called out any argument to the contrary as frivolous and dangerous.

House managers respond now by arguing, nonetheless, that the President has no right to defy a legitimate subpoena, particularly, I suppose, when their impeachment efforts are at stake. And thus, it is an issue rising to the level of an interbranch conflict that in our system of government only accommodation between the branches and, ultimately, courts can finally resolve.

The House chose to forgo that course and to plow forward with impeachment. House managers cannot be heard to complain now that their own strategic choice can form any basis to place blame on the President for it and, worse yet, to then impeach him on that basis and seek his removal from office. That is no basis at all, as Professor Jonathan Turley persuasively has explained.

Compliance with a legitimate subpoena is enforced over a claim of executive privilege or Presidential immunity only when a court with jurisdiction says so in a final decision.

In sum, calling a subpoena legitimate, as House managers have done here, does not make it so. An analogy taken from baseball, which I believe the Chief Justice might appreciate, makes the point: A longtime major league umpire named Bill Klem, who worked until 1941 after 37 years in the big leagues, was once asked during a game by a player whether a ball was fair or foul. The umpire replied: It ain't nothing until I call it.

I say the same thing to Chairman SCHIFF now. It's not a legitimate and, therefore, enforceable subpoena until a court says that it is.

Preceding the Clinton impeachment and, indeed, in response to demands not just from the Whitewater independent counsel but also from several other of the independent counsel investigations that were ongoing at that time—and, again, I know, I was in one of them—the White House repeatedly asserted claims of executive privilege. Many of those claims were litigated for months, not weeks, and in some cases for years.

When I hear Mr. SCHIFF's complaint that the House's request for former White House Counsel Don McGahn's testimony, grand jury material, and other documents has been drawn out since April of last year, I can only say in response: Boohoo.

Did I think at the time that many of those claims of privilege were frivolous and an abuse of the judicial process? Of course. And, indeed, that was the determination of the House Judiciary Committee during the Clinton impeachment. What did they do about it? Nothing. The committee properly concluded then that those assertions of privilege, even if ill-founded, did not constitute an impeachable offense. Did I believe that the Clinton administration's actions in this regard have adversely impacted our investigation? You bet I did. And I said so in the final report. But never did I seriously consider that those efforts by the White House, although endlessly frustrating and damaging to the independent counsel's investigation, would constitute the crime of obstruction of justice or any related impeachable offense for obstruction of Congress. Instead, I and my colleagues did the best that we could in reaching an accommodation with the White House where possible or through litiga-

tion, when necessary, in order to complete the task at hand, to the best of our ability to do so.

Any contention that what has transpired here involving this administration's assertion of valid and well-recognized claims of privileges and immunities is somehow contrary to law and impeachable is ludicrous. In short, to add to the parade of criminal offenses not sustained on this impeachment, there was no obstruction of justice or of Congress, period.

The President cannot be impeached and removed from office for asserting, subject to judicial review, what he has every right to assert. That is true now, as it has been true of every President all the way back to President George Washington.

In short, as to both Articles of Impeachment, all the President is asking for here is basic fairness and to be held to the very same standard that both House Speaker NANCY PELOSI proffered in March 2019 and which previously was endorsed during the Clinton impeachment in strikingly similar language by House manager JERRY NADLER 20-odd years ago in 1998. The evidence must be nothing less than "compelling, overwhelming, and bipartisan." We agree. No amount of witness testimony, documents, high-fives, fist-bumps, signing pens, or otherwise are ever going to be sufficient to sustain this impeachment under the Democrats' own standard.

With that, I am ready to conclude. The President's only instruction to me for this trial was a simple one: Do what you think is right.

As a country, we need to put a stop to doing anything and everything that we can do and start doing what is right and what needs to be done in the Nation's best interests. A brazenly partisan, political impeachment by House Democrats is not, I submit, in the best interest of this country because in the final analysis, we will all be judged in the eyes of history on whether, in this moment, we act with the country's overriding welfare firmly in mind rather than in advancing the cause of partisan political advantage.

I have always believed as an article of faith that in good times and in hard times and even in bad times, with matters of importance at stake, that this country gets the big things right. I have seen that in my own life and for my own experience, even in Washington, DC.

Well, Members of the Senate, this, what lies before you now, is just such a big thing. The next election awaits. Election day is only 9 months away.

As Senator Dale Bumpers eloquently concluded in arguing against President Clinton's removal from office:

That is the day when we reach across this aisle and hold hands, Democrats and Republicans, and we say, win or lose, we will abide by the decision. It is a solemn event, a Presidential election, and it should not be undone lightly or just because one side has political clout and the other one doesn't.

Otherwise, as Abraham Lincoln warned us during his first inaugural address:

If the minority will not acquiesce . . . the government must cease.
So that rejecting the majority principle, anarchy . . . in some form, is all that is left.

This impeachment and the refusal to accept the results of the last election in 2016 cannot be left to stand. For the reasons stated,

the Articles of Impeachment, therefore, should be rejected, and the President must be acquitted.

Members of the Senate, thank you very much.

With that, Mr. Chief Justice, I yield back to Mr. Sekulow.

Thank you.

Mr. Counsel SEKULOW. Mr. Chief Justice, we are going to now delve into the constitutional issues for a bit and our presenter is Professor Alan Dershowitz. He is the Felix Frankfurter Professor Emeritus of Harvard Law School. After serving as a law clerk for Judge David Bazelon of the U.S. Court of Appeals for the District of Columbia, he served as a law clerk for Justice Arthur Goldberg at the U.S. Supreme Court. At the age of 28, Professor Dershowitz became the youngest tenured professor at Harvard Law School. Mr. Dershowitz spent 50 years as an active faculty member at Harvard, teaching generations of law students, including several Members of this Chamber, in classes ranging from criminal law to constitutional law, criminal procedure, constitutional litigation, legal ethics, and even courses on impeachment. He will address the constitutional issues raised by these articles.

Mr. Counsel DERSHOWITZ. Mr. Chief Justice, distinguished Members of the Senate, our friends, lawyers, fellow lawyers, it is a great honor for me to stand before you today to present a constitutional argument against the impeachment and removal not only of this President but of all and any future Presidents who may be charged with the unconstitutional grounds of abuse of power and obstruction of Congress.

I stand before you today as I stood in 1973 and 1974 for the protection of the constitutional and procedural rights of Richard Nixon, whom I personally abhorred, and whose impeachment I personally favored; and as I stood for the rights of President Clinton, whom I admired and whose impeachment I strongly opposed. I stand against the application and misapplication of the constitutional criteria in every case and against any President without regard to whether I support his or her parties or policies. I would be making the very same constitutional argument had Hillary Clinton, for whom I voted, been elected and had a Republican House voted to impeach her on these unconstitutional grounds.

I am here today because I love my country and our Constitution. Everyone in this room shares that love. I will argue that our Constitution and its terms, high crimes and misdemeanors, do not encompass the two articles charging abuse of power and obstruction of Congress. In offering these arguments, I stand in the footsteps and in the spirit of Justice Benjamin Curtis, who was of counsel to impeached President Andrew Johnson and who explained to the Senate that "a greater principle was at stake than the fate of any particular president" and of William Evarts, a former Secretary of State, another one of Andrew Johnson's lawyers, who reportedly said that he had come to the defense table not as a "partisan," not as a "sympathizer," but to "defend the Constitution."

The Constitution, of course, provides that the Senate has the sole role and power to try all impeachments. In exercising that power, the Senate must consider three issues in this case.

The first is whether the evidence presented by the House managers establishes, by the appropriate standard of proof—proof beyond a reasonable doubt—that the factual allegations occurred.

The second is whether, if these factual allegations occurred, did they rise to the level of abuse of power and/or obstruction of Congress?

Finally, the Senate must determine whether abuse of power and obstruction of Congress are constitutionally authorized criteria for impeachment.

The first issue is largely factual and I leave that to others. The second is a combination of traditional and constitutional law, and I will touch on those. The third is a matter of pure constitutional law. Do charges of abuse and obstruction rise to the level of impeachable offenses under the Constitution?

I will begin, as all constitutional analysis begins, with the text of the Constitution governing impeachment. I will then examine why the Framers selected the words they did as the sole criteria authorizing impeachment. In making my presentation, I will transport you back to a hot summer in Philadelphia and a cold winter in Washington. I will introduce you to patriots and ideas that helped shape our great Nation.

To prepare for this journey, I have immersed myself in a lot of dusty old volumes from the 18th and 19th century. I ask your indulgence as I quote from the wisdom of our Founders. This return to the days of yesteryear is necessary because the issue today is not what the criteria of impeachment should be, not what a legislative body or a constitutional body might today decide are the proper criteria for impeachment of a President but what the Framers of our Constitution actually chose and what they expressly and implicitly rejected.

I will ask whether the Framers would have accepted such vague and open-ended terms as “abuse of power” and “obstruction of Congress” as governing criteria. I will show by close review of the history that they did not and would not accept such criteria for fear that these criteria would turn our new Republic into a British-style parliamentary democracy in which the Chief Executive’s tenure would be, in the words of James Madison, father of our Constitution, “at the pleasure” of the legislature.

The conclusion I will offer for your consideration is similar, though not identical, to that advocated by highly respected Justice Benjamin Curtis, who as you know, dissented from the Supreme Court’s notorious decision in *Dred Scott*, and who, after resigning in protest from the High Court, served as counsel to President Andrew Johnson in the Senate impeachment trial. He argued that “there can be no crime, there can be no misdemeanor without a law, written or unwritten, express or implied.”

In so arguing, he was echoing the conclusion reached by Dean Theodore Dwight of the Columbia Law School, who wrote in 1867, just before the impeachment, that “unless the crime is specifically named in the Constitution”—treason and bribery—“impeachments, like indictments, can only be instituted for crimes committed against the statutory law of the United States.” As Judge Starr said earlier today, he described that as the weight of authority

being on the side of that proposition at a time much closer to the framing than we are today.

The main thrust of my argument, however, and the one most relevant to these proceedings is that even if that position is not accepted, even if criminal conduct were not required, the Framers of our Constitution implicitly rejected—and, if it had been presented to them, would have explicitly rejected—such vague terms as “abuse of power” and “obstruction of Congress” as among the enumerated and defined criteria for impeaching a President.

You will recall in the many Articles of Impeachment against President Johnson were accusations of noncriminal but outrageous misbehavior, including ones akin to abuse of power and obstruction of Congress. For example, article X charged Johnson “did attempt to bring into disgrace, ridicule, hatred, contempt and reproach, the Congress of the United States.”

Article XI charged Johnson with denying that Congress was [a]uthorized by the Constitution to exercise the legislative power” and denying that “[t]he legislation of said Congress was obligatory upon him.” Those are pretty serious charges.

Here is how Justice Curtis responded to these noncriminal charges:

My first position is, that when the Constitution speaks of treason, bribery, and other crimes and misdemeanors, it refers to, and includes only, high criminal offenses against the United States, made so by some law of the United States existing when the acts complained of were done, and I say that this is plainly to be inferred from each and every provision of the Constitution on the subject of impeachment.

I will briefly review those other provisions of the Constitution with you. Judge Curtis’s interpretation is supported—indeed, in his view it was compelled—by the constitutional text. Treason, bribery, and other high crimes and misdemeanors are high crimes. Other high crimes and misdemeanors must be akin to treason and bribery. Curtis cited the Latin phrase “*Noscitur a sociis*,”—I am sorry for my pronunciation—referring to a classic rule of interpretation that when the meaning of a word that is part of a group of words is uncertain, you should look to the other words in that group that provide interpretive context.

The late Justice Antonin Scalia gave the following current example. If one speaks of Mickey Mantle, Rocky Marciano, Michael Jordan, and other great competitors, the last noun does not reasonably refer to Sam Walton, who is a great competitor, but in business, or Napoleon, a great competitor on the battlefield. Applying that rule to the groups of words “treason, bribery, or other high crimes and misdemeanors,” the last five words should be interpreted to include only serious criminal behavior akin to treason and bribery.

Justice Curtis then reviewed the other provisions of the Constitution that relate to impeachment. First, he started with the provision that says “the President of the United States shall have Power to grant Reprieves and Pardons”—listen now—“for Offenses against the United States, except in Cases of Impeachment.”

He cogently argued that if impeachment were not for “offenses against the United States” [Slide 549] was not based on an offense against the United States—there would have been no need for any constitutional exception.

He then went on to a second provision: [Slide 550] “The trial of all crimes, except in cases of impeachment, shall be by jury.” This demonstrated, according to Curtis, that impeachment requires a crime, but unlike other crimes, it does not require a jury trial. You are the judge and the jury. He also pointed out that an impeachment trial, by the “express words” of the Constitution, requires an “acquittal” or a “conviction,” judgments generally rendered only in the trials of crimes.

Now, President Johnson’s lawyers, of course, argued in the alternative, as all lawyers do when there are questions of fact and law. He argued that Johnson did not violate the Articles of Impeachment, as you heard from other lawyers today but, even if he did, that the articles do not charge impeachable offenses, which is the argument that I am making before you this evening.

Justice Curtis’s first position, however, was that the articles did not charge an impeachable offense because they did not allege “high criminal offenses against the United States.”

According to Harvard historian and law professor Nikolas Bowie, Curtis’s constitutional arguments were persuasive to at least some Senators who were no friends of President Johnson’s, including the coauthors of the 13th and the 14th Amendments. As Senator William Pitt Fessenden later put it, “Judge Curtis gave us the law, and we followed it.”

Senator James W. Grimes echoed Curtis’s argument by refusing to “accept an interpretation” of high crimes and misdemeanors that changes “according to the law of each Senator’s judgment, enacted in his own bosom after the alleged commission of the offense.” Though he desperately wanted to see President Johnson, whom he despised, out of office, he believed that an impeachment removal without the violation of law would be “construed into approval of impeachments as part of future political machinery.”

According to Professor Bowie, Justice Curtis’s constitutional arguments may well have contributed to the decision by at least some of the seven Republican dissidents to defy their party and vote for acquittal, which was secured by a single vote.

Today, Professor Bowie has an article in the *New York Times* in which he repeats his view of “impeachment requires a crime,” but he now argues that the Articles of Impeachment do charge crimes. He is simply wrong. He is wrong because, in the *United States v. Hudson*—a case decided almost more than 200 years ago now—the U.S. Supreme Court ruled that Federal courts have no jurisdiction to create common law crimes. Crimes are only what are in the statute book.

So Professor Bowie is right that the Constitution requires a crime for impeachment but wrong when he says that common law crimes can be used as a basis for impeaching even though they don’t appear in the statute books.

Now, I am not here arguing that the current distinguished Members of the Senate are in any way bound—legally bound—by Justice Curtis’s arguments or those of Dean Dwight, but I am arguing that you should give them serious consideration—the consideration to which they are entitled by the eminence of their author and the role they may have played in the outcome of the closest precedent to the current case.

I want to be clear. There is a nuanced difference between the arguments made by Curtis and Dwight and the argument that I am presenting here today based on my reading of history.

Curtis argued that there must be a specific violation of pre-existing law. He recognized that, at the time of the Constitution, there were no Federal criminal statutes. Of course not. The Constitution established a national government, so we couldn't have statutes prior to the establishment of our Constitution and our Nation.

This argument is offered today by proponents of this impeachment on the claim that the Framers could not have intended to limit the criteria for impeachment to criminal-like behavior. Justice Curtis addressed that issue and that argument head-on.

He pointed out that crimes such as bribery would be made criminal "by the laws of the United States, which the Framers of the Constitution knew would be passed." In other words, he anticipated that Congress would soon enact statutes punishing and defining crimes such as burglary, extortion, perjury, et cetera. He anticipated that, and he based his argument, in part, on that.

The Constitution already included treason as a crime, and that was defined in the Constitution itself, and then it included other crimes; but what Justice Curtis said is that you could include laws, "written or unwritten, express or implied"—by which he meant common law, which, at the time of the Constitution, there were many common law crimes—and they were enforceable, even federally, until the Supreme Court, many years later, decided that common law crimes were no longer part of Federal jurisdiction.

So the position that I have derived from history would include—and this is a word that will upset some people—criminal-like conduct akin to treason and bribery. There need not be, in my view, conclusive evidence of a technical crime that would necessarily result in a criminal conviction. Let me explain.

For example, if a President were to receive or give a bribe outside of the United States and outside of the statute of limitations, he could not technically be prosecuted in the United States for such a crime, but I believe he could be impeached for such a crime because he committed the crime of bribery even though he couldn't technically be accused of it in the United States. That is the distinction that I think we draw. Or if a President committed extortion, perjury, or obstruction of justice, he could be charged with these crimes as impeachable offenses because these crimes, though not specified in the Constitution, are akin to treason and bribery. This would be true even if some of the technical elements—time and place—were absent.

What Curtis and Dwight and I agree upon—and this is the key point in this impeachment case; please understand what I am arguing—is that purely noncriminal conduct, including abuse of power and obstruction of Congress, are outside the range of impeachable offenses. That is the key argument I am presenting today.

This view was supported by text writers and judges close in time to the founding. William Oldhall Russell, whose 1819 treatise on criminal law was a bible among criminal law scholars and others, [Slide 551] defined "high crimes and misdemeanors" as "such im-

moral and unlawful acts as are nearly allied, and equal in guilt, to a felony; and yet, owing to the absence of some technical circumstances—technical circumstances—“do not fall within the definition of a felony.” Similar views were expressed by some State courts. Others disagreed.

Curtis’s considered views and those of Dwight, Russell, and others, based on careful study of the text and history, are not “bonkers,” “absurdist,” “legal claptrap,” or other demeaning epithets thrown around by partisan supporters of this impeachment. As Judge Starr pointed out, they have the weight of authority. They were accepted by the generation of the Founders and the generations that followed. If they are not accepted by academics today, that shows a weakness among the academics, not among the Founders. Those who disagree with Curtis’s textual analysis are obliged, I believe, to respond with reason, counter interpretations, not name-calling.

If Justice Curtis’s arguments and those of Dean Dwight are rejected, I think then proponents of impeachment must offer alternative principles and alternative standards for impeachment and removal.

We just heard that, in 1970, Congressman Gerald Ford, whom I greatly admired, said the following in the context of an impeachment of a justice: “[A]n impeachable offense is whatever a majority of the House of Representatives considers it to be at a given moment in history,” et cetera. You all know the quote.

Congresswoman MAXINE WATERS recently put it more succinctly in the context of a Presidential impeachment. Here is what she said: [Slide 552]

Impeachment is whatever Congress says it is. There is no law.

But this lawless view would place Congress above the law. It would place Congress above the Constitution. For Congress to ignore the specific words of the Constitution itself and substitute its own judgments would be for Congress to do what it is accusing the President of doing—and no one is above the law, not the President and not Congress.

This is precisely the kind of view expressly rejected by the Framers, who feared having a President serve at the “pleasure” of the legislature, and it is precisely the view rejected by Senator James Grimes when he refused to accept an interpretation of high crimes and misdemeanors that would change “according to the law of each Senator’s judgment, enacted in his own bosom.”

The Constitution requires, in the words of Gouverneur Morris, that the criteria for impeachment must be “enumerated and defined.” Those who advocate impeachment today are obliged to demonstrate how the criteria accepted by the House in this case are enumerated and defined in the Constitution.

The compelling textual analysis provided by Justice Curtis is confirmed by the debate in the Constitutional Convention, by the Federalist Papers, by the writings of William Blackstone, and, I believe, by the writings of Alexander Hamilton, which were heavily relied on by lawyers at the time of the Constitution’s adoption.

There were at the time of the Constitution’s adoption two great debates that went on, and it is very important to understand the

distinction between these two great debates. It is hard to imagine today, but the first was, Should there be any power to impeach a President at all? There were several members of the founding generation and of the Framers of the Constitution who said no—who said, no, a President shouldn't be allowed to be impeached.

The second—and the second is very, very important in our consideration today—is, If a President is to be subject to impeachment, what should the criteria be? These are very different issues, and they are often erroneously conflated.

Let's begin with the first debate.

During the broad debate about whether a President should be subject to impeachment, proponents of impeachment used vague and open-ended terms, such as “unfit,” “obnoxious,” “corrupt,” “misconduct,” “misbehavior,” “negligence,” “malpractice,” “perfidy,” “treachery,” “incapacity,” “peculation,” and “maladministration.” They worried that a President might “pervert his administration into a scheme of speculation and oppression”; that he might be “corrupted by foreign influence”; and—yes, this is important—that he might have “great opportunities of abusing his power.”

Those were the concerns that led the Framers to decide that a President must be subject to impeachment, but not a single one of the Framers suggested that these general fears justifying the need for an impeachment and removal mechanism should automatically be accepted as a specific criterion for impeachment. Far from it.

As Gouverneur Morris aptly put it: “[C]orruption and some other offenses . . . ought to be impeachable, but . . . the cases ought to be enumerated and defined.”

The great fallacy of many contemporary scholars and pundits and, with due respect, Members of the House of Representatives is that they fail to understand the critical distinction between the broad reasons for needing an impeachment mechanism and the carefully enumerated and defined criteria that should authorize the deployment of this powerful weapon.

Let me give you a hypothetical example that might have faced Congress or, certainly, will face Congress.

Let's assume that there is a debate over regulating the content of social media—whether we should have regulations or criminal, civil regulations over Twitter or Facebook, et cetera. In the debate over regulating the social media, proponents of regulation might well cite broad dangers, such as false information, inappropriate content, hate speech. Those are good reasons for having regulation; but when it came to enumerating and defining what should be prohibited, such broad dangers would have to be balanced against other important policies, and the resulting legislation would be much narrower and more carefully defined than the broad dangers that necessitated some regulation.

The Framers understood and acted on this difference, but I am afraid that many scholars and others and Members of Congress fail to see this distinction, and they cite some of the fears that led to the need for an impeachment mechanism. They cite them as the criteria themselves. That is a deep fallacy, and it is crucially important that the distinction be sharply drawn between arguments made in favor of impeaching and the criteria then decided upon to justify the impeachment specifically of the President.

The Framers understood this, and so they got down to the difficult business of enumerating and defining precisely which offenses, among the many that they feared a President might commit, should be impeachable as distinguished by those left to the voters to evaluate.

Some Framers, such as Roger Sherman, wanted the President to be removable by “the National legislature” at its “pleasure,” much like the Prime Minister can be removed by a simple vote of no confidence by Parliament. That view was rejected.

Benjamin Franklin opposed decidedly the making of the Executive “the mere creature of the legislature.”

Gouverneur Morris was against “a dependence of the Executive on the Legislature, considering the Legislature”—you will pardon me for quoting this—“a great danger to be apprehended . . .”

I don’t agree with that.

James Madison expressed concern about the President being improperly dependent on the legislature. Others worried about a feeble Executive.

Hearing these and other arguments against turning the new Republic into a parliamentary democracy, in which the legislature had the power to remove the President, the Framers set out to strike the appropriate balance between the broad concerns that led them to vote for a provision authorizing the impeachment of the President and the need for specific criteria not subject to legislative abuse or overuse.

Among the criteria proposed were: malpractice, neglect of duty, misconduct, neglect in the execution of office, and—and this word we will come back to talk about—maladministration.

It was in response to that last term, a term used in Britain, as a criteria for impeachment that Madison responded: [Slide 553] “So vague a term will be equivalent to a tenure during the pleasure of the Senate.”

Upon hearing Madison’s objections Colonel Mason withdrew “maladministration” and substituted “other high crimes and misdemeanors.”

Had a delegate proposed inclusion of “abuse of power” or “obstruction of Congress” as enumerated and defined criteria for impeachment, history strongly suggests that Madison would have similarly opposed it, and it would have been rejected.

I will come back to that argument a little later on when I talk specifically about abuse of power.

Indeed, Madison worried that a partisan legislature could even misuse the word “misdemeanor” to include a broad array of non-crimes, so he proposed moving the trial to the nonpartisan Supreme Court. The proposal was rejected.

Now, this does not mean, as some have suggested, that Madison suddenly changed his mind and favored such misuse to expand the meaning of “misdemeanor” to include broad terms like “misbehavior.” No, it only meant that he feared—he feared that the word “misdemeanor” could be abused. His fear has been proved prescient by the misuse of that term, “high crimes and misdemeanors,” by the House, in this case.

Now, the best evidence that the broad concerns cited by the Framers to justify impeachment were not automatically accepted

as criteria justifying impeachment is the manner by which the word “incapacity”—focus on that word, please—incapacity was treated.

Madison and others focused heavily on the problem of what happens if a President becomes incapacitated. Certainly, a President who is incapacitated should not be allowed to continue to preside over this great country. And everyone seemed to agree that the possibility of Presidential incapacity is a good and powerful reason for having impeachment provisions.

But when it came time to establishing criteria for actually removing a President, “incapacity” was not included. Why not? Presumably because it was too vague and subjective a term.

And when we had the incapacitated President in the end of the Woodrow Wilson second term, he was not impeached and removed.

A constitutional amendment with carefully drawn procedural safeguards against abuse was required to remedy the daunting problem of a President who was deemed incapacitated.

Now, another reason why incapacitation was not included among impeachable offenses is because it is not criminal. It is not a crime to be incapacitated. It is not akin to treason. It is not akin to bribery, and it is not a high crime and misdemeanor.

The Framers believed that impeachable offenses must be criminal in nature and akin to the most serious crimes. Incapacity simply did not fit into this category. Nothing criminal about it.

So the Constitution had to be amended to include a different category of noncriminal behavior that warranted removal.

I urge you to consider seriously that important part of the history of the adoption of our Constitution.

I think that Blackstone and Hamilton also support this view.

There is no disagreement over the conclusion that the words “treason, bribery, or other high crimes”—those words require criminal behavior. The debate is only over the words “and misdemeanors.” The Framers of the Constitution were fully cognizant of the fact that the word “misdemeanor” was a species of crime.

The book that was most often deemed authoritative was written by William Blackstone of Great Britain, and here is what he says about this in the version that was available to the Framers: [Slide 554]

A crime, or misdemeanor, is an act committed or omitted, in violation of the [public] law, either forbidding or commanding it. The general definition comprehends both crimes and misdemeanors; which, properly speaking, are mere synonymous terms.

Mere synonymous terms. He went then on:

[T]hough, in common usage, the word “crimes” is made to denote such offenses are of a deeper and more atrocious dye; while smaller faults, and omissions of less consequence, are comprised under the gentler name of “misdemeanors” only.

Interestingly, though, he pointed out that misdemeanors were not always so gentle.

There was a category called “capital misdemeanors,” where if you stole somebody’s pig or other fowl, you could be sentenced to death, but it was only for a misdemeanor. Don’t worry. It is not for a felony. But there were misdemeanors that were capital in nature.

Moreover, Blackstone wrote that parliamentary impeachment “is a prosecution”—a prosecution—“of already known and established

law [presented] to the most high and Supreme Court of criminal jurisdiction”—analogous to this great court.

He observed that “[a] commoner [can be impeached] but only for high misdemeanors: a peer may be impeached for any crime”—any crime.

This certainly suggests that Blackstone deemed high misdemeanors to be a species of crime.

Hamilton is a little less clear on this issue, and not surprisingly because he was writing—in Federalist No. 65, he was writing not to define what the criteria for impeachment were, he was writing primarily in defense of the Constitution as written and less to define its provisions, but he certainly cannot be cited as in favor of criteria such as abuse of power or obstruction of Congress, nor of impeachment voted along party lines.

He warned that the “greatest danger”—these were his words—“the greatest danger [is] that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.”

In addition to using the criminal terms “innocence” or “guilt,” Hamilton also referred to “prosecution” and “sentence.” He cited the constitutional provisions that state that “the party convicted shall nevertheless be libel and subject” to a criminal trial, as a reason for not having the President tried before the Supreme Court.

He feared a double prosecution, a variation of double jeopardy, before the same judiciary. These points all sound in criminal terms.

But advocates of a broad, open-ended, noncriminal interpretation of “high crimes and misdemeanors” [Slide 555] insist that Hamilton is on their side, and they cite the following words regarding the court of impeachment. And I think I heard these words quoted more than any other words in support of a broad view of impeachment, and they are misunderstood. Here is what he said when describing the court of impeachment. He said:

The subjects of its jurisdiction—

Those are important words, the subjects of its jurisdiction, by which he meant treason, bribery, and other high crimes and misdemeanors.

The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to society itself.”

Those are Hamilton’s words. They are often misunderstood as suggesting that the criteria authorizing impeachment include “the misconduct of public men” or “the abuse or violation of some public trust.”

That is a misreading. These words were used to characterize the constitutional criteria that are “the subject of” the jurisdiction of the court of impeachment: namely, “treason, bribery, or other high crimes and misdemeanors.”

Those specified crimes are political in nature. They are the crimes that involve “misconduct of public men” and “the abuse or violation of some public trust.”

Hamilton was not expanding the specified criteria to include—as independent grounds for impeachment—misconduct, abuse, or vio-

lation. If anything, he was contracting them to require, in addition to proof of the specified crimes, also proof that the crime must be of a political nature.

This would exclude President Clinton's private, nonpolitical crimes. In fact, and this is interesting, Hamilton's view was cited by Clinton's advocates as contracting, not expanding, the meaning of "high crimes."

Today, some of these same advocates, you look at the same words and cite them as expanding its meaning.

Clinton was accused of a crime—perjury—and so the issue in his case was not whether the Constitution required a crime for impeachment. Instead, the issue was whether Clinton's alleged crime could be classified as a "high crime" in light of the personal nature.

During the Clinton impeachment, I stated in an interview that I did not think that a technical crime was required but that I did think that abusing trust could be considered. I said that.

At that time, I had not done the extensive research on that issue because it was irrelevant to the Clinton case, and I was not fully aware of the compelling counterarguments. So I simply accepted the academic consensus on an issue that was not on the front burner at the time.

But because this impeachment directly raises the issue of whether criminal behavior is required, I have gone back and read all the relevant historical material, as nonpartisan academics should always do, and have now concluded that the Framers did intend to limit the criteria for impeachment to criminal-type acts akin to treason, bribery, and they certainly did not intend to extend it to vague and open-ended and noncriminal accusations such as abuse of power and obstruction of Congress.

I published this academic conclusion well before I was asked to present the argument to the Senate in this case. My switch in attitude, purely academic, purely nonpartisan.

Nor am I the only participant in this proceeding who has changed his mind. Several Members of Congress, several Senators expressed different views regarding the criteria for impeachment when the subject was President Clinton than they do now.

When the President was Clinton, my colleague and friend Professor Laurence Tribe, who is advising Speaker PELOSI now, wrote that a sitting President could not be charged with a crime. Now he has changed his mind. That is what academics do and should do, based on new information.

If there are reasonable doubts about the intended meaning of "high crimes and misdemeanors," Senators might consider resolving these doubts by reference to the legal concept known as lenity.

Lenity goes back to hundreds of years before the founding of our country and was a concept in Great Britain, relied upon by many of our own Justices and judges over the years. It was well known to the legal members of the founding generations.

It required that in construing a criminal statute that is capable of more than one reasonable interpretation, the interpretation that favors the defendant should be selected unless it conflicts with the intent of the statute.

It has been applied by Chief Justice Marshall, Justice Oliver Wendell Holmes, Felix Frankfurter, Justice Antonin Scalia, and others.

Now, applying that rule to the interpretation of “high crimes and misdemeanors” would require that these words be construed narrowly to require criminal-like conduct akin to treason and bribery rather than broadly to encompass abuse of power and obstruction of Congress.

In other words, if Senators are in doubt about the meaning of “high crimes and misdemeanors,” the rule of lenity should incline them toward accepting a narrower rather than a broad interpretation, a view that rejects abuse of power and obstruction of Congress as within the constitutional criteria.

Now, even if the rule of lenity is not technically applicable to impeachment—that is a question—certainly, the policies underlying that rule are worthy and deserving of consideration as guides to constitutional interpretation.

Now, here I am making, I think, a very important point. Even if the Senate were to conclude that a technical crime is not required for impeachment, the critical question remains—and it is the question I now want to address myself to—do abuse of power and obstruction of Congress constitute impeachable offenses?

The relevant history answers that question clearly in the negative. Each of these charges suffers from the vice of being “so vague a term that they will be equivalent of tenure at the pleasure of the Senate,” to quote again the Father of our Constitution.

Abuse of power is an accusation easily leveled by political opponents against controversial presidents. In our long history, many Presidents have been accused of abusing their power. I will now give you a list of Presidents who in our history have been accused of abusing their power and who would be subject to impeachment under the House managers’ view of abuse: George Washington, for refusal to turn over documents relating to the Jay Treaty; John Adams for signing and enforcing the Alien and Sedition laws; and Thomas Jefferson, for purchasing Louisiana without congressional authorization.

I will go on—John Quincy Adams; Martin Van Buren; John Tyler, “arbitrary, despotic and corrupt use of the veto power”; James Polk—and here I quote Abraham Lincoln. Abraham Lincoln accused Polk of abusing the power of his office, “contemptuously disregarding the Constitution, usurping the role of Congress, and assuming the role of dictator.” He didn’t seek to impeach him, just sought to defeat him.

Abraham Lincoln was accused of abusing his power for suspending the writ of habeas corpus during the Civil War; President Grant, Grover Cleveland, William McKinley, Theodore Roosevelt, William Taft, Woodrow Wilson, Franklin Roosevelt, Harry Truman, Jimmy Carter, Ronald Reagan—concerning Iran-Contra, and now I say, Professor Laurence Tribe said the following: “Therein lies what appears to be the most serious breach of duty by the President, a breach that may well entail an impeachable abuse of power”—George H.W. Bush, “The following was released today by the Clinton-Gore campaign: In the past weeks, Americans have begun to learn the extent to which George Bush and his adminis-

tration have abused their governmental power for political purposes.”

That is how abuse of power should be used, as campaign rhetoric. It should be issued as statements of one political party against the other. That is the nature of the term. Abuse of power is a political weapon, and it should be leveled against political opponents. Let the public decide if that is true.

Barack Obama, the House Committee on the Judiciary held an entire hearing entitled “Obama Administration’s Abuse of Power.”

By the standards applied to earlier Presidents, nearly any controversial act by a Chief Executive could be denominated as abuse of power. For example, past Presidents have been accused of using their foreign policy, even their war powers, to enhance their electoral prospects. Presidents often have mixed motives that include partisan personal benefits, along with the national interest.

Professor Josh Blackman, constitutional law professor, provided the following interesting example:

In 1864, during the height of the Civil War, President Lincoln encouraged General William Sherman to allow soldiers in the field to return to Indiana to vote.

What was Lincoln’s primary motivation, the professor asks.

He wanted to make sure that the government of Indiana remained in the hands of Republican loyalists who would continue the war until victory. Lincoln’s request risked undercutting the military effort by depleting the ranks. Moreover, during this time, soldiers in the remaining States faced greater risks than did the returning Hoosiers.

The professor continues:

Lincoln had personal motives. Privately, he sought to secure victory for his party; but the President, as a President and as a party leader and Commander in Chief made a decision with life-or-death consequences.

Professor Blackman used the following relevant conclusion from this and other historical events. He said:

Politicians routinely promote the understanding of the general welfare while at the back of their minds considering how these actions will affect their popularity. Often the two concepts overlap. What is good for the country is good for the official’s reelection. All politicians understand that dynamic.

Like all human beings, Presidents and other politicians, persuade themselves that their actions seen by their opponents as self-serving are primarily in the national interest. In order to conclude that such mixed-motive actions constitute an abuse of power, opponents must psychoanalyze the President and attribute to him a singular, self-serving motive. Such a subjective probing of motives cannot be the legal basis for a serious accusation of abuse of power that could result in the removal of an elected President.

Yet this is precisely what the managers are claiming. Here is what they said: “Whether the President’s real reason, the one actually in his mind, are at the time legitimate.”

What a standard, what was in the President’s mind—actually in his mind? What was the real reason? Would you want your actions to be probed for what was “the real reason” why you acted? Even if a President were—and it clearly shows in my mind that the Framers could not have intended this psychoanalytical approach to Presidential motives to determine the distinction between what is impeachable and what is not.

Here, I come to a relevant and contemporaneous issue: Even if a President—any President—were to demand a quid pro quo as a condition to sending aid to a foreign country—obviously a highly disputed matter in this case—that would not, by itself, constitute an abuse of power.

Consider the following hypothetical case that is in the news today as the Israeli Prime Minister comes to the United States for meetings. Let's assume a Democratic President tells Israel that foreign aid authorized by Congress will not be sent or an Oval Office meeting will not be scheduled unless the Israelis stop building settlements—quid pro quo. I might disapprove of such a quid pro quo demand on policy grounds, but it would not constitute an abuse of power.

Quid pro quo alone is not a basis for abuse of power. It is part of the way foreign policy has been operated by Presidents since the beginning of time. The claim that foreign policy decisions can be deemed abuses of power based on subjective opinions about mixed or sole motives that the President was interested only in helping himself demonstrate the dangers of employing the vague, subjective, and politically malleable phrase “abuse of power” as a constitutionally permissible criteria for the removal of a President.

Now, it follows from this that, if a President—any President—were to have done what “The Times” reported about the content of the Bolton manuscript, that would not constitute an impeachable offense. Let me repeat it. Nothing in the Bolton revelations, even if true, would rise to the level of an abuse of power or an impeachable offense. That is clear from the history. That is clear from the language of the Constitution. You cannot turn conduct that is not impeachable into impeachable conduct simply by using words like “quid pro quo” and “personal benefit.”

It is inconceivable that the Framers would have intended so politically loaded and promiscuously deployed a term as “abuse of power” to be weaponized as a tool of impeachment. It is precisely the kind of vague, open-ended, and subjective term that the Framers feared and rejected.

Consider the term “maladministration.” I want to get back to that term because it was a term explicitly rejected by the Framers. Recall that it was raised, Madison objected to it, and it was then withdrawn, and it was not a part of the criteria. We all agree that maladministration is not a ground for impeachment. If the House were to impeach on maladministration, it would be placing itself above the law. There is no doubt about that because the Framers explicitly rejected maladministration.

Now what is maladministration? It is comparable in many ways to abuse of power. Maladministration has been defined as “abuse, corruption, misrule, dishonesty, misuse of office, and misbehavior.” Professor Bowie in his article in today’s “New York Times” equates abuse of power with “misconduct in office”—misconduct in office—thus supporting the view that, when the Framers rejected maladministration, they also rejected abuse of power as a criteria for impeachment.

Blackstone denominated maladministration as a “high misdemeanor” that is punishable “by the method of parliamentary impeachment, wherein such penalties, short of death, are inflicted.”

He included among those imprisonment. In other words, you can go to prison for maladministration. Despite this British history, Madison insisted it be rejected as a constitutional criteria for impeachment because "so vague a term will be equivalent to a tenure during the pleasure of the Senate," and it was subsequently rejected and withdrawn by its sponsor.

This important episode in our constitutional history supports the conclusion that the Framers did not accept, whole hog, the British approach to impeachment as some have mistakenly argued. Specifically, they rejected vague and open-ended criteria, even those that carried the punishment of imprisonment in Britain because they did not want to turn our new Republic into a parliamentary-style democracy in which the Chief Executive could be removed from office simply by a vote of nonconfidence. That is what they didn't want.

Sure, nobody was above the law, but they created a law. They created a law by which Congress could impeach, and they did not want to expand that law to include all the criteria that permitted impeachment in Great Britain. The Framers would never have included and did not include abuse of power as an enumerated and defined criteria for impeachment. By expressly rejecting maladministration, they implicitly rejected abuse.

Nor would the Framers have included obstruction of Congress as among the enumerated defined criteria—it, too, is vague and indefinable, especially in a constitutional system in which, according to Hamilton in *Federalist* No. 78, "the legislative body" is not themselves "the constitutional judge of their own powers" and the "construction they put on them" is not "conclusive upon other departments." Instead, he said, "the courts were designed as an intermediate body between the people [as declared in the Constitution] and the legislature" in order "to keep the latter within the limits assigned to their authority."

Under our system of separation of powers and checks and balances, it cannot be an "obstruction of Congress" for a President to demand judicial review of legislative subpoenas before they are complied with. The legislature is not the "Constitutional judge of their own powers," including the power to issue subpoenas. The courts were designated to resolve disputes between the executive and legislative branches, and it cannot be obstruction of Congress to invoke the constitutional power of the courts to do so.

By their very nature, words like "abuse of power" and "obstruction of Congress" are standardless. It is impossible to put standards into words like that. Both are subjective matters of degree and amenable to varying powers of interpretations. It is impossible to know in advance whether a given action will subsequently be deemed to be on one side or the other of the line. Indeed, the same action with the same state of mind can be deemed abusive or obstructive when done by one person but not when done by another. That is the essence of what the rule of law is not, when you have a criteria that can be applied to one person in one way and another person in another way and they both fit within the terms "abuse of power."

A few examples will illustrate the dangers of standardless impeachment criteria. My friend and colleague Professor Noah Feld-

man argued that a tweet containing what he believed false information could “get the current President impeached if it is part of a broader course of conduct”—a tweet.

Professor Allan Lichtman has argued that the President could be impeached based on his climate change policy, which he regards as “a crime against humanity.” I have to tell you, I disagree with our President’s climate change policy, as I do many of his other policies, but that is not a criteria for impeachment. That is a criteria for deciding who you are going to vote for.

If you don’t like the President’s policies on climate change, vote for the other candidate. Find a candidate who has better policies on climate change. If you don’t like the President’s tweets, find somebody who doesn’t tweet. That will be easy. But don’t allow your subjective judgments to determine what is and is not an impeachable offense. Professor Tribe, as I mentioned, argued that under the criteria of abuse of power, President Ronald Reagan should have been impeached.

Would any American today accept a legal system in which prosecutors could charge a citizen with abuse of conduct? Can you imagine, abuse of conduct? Fortunately, we have constitutional protections against a statute that “either forbids or requires the doing of an act in terms so vague that men and women of common intelligence must necessarily guess at its meaning and differ as to its application.” It is very difficult to imagine criteria that fits this description of what the Supreme Court has said violates the first essential rule of due process more closely than abuse of power and obstruction of Congress.

Another constitutional rule of construction is that, when words can be interpreted in an unconstitutionally vague manner or a constitutional precise manner, the latter must be chosen. You are entitled to use that rule of interpretation as well in deciding whether or not obstruction of Congress or abuse of power can be defined as fitting within the criteria of high crimes and misdemeanors.

For the Senate to remove a duly-elected President on vague, non-constitutional grounds, such as abuse of power or obstruction of Congress, would create a dangerous precedent and “be construed,” in the words of Senator James N. Grimes, “into approval of impeachment as part of future political machinery.”

This is a realistic threat to all future Presidents who serve with opposing legislative majorities that could easily concoct vague charges of abuse or obstruction. The fact that a long list of Presidents who were accused of abuse of power were not impeached demonstrates how selectively this term has and can be used in the context of impeachment.

I am sorry, House managers, you just picked the wrong criteria. You picked the most dangerous possible criteria to serve as a precedent for how we supervise and oversee future Presidents. The idea of abuse of power and obstruction of Congress are so far from what the Framers had in mind that they so clearly violate the Constitution and would place Congress above the law.

Nor are these vague, open-ended, and unconstitutional Articles of Impeachment that were charged here—they are not saved by the inclusion in these articles of somewhat more specific but still not criminal-type conduct. The specifications are themselves vague,

open-ended, and do not charge impeachable offenses. They include such accusations as compromising national security, abusing the power of the Presidency, and violating his oath of office.

In any event, it is the actual articles that charge abuse of power and obstruction of justice—neither of which are in the Constitution. It is the actual articles on which you must all vote, not on the more specific list of means included in the text of the articles.

An analogy to a criminal indictment might be helpful. If a defendant were accused of dishonesty, committing the crime of dishonesty, it wouldn't matter that the indictment listed as well the means toward dishonesty, a variety of far more specific potential offenses. Dishonesty is simply not a crime. It is too broad a concept. It is not in the statute. It is not a crime. The indictment would be dismissed because dishonesty is a sin and not a crime, even if the indictment included a long list of more specific acts of dishonesty.

Nor can impeachment be based on a bunching together of non-impeachable sins, none of which, standing alone, meet the constitutional criteria. Only if at least one constitutionally authorized offense is proved can the Senate then consider other conduct in deciding the discretionary issue of whether removal is warranted.

In other words, your jurisdiction is based on commission of an impeachable offense. Once that jurisdictional element is satisfied, you have broad discretion to determine whether removal is warranted, and you can consider a wide array—a wide array—of conduct, criminal and noncriminal. But you have no jurisdiction to remove unless there is at least one impeachable offense within the meaning of high crimes and misdemeanors.

In the 3 days of argument, the House managers tossed around words even vaguer and more open-ended than “abuse” and “obstruction” to justify their case for removal. These words include “trust,” “truth,” “honesty,” and finally “right.” These aspirational words of virtue are really important, but they demonstrate the failure of the managers to distinguish alleged political sins from constitutionally impeachable offenses.

We all want our Presidents and other public officials to live up to the highest standards set by Washington and Lincoln, although both of them were accused of abuse of power by their political opponents.

The Framers could have demanded that all Presidents must meet Congressman SCHIFF's standards of being honest, trustworthy, virtuous, and right in order to complete their terms, but they didn't because they understand human fallibility. As Madison put it, “If men were angels, no government would be necessary,” and then, speaking of Presidents and other public officials, “If angels were to govern men, neither internal nor external controls on government would be necessary.”

The Framers understood that if they set the criteria for impeachment too low, few Presidents would serve their terms. Instead, their tenure would be at the pleasure of the legislature, as it was and still is in Britain. So they set the standards and the criteria high, requiring not sinful behavior—not dishonesty, distrust, or dishonor—but treason, bribery, or other high crimes and misdemeanors.

I end this presentation today with a nonpartisan plea for fair consideration of my arguments and those made by counsel and managers on both sides. I willingly acknowledge that the academic consensus is that criminal conduct is not required for impeachment and that abuse of power and obstruction of Congress are sufficient. I have read and respectfully considered the academic work of my many colleagues who disagree with my view and the few who accept it. I do my own research, and I do my own thinking, and I have never bowed to the majority on intellectual or scholarly matters.

What concerns me is that during this impeachment proceeding, there have been few attempts to respond to my arguments and other people's arguments opposed to the impeachment of this President. Instead of answering my arguments and those of Justice Curtis and Professor Bowie and others on their merits and possible demerits, they have simply been rejected with negative epithets.

I urge the Senators to ignore these epithets and to consider the arguments and counterarguments on their merits, especially those directed against the unconstitutional vagueness of abuse of power and obstruction of Congress.

I now offer a criteria for evaluating conflicting arguments. The criteria that I offer I have long called the "shoe on the other foot" test. It is a colloquial variation of the test proposed by the great legal and political thinker, my former colleague, John Rawls. It is simple in its statement but difficult in its application.

As a thought experiment, I respectfully urge each of you to imagine that the person being impeached were of the opposite party of the current President but that in every other respect, the facts were the same.

I have applied this test to the constitutional arguments I am offering today. I would be making the same constitutional arguments in opposition to the impeachment on these two grounds regardless of whether I voted for or against the President and regardless of whether I agreed or disagreed with his or her policies. Those of you who know me know that is the absolute truth. I am nonpartisan in my application of the Constitution. Can the same can be said for all of my colleagues who support this impeachment, especially those who opposed the impeachment of President Bill Clinton?

I first proposed the shoe test 20 years ago in evaluating the Supreme Court's decision in *Bush v. Gore*, asking the Justices to consider how they would have voted had it been Candidate Bush, rather than Gore, who was several hundred votes behind and seeking a recount. In other words, I was on the other side of that issue. I thought the Supreme Court in that case favored the Republicans over the Democrats, and I asked them to apply the "shoe on the other foot" test.

I now respectfully ask this distinguished Chamber to consider that heuristic test in evaluating the arguments you have heard in this historic Chamber. It is an important test because how you vote on this case will serve as a precedent for how other Senators of different parties, different backgrounds, and different perspectives vote in future cases.

Allowing a duly-elected President to be removed on the basis of standardless, subjective, ever-changing criteria—abuse of power

and obstruction of Congress—risks being “construed,” in the words of Senator Grimes, a Republican Senator from Iowa, who voted against impeaching President Andrew Johnson, “into approval of impeachments as part of future political machinery.”

As I began, I will close. I am here today because I love my country. I love the country that welcomed my grandparents and made them into great patriots and supporters of the freest and most wonderful country in the history of the world. I love our Constitution—the greatest and most enduring document in the history of humankind.

I respectfully urge you not to let your feelings about one man—strong as they may be—establish a precedent that would undo the work of our Founders, injure the constitutional future of our children, and cause irreparable damage to the delicate balance of our system of separation of powers and checks and balances.

As Justice Curtis said during the trial of Andrew Johnson, a greater principle is at stake than the fate of any particular President. The fate of future Presidents of different parties and policies is also at stake, as is the fate of our constitutional system. The passions and fears of the moment must not blind us to our past and to our future.

Hamilton predicted that impeachment would agitate the passions of the whole community and enlist all their animosities, partialities, influence, and interest on one or the other. The Senate—the Senate—was established as a wise and mature check on the passions of the moment with “a deep responsibility to future times.”

I respectfully urge the distinguished Members of this great body to think beyond the emotions of the day and to vote against impeaching on the unconstitutional articles now before you. To remove a duly-elected President and to prevent the voters from deciding his fate on the basis of these articles would neither do justice to this President nor to our enduring Constitution. There is no conflict here. Impeaching would deny both justice to an individual and justice to our Constitution.

I thank you for your close attention. It has been a great honor for me to address this distinguished body on this important matter. Thank you so much for your attention.

The CHIEF JUSTICE. The majority leader is recognized.

I am sorry. Are you complete?

Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Majority Leader MCCONNELL, Democratic Leader SCHUMER, Senators, don't worry, this won't take very long. We are going to stop for the day, and we will continue with our presentations tomorrow. I just had three observations that I wanted to briefly make for you.

First of all, thank you very much, Professor Dershowitz and all the presenters from our side today.

I was sitting here listening to Professor Dershowitz, and believe it or not, my mind went back to law school, and I began thinking, how would this impeachment look as a law school hypothetical question on an exam? How would we answer that question? And I found myself thinking maybe that is a good way to think about it.

The question would go something like this: Imagine you are a U.S. Senator and you are sitting in an impeachment trial. The Articles of Impeachment before you had been passed on a purely partisan basis for the first time in history. In fact, there was bipartisan opposition to the Articles of Impeachment. They have been trying to impeach the President from the moment of his inauguration for no reason—just because he won.

The articles before you do not allege a crime or even any violation of the civil law. One article alleges obstruction of Congress simply for exercising longstanding constitutional rights that every President has exercised. The President was given no rights in the House of Representatives. The Judiciary Committee conducted only 2 days of hearings.

You are sitting through your sixth day of trial. The House is demanding witnesses from you that they refused to seek themselves. When confronted with expedited court proceedings regarding subpoenas they had issued, they actually withdrew those subpoenas.

They are now criticizing you in strong, accusatory language if you don't capitulate to their unreasonable demands and sit in your seats for months. An election is only months away, and for the first time in history, they are asking you to remove a President from the ballot. They are asking you to do something that violates all past historical precedents that you have studied in class and principles of democracy and take the choice away from the American people. It would tear apart the country for generations and change our constitutional system forever.

Question: What should you do?

Your first thought might be, that is not a realistic hypothetical. That could never happen in America.

But then you would be happy because you would have an easy answer and you can be done with your law school exam, and it would be—you immediately reject the Articles of Impeachment.

Bonus question: Should your answer depend on your political party?

Answer: No.

My second observation is, I actually think it is very instructive to watch the old videos from the last time this happened, when many of you were making so eloquently—more eloquently than we are—the points that we are making about the law and precedent. But that is not playing a game of “gotcha”; that is paying you a compliment.

You were right about those principles. You were right about those principles. And if you will not listen to me, I urge you to listen to yourselves. You were right.

The third observation I had sitting here today is, Judge Starr talked about that we are in the age of impeachment, in the age of constant investigations. Imagine—imagine—if all of that energy were being used to solve the problems of the American people. Imagine if the age of impeachment were over in the United States. Imagine that.

I was listening to Professor Dershowitz talking about the shoe-on-the-other-foot rule, and it makes a lot of sense. I would maybe put it differently. I would maybe call it the golden rule of impeachment. For the Democrats, the golden rule could be, do unto Repub-

licans as you would have them do unto Democrats. And hopefully we will never be in another position in this country where we have another impeachment but vice versa for that rule.

Those are my three observations. I hope that is helpful. Those were the thoughts I had listening to the presentations.

At the end of the day, the most important thought is this: This choice belongs to the American people. They will get to make it months from now.

The Constitution and common sense and all of our history prevent you from removing the President from the ballot. There is no basis for it in the facts. There is simply no basis for it in the law. I urge you to quickly come to that conclusion so we can go have an election.

Thank you very much for your attention.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m., Tuesday, January 28, and that this order also constitute the adjournment of the Senate.

There being no objection, at 9:02 p.m. the Senate, sitting as a Court of Impeachment, adjourned until Tuesday, January 28, 2020, at 1 p.m.

[From the CONGRESSIONAL RECORD, January 28, 2020]

The Senate met at 1:03 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will lead us in prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

O God, You are our rock of safety. Protect us in an unsafe world. Guard us from those who smile but plan evil in their hearts. Use our Senators to bring peace and unity to our world. May they permit Godliness to make them bold as lions. Give them a clearer vision of your desires for our Nation. Remind them that they borrow their heartbeats from You each day. Provide them with such humility, hope, and courage that they will do Your will.

Lord, grant that this impeachment trial will make our Nation stronger, wiser, and better.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Without objection, it is so ordered.

The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, we expect several hours of session today, with probably one quick break in the middle.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 483, the counsel for the President have 15 hours and 33 minutes remaining to make the presentation of their case, though it will not be possible to use the remainder of that time before the end of the day.

The Senate will now hear you.

OPENING STATEMENT

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Members of the Senate, just to give you a very quick, brief overview of today, we do not intend to use much of that time today. Our goal is to be finished by dinnertime and well before. We will have three presentations. First will be Pat Philbin, Deputy White House counsel. Then, Jay Sekulow will give a presentation. We will take a break, if that is OK with you, Mr. Leader. And then, after that, I will finish with a presentation. That is our goal for the day. With that, I will turn it over to Pat Philbin.

Mr. Counsel PHILBIN. Mr. Chief Justice, Members of the Senate, Majority Leader McCONNELL, Minority Leader SCHUMER, I would like to start today by making a couple of observations related to the abuse of power charge in the first Article of Impeachment. I wouldn't presume to elaborate on Professor Dershowitz' presentation from yesterday evening, which I thought was complete and compelling, but I wanted to add a couple of very specific points in support of the exposition of the Constitution and the impeachment clause that he set out.

It begins from a focus on the point in the debate about the impeachment clause at the Constitutional Convention where maladministration was offered by George Mason as a grounds for impeachment, and James Madison responded that that was a bad idea, and he said: "So vague a term will be equivalent to a tenure

during the pleasure of the Senate.” That evinced the deep-seated concern that Madison had, and it is part of the whole design of our Constitution for ways that can lead to exercises of arbitrary power.

The Constitution was designed to put limits and checks on all forms of government power. Obviously, one of the great mechanisms for that is the separation of powers—the structural separation of powers in our Constitution. But it also comes from defining and limiting powers and responsibilities and a concern that vague terms, vague standards are themselves an opportunity for the expansion of power and the exercise of arbitrary power. We see that throughout the Constitution and in the impeachment clause as well. This is why, as Gouverneur Morris argued in discussing the impeachment clause, that only few offenses—he said few offenses—ought to be impeachable, and the cases ought to be enumerated and defined.

Many terms had been included in earlier drafts, when it was narrowed down to treason and bribery, and there was a suggestion to include maladministration, which had been a ground for impeachment in English practice. The Framers rejected it because it was too vague; it was too expansive. It would allow for arbitrary exercises of power.

We see throughout the Constitution, in terms that relate and fit in with the impeachment clause, the same concern. One is in the definition of “treason.” The Framers were very concerned that the English practice of having a vague concept of treason that was malleable and could be changed even after the fact to define new concepts of treason was dangerous. It was one of the things that they wanted to reject from the English system. So they defined in the Constitution very specifically what constituted treason and how it had to be proved, and then that term was incorporated into the impeachment clause.

Similarly, in the rejection of maladministration, which had been an impeachable offense in England, the Framers rejected that because it was vague. A vague standard, something that is too changeable, that can be redefined, that can be malleable after the fact, allows for the arbitrary exercise of power, and that would be dangerous to give that power to the legislature as a power to impeach the executive.

Similarly—and it relates again to the impeachment clause—one of the greatest dangers from having changeable standards that existed in the English system was bills of attainder. Under a bill of attainder, the Parliament could pass a specific law saying that a specific person had done something unlawful—they were being attainted—even though it wasn’t unlawful before that.

The Framers rejected that entire concept. In article I, section 9, they eliminated both bills of attainder and all ex post facto laws for criminal penalties at the Federal level, and they also included a provision to prohibit States from using bills of attainder.

In the English system, there was a relationship, to some extent, between impeachment and bills of attainder because both were tools of the Parliament to get at officials in the government. You could impeach them for an established offense or you could pass a bill of attainder.

It was because the definition of “impeachment” was being narrowed that George Mason at the debates suggested—he pointed out—that in the English system there is a bill of attainder. It has been a great, useful tool for the government, but we are eliminating that, and now we are getting a narrow definition of “impeachment,” and we ought to expand it to include “maladministration.” Madison said no, and the Framers agreed: We have to have enumerated and defined offenses—not a vague concept, not something that can be blurry and interpreted after the fact and that could be used, essentially, to make policy differences or other differences like that the subject of impeachment.

All of the steps that the Framers took in the way they approached the impeachment clause were in terms of narrowing, restricting, constraining, and enumerating offenses and not a vague and malleable approach, as they had been in the English system.

I think the minority views of Republican Members of the House Judiciary Committee at the time of the Nixon impeachment inquiry summed this up and reflected it well because they explained—and I am quoting from the minority views in the report:

The whole tenor of the Framers’ discussions, the whole purpose of their many careful departures from English impeachment practice, was in the direction of limits and of standards. An impeachment power exercised without extrinsic and objective standards would be tantamount to the use of bills of attainder and *ex post facto* laws, which are expressly forbidden by the Constitution and are contrary to the American spirit of justice.

What we see in the House managers’ charges and their definition of abuse of power is exactly antithetical to the Framers’ approach because their very premise for their abuse of power charge is that it is entirely based on subjective motive—not objective standards, not predefined offenses, but the President can do something that is perfectly lawful, perfectly within his authority. But if the real reason, as Professor Dershowitz pointed out—that is the language from their report—the reason in the President’s mind is something that they ferret out and decide is wrong, that becomes impeachable, and that is not a standard at all. It ends up being infinitely malleable.

It is something that I think—a telling factor that reflects how malleable it is and how dangerous it is in the House Judiciary’s Committee’s report because after they define their concept of abuse of power and they say that it involves your exercising government power for personal interest and not the national interest and it depends on your subjective motives, they realize that is infinitely malleable.

There is not really a clear standard there, and it is violating a fundamental premise of the American system of justice that you have to have notice of what is wrong. You have to have notice of an offense. This is something Professor Dershowitz pointed out last night. There has to be a defined offense in advance. The way they try to resolve this is to say: Well, in addition to our definition, high crimes and misdemeanors involve conduct that is recognizably wrong to a reasonable person. And that is their kind of add-on to deal with the fact that they have an unconstitutionally vague standard.

They don't have a standard that really defines a specific offense. They don't have a standard that really defines, in coherent terms that are going to be identifiable, what the offenses are, so they just add on. It has to be recognizably wrong.

They say they are doing this to resolve a tension, they call it, within the Constitution because they point out—and this is quoting from the report—“The structure of the Constitution, including its prohibition on bills of attainder and the ex post facto clause, implies that peaceable offenses should not come as a surprise.”

That is exactly what Professor Dershowitz pointed out. And everything about the terms of the Constitution, speaking of an offense and a conviction, that crime should be tried by jury except impeachments. They all talk about impeachment in those criminal offense terms.

But the tension here isn't within the Constitution; it is between the House managers' definition, which lacks any coherent definition of an offense that would catch people by surprise and the Constitution. That is the tension that they are trying to resolve between their malleable standards that actually states no clear offense and the Constitution and the principles of justice embodied in the Constitution that requires some clear offense.

I wanted to point that out in relation to the standards for impeachable offenses because it is another piece of the constitutional puzzle that fits in with the exposition that Professor Dershowitz set out. And it also shows an inherent flaw in the House managers' theory of abuse of power, regardless of whether or not one accepts the view that an impeachable offense has to be a defined crime. There is still the flaw in their definition of abuse of power; that it is so malleable, based on purely subjective standards, that it does not provide any recognizable notice of an offense. It is so malleable that it, in effect, recreates the offense of maladministration that the Framers expressly rejected, as Professor Dershowitz explained.

The second point that I wanted to make is, how do we tell, under the House managers' standard, what the illicit motive is; when is there illicit motive? How are we supposed to get the proof of what is inside the President's head because, of course, motive is inherently difficult to prove when you are talking about, as they conceded they are talking about, perfectly lawful actions, on their face, within the constitutional authority of the President? They want to make it impeachable if it is just the wrong idea inside the President's head. And they explain in the House Judiciary Committee report that the way we will tell if the President had the wrong motive is we will compare what he did to what staffers in the executive branch said he ought to do. They say that the President “disregarded United States foreign policy towards Ukraine” and that he ignored “official” policy that he had been briefed on and that “he ignored, defied, and confounded every . . . agency within the Executive Branch.”

That is not a constitutionally coherent statement. The President cannot defy agencies within the executive branch. Article II, section 1 of the Constitution vests all of the Executive power in a President of the United States. He alone is an entire branch of government. He sets policy for the executive branch. He is given vast power. And, of course, within limits set by laws passed by Congress

and within limits set by spending priorities—spending laws passed by Congress—he, within those constraints, sets the policies of the government. And in areas of foreign affairs, military affairs, national security—which is what we are dealing with in this case—in foreign affairs and head of state communications, he has vast powers.

As Professor Dershowitz explained, for over two centuries, the President has been regarded as the sole organ of the Nation in foreign affairs. So the idea that we are going to find out when the President has the wrong subjective motives by comparing what he did to the recommendations of some interagency consensus among staffers is fundamentally anti-constitutional. It inverts the constitutional structure, and it is also fundamentally anti-democratic because our system is rather unique in the amount of power that it gives to the President.

The Executive here has much more power than in a parliamentary system, but part of the reason that the President can have that power is if he is directly democratically accountable to the people. There is an election every 4 years to ensure that the President stays democratically accountable to the people. Those staffers in these supposed interagencies who have their meetings and make recommendations to the President are not accountable to the people. There is no democratic legitimacy or accountability to their decisions or recommendations. And that is why the President, as head of the executive branch, has the authority to actually set policies and make determinations, regardless of what his staffers may recommend. They are there to provide information and recommendations, not to set policy.

The idea that we are going to start impeaching Presidents by deciding that they have illicit motives if we can show they disagree with some interagency consensus is fundamentally contrary to the Constitution and fundamentally anti-democratic. Those were the two observations I wanted to add to supplement specific points on Professor Dershowitz' comments from last night.

I want to shift gears and respond to a couple of points that the House managers have brought up that are really completely extraneous to this proceeding. They involve matters that are not charged in the Articles of Impeachment. They do not relate directly to the President and his actions, but they are accusations that were brought up somewhat recklessly, in any event, and we can't close without some response to them. The first has to do with the idea that somehow the White House and White House lawyers were involved in some sort of coverup related to the transcript of the July 25 call because it was stored on a highly classified system.

Let me start with that. The House managers made this accusation of something nefarious going on. Let's see what the witnesses actually had to say. Lieutenant Colonel Alexander Vindman—remember Lieutenant Colonel Vindman is the person who was listening in on the call and who raised a concern. He was the only person who went and raised a concern with NSC lawyers that he thought there was something improper, something wrong with the call. Even though he later conceded under cross-examination it was really a policy concern, but he thought there was something wrong.

And he had to say: [Slide 556] "I do not think there was malicious intent or anything of that nature . . . to cover anything up."

He is the one who went and talked to the lawyers. He is the one whose complaint spurred the idea that, wait, there might be something that is really sensitive here. Let's make sure this is not going to leak. He thought there was nothing covering it up.

His boss, Senior Director Tim Morrison, had similar testimony. (Text of Videotape presentation:)

Mr. CASTOR. So to your knowledge, there was no malicious intent in moving the transcript to the compartmented server?

Mr. MORRISON. Correct.

Mr. Counsel PHILBIN. The idea that there was some sort of coverup is further destroyed by the simple fact that everyone who as part of their job needed access to that transcript, still had access to it, including Lieutenant Colonel Vindman. The person who raised the complaint still had access to the transcript the entire time.

This is the way Mr. Morrison's testimony explained that.

(Text of Videotape presentation:)

Mr. CASTOR. And even on the code word server, you had access to it?

LTC VINDMAN. Yes.

Mr. CASTOR. So at no point in time in your official duties were you denied access to this information, is that correct?

LTC VINDMAN. Correct.

Mr. CASTOR. And to your knowledge, anybody on NSC staff that needed access to their official duties always was able to access it, correct, people that had a need to know and a need to access it?

Mr. MORRISON. Once it was moved to the departmental system? Yes.

Mr. CASTOR. OK.

Mr. Counsel PHILBIN. Now, Mr. Morrison testified that he recommended restricting access to the transcript, not because he was concerned there was anything improper or illegal, but he was concerned about a potential leak and, as he put it, how that "would play out in Washington's polarized environment" and would "affect bipartisan support our Ukrainian partners are currently experiencing in Congress."

He was right to be concerned, potentially, about leaks because the Trump administration has faced national security leaks at an alarming rate. Lieutenant Colonel Vindman, himself, said concerns about leaks seemed justified, and it was not unusual that something would be put in a more restricted circulation.

Now, what else is in the record evidence? Mr. Morrison explained his understanding of how the transcript ended up on that server.

(Text of Videotape presentation:)

Mr. MORRISON. I spoke with the NSC executive secretariat staff, asked them why, and they did their research and they informed me that it had been moved to the higher classification system at the direction of John Eisenberg, whom I then asked why. I mean, if that was the judgment he made, that's not necessarily mine to question, but I didn't understand it. And he essentially told me: I gave no such direction. He did his own inquiry, and he represented back to me that it was his understanding that it was kind of an administrative error, that when he also gave direction to restrict access, the executive secretariat staff also understood that as an apprehension that there was something in the content of the Memcon that could not exist on the lower classification system.

Mr. CASTOR. To the best of your knowledge, there was no malicious intent in moving the transcript to the compartmented server?

Mr. MORRISON. Correct.

Mr. Counsel PHILBIN. Everyone who knew something about it and who testified agreed there was no malicious intent. The call was still available to everyone who needed it as part of their job, and it certainly wasn't covered up or deep-sixed in some way. The President declassified it and made it public. So why we are even here talking about these accusations about a coverup, when it is a transcript that was preserved and made public, is somewhat absurd.

The other point I would like to turn to—another accusation from the House managers—is that the whistleblower complaint was not forwarded to Congress. They have said that lawyers at the Department of Justice, this time, they accused OLC, the Office of Legal Counsel, of providing a bogus opinion for why the Director of National Intelligence did not have to advance the whistleblower's complaint to Congress.

Manager JEFFRIES said that OLC opined “without any reasonable basis that the Acting DNI did not have to turn over the complaint to Congress.”

The way he portrayed this—now, there is a statute that says if the inspector general of the intelligence community finds a matter of urgent concern, it must be forwarded to Congress. And Manager JEFFRIES portrayed this as if the only thing to decide was were these claims urgent. He said: “What can be more urgent than a sitting President trying to cheat in an American election by soliciting foreign interference?”

Except that is not the only question. The statute doesn't just say, if it is urgent, you have to forward it. It talks about “urgent concern” as a defined term. If the House managers want to come and cast accusations that the political and career officials at the Office of Legal Counsel, which we all know is a very respected office of the Department of Justice, provides opinions for the executive branch on what governing law is, they should come backed up with analysis.

So let's look at what the law actually says, and I think we have the slide of that. [Slide 557]

“Urgent concern is defined as a serious or flagrant problem, abuse, violation of law relating to the funding, administration, or operation of an intelligence activity within the responsibility and authority of the Director of National Intelligence involving classified information.”

So the Office of Legal Counsel was consulted by the General Counsel at the DNI's office, and they looked at this definition, and they did an analysis. They determined that the alleged misconduct was not an urgent concern within the meaning of the statute because they were not just talking about “Do we think it is urgent?” “Do we think it is important?” No. They were analyzing the law, and they looked at the terms of the statute. [Slide 558]

“The alleged misconduct is not an urgent concern within the meaning of the statute because it does not concern the funding, administration, or operation of an intelligence activity under the authority of the DNI.”

Remember, what we are talking about here is a head-of-state communication between the President of the United States and another head of state. This isn't some CIA operation overseas. This

isn't the NSA's doing something. This isn't any intelligence activity going on within the intelligence community under the supervision of the DNI. It is the head of the executive branch, in the exercising of his constitutional authority, engaging in foreign relations with a foreign head of state.

So, in reaching that conclusion, the Office of Legal Counsel looked at the statute, case law, and the legislative history. [Slide 559] It concluded that this phrase "urgent concern" included matters relating to an intelligence activity subject to the DNI's supervision, but it did not include allegations of wrongdoing arising outside of any intelligence activity or outside the intelligence community itself.

That makes sense. This statute was meant to provide for an ability of the inspector general's of the intelligence community, in overseeing the activities of the intelligence community, to receive reports about what was going on at intelligence agencies, those who were members of the intelligence community, and if there were fraud, waste, abuse—something unlawful—in those activities. It was not meant to create an inspector general of the Presidency, an inspector general of the Oval Office, to purport to determine whether the President, in exercising his constitutional authorities, had done something that should be reported.

This law is narrow, and it does not cover every alleged violation of law, the OSC explained, or other abuse that comes to the attention of a member of the intelligence community. Just because you are in the intelligence community and happen to see something else doesn't make this law apply. The law does not make the inspector general for the intelligence community responsible for investigating and reporting on allegations that do not involve intelligence activities or the intelligence community.

Nonetheless, the President, of course, released the July 25 call transcript, and it was also not the end of the matter that the whistleblower complaint and the ICIG's letter were not sent directly to Congress. As the OLC explained, if the alleged complaint does not involve an urgent concern but if there is anything else there that you want to have checked out, the appropriate action is to refer the matter to the Department of Justice, and that is what the DNI's office did.

They sent the ICIG's letter, with the complaint, to the Department of Justice, and the Department of Justice looked at it. This was all made public some time ago. The Department of Justice examined the exact allegations of the whistleblower's and the exact framing and concern raised by the inspector general, which had to do with the potential of, perhaps, a campaign finance law violation. The DOJ looked at it—looked at the statutes, analyzed it—and determined there was no violation, and it closed the matter. It announced that months ago.

When something gets sent over to the Department of Justice to examine, you can't call that a coverup. Everything here was done correctly. The lawyers analyzed the law. The complaint was sent to the appropriate person for review. It was not within the statute that it required transmission to Congress. Everything was handled entirely properly.

Again, actually extraneous to the matters before you, there is nothing about these two points in the Articles of Impeachment, but it merits a response when reckless allegations are made against those at the White House and at the Department of Justice.

With that, Mr. Chief Justice, I yield my time to Mr. Sekulow.

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice, Majority Leader MCCONNELL, Democratic Leader SCHUMER, House managers, Members of the Senate.

What we are involved in here, as we conclude, is perhaps the most solemn of duties under our constitutional framework—the trial of the leader of the free world and the duly elected President of the United States. It is not a game of leaks and unsourced manuscripts. That is politics, unfortunately, and Hamilton put impeachment in the hands of this body—the Senate—precisely and specifically to be above that fray. This is the greatest deliberative body on Earth.

In our presentation so far, you have now heard from legal scholars from a variety of schools of thought, from a variety of political backgrounds, but they do have a common theme with a dire warning—danger, danger, danger. To lower the bar of impeachment based on these Articles of Impeachment would impact the functioning of our constitutional Republic and the framework of that Constitution for generations.

I asked you to put yourselves—in quoting Mr. SCHIFF's statement that his father made—in the shoes of someone else, and I said I would like you to put yourselves in the shoes of the President. I think it is important, as we conclude today, that we are reminded of that fact.

The President of the United States, before he was the President, was under an investigation. It was called Crossfire Hurricane. It was an investigation, led by the FBI, the Federal Bureau of Investigation. James Comey eventually told the President a little bit about the investigation and referenced the Steele dossier. James Comey, the then-Director of the FBI, said it was salacious and unverified—so salacious and unverified that they used it as a basis to obtain FISA warrants. Members—managers here, managers at this table right here—said that any discussions on the abuse from the Foreign Intelligence Surveillance Act, utilized to get the FISA warrants from the court, were conspiracy theories.

At the very beginning, I asked you to put yourselves in the shoes of not just this President but of any President who would have been under this type of attack. FISA warrants were issued on people affiliated with his campaign—American citizens affiliated with the people of his campaign, citizens of the United States being surveilled pursuant to an order that has now been acknowledged by the very court that issued the order that it was based on a fraudulent presentation.

In fact, evidence specifically changed—changed by the very FBI lawyer who was in charge of this, changed to such an extent that the Foreign Intelligence Surveillance Court—as I said earlier, and I will not repeat it again—issued two orders, saying that when this agent—this lawyer—made these misrepresentations to the National Security Division, they also made a misrepresentation to a Federal court—the Federal court—the Foreign Intelligence Surveil-

lance Court. This is a court where there are no defense witnesses and is a court where there is no cross-examination. It is a court based on trust. That trust was violated.

Then the Director of the Federal Bureau of Investigation, James Comey, decides he will leak a memo of a conversation he had with the President of the United States. He is leaking the memo for a purpose, he said—to obtain the appointment of a special counsel. Lo and behold, a special counsel is appointed. It just so happens that that FBI agent—lawyer—who committed the fraud on the FISA Court, became a lawyer for the Mueller investigation, only to be removed because of political animus and bias found by the inspector general.

Then we have a special counsel investigation. Lisa Page, Agent Strzok—I am not going to go into the details. You know them. They are not in controversy. They are uncontroverted. The facts are clear. But does it bother your sense of justice even a little bit—even a little bit—that Bob Mueller allowed the evidence on the phones of those agents to be wiped clean while there was an investigation going on by the inspector general?

Now, if you did it, or if you did it, Manager SCHIFF, or if you did it, Manager JEFFRIES, or if I did that—destroyed evidence—if anyone in this Chamber did this, we would be in serious trouble. Their serious trouble is their getting fired. Bob Mueller's explanation for it is, I don't know what happened. I don't know what happened. I can't recall conversations.

You can't view this case in a vacuum. You are being asked—and I say this with the utmost respect—to remove a duly elected President of the United States. We have referenced the law school exams, and I love that. I thought there was great analysis yesterday. I appreciate all of that, but I want to focus today on my section, on what you are being asked to do. You are being asked to remove a duly elected President of the United States, and you are being asked to do it in an election year—in an election year.

There are some of you in this Chamber right now who would rather be someplace else, and that is why we will be brief. I understand. You would rather be someplace else. Why would you rather be someplace else? Because you are running for President, for the nomination of your party. I get it, but this is a serious, deliberative situation. You are being asked to remove a duly elected President of the United States. That is what the Articles of Impeachment call for—removal.

So we had a special counsel, and we got the report. Just for a moment, putting yourselves in the shoes of this President—or of any President who would be under this situation—you are No. 4 at the Department of Justice. His wife is working for the firm that is doing the opposition research on him and is communicating with the foreign former spy, Christopher Steele, who put together the dossier. It is being handled by Christopher Steele, through Nellie Ohr, to her husband—then, the fourth ranking member at the Department of Justice, Bruce Ohr. All of this is going on, and he doesn't want to tell everybody—and he has testified to this—what he is doing because he is afraid he might have to stop.

Might have to stop?

How did this happen? This is the Federal Bureau of Investigation. And then we ask why the President is concerned about advice he is being given?

Put yourself in his shoes. Put yourself in his shoes.

We have given you—and our approach has been to give—an overview, and to be very specific, to remove a duly elected President, which is what you are being asked to do, for essentially policy disagreements—you heard a lot about policy, although the one that I still—it still troubles me, this idea that the President—it was said by several of the managers—is only doing these things for himself.

Understanding what is going on in the world today, as we are here—they raised it, by the way. I am not trying to be disrespectful. They raised it: This President is only doing things for himself while the leaders of opposing parties, by the way, at the highest level, to obtain peace in the Middle East—to say you are only doing that for yourself? I think the irony is that those statements were made while all of that was going on and other acts that this body has passed, some of them bipartisan, to help the American people.

Policy differences—those policy differences cannot be utilized to destroy the separation of powers. House managers spoke for—I know we have had disagreements on the time. It was 21 hours or 23 hours. They spoke during their time—a lot of time—most of it attacking the President, policy decisions. They didn't like what they heard. They didn't like there was a pause on foreign aid.

I have laid out before that there were pauses on all kinds of foreign aid. He is not the first President to do it.

But the one thing I am still trying to understand from the managers' perspective—and maybe it is not fair to ask the managers because you are not the leader of the House. But remember the whole idea that this was a dire national security threat, a danger to our Nation, and we had to get this over here right away. It had to be done before Christmas. It was so important; it was so significant; the country was in such jeopardy; the jeopardy was so serious that it had to be done immediately.

Let's hold on to the Articles of Impeachment for a month to see if the House could force the Senate to adopt rules that they wanted, which is not the way the Constitution is set up.

But it was such a dire emergency, it was so critical for our Nation's national interests, that we could hold them for 33 days. Danger, danger, danger. That is politics.

As I said, you are being called upon to remove the duly elected President of the United States. That is what these Articles of Impeachment call for.

They never really answered the question of why they thought there was such a national emergency. Maybe they will during questions; I don't know. If there was such a national emergency, they never did explain why it was that they waited. They certainly didn't wait to have the proceedings, as my colleagues have laid out; I mean, those proceedings moved in record time. I suspect that we have been here more than the House actually considered the actual Articles of Impeachment.

Is that the way the Constitution is supposed to work? Is that the design of the Constitution?

And then their question, of course, came up yesterday on the whole situation with Burisma and the Bidens and that whole issue, and my colleague went through that a great deal, and I am not going to do that.

But do we have a—we used to call this, in free speech cases, like a free speech zone. You could have your free speech activities over here; you can't have them over there. Do you we have like a Biden-free zone? Was that was this was? You mention someone or you are concerned about a company, and it is now off limits? You can impeach the President of the United States for asking a question? I think we significantly showed the question.

I am not going to go through a detail-by-detail analysis of the facts, but there are some that we just have to go through.

You heard a lot of new facts yesterday in our presentation. On Saturday, what we were pointing to was a very quick overview, and then yesterday we spent the day—and we appreciate everybody's patience on that—going through the facts: They showed you this, but they didn't show you that.

The facts are important, though, because facts have legal ramifications; legal ramifications impact the decisions you make. So I don't take facts lightly, and I certainly don't take the constitutional mandate lightly, and we can't.

The facts we demonstrated yesterday and briefly on Saturday demonstrate that there was, in fact, a proper governmental interest in the questions that the President asked and the issues that the President raised on that phone call.

A phone call—now, let's—again, put your feet in the shoes of the President. Put yourself in the President's position. Do you think he thought, when he was on the call, it was him and President Zelensky he was talking to, and that was it? Or as I heard one commentator say it was—people listening in on the call—the President and 3,000 of his closest friends.

Let's be realistic. The President of the United States knew, when he was on that call, there were a lot of people listening from our side and from their side. So he knew what he was saying. He said it. We released a transcript of it.

The facts on the call that have been kind of the focus of all of this really focused on foreign policy initiatives both in Ukraine and around the globe. They talked about other countries. The President has been very concerned about other countries carrying some of the financial load here, not just the United States. That is a legitimate position for a President to take. If you disagree with it, you have the right to do that, but he is the President. As my colleague Deputy White House Counsel Philbin just said, that is the executive branch prerogative. That is their constitutional, appropriate role.

So the call is well documented. There were lots of people on the call. The person that would be on the other end of the quid pro quo, if it existed, would have been President Zelensky. But President Zelensky—and we already laid out the other officials from Ukraine—has repeatedly said there was no pressure. It was a good call. They didn't even know there was a pause in the aid. All of that is well documented. I am not going to go through each and every one of those facts. We did that over the last several days.

President Zelensky's senior adviser, Andriy Yermak, was asked if he ever felt there was a connection between military aid and the request for investigations, and he was adamant that "We never had that feeling" and "We did not have the feeling that this aid was connected to any one specific issue." This is coming from the people who were receiving the aid.

So we talk about this whole quid pro quo, and that was a big issue. That is how this—actually, before it became an impeachment proceeding, there was—as the proceedings were beginning in the House Permanent Select Committee on Intelligence under Chairman SCHIFF's role, there were all these discussions: Is it a quid pro quo? Was it extortion? Was it bribery? What was it?

And we are clear in our position that there was no quid pro quo. But then yesterday, my cocounsel, Professor Alan Dershowitz, explained last night that these articles must be rejected—he was talking about from a constitutional framework—even if it was a quid pro quo, which we have clearly established there was not.

And this is what he said, and I am going to quote it verbatim:

The claim that foreign policy decisions can be deemed abuses of power based on subjective opinions about mixed or sole motives that the President was interested only in helping himself demonstrate the dangers of employing the vague, subjective, and politically malleable phrase "abuse of power" as a constitutionally permissible criteria for the removal of a President.

He went on to say:

Now, it follows from this that if a President—any President—were to have done what "The Times" reported about the content of John Bolton's manuscript, that would not constitute an impeachable offense.

I am quoting exactly from Professor Dershowitz. He said:

Let me repeat it. Nothing in the Bolton revelations, even if true—

Even if true.

would rise to the level of abuse of power or an impeachable offense. That is clear from history. That is clear from the language of the Constitution. You cannot turn conduct that is not impeachable into impeachable conduct simply by using words like "quid pro quo" and "personal benefit."

It is inconceivable that the Framers would have intended so politically loaded and promiscuously deployed a term as "abuse of power" to be weaponized—

Again, Professor Dershowitz.

as a tool of impeachment. It is precisely the kind of vague, open-ended, and subjective term Framers feared and rejected.

Now, to be specific: You cannot impeach a President on an unsourced allegation. But what Professor Dershowitz was saying is that even if everything in there is true, it constitutionally doesn't rise to that level.

But I want to be clear on this because there is a lot of speculation out there with regard to what John Bolton has said, which referenced a number of individuals. We will start with the President. Here is what the President said in response to that New York Times piece:

I NEVER told John Bolton that the aid to Ukraine was tied to investigations into Democrats, including the Bidens. In fact, he never complained about this at the time of his very public termination. If John Bolton said this, it was only to sell a book.

The Department of Justice.

While the Department of Justice has not reviewed Mr. Bolton's manuscript, the New York Times' account of his conversation grossly mischaracterizes what Attorney General Barr and Bolton discussed.

There was no discussion of "personal favors" or "undue influence" on investigations, nor did the Attorney General state that the President's conversations with foreign leaders were improper.

The Vice President's chief of staff issued a statement:

In every conversation with the President and the Vice President, in preparation for our trip to Poland—

Remember, that was the trip that was being planned for the meeting with President Zelensky.

the President consistently expressed his frustration that the United States was bearing the lion's share of responsibility for aid to Ukraine and that European nations weren't doing their part.

The President also expressed concerns about corruption in Ukraine, and at no time did I hear him tie Ukraine aid to investigations into the Biden family or Burisma.

That was the response responding to an unpublished manuscript that maybe some reporters have an idea of maybe what it says. I mean, that is what the evidence—if you want to call that evidence. I don't know what you call that. I would call it inadmissible, but that is what it is.

To argue that the President is not acting in our national interest and is violating his oath of office, which the managers have put forward, is wrong based on the facts and the way the Constitution is designed.

When you look at the fullness of the record of their witnesses—their witnesses—the witnesses' statements, the transcripts—there is one thing that emerged: There is no violation of law. There is no violation of the Constitution. There is a disagreement on policy decisions.

Most of those who spoke at your hearings did not like the President's policy. That is why we have elections. That is where policy differentials and differences are discussed. But to have a removal of a duly elected President based on policy differences is not what the Framers intended.

If you lower the bar that way, danger, danger, danger, because the next President or the one after that—he or she would be held to that same standard. I hope not. I pray that is not what happens, not just for the sake of my client but for the Constitution. Professor Dershowitz gave a list of Presidents, from Washington to where we are today, who, under the standard that they are proposing, could be subject to abuse of power or obstruction of Congress.

We know that this is not about a President pausing aid to Ukraine. It is really not about the law. It is about a lot of attempts on policy disagreements that are not being debated here. My goodness, how much time—how much time has been spent in the House of Representatives hoping? They were hoping that the Mueller probe would result in—I mean, I am not going to play all the—I was thinking about it, playing all the clips from all the commentators the day after Bob Mueller testified. Bob Mueller was unable to answer, under his examination, basic and fundamental questions. He had to correct himself, actually. He had to correct himself before the Senate for something that he said before the House. So that is what the President has been living with.

And we are today arguing about what? A phone call to Ukraine or Ukraine aid being held or a question about corruption or a question about corruption that happened to involve a high-profile public figure? Is that what this is? Is that where we are?

Then what do we find out? The aid was released. It was released in an orderly fashion. The reform President, President Zelensky, wins, but there was a question on whether his party would take the Parliament. It did. They worked late into the evening with the desire to put forward reforms. So everybody was waiting, including—and you heard the testimony from, I will say, their witnesses—you heard the testimony—everybody was concerned about Ukraine. Everybody was concerned about whether these reforms could actually take place. Everybody was concerned about it. So you hold back.

It didn't affect anything that was going on in the field. We heard Mr. CROW worrying about the soldiers. I understand that, I appreciate that, but none of that aid was affecting what was going on in the battlefield right then or for the next 4 months because it was future aid. Are we having an impeachment proceeding because aid came out 3 weeks before the end of the fiscal year, for a 6-minute phone call? You boil it down, that is what this is.

It is interesting to me that everybody said: Well, the aid was finally released September 11 only because of the committee and the whistleblower we have never seen. Mr. Philbin dealt with that in great detail. I am not going to go over that again. But, you know, the new high court, the anti-corruption court, wasn't established and did not sit until September 5, 2019. So while the President of Ukraine was trying to get reforms put in place, the court that was going to decide corruption issues was not set until September 5.

I want you to think about this for a moment too. They needed a high court of corruption for corruption. Think about that for a moment. Now, it is good that they recognized it, but remember when I said the other day that you don't wave a magic wand and now Ukraine doesn't have a corruption problem? The high court of corruption, which they have to have because it is not just past corruption—they are concerned about ongoing corruption issues.

You could put all of your witnesses back under oath in the next hearings you will have when this is all over, and you are going to be back in the House and you are going to be doing this again, putting them all back under oath, and ask them, Mr. SCHIFF, is there a problem with corruption in Ukraine? If they get up there and say: No. Everything is great now, hallelujah—but I suspect they are going to say: We are working really hard on it. But this idea that it has just vanished and now we are back into “everything is fine” is absurd.

Mr. Morrison testified that while the developments were taking place, the Vice President also met with President Zelensky in Warsaw. That was the meeting of September 1—the one, by the way, where the Vice President's Office said in response to this New York Times article that nobody told him about aid being held or linked to investigations.

Are you going to stop—are you going to allow proceedings on impeachment to go from a New York Times report about someone

that says what they hear is in a manuscript? Is that where we are? I don't think so. I hope not.

What did Morrison say? You heard firsthand that the new Ukraine administration was taking concrete steps to address corruption. That is good. He advised the President that the relationship with Zelensky is one that could be trusted. Good.

President Zelensky also agreed with Vice President PENCE—this is interesting—that the Europeans should be doing more and related to Vice President PENCE conversations he had been having with European leaders about getting them to do more.

In sum, the President raised two issues he was concerned with to get them addressed.

Now I have already gone over—again, this is just the closing moments here of our portion of this proceeding. Aid was withheld or paused, put on a pause button not just for Ukraine but for Afghanistan, South Korea, El Salvador, Honduras, Guatemala, Lebanon, and Pakistan. I am sure I am leaving countries out. But do you think the American people are concerned if the President says: You know, before we give a country, I don't know, \$550 million—some countries, only \$400 million—we would like to know what they are doing with it. You are supposed to be the guardians of the trust here. It is the taxpayers' money we are spending.

There was a lot of testimony from Dr. Fiona Hill, John Bolton's deputy. Here is what she said about aid that was being held. This was her testimony: There was a freeze put on all kinds of aid and assistance because it was in the process at the time of an awful lot of reviews of foreign assistance.

Oh, you mean there was a policy within the administration to review foreign assistance and how we are doing it because we spend a lot of money?

By the way, I am not complaining about the money. I don't think anybody doesn't want to help. But we do need to know what is going on, and those are valid and important questions.

Manager CROW told you that the President's Ukraine policy was not strong against Russia, but Ambassador Yovanovitch stated the exact opposite. She said in her deposition that our country's Ukraine policy under President Trump actually—her words—“got stronger” than it was under President Obama.

So, again, policy disagreements. Disagreements on approach. Have elections. That is what we do in our Republic.

For 3 long days, House managers presented their case by selectively showing parts of testimony. Good lawyers show parts of testimony. You don't have to show the whole thing. But other good lawyers show the rest of the testimony. And that is what we sought to do to give you a fuller view of what we saw as the glaring omissions by my colleagues, the House managers.

The legal issues here are the constitutional ones, and I have been I think pretty clear over the last week, starting when we had the motions arguments, in my concern about the constitutional obligations that we are operating under. I have been critical of Manager NADLER's “executive privilege and other nonsense.”

I want you to look at it this way. Take out executive privilege; First Amendment free speech and other nonsense; the free exercise of religion and other nonsense; the right to due process and other

nonsense; the right of equal protection under the law and other nonsense. You can't start doing that. You would not do that. No administration has done that, in fact, since the first administration, George Washington. They wanted information. He thought it was privileged. He said it was executive privilege.

Let's not start calling constitutional rights "other nonsense" and lumping them together. This is from a House of Representatives that actually believes the attorney/client privilege doesn't apply, which should scare every lawyer in Washington, DC, but more scary to the lawyers would be for their clients. They say that in writing, in letters. They don't hide it.

I would ask them—I am not going to; it is not my privilege to do that—do you really believe that? Do you really believe that the attorney/client privilege does not apply in a congressional hearing? Do you really believe that? Because then if it doesn't apply, then there is no attorney/client privilege—or is that the attorney/client privilege and other nonsense? Danger, danger, danger.

We believe that article I fails constitutionally. The President has constitutional authority to engage in and conduct foreign policy and foreign affairs. It is our position legally—the President at all times acted with perfect legal authority, inquired of matters in our national interest, and, having received assurances of those matters, continued his policy that his administration put forward of what really is unprecedented support for Ukraine, including the delivery of a military aid package that was denied to the Ukrainians by the prior administration.

Some of the managers right here, my colleagues at the other table, voted in favor of those—wanted Javelin anti-tank missiles for Ukraine. Some of the Members here did not, didn't want to do that, voted against that. I am glad we gave it to them. I am glad we allowed them to purchase Javelins.

I never served in the military. I have tremendous, tremendous respect for the men and women who protect our freedom each and every day. I have tremendous respect for what they are doing and continue to do.

This President actually allowed the Javelins to go. Some of you liked that idea; some of you did not. Policy difference. Were you going to impeach President Obama because he did not give them lethal aid? No. Nor should you. You should not do that. It is a policy difference. Policy differences do not rise to the level of constitutionally mandated or constitutional applications for removal from office. It is policy differences.

By the way, it is not just on lethal weapons; President Obama, as I said, withheld aid. He had the right to do that. You have allowed him to do that.

Oh, but we don't like that this President did it, so the rules change. So this President's rules are different than—he has a different set of standards he has to apply than what you allowed the previous administrations to apply. And you know what—or the future administrations to apply. That is the problem with these articles.

We have laid out, I believe, a compelling case on what the Constitution requires. When they were in the House of Representatives putting this together, did they go through a constitutionally man-

dated accommodation process to see if there was a way to come up with something? No, they did not. Did they run to court? No. And the one time it was about to happen, they ran the other way.

Separation of powers means something. It is not separation of powers and other nonsense. If we have reached now, at this very moment in the history of our Republic, a bar of impeachment because you don't like the President's policies or you don't like the way he undertook those policies—because we heard a lot about policy. If partisan impeachment is now the rule of the day, which these Members and Members of this Senate said should never be the rule of the day—my goodness, they said it—some of them—5 months ago, but then we had the national emergency, a phone call. It is an emergency, except we will just wait.

But if partisan impeachment based on policy disagreements, which is what this is, and personal presumptions or newspaper reports and allegations in an unsourced—maybe this is in somebody's book who is no longer at the White House—if that becomes the new norm, future Presidents, Democrats and Republicans, will be paralyzed the moment they are elected, before they can even take the oath of office. The bar for impeachment cannot be set this low.

Majority Leader MCCONNELL, Democratic Leader SCHUMER, House managers, Members of the Senate—danger, danger, danger. These articles must be rejected. The Constitution requires it. Justice demands it.

We would ask the majority leader for a short recess, if we can, about 15 minutes.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. MCCONNELL. Mr. Chief Justice, we will be in recess for 15 minutes.

There being no objection, at 2:18 p.m., the Senate, sitting as a Court of Impeachment, recessed until 2:44 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senate will come to order. Please be seated.

Mr. Cipollone.

Mr. Counsel CIPOLLONE. I thank Mr. Chief Justice and Members of the Senate.

Well, I had kind of a lengthy presentation prepared, but I think you have heard a lot from our side, and I think we have made our case.

I just want to leave you with a couple of points. First of all, I thank the majority leader and thank Democratic Leader SCHUMER and all of you for the privilege of speaking on the floor of the Senate and for your time and attention. We really appreciate it.

We made three basic points. One, all you need in this case is the Constitution and your common sense. If you just look at the Articles of Impeachment, the Articles of Impeachment fall far short of any constitutional standard, and they are dangerous. If you look to the words from the past that I think are instructive, as I said last night, they are instructive because they were right then and they are right now, and I will leave you with some of those words.

(Text of Videotape presentation:)

Mr. NADLER. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by the other. Such an impeachment will produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political institutions.

Ms. LOFGREN. This is unfair to the American people. By these actions you would undo the free election that expressed the will of the American people in 1996. In so doing, you will damage the faith the American people have in this institution and in the American democracy. You will set the dangerous precedent that the certainty of Presidential terms, which has so benefited our wonderful America, will be replaced by the partisan use of impeachment. Future Presidents will face election, then litigation, then impeachment. The power of the President will diminish in the face of the Congress, a phenomena much feared by the Founding Fathers.

Mr. MARKEY. This is a constitutional amendment that we are debating, not an impeachment resolution. The Republicans are crossing out the impeachment standard of high crimes and misdemeanors, and they are inserting the words "any crime or misdemeanor." We are permitting a constitutional coup d'etat which will haunt this body and our country forever.

Mr. MENENDEZ. I warn my colleagues that you will reap the bitter harvest of the unfair partisan seeds you sow today. The constitutional provision for impeachment is a way to protect our government and our citizens, not another weapon in the political arsenal.

Mr. SCHUMER. I expect history will show that we have lowered the bar on impeachment so much we have broken the seal on this extreme penalty so cavalierly that it will be used as a routine tool to fight political battles. My fear is that when a Republican wins the White House Democrats will demand payback.

Mr. Counsel CIPOLLONE. You were right, but I am sorry to say you were also prophetic, and I think I couldn't say it better myself, so I will not. You know what the right answer is in your heart. You know what the right answer is for our country. You know what the right answer is for the American people.

What they are asking you to do is to throw out a successful President on the eve of an election with no basis and in violation of the Constitution. It would dangerously change our country and weaken—weaken—forever all of our democratic institutions. You all know that is not in the interest of the American people. Why not trust the American people with this decision? Why tear up their ballots? Why tear up every ballot across this country? You can't do that. You know you can't do that.

So I ask you to defend our Constitution, to defend fundamental fairness, to defend basic due process rights, but most importantly—most importantly—to respect and defend the sacred right of every American to vote and to choose their President. The election is only months away. The American people are entitled to choose their President.

Overturning the last election and massively interfering with the upcoming one would cause serious and lasting damage to the people of the United States and to our great country. The Senate cannot allow this to happen. It is time for this to end, here and now. So we urge the Senate to reject these Articles of Impeachment for all of the reasons we have given you. You know them all. I don't need to repeat them.

They have repeatedly said, over and over again, a quote from Benjamin Franklin: "It is a republic, if you can keep it." And every time I heard it, I said to myself: It is a republic, if they let us keep it.

I have every confidence—every confidence—in your wisdom. You will do the only thing you can do, what you must do, what the Con-

stitution compels you to do: Reject these Articles of Impeachment for our country and for the American people.

It will show that you put the Constitution above partisanship. It will show that we can come together on both sides of the aisle and end the era of impeachment for good. You know it should end. You know it should end. It will allow you all to spend all of your energy and all of your enormous talent and all of your resources on doing what the American people sent you here to do: to work together, to work with the President, to solve their problems.

So this should end now, as quickly as possible. Thank you again for your attention. I look forward to answering your questions.

With that, that ends our presentation. Thank you very much.

The CHIEF JUSTICE. The majority leader is recognized.

UNANIMOUS CONSENT AGREEMENT

Mr. McCONNELL. Mr. Chief Justice, I have reached an agreement with the Democratic leader on how to proceed during the question period. Therefore, I ask unanimous consent that the question period for Senators start when the Senate reconvenes on Wednesday; further, that the questions alternate between the majority and minority sides for up to 8 hours during that session of the Senate; and finally, that on Thursday, the Senate resume time for Senators' questions, alternating between sides for up to 8 hours during that session of the Senate.

The CHIEF JUSTICE. Is there objection? Without objection, it is so ordered.

Mr. McCONNELL. Mr. Chief Justice, we will complete the question period over the next 2 days. I remind Senators that their questions must be in writing and will be submitted to the Chief Justice. During the question period of the Clinton trial, Senators were thoughtful and brief with their questions, and the managers and counsel were succinct in their answers. I hope we can follow both of these examples during this time.

The CHIEF JUSTICE. During the impeachment trial of President Clinton, Chief Justice Rehnquist advised "counsel on both sides that the Chair will operate on a rebuttable presumption that each question can be fully and fairly answered in 5 minutes or less." The transcript indicates that the statement was met with "laughter."

Nonetheless, managers and counsel generally limited their responses accordingly. I think the late Chief's time limit was a good one and would ask both sides to abide by it.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m., Wednesday, January 29, and that this order also constitute the adjournment of the Senate.

There being no objection, the Senate, at 2:54 p.m., adjourned until Wednesday, January 29, 2020, at 1 p.m.

[From the CONGRESSIONAL RECORD, January 29, 2020]

The Senate met at 1:13 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will lead us in prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

Divine Shepherd, honor, glory, and power belong to You. Refresh our Senators as they enter a new phase of this impeachment trial. May they realize that You have appointed them for this great service, and they are accountable to You.

Lord, empower them to labor today with the dominant purpose of pleasing You, knowing that it is never wrong to do right. Give them resiliency in their toil, as they remember Your promise that they will reap a bountiful harvest if they don't give up. Help them to follow the road of humility that leads to honor, as they find their safety in trusting You.

We pray in Your majestic Name. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

Without objection, it is so ordered.

The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

Mr. CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, today the Senate will conduct up to 8 hours of questions to the parties delivered in writing to the Chief Justice. As a reminder, the two sides will alternate, and answers should be kept to 5 minutes or less.

SENATORS' QUESTIONS

The majority side will lead off with a question from the Senator from Maine.

Ms. COLLINS. Mr. Chief Justice.

Mr. CHIEF JUSTICE. The Senator is recognized.

Ms. COLLINS. I send a question to the desk on behalf of myself, Senator MURKOWSKI, and Senator ROMNEY.

The CHIEF JUSTICE. This is a question for the counsel for the President:

If President Trump had more than one motive for his alleged conduct, such as the pursuit of personal political advantage, rooting out corruption, and the promotion of national interests, how should the Senate consider more than one motive in its assessment of article I?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, in response to that question, there are really two layers to my answer because I would like to point out first that, even if there was only one motive, the theory of abuse of power that the House managers have presented, that the subjective motive alone can become the basis for an impeachable offense, we believe is constitutionally defective. It is not a permissible way to frame a claim of an impeachable offense under the Constitution.

I will put that aside and address the question of mixed motive. If there were a motive that was of public interest and also of some personal interest, we think it follows even more clearly that that cannot possibly be the basis for an impeachable offense. Even the House managers, as they have framed their case, they have explained—and this is pointed out in our trial memorandum—that in the House Judiciary Committee report, they specify that the standard they have to meet is to show that this is a sham investigation; it is a bogus investigation. These investigations have—there is not any legitimate public purpose. That is the language: any “legitimate public purpose.” That is the standard they have set for themselves in being able to make this claim under their theory of what an abuse of power offense can be.

It is a very demanding standard that they have set for themselves to meet, and they have even said—they came up, and they talked a lot about the Bidens. They talked a lot about these issues and 2016 election interference because they were saying there is not even a scintilla—a scintilla of any evidence of anything worth looking into there. And that is the standard that they would have to meet, showing that there is no possible public interest and the President couldn't have had any smidgeon, even, of a public interest motive because they recognize that once you get into a mixed-motive situation—if there is both some personal motive but also a legitimate public interest motive—it can't possibly be an offense because it would be absurd to have the Senate trying to consider: Well, was it 48 percent legitimate interest and 52 percent personal interest or was it the other way, was it 53 percent and 47 percent? You can't divide it that way.

That is why they recognize that to have even a remotely coherent theory, the standard they have to set for themselves is establishing there is no possible public interest at all for these investigations. And if there is any possibility, if there is something that shows a

possible public interest and the President could have that possible public interest motive, that destroys their case. So once you are into mixed-motive land, it is clear that their case fails. There can't possibly be an impeachable offense at all.

Think about it. All elected officials, to some extent, have in mind how their conduct, how their decisions, their policy decisions will affect the next election. There is always some personal interest in the electoral outcome of policy decisions, and there is nothing wrong with that. That is part of representative democracy. And to start saying now that, well, if you have a part motive that is for your personal electoral gain that that somehow is going to become an offense, it doesn't make any sense and it is totally unworkable and it can't be a basis for removing a President from office.

The bottom line is, once you are into any mixed-motive situation, once it is established that there is a legitimate public interest that could justify looking into something, just asking a question about something, the managers' case fails, and it fails under their own terms. They recognize that they have to show no possible public interest. There isn't any legitimate public interest, and they have totally failed to make that case.

I think we have shown very clearly that both of the things that were mentioned, 2016 election interference and the Biden-Burisma situation, are things that raise at least some public interest; there is something worth looking at there. It has never been investigated in the Biden situation. Lots of their own witnesses from the State Department said that on its face it appears to be a conflict of interest. It is at least worth raising a question about or asking a question about it. And there is that public interest, and that means their case absolutely fails.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Democratic leader is recognized.

Mr. SCHUMER. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The Democratic leader asks of the House managers:

John R. Bolton's forthcoming book states that the President wanted to continue withholding \$391 million in military aid to Ukraine until Ukraine announced investigations into his top political rival and the debunked conspiracy theory about the 2016 election. Is there any way for the Senate to render a fully informed verdict in this case without hearing the testimony of Bolton, Mulvaney, and the other key eyewitnesses or without seeing the relevant documentary evidence?

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

The short answer to that question is no. There is no way to have a fair trial without witnesses. And when you have a witness who is as plainly relevant as John Bolton, who goes to the heart of the most serious and egregious of the President's misconduct, who has volunteered to come and testify, to turn him away, to look the other way, I think, is deeply at odds with being an impartial juror.

I would also add, in response to the last question, that if any part of the President's motivation was a corrupt motive, if it was a causal factor in the action to freeze the aid or withhold the meeting, that is enough to convict. It would be enough to convict under criminal law.

But here there is no question about the President's motivation. And if you have any question about the President's motivation, it makes it all the more essential to call the man who spoke directly with the President, whom the President confided in and said he was holding up this aid because he wanted Ukraine to conduct these political investigations that would help him in the next election—if you have any question about whether it was a factor, the factor, a quarter of the factor, all of the factor, there is a witness a subpoena away who could answer that question.

But the overwhelming body of the evidence makes it very clear, on July 26, the day after that phone call, Donald Trump speaks to Gordon Sondland. That is that conversation at a Ukraine restaurant. What does Gordon Sondland—what is the President's question of Gordon Sondland the day after that call? Is he going to do the investigations?

Counsel for the President would have you believe the President was concerned about the burden-sharing. Well, he may have had a generic concern about the burden-sharing in other contexts, but here the motivation was abundantly clear. On that phone with Gordon Sondland, the only question he wanted an answer to was, Is he going to do the investigation?

Now, bear in mind he is talking to the Ambassador to the European Union. What better person to talk to if his real concern was about burden-sharing than the guy responsible for Europe's burden-sharing? But did the President raise this at all? Of course not. Of course not. And if you have any question about it at all, you need to hear from his former National Security Advisor. Don't wait for the book. Don't wait until March 17, when it is in black and white, to find out the answer to your question: Was it all the motive, some of the motive, or none of the motive?

We think, as I mentioned, the case is overwhelmingly clear without John Bolton, but if you have any question about it, you can erase all doubt.

Let me show a video to underscore—No. 2, slide 2—how important this is.

(Text of Videotape presentation:)

Mr. Counsel CIPOLLONE. As House managers, really their goal should be to give you all of the facts because they are asking you to do something very, very consequential . . . and ask yourself, ask yourself, given the facts you heard today that they didn't tell you, who doesn't want to talk about the facts? Who doesn't want to talk about the facts?

Impeachment shouldn't be a shell game. They should give you the facts.

Mr. Manager SCHIFF. One last video, which is even more important and on point for Mr. Bolton—No. 3.

(Text of Videotape presentation:)

Mr. Counsel PURPURA. And once again, not a single witness in the House record that they compiled and developed under their procedures that we discussed and will continue to discuss provided any firsthand evidence that the President ever linked the Presidential meeting to any of the investigations.

Anyone who spoke with the President said that the President made it clear that there was no linkage between security assistance and investigations.

Mr. Manager SCHIFF. We know that is not correct, right? Because, of course, Mick Mulvaney said that the money was linked to these investigations. He said, in acknowledging a quid pro quo, that they do it all the time, and we should just get over it. Gordon

Sondland also said the President said, on the one hand, no quid pro quo but also made it clear that Zelensky had to go to the mic and announce these investigations.

The CHIEF JUSTICE. The gentleman's time has expired.

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

The Senator is recognized.

Mr. THUNE. I have a question for the President's counsel.

The CHIEF JUSTICE. To the President's counsel:

Would you please respond to the arguments or assertions the House managers just made in response to the previous question?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, a couple of points that I would like to make.

Manager SCHIFF suggested that there was no evidence the President was actually interested in burden-sharing because he didn't, apparently, according to David Hale, raise it in the telephone conversation he had with Gordon Sondland that Hale seems to have overheard in a restaurant in Kyiv.

Let's look at the real evidence.

As we explained, on June 24, there is an email in the record. It is an email from one person at the Department of Defense to another, with the subject line: "POTUS' follow-up"—President of the United States' follow-up—asking specifically about burden-sharing.

It reads: "What do other NATO members spend to support Ukraine?"

That was what they were following up on for the President.

In the transcript of the July 25 call itself, the President said:

We spend a lot of effort and a lot of time on Ukraine, much more than the European countries are doing, and they should be helping you more than we are. Germany does almost nothing for you. All they do is talk, and I think it is something you should really ask them about.

He goes on to say that he talks to Angela Merkel about it and that they are not really doing as much as the United States is doing. He is raising burden-sharing, and President Zelensky agreed with him.

Manager SCHIFF also suggested that there is evidence of some connection between the military assistance and investigations into 2016 election interference because of a statement that Acting Chief of Staff Mulvaney made at a press conference, but that has been made clear in the record, since that press conference, that what he was saying was garbled and/or misunderstood. He immediately clarified and said on that date: "The President never told me to withhold any money until the Ukrainians did anything related to the server."

Similarly, he issued a statement just the other day, making clear again—this is from his counsel; so it is phrased in the third person: ". . . nor did Mr. Mulvaney ever have a conversation with the President or anyone else indicating that Ukrainian military aid was withheld in exchange for the Ukrainian investigation of Burisma, the Bidens, or the 2016 election."

That was Mr. Mulvaney's statement.

Lastly, as to the point of whether this Chamber should hear from Ambassador Bolton—and I think it is important to consider what that means, because it is not just a question of, well, should we

just hear one witness? That is not what the real question is going to be.

For this institution, the real question is, What is the precedent that is going to be set for what is an acceptable way for the House of Representatives to bring an impeachment of a President of the United States to this Chamber, and can it be done in a hurried, half-baked, partisan fashion?

They didn't even subpoena John Bolton. They didn't even try to get his testimony. To insist now that this body will become the investigative body—that this body will have to do all of the discovery—then, this institution will be effectively paralyzed for months on end because it will have to sit as a Court of Impeachment while now discovery will be done. It would be Ambassador Bolton, and if there are going to be witnesses, in order for there to be, as they said, a fair trial, fair adjudication, then, the President would have to have his opportunity to call his witnesses, and there would be depositions. This would drag on for months. Then that will be the new precedent. Then that is the way all impeachments will operate in the future, where the House doesn't have to do the work—it does it quickly and throws it over the transom—and this institution gets derailed and has to deal with it. That should not be the precedent that is set here for the way this body will have to handle all impeachments in the future, because, if it becomes that easy for the House to do it, they will be doing it a lot.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Massachusetts.

Mr. MARKEY. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The question from Senator MARKEY to the House managers:

On Monday, President Trump tweeted, "The Democrat controlled House never even asked John Bolton to testify." So that the record is accurate, did House impeachment investigators ask Mr. Bolton to testify?

Mr. Manager SCHIFF. Senators, the answer is yes. Of course, we asked John Bolton to testify in the House, and he refused. We asked his deputy, Dr. Kupperman, to testify, and he refused. Fortunately, we asked their deputy, Dr. Fiona Hill, to testify, and she did. We asked her deputy, Colonel Vindman, to testify, and he did. We did seek the testimony of John Bolton as well as Dr. Kupperman, and they refused.

When we subpoenaed Dr. Kupperman, he sued us. He took us to court. When we raised a subpoena with John Bolton's counsel, the same counsel for Dr. Kupperman, the answer was, "Senator, you serve us with a subpoena, and we will sue you, too." We knew, based on the McGahn litigation, it would take months, if not years, to force John Bolton to come and testify.

Because, I think, this is an essential point to underscore, as the President's lawyers say, "They didn't try hard enough to get John Bolton," or "they should have subpoenaed John Bolton"—that this is what they are telling you—let me show you what they are telling the court in the McGahn litigation, if we could pull up slide 39. [Slide 560]

This is from the President's lawyers who are in the court of appeals right now in the McGahn litigation: "The committee [meaning our committee] lacks article III standing to sue to enforce a congressional subpoena demanding testimony from an individual on matters related to his duties as an Executive Branch official."

I mean, it takes your breath away, the duplicity of that argument. They are before you, saying: They should have tried harder to get these witnesses. They should have subpoenaed. They should have litigated for years; and down the street in the Federal courthouse, they are arguing: Judge, you need to throw them out. They have no standing to sue to force a witness to testify.

Are we really prepared to accept that?

Counsel says to think about the precedent we would be setting if you allow the House to impeach a President and you permit them to call witnesses. I would submit: Think about the precedent you would be setting if you don't allow witnesses in a trial. That, to me, is the much more dangerous precedent here.

I will tell you something even more dangerous, and this was something that we anticipated from the very beginning, which is that we understood, when we got to this point, they could no longer contest the facts that the President withheld military aid from an ally at war to coerce that ally into doing the President's political dirty work. So now they have fallen back on, You shouldn't hear any further evidence or any further witnesses on this subject.

What is more, we are going to use the end-all argument: So what? The President is free to abuse his power. We are going to rely on a constitutional theory—a fringe theory—that even the advocate of which says is outside the consensus of constitutional law to say that a President can abuse his power with impunity. Imagine where that leads. The President can abuse his power with impunity.

That argument made by Professor Dershowitz is at odds with the Attorney General's own expressed opinion on the subject, with Ken Starr's expressed opinion on the subject, and with other counsel for the President. Jonathan Turley, who testified in the House, said that theory is constitutionally, effectively, nonsense. Even 60-year-old Alan Dershowitz doesn't agree with 81-year-old Alan Dershowitz and for a reason—because where that conclusion leads us is that a President can abuse his power in any kind of way, and there is nothing you can do about it.

Are we really ready to accept the position that this President or the next can withhold hundreds of millions of dollars of military aid to an ally at war unless he gets help in his reelection?

Would you say that you could, as President, withhold disaster relief from a Governor unless that Governor got his Attorney General to investigate the President's political rival?

That, to me, is the most dangerous argument of all. It is a danger to have a President engage in this conduct, and it is dangerous to have a trial with no witnesses and set that precedent. The biggest danger of all would be to accept the idea that a President could abuse his office in this way and that the Congress is powerless to do anything about it. That is certainly not what the Founders intended.

The CHIEF JUSTICE. The Senator from Tennessee.

Mrs. BLACKBURN. Mr. Chief Justice, I send a question to the desk on my behalf. I am also joined by Senators LOEFFLER, LEE, CRAMER, and MCSALLY.

The CHIEF JUSTICE. Senators BLACKBURN, LOEFFLER, CRAMER, LEE, and MCSALLY ask of counsel for the President:

Is the standard for impeachment in the House a lower threshold to meet than the standard for conviction in the Senate, and have the House managers met their evidentiary burden to support a vote of removal?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, as for the standard in the House, of course, the House is not making a final determination. In the structure of the Constitution, an impeachment is simply an accusation, and as in most systems where there is simply an accusation being made, the House does not have to adhere to the same standard that is used in the Senate.

In most instances, House Members have suggested in debates on articles—of whether or not to approve Articles of Impeachment—that they should have clear and convincing evidence in the view of the Members voting on it that there was some impeachable offense, and that is all—some, not even that standard. So there is simply enough evidence that an accusation can be made. It is definitely a lower standard than the standard that has to be met here in a trial for an ultimate verdict.

The Constitution speaks in terms of a conviction in the Senate. As both Professor Dershowitz and Judge Starr pointed out in their comments, everywhere in the Constitution in which there is any mention of impeachment, it is spoken of in terms of the criminal law. The offenses that define the jurisdiction for the Senate in its sitting as a Court of Impeachment are treason, bribery, and high crimes and misdemeanors. The Constitution speaks of a conviction, upon being convicted in the Senate. It speaks of all crimes being tried by a jury except in cases of impeachment—again, suggesting notions of the criminal law.

As we pointed out in our trial memorandum, all of these textual references make it clear that the standards of the criminal law should apply in the trial, certainly to the extent of the burden and standard of proof to be carried by the House managers, which means proof beyond a reasonable doubt. It is very clear that there is not any requirement for proof beyond a reasonable doubt simply for the House to vote upon Articles of Impeachment.

There is a very much higher standard at stake here. As we pointed out in our trial memorandum, the mere accusation made by the House comes here with no presumption of regularity at all in its favor. The Senate sits as a trier of both fact and law, reviewing both factual and legal issues *de novo*, and the House managers are held to a standard of proving proof beyond a reasonable doubt of every element of what would be a recognizable impeachable offense.

Here they have failed in their burden of proof. They have also failed in the law. They have not stated in the Articles of Impeachment anything that on its face amounts to an impeachable offense. On that fact, I think we have demonstrated very clearly that they have not presented facts that would amount to an impeachable offense even under their own theories. They have presented only part of the facts and left out the key facts. Mr. Purpura, I think, went

through, very effectively, showing that there are some facts that don't change.

The transcript of the July 25 call shows the President doing nothing wrong. President Zelensky said he never felt any pressure. His other advisers have said the Ukrainians never felt any pressure. They didn't think there was any quid pro quo. They didn't even know that the military assistance had been held up until the POLITICO article at the end of August.

The only two people with statements on record who spoke to the President, Gordon Sondland and Senator RON JOHNSON, report that the President said to them there was no quid pro quo, and the aid flowed without anything ever being done related to investigations.

That is what is in the record. That is what the House managers have to rely on to make their case, and they have failed to prove their case beyond a reasonable doubt, failed even to prove it by clear and convincing evidence—failed to prove it at all, in my opinion.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. Chief Justice, I send a question to the House managers.

The CHIEF JUSTICE. Senator FEINSTEIN asks the House managers:

The President's counsel stated that "there is simply no evidence anywhere that President Trump ever linked security assistance to any investigations"—is that true?

Mr. Manager CROW. Thank you, Mr. Chief Justice, and thank you, Senator, for that question.

President's counsel is not correct. There is, in fact, overwhelming evidence that the President withheld the military aid directly to get a personal political benefit to help his individual political campaign.

There are a few points that I would like to submit for your consideration.

First, look no further than the words of the President's Acting Chief of Staff, Mick Mulvaney, who, on October 17, 2019, during a national press conference mentioned—or he was asked about the direct connection between the aid, and he said: "Did he"—meaning President Trump, referring to "he"—"also mention to me in passing the corruption related to the DNC server? Absolutely—no question about that. That's it, and that's why we held up the money."

He was repeating the President's own explanation relayed directly to him.

Second, Gordon Sondland testified he spoke by phone with President Trump on September 7. The President denied there was a "quid pro quo," but then outlined the very quid pro quo that he wanted from Ukraine.

Then he told Ambassador Sondland that President Zelensky should "go to a microphone and announce the investigations . . . he should want to do [it]."

Third, the President's own advisers, including the Vice President and Secretary Pompeo, were also aware of the direct connection. In

Warsaw, on September 1, Ambassador Sondland told Vice President PENCE [Slide 561] that he was concerned the delay in security assistance had become “tied to the issue of investigations.” The Vice President simply nodded, tacitly acknowledging the conditionality of the aid.

Fourth, we heard from Ambassador Taylor, who, in direct emails and texts, said it was crazy to tie the security assistance to the investigations.

Five, we also know there is no other reason. The entire apparatus and structure of the Defense Department, the State Department that should have been dealing with the other legitimate reasons—you know, the policy debate that the President’s counsel wants you to believe that this was about—they were all kept in the dark.

And the supposed interagency process that they made up several months after the fact had ended months before, during the last interagency meetings.

Now I will make one final point. Again, if you have any lingering questions about direct evidence, any thoughts about anything we just talked about, anything I have just relayed or that we have talked about the last week, there is a way to shed additional light on it: You can subpoena Ambassador Bolton and ask him that question directly.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Utah.

Mr. LEE. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Senators LEE and CRUZ ask of counsel for the President:

The House managers have argued aggressively that the President’s actions contravened U.S. foreign policy. Isn’t it the President’s place—certainly more than the place for career civil servants—to conduct foreign policy?

Mr. Counsel PHILBIN. Thank you, Mr. Chief Justice, Senators, and thank you for that question.

It is definitely the President’s place to set U.S. foreign policy, and the Constitution makes this clear. Article II, section 1 vests the entirety of the executive authority in a President of the United States, and it is critically important in our constitutional structure that that authority is vested solely in the President because the President is elected by the people every 4 years. That is what gives the President democratic legitimacy to have the powers that he is given under the Constitution.

Our system is somewhat unique in the very broad powers that are assigned to the Executive, but it works, and it makes sense in a democratic system precisely because he is directly accountable to the people for the policies that he sets.

Those who are staffers in the executive branch bureaucracy are not elected by the people. They have no accountability, and they have no legitimacy or authority that comes from an election by the people, and so it is critically important to recognize the President sets foreign policy.

Of course, within some constraints, there are some roles for Congress in foreign affairs. To some extent, statutes can be passed, funding provisions can be passed that relate to it, but the Supreme Court has recognized time and again that the President is, as the

Court said in *Curtiss-Wright*, the “sole organ of the nation” in foreign affairs.

So he sets foreign policy, and if staffers disagree with him, that does not mean that the President is doing something wrong, and this is a critical point because this is one of the centerpieces of the abuse of power theory that the House managers would like this body to adopt, and that is that they are going to impeach the President based solely on his subjective motive.

The premise of their case is the objective actions that were taken were perfectly permissible and within the President’s constitutional authority, but if his real reason—if we get inside his head and figure it out—then we can impeach him. And the way that they have tried to explain that they can prove that the President had a bad motive is they say: Well, we compare what did the President want to do with what the interagency consensus was.

And I mentioned this the other day. They say that the President defied and confounded every agency in the executive branch. That is a constitutionally incoherent statement. The President cannot defy the agencies within the executive branch that are subordinate to him. It is only they who can defy the President’s determinations of policy.

And so what this all boils down to is it shows that this case is built upon a policy difference and a policy difference where the President is the one who gets to determine policy because he has been elected by the people to do that.

And we are right now only a few months away from another election where the people can decide for themselves whether they like what the President has done with that authority or not, and that is the way disputes about policy like that should be resolved.

It is not legitimate to say that there is some interagency consensus that disagrees with the President, and therefore we can show he did something wrong, and therefore he can be impeached. That is an extraordinarily dangerous proposition because it lacks any democratic legitimacy whatsoever. It is contrary to the Constitution, and it should be rejected by this body.

The President is the one who gets to set foreign policy because that is the role assigned to him in the Constitution.

And it was even Lieutenant Colonel Vindman, who had complained about the July 25 call, himself, and ultimately agreed that it was only a policy difference; it was a policy concern that he raised about the call. That is not enough to impeach a President of the United States.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from New Hampshire.

Mrs. SHAHEEN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Senator SHAHEEN asks the House managers:

The President’s counsel has argued that the alleged conduct set out in the articles does not violate a criminal statute and thus may not constitute grounds for impeachment as “High Crimes and Misdemeanors.” Does this reasoning imply that if the President does not violate a criminal statute he could not be impeached for abuses of power such as ordering tax audits of political opponents, suspending ha-

beas corpus rights, indiscriminately investigating political opponents or asking foreign powers to investigate Members of Congress?

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, I appreciate the question.

The simple answer is that a President can be impeached without a statutory crime being committed. That was the position and the question that was rejected in President Nixon's case and rejected again in President Clinton's case. It should be rejected here in President Trump's case.

The great preponderance of legal authority confirms that impeachable offenses—of legal authority confirms that it is not defined in criminal conduct. This authority includes nearly every legal scholar who has studied the issue, multiple Supreme Court Justices who addressed it in public remarks, and prior impeachments in the House.

This conclusion follows that constitutional history, text, and structure and reflects the absurdities and practical difficulties that would result were the impeachment power confined to indictable crimes.

As slide 35 shows, [Slide 562] first, the plain text of the Constitution does not require that an offense be a crime in order for it to be impeachable.

Alexander Hamilton explained that impeachable offenses, high crimes, and misdemeanors are defined fundamentally by the abuse or violation of some public trust—some public trust. They are political as they relate chiefly to injuries done immediately to society itself.

Offenses against the Constitution are different than offenses against the Criminal Code. Some crimes, like jaywalking, are not impeachable, and some forms of misconduct often both offend the Constitution and the criminal law.

Impeachment and criminality must, therefore, be assessed separately, even though the President's commission of indictable crimes may further support a case of impeachment and removal.

The American experience with impeachment confirms this. A strong majority of impeachments voted by the House since 1789 have included one or more allegations that did not charge a violation of criminal law.

Although President Nixon resigned before the House could consider the Articles of Impeachment against him, the Judiciary Committee's allegations encompassed many, many noncriminal acts.

And in President Clinton's case, the Judiciary Committee report accompanying the Articles of Impeachment to the House floor stated that "the actions of President Clinton do not have to rise to the level of violating the Federal statute regarding obstruction of justice in order to justify impeachment. . . . The Framers intended impeachment to reach the full spectrum of Presidential misconduct that threatened the Constitution. They also intended that our Constitution endure throughout the ages."

In other words, if it named one, two, and three, but new ones came up and you had to keep up with the times, it was better to have the full spectrum of Presidential misconduct. Because it could not anticipate and specifically prohibit every single threat a President might someday pose, the Framers adopted a standard suffi-

ciently general and flexible to meet unknown future circumstances. This standard was meant, as Mason put it, to capture “all manner of great and dangerous offences,” and compatible with the Constitution.

When the President uses the powers of his high office to benefit himself while injuring or ignoring the very people he is duty-bound to serve, he has committed an impeachable offense.

The records of the Constitutional Convention offer further clarity. At the Constitutional Convention itself, no delegate—no delegate—linked impeachment to the technicalities of criminal law. Instead, the Framers principally intended impeachment for three forms of Presidential wrongdoing, the ABCs of impeachment: A, abuse of power; B, betrayal of the national interests through foreign entanglements; and C, corruption of office and elections.

When the President uses his power to obtain illicit help in his election from a foreign power, it undermines our national security and election integrity. It is a trifecta.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Louisiana.

Mr. KENNEDY. Mr. Chief Justice, along with Senator BLACKBURN and Senator CORNYN, I send a question to the desk for the House managers and for counsel to the President.

The CHIEF JUSTICE. In the case of such a question, addressed to both sides, they will split the 5 minutes equally.

The Senators ask:

Why did the House of Representatives not challenge President Trump’s claims of executive privilege and/or immunity during the House impeachment proceedings?

We will begin with the House managers.

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Senators, thank you for your question. The answer is simple. We did not challenge any claims related to executive privilege because, as the President’s own counsel admitted during this trial, the President never raised the question of executive privilege.

What the President did raise was this notion of blanket defiance, this notion that the executive branch, directed by the President, could completely defy any and all subpoenas issued by the House of Representatives, not turn over documents, not turn over witnesses, not produce a single shred of information in order to allow us to present the truth to the American people.

In the October 8 letter that was sent to the House of Representatives, there was no jurisprudence that was cited to justify the notion of blanket defiance. There has been no case law cited to justify the doctrine of absolute immunity. In fact, every single court that has considered any Presidential claims of absolute immunity such as the one asserted by the White House has rejected it out of hand.

The CHIEF JUSTICE. Counsel for the President.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

Let me frame this partly in response to what Manager JEFFRIES said, and I went through this before. The idea that there was blanket defiance and no explanation and no case law from the White House is simply incorrect. I put up slides showing the letter—the letter from October 18 that explains specifically that the subpoenas that had been issued by the House, because they were not author-

ized by a vote from the House, were invalid. And there was a letter from the White House counsel saying that. There was a letter from OMB saying that. There was a letter from the State Department saying that. There was specific rationale given, citing cases—Watkins, Rumely, and others—explaining that defect. The House managers—the House, Manager SCHIFF—chose not to take any steps to correct that.

We also pointed out other defects.

We asserted the doctrine of absolute immunity for senior advisers to the President, which has been asserted by every President since the 1970s. They chose not to challenge that in court.

We also explained the problem that they didn't allow agency counsel to be present at depositions. They chose not to challenge that in court.

These are specific legal reasons, not blanket defiance. That is a misrepresentation of the record. And there was no attempt to have that adjudicated in court. The reason there was no attempt is that the House Democrats were just in a hurry. They had a timetable. One of the House managers said on the floor here—they had no time for courts. They had to impeach the President before the election, so they had to have that done by Christmas. That is why the proper process wasn't followed here, because it was a partisan and political impeachment that they wanted to get done all around timing for the election.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Vermont.

Mr. LEAHY. Mr. Chief Justice, I have a question for the House managers, and I send it to the desk.

The CHIEF JUSTICE. Senator LEAHY asks the House managers:

The President's counsel argues that there was no harm done, that the aid was ultimately released to Ukraine, the President met with Zelensky at the U.N. in September, and that this President has treated Ukraine more favorably than his predecessors. What is your response?

Mrs. Manager DEMINGS. Mr. Chief Justice, Senators, thank you so much for your question.

Contrary to what the White House counsel has said or has claimed—that there was no harm, no foul; that the aid eventually got there—we promised Ukraine in 2014 that if they gave up their nuclear arsenal, that we would be there for them, that we would defend them, that we would fight along beside them.

Fifteen thousand Ukrainians have died. It was interesting the other day when the White House counsel said that no American life was lost, and we are always grateful and thankful for that. But what about our friends? What about our allies in Ukraine? According to Diplomat Holmes and Ambassador Taylor, our Ukrainian friends continue to die on the frontlines, those who are fighting for us, fighting Russian aggression. When the Ukrainians have the ability to defend themselves, they have the ability to defend us.

The aid, although it did arrive, took the work of some Senators in this room who had to pass additional laws to make sure that the Ukrainians did not lose out on 35 million additional dollars.

Contrary to the President's tweet that all of the aid arrived and that it arrived ahead of schedule—that is not true. All of the aid had not arrived.

Let's talk about what kind of signal is sent, withholding the aid for no legitimate reason. The President talked about burden-sharing, but nothing had changed on the ground. Holding the aid for no legitimate reason sent a strong message that we would not want to send to Russia—that the relationship between the United States and Ukraine was on shaky ground. It actually undercut Ukraine's ability to negotiate with Russia, with which, as everybody in this room knows, it is in an active war, in a hot war.

So when we talk about "The aid eventually got there; no harm, no foul," that is not true, Senators, and I know that you know that. There was harm and there was foul. And let us not forget that Ukraine is not an enemy. They are not an adversary. They are a friend.

The CHIEF JUSTICE. Thank you.

Senator CRUZ?

Mr. CRUZ. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The question is addressed to counsel for the President:

As a matter of law, does it matter if there was a quid pro quo? Is it true that quid pro quos are often used in foreign policy?

Mr. Counsel DERSHOWITZ. Mr. Chief Justice, thank you very much for your question.

Yesterday, I had the privilege of attending the rolling-out of a peace plan by the President of the United States regarding the Israel-Palestine conflict, and I offered you a hypothetical the other day: What if a Democratic President were to be elected and Congress were to authorize much money to either Israel or the Palestinians and the Democratic President were to say to Israel "No; I am going to withhold this money unless you stop all settlement growth" or to the Palestinians "I will withhold the money Congress authorized to you unless you stop paying terrorists," and the President said "Quid pro quo. If you don't do it, you don't get the money. If you do it, you get the money"? There is no one in this Chamber who would regard that as in any way unlawful. The only thing that would make a quid pro quo unlawful is if the quo were in some way illegal.

Now, we talked about motive. There are three possible motives that a political figure can have: One, a motive in the public interest, and the Israel argument would be in the public interest; the second is in his own political interest; and the third, which hasn't been mentioned, would be in his own financial interest, his own pure financial interest, just putting money in the bank. I want to focus on the second one for just one moment.

Every public official whom I know believes that his election is in the public interest. Mostly, you are right. Your election is in the public interest. If a President does something which he believes will help him get elected—in the public interest—that cannot be the kind of quid pro quo that results in impeachment.

I quoted President Lincoln, when President Lincoln told General Sherman to let the troops go to Indiana so that they could vote for the Republican Party. Let's assume the President was running at

that point and it was in his electoral interests to have these soldiers put at risk the lives of many, many other soldiers who would be left without their company. Would that be an unlawful quid pro quo? No, because the President, A, believed it was in the national interest, but B, he believed that his own election was essential to victory in the Civil War. Every President believes that. That is why it is so dangerous to try to psychoanalyze the President, to try to get into the intricacies of the human mind.

Everybody has mixed motives, and for there to be a constitutional impeachment based on mixed motives would permit almost any President to be impeached.

How many Presidents have made foreign policy decisions after checking with their political advisers and their pollsters? If you are just acting in the national interest, why do you need pollsters? Why do you need political advisers? Just do what is best for the country. But if you want to balance what is in the public interest with what is in your party's electoral interest and your own electoral interest, it is impossible to discern how much weight is given to one or the other.

Now, we may argue that it is not in the national interest for a particular President to get reelected or for a particular Senator or Member of Congress—and maybe we are right; it is not in the national interest for everybody who is running to be elected—but for it to be impeachable, you would have to discern that he or she made a decision solely on the basis of, as the House managers put it, corrupt motives, and it cannot be a corrupt motive if you have a mixed motive that partially involves the national interest, partially involves electoral, and does not involve personal pecuniary interest.

The House managers do not allege that this decision, this quid pro quo, as they call it—and the question is based on the hypothesis there was a quid pro quo. I am not attacking the facts. They never allege that it was based on pure financial reasons. It would be a much harder case.

If a hypothetical President of the United States said to a hypothetical leader of a foreign country: Unless you build a hotel with my name on it and unless you give me a million-dollar kickback, I will withhold the funds. That is an easy case. That is purely corrupt and in the purely private interest.

But a complex middle case is: I want to be elected. I think I am a great President. I think I am the greatest President there ever was, and if I am not elected, the national interest will suffer greatly. That cannot be.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Counsel DERSHOWITZ. Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. I recognize the Democratic leader.

Mr. SCHUMER. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Senator SCHUMER's question is for the House managers:

Would you please respond to the answer that was just given by the President's counsel?

Mr. Manager SCHIFF. I would be delighted. There are two arguments that Professor Dershowitz makes: one that is, I have to say, a very odd argument for a criminal defense lawyer to make, and

that is, it is highly unusual to have a discussion in trial about the defendant's state of mind, intent, or mens rea.

In every courtroom in America, in every criminal case—or almost every criminal case, except for a very small sliver where there is strict liability—the question of the defendant's intent and state of mind is always an issue. This is nothing novel here. You don't require a mind reader. In every criminal case—and I would assume in every impeachment case—yes, you have to show that the President was operating from a corrupt motive, and we have.

But he also makes an argument that all quid pro quos are the same and all are perfectly copacetic. Now, some of you said earlier: Well, if they could prove a quid pro quo over the military, now that would be something. Well, we have. So now the argument shifts to all quid pro quos are just fine, and they are all the same.

Well, I am going to apply Professor Dershowitz's own test. He talked about the step test, John Rawls, the philosopher—let's put the shoe on the other foot and see how that changes our perception of things. I want to merge that argument with one of the other Presidential counsel's argument when they resorted to the whataboutism about Barack Obama's open mic.

Now, that was a very poor analogy, I think you will agree, but let's use that analogy and let's make it more comparable to today and see how you feel about this scenario.

President Obama, on an open mic, said to Medvedev: Hey, Medvedev, I know you don't want me to send this military money to Ukraine because they are fighting and killing your people. I want you to do me a favor, though. I want you to do an investigation of MITT ROMNEY, and I want you to announce you found dirt on MITT ROMNEY, and if you are willing to do that, quid pro quo, I will not give Ukraine the money they need to fight you on the frontline.

Do any of us have any question that Barack Obama would be impeached for that kind of misconduct? Are we really ready to say that would be OK, that Barack Obama asked Medvedev to investigate his opponent and would withhold money from an ally that needed to defend itself to get an investigation of MITT ROMNEY?

That is the parallel here. And to say, well, yes, we condition aid all the time—for legitimate reasons, yes. For legitimate reasons, you might say to a Governor of a State: Hey, Governor of the State, you should chip in more toward your own disaster relief. But if the President's real motive in depriving the State of disaster relief is because that Governor will not get his attorney general to investigate the President's political rival, are we ready to say that the President can sacrifice the interest of the people of that State or, in the case of Medvedev, the people of our country because all quid pro quos are fine? It is carte blanche? Is that really what we are prepared to say with respect to this President's misconduct or the next?

Because if we are, then the next President of the United States can ask for an investigation of you. They can ask for help in their next election from any foreign power, and the argument will be made: No, Donald Trump was acquitted for doing exactly the same thing; therefore, it must not be impeachable.

Now, bear in mind that efforts to cheat an election are always going to be in proximity to an election. And if you say you can't hold a President accountable in an election year, where they are trying to cheat in that election, then you are giving them *carte blanche*.

So all quid pros are not the same. Some are legitimate and some are corrupt, and you don't need to be a mind reader to figure out which is which. For one thing, you can ask John Bolton.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. GRASSLEY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Iowa.

Mr. GRASSLEY. I send a question to the desk.

The CHIEF JUSTICE. Senator GRASSLEY asks counsel for the President:

Does the House's failure to enforce its subpoenas render its "obstruction of Congress" theory unprecedented?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, the answer is yes. As far as I am aware, there has never been a prior instance in which there has been an attempt, even in the House, as in the Nixon proceeding—never mind in the Clinton proceeding, which actually left the House and came to the Senate—to suggest that there can be obstruction of Congress when there hasn't been anything beyond simply issuing a subpoena, getting resistance, and then throwing up your hands and giving up and saying: Oh, well, that is obstruction.

In the Clinton situation, most of the litigation was with independent counsel, and there were privileges asserted in litigation and litigation again and again, but the point is that the issues about the privileges were all litigated, and they were resolved before things came to this body.

Similarly, in the Nixon impeachment proceeding within the House, a lot of investigation had been done by the special counsel, and there was litigation over assertions of privileges there in order to get the tapes, and some tapes and transcripts had already been turned over, but, again, there was litigation about the assertion of the privilege in response to the grand jury subpoena that then fed into the House's proceedings.

So it would be completely unprecedented for the House to attempt to actually bring a charge of obstruction into the Senate where all they can present is: Well, we issued a subpoena, and there were legal grounds asserted for the invalidity of the subpoena, and there were different grounds, as I have gone through. I will not repeat them all in detail here.

Some of those subpoenas were just invalid when issued because there was no vote. Some of the subpoenas for witnesses were invalid because senior advisers to the President had absolute immunity from compulsion. Some were that they were forcing executive branch officials to testify without the benefit of agency counsel and executive branch counsel with them. So there were various reasons asserted for the invalidity and the defects in various subpoenas and then no attempt to enforce them, no attempt to litigate out what the validity or invalidity might be but to just bring it here as an obstruction charge is unprecedented.

I will note that House managers have said—and I am sure that they will say again today—that, well, but if we had gone to court, the Trump administration would have said that the courts don't have jurisdiction over those claims. Now, that is true. In some cases—there is one being litigated right now related to the former Counsel for the President, Don McGahn. The Trump administration's position, just like the position of the Obama administration, is that an effort by the House to enforce a subpoena in an article III court is a nonjusticiable controversy. That is our position, and we would argue that in court.

But that is part of what would have to be litigated. That doesn't change the fact that the House managers can't have it both ways. I want to make this clear. The House managers want to say that they have an avenue for going to court; they are using that avenue for going to court; and they actually told the court in McGahn that once they reached an impasse with the executive branch, the courts were the only way to resolve the impasse.

As I explained the other day, there are mechanisms for dealing with these disputes between the executive and Congress. First is an accommodations process. They didn't do that. We offered to do that in the White House Counsel's October 8 letter. They didn't do accommodations. If they think they can sue, they have to take that step because the Constitution, the courts have made clear, requires incrementalism in disputes between the executive and the legislative branch.

So if they think that the courts can resolve that dispute, that is the next step. They should do that and have that litigated, and then things can proceed on to a higher level of confrontation. But to jump straight to impeachment, to the ultimate constitutional confrontation, doesn't make sense. It is not the system that the Constitution requires, and it is unprecedented in this case. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Michigan.

Ms. STABENOW. Thank you, Mr. Chief Justice. I send a question to the desk.

The CHIEF JUSTICE. Senator STABENOW asks the House managers:

Would the House Managers care to correct the record on any falsehoods or mischaracterizations in the White House's opening arguments?

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, thank you for that question. We believe that the President's team has claimed basically there were six facts that have not been met and will not change and all six of those so-called facts are incorrect.

Let's be clear. On July 25—that is not the whole evidence before us, even though it includes devastating evidence, the President's scheme. President Trump's intent was made clear on the July 25 call, but we had evidence of information before the meeting with Mr. Bolton, the text message to Mr. Zelensky's people telling him he had to do the investigations to get what he wanted. All of this evidence makes us understand that phone call even more clearly.

Now, the President's team claimed that Mr. Zelensky and other Ukrainians said they never felt pressured over investigations. Now, of course, they didn't say that publicly. They were afraid of the

Russians finding out. But Zelensky said privately that he didn't want to be involved in U.S. domestic politics. He resisted announcing the investigations. He only relented and scheduled the CNN meeting after it became clear that he was not going to receive the support that he needed and that Congress had provided in our appropriations. That is the definition of "pressure."

Now, Ukraine—the President's lawyers say—didn't know that Trump was withholding the security assistance until it was public. Many witnesses have contested that, including the open statement by Olena Zerkal, who was then the Deputy Foreign Minister of Ukraine, that they knew about the President's hold on security matters, and in the end, everyone knew, it was public, and afterward, Ukraine did relent and scheduled that testimony.

Fourth, they said no witnesses, said security was conditioned on the investigations. Not so. Mulvaney, and we had other witnesses talking about the shakedown for the security assistance. But the important thing is, you can get a witness who talked to the President firsthand about what the President thought he was doing.

Ultimately, of course, the funds—or at least some of them—were released, but the White House meeting that the President promised three different times still has not occurred, and we still don't have the investigation of the Bidens.

Getting caught doesn't mitigate the wrongdoing. The President is unrepentant, and we fear he will do it again.

The independent Government Accountability Office concluded that the President violated Federal law when he withheld that aid. That misconduct is still going on. All the aid has not yet been released.

Finally, I would just like to say that there has been some confusion, I think. I am sure it is not intentional. But the President surely does not need the permission of his staff about foreign policy. That information is offered to you as evidence of what he thought he was doing. He did not appear to be pursuing a policy agenda. From all of the evidence, he appeared to be pursuing a corruption—a corruption of our election that is upcoming; a high crime and misdemeanor that requires conviction and removal.

I yield back.

The CHIEF JUSTICE. Thank you, counsel.

Mr. COTTON. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Arkansas.

Mr. COTTON. I send a question to the desk for the President's counsel on behalf of myself and Senators BOOZMAN, MCSALLY, BLACKBURN, KENNEDY, and TOOMEY.

The CHIEF JUSTICE. The Senators ask the President's counsel:

Did the House bother to seek testimony or litigate executive privilege issues during the month during which it held up the impeachment articles before sending them to the Senate?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, no, the House did not seek to litigate any of the privilege issues during that time. In fact, they filed no lawsuits arising from this impeachment inquiry to seek to contest the bases that the Trump administration gave for resisting the subpoenas, the bases for why those subpoenas were invalid.

When litigation was filed by one of the subpoena recipients—that was Dr. Charles Kupperman, the Deputy National Security Advisor—he went to the court and sought a declaratory judgment, saying: The President has told me I shouldn't go. I have a subpoena from the House saying I should go. Please, courts, tell me what my obligations are.

I believe that was filed around October 25. It was toward the end of October.

Very shortly, within a few days, the court had set an expedited briefing schedule and scheduled the hearing for December 10. They were supposed to hear both preliminary motions to dismiss and also the merits issue.

So they were going to get a decision after a hearing on December 10 that would go to the merits of the issue, but the House managers withdrew the subpoena. The House of Representatives decided they wanted to moot out the case so they wouldn't get a decision.

So, no, the House has not pursued litigation to get any of these issues resolved. It has affirmatively avoided getting into any litigation. That seems to be at least in part based on—if you look at the House Judiciary Committee report—their assertion that under the sole power of impeachment assigned to the House, the House believes that the Constitution assigns—I believe the exact words are that it gives the House the last word, something to that effect.

I mentioned this the other day. This is the new constitutional theory that because they have the sole power of impeachment, in their view, it is actually the paramount power of impeachment and all other constitutionally based privileges or rights or immunities or roles, even, of the other branches—both the judiciary and the executive—fall away, and there is nothing that can stand in the way of the House's power of impeachment. If they issue a subpoena, the executive has to respond, and it can't raise any constitutionally based separation of powers concerns. If you do, that is obstruction of the courts. The courts have no role. The House has the sole power of impeachment.

That is a very dangerous construct for our Constitution. It suggests that once they flip the switch on to impeachment, there is no check on their power and what they want to do. That is not the way the Constitution is structured. When there are interbranch conflicts, the Constitution requires that there be an accommodation process, that there be attempts to address the interests of both branches.

The House has taken the position—and in other litigation—the McGahn litigation—they are telling the courts that the courts are the only way to resolve these issues. They brought that case in August. They already have a decision from the district court. They have an appeal in the DC Circuit. It was argued on January 3. A decision could come any day. That is pretty fast for litigation. But in this impeachment, they have decided that they don't want to do litigation. Again, it is because they had a timetable. One of the House managers admitted it on this floor. They had to get the President impeached before the election. They had no time for the courts, for anyone telling them what the rules were. They had to

get it done by Christmas, and that is what they did. Then they waited around a month before bringing it here.

I think that shows you what is really behind the claims of, oh, it is urgent, then it is not urgent. It was urgent when it was our timetable to get it done by Christmas. It is not so urgent when we can wait for a month because we want to tell the Senate how to run things. It is all a political charade.

That is part of the reason—a major reason—that the Senate should reject these Articles of Impeachment.

The CHIEF JUSTICE. Thank you, counsel.

Mr. UDALL. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from New Mexico.

Mr. UDALL. Thank you for the recognition, Mr. Chief Justice. I send a question to the desk.

The CHIEF JUSTICE. Senator UDALL's question is for the House managers:

Please address the President's counsel's argument that House managers seek to overturn the results of the 2016 election and that the decision to remove the President should be left to the voters in November.

Mr. Manager SCHIFF. Thank you for the question.

First, I just want to respond to something counsel just said—that 9 months is pretty fast for litigation in the courts. Sadly, I agree with that. Nine months is pretty fast in the McGahn case, and we still don't have a decision yet. What is more, that is the very case in which they are arguing, as I quoted earlier, that Congress has no right to come to the courts to force a witness to testify. So here we are 9 months later in that litigation that they said we are compelled under the Constitution to bring, and they are saying in court: You can't bring this. And it is 9 months, and we still don't have a decision. I think that tells you just where they are coming from. It all goes back to the President's directive to fight all subpoenas, and they are.

Nixon was going to be impeached for far less obstruction than anything that Donald Trump did.

The argument: Well, if you impeach a President, you are overturning the results of the last election and you are tearing up the ballots in the next election. If that were the case, there would be no impeachment clause in the Constitution because, by definition, if you are impeaching a President, that President is in office and has won an election.

Clearly, that is not what the Founders had in mind. What they had in mind is, if the President commits high crimes and misdemeanors, you must remove him from office. It is not voiding the last election; it is protecting the next election. Indeed, the impeachment power was put in the Constitution not as a punishment—that is what the criminal laws are for—but to protect the country.

Now, if you say you can't impeach a President before the next election, what you are really saying is you can only impeach a President in their second term. If that were going to be the constitutional requirement, the Founders would have put in the Constitution: A President may commit whatever high crimes and misdemeanors he wants as long as it is in the first term. That is clearly not what any rational Framer would have written, and, indeed, they didn't, and they didn't for a reason. The Founders were con-

cerned that, in fact, the object of a President's corrupt scheme might be to cheat in the very form of accountability that they have prescribed: the election.

So counsel has continued to mischaracterize what the managers have said. We are not saying we had to hurry to impeach the President before the election. We had to hurry because the President was trying to cheat in that election.

The position of the President's counsel is, well, yes, it is true that if a President is going to try to cheat an election, by definition, that is prior to their reelection; by definition, that is going to be proximate to an election; but, you know, let the voters decide, even though the object is to corrupt that vote of the people. That cannot be what the Founders had in mind.

One of the things I said at the very opening of this proceeding is, yes, we are to look to history; yes, we are to try to define the intent of the Framers; but we are not to leave our common sense at the door.

The issue isn't whether it is his first term or his second. It isn't whether the election is a year away or 3 years away. The issue is, did he commit a high crime and misdemeanor? Is it a high crime and misdemeanor for a President of the United States to withhold hundreds of millions of dollars in aid to an ally at war to get help, to elicit foreign interference in our election? If you believe that it is, it doesn't matter what term it is, it doesn't matter how far away the election is because that President represents a threat to the integrity of our elections and, more than that, a threat to our national security.

As we have shown, by withholding that aid—and I know the argument is, no harm, no foul—we withheld aid from an ally at war. We sent a message to the Russians, when they learned of this hold, that we did not have Ukraine's back. We sent a message to the Russians, as Zelensky was going into negotiations with Putin to try to end that war, that Zelensky was operating from a position of weakness because there was a division between the President of the United States and Ukraine. That is immediate damage. That is damage done every day. That damage continues to this day.

The damage the President does in pushing out the Russian conspiracy theories were identified during the House proceedings—and you have heard it in the Senate—as Russian intelligence propaganda. The danger the President poses by taking Vladimir Putin's side over his own intelligence agencies—that is a danger today. That is a danger that continues every day he pushes out this Russian propaganda.

If the Framers meant impeachment only to apply in the second term, they would have said so. But that would have made the Constitution a suicide pact. That is not what it says, and that is not how you should interpret it.

The CHIEF JUSTICE. Thank you, counsel.

Mr. PORTMAN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Ohio.

Mr. PORTMAN. I send a question to the desk.

The CHIEF JUSTICE. Senator PORTMAN's question is directed to counsel for the President:

Given that impeachment proceedings are privileged in the Senate and largely prevent other work from taking place while they are ongoing, please address the implications of allowing the House to present an incomplete case to the Senate and request the Senate to seek testimony from additional witnesses.

Mr. Counsel PHILBIN. Thank you, Mr. Chief Justice, Senators. I think this is one of the most important issues that this body faces, given these calls to have witnesses, because the House managers tried to present it as if, oh, it is just a simple question; how can you have a trial without witnesses? But in real litigation, no one goes to trial without doing discovery. No one goes to trial without having heard from the witnesses first. You don't show up at trial and then start trying to call witnesses for the first time.

The implications here in our constitutional structure, trying to run things in such an upside-down way would be very grave for this body as an institution because, as the Senator's question points out, it largely prevents this Chamber from getting other business done as long as there is a trial pending.

The idea that the House can do an incomplete job in trying to find out what witnesses there are, having them come testify, trying to find out the facts—just rush something through and bring it here as an impeachment and then start trying to call all the witnesses—means that this body will end up taking over that investigatory task, and all the regular business of this body will be slowed down, hindered, prevented while that goes on.

And it is not a question of just one witness. A lot of people talk right now about John Bolton, but the President would have the opportunity to call his witnesses, just as a matter of fundamental fairness. There would be a long list of witnesses if the body were to go in that direction. It would mean this would drag on for months and prevent this Chamber from getting its business done.

There is a proper way to do things and an upside-down way of doing things. To have had the House not go through a process that is thorough and complete and to just rush things through in a partisan and political manner and then dump it onto this Chamber to clean everything up is a very dangerous precedent to be set. As I said the other day, whatever is accepted in this case becomes the new normal. If this Chamber puts its imprimatur on this process, then that is the seal of approval for all time in the future.

If it becomes that easy for the House of Representatives to impeach a President of the United States—don't attempt to subpoena the witnesses, never mind litigation because it takes too long, but then leave it all to this Chamber—and, as I said the other day: Remember, what do we think will happen if some of these witnesses are subpoenaed now that they never bothered to litigate about? Then there will be the litigation now, most likely, and then that will take time while this Chamber is still stuck sitting as a Court of Impeachment.

That is not the way to do things, and it would forever change the relationship between the House of Representatives and the Senate in terms of the way impeachments operate.

So I think it is vitally important for this Chamber to consider what it really means to start having this Chamber do all that investigatory work, how this Chamber would be paralyzed by that. And is that really the precedent? Is that the way this Chamber

wants everything to operate in the future? Once you make it that much easier—and we have said this on a couple of different points, both in terms of the standards for impeachable offenses but also in terms of the process that is used in the House. If you make it really way too easy to impeach a President, then this Chamber is going to be dealing with that all the time.

As Minority Leader SCHUMER had pointed out at the time of the Clinton impeachment—he was prophetic, as White House counsel pointed out the other day—once you start down the path of partisan impeachments, they will be coming again and again and again. And if you make it easier, they will come even more frequently, and this Chamber is going to be spending a lot of time dealing with impeachment trials and cleaning up any incomplete, half-baked procedures, rushed partisan impeachments from the House if that is the sort of system that is given the imprimatur here.

That is a very important reason for not accepting that procedure and not trying to open things up now when things haven't been done properly in the House of Representatives.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Delaware.

Mr. CARPER. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Senator CARPER's question is for the House managers:

Some have claimed that subpoenaing witnesses or documents would unnecessarily prolong this trial. Isn't it true that depositions of the three witnesses in the Clinton trial were completed in only one day each? And, isn't it true that the Chief Justice, as presiding officer in this trial, has the authority to resolve any claims of privilege or other witness issues, without any delay?

Mr. Manager JEFFRIES. Mr. Chief Justice, the answer is yes. What is clear, based on the record that was compiled by the House of Representatives, where up to five depositions per week were completed, is that this can be done in an expeditious fashion.

It is important to note that the record that exists before you right now contains strong and uncontroverted evidence that President Trump pressured a foreign government to target an American citizen for political and personal gain, as part of a scheme to cheat in the 2020 election and solicit foreign interference. That is evidence from witnesses who came forward from the Trump administration, including individuals like Ambassador Bill Taylor, a West Point graduate and a Vietnam war hero; including individuals like Ambassador Sondland, who gave \$1 million to President Trump's inauguration; including respected national security professionals like Lieutenant Colonel Alexander Vindman, as well as Dr. Fiona Hill—17 different witnesses, Trump administration employees, troubled by the corrupt conduct that took place, as alleged and proven by the House of Representatives.

But to the extent that there are ambiguities in your mind, this is a trial. A trial involves witnesses. A trial involves documents. A trial involves evidence. That is not a new phenomenon for this distinguished body. The Senate, in its history, has had 15 different impeachment trials. In every single trial there were witnesses—every single trial. Why should this President be treated differently,

held to a lower standard, at this moment of Presidential accountability?

In fact, in many of those trials, there were witnesses who testified in the Senate who had not testified in the House. That was the case most recently in the Bill Clinton trial. It certainly was the case in the trial of President Johnson. Thirty-seven out of the 40 witnesses who testified in the Senate were new—37 out of 40.

Why can't we do it in this instance, when you have such highly relevant witnesses like John Bolton, who had a direct conversation with President Trump, indicating that President Trump was withholding the aid because he wanted the phony investigations?

Counsel has said the greatest invention in the history of jurisprudence for ascertaining the truth has been the vehicle of cross-examination. Let's call John Bolton. Let's call Mick Mulvaney. Let's call other witnesses, subject them to cross-examination, and present the truth to the American people.

The CHIEF JUSTICE. Thank you.

The Senator from Texas.

Mr. CORNYN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Senators CORNYN and GARDNER ask counsel for the President:

What are the consequences to the Presidency, the President's constitutional role as the head of the executive branch, and the advice the President can expect from his senior advisers, if the Senate seeks to resolve claims of executive privilege for subpoenas in this impeachment trial without any determination by an article III court?

Mr. Counsel PHILBIN. Mr. Chief Justice, I thank the Senators for the question.

The Supreme Court has recognized that the confidentiality of communications with the President is essential—keeping those communications confidential is essential for the proper functioning of the government.

In *Nixon v. United States*, the court explained that this privilege is grounded in the separation of powers and essential for the functioning of the executive for this reason: In order to receive candid advice, the President has to be able to be sure that those who are speaking with him have the confidence that what they say is not going to be revealed, that their advice can remain confidential. If it is not confidential, they would temper what they are saying; they wouldn't be candid with the President; and the President, then, would not be able to get the best advice.

It is the same concern that underpins the deliberative process aspect of executive privilege. Even if it is not a communication directly with the President, if it is the deliberative process within the executive branch, people have to be able, before coming up with a decision, to discuss alternatives, to probe what other ways might work to address the problem, and to discuss them candidly and openly, not with the feeling that the first thing they say is going to be on the front page of the *Washington Post* the next day, because if you don't have the confidence that what you are saying is going to be kept confidential, you will not be candid, you will not give your best advice, and that damages decision-making. It is bad for the government, and it is bad for the people of the United

States because it means the government and the executive branch can't function efficiently.

So there is a critical need for the executive to be able to have these privileges and to protect them, and that is why the Supreme Court recognized that in *Nixon v. United States* and pointed out that there has to be some very high showing of need from another branch of government if there is going to be any breach of that privilege.

That is why there is an accommodations process. The courts have said that, when the Congress and the legislature seek information from the executive and the executive has confidentiality interests, both branches are under an obligation to try to come to some accommodation to address the interests of both branches. But it is not a situation of simply that the Congress is supreme and can demand information from the executive and the executive must present everything. The courts have made that clear, because that would be damaging to the functioning of government.

So here, in this case, there are vital interests at stake. And one of the potential witnesses that the House managers have raised again and again is John Bolton. John Bolton was a National Security Advisor to the President. He has all of the Nation's secrets from the time that he was the National Security Advisor, and that is precisely the area, the field, in which the Supreme Court suggested, in *Nixon v. United States*, there might be something approaching an absolute privilege of confidentiality in communications with the President: the fields of national security and foreign affairs. That is the crown jewel of executive privilege.

So to suggest that the National Security Advisor—well, we will just subpoena him, and he will come in; that will be easy; there will not be any problem—that is not the way it would work because there is a vital constitutional privilege at stake there, and it is important for the institution of the Office of the Presidency, for every President, to protect that privilege, because once precedents start to be set—if one President says: Well, I will not insist on the privilege then; I will let people interview this person; I will not insist on the immunity—that sets precedent. Then the next time, when it is important to preserve the privilege, the precedent is raised, and the privilege has been weakened—and is forever weakened—and that damages the functioning of government.

So this is a very serious issue to consider. It is important. The Supreme Court has made it clear for the proper functioning of the executive branch, for the proper functioning of our government. And there would be grave issues raised attempting to have a National Security Advisor to the President come under subpoena to testify. That would all have to be dealt with, and that would take some time before things would continue.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Hawaii.

Mr. SCHATZ. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The question from Senator SCHATZ is directed to the House managers, and the question also is from Senator FEINSTEIN:

If the President were acting in the interest of national security, as he alleges, would there be documentary evidence or testimony to substantiate his claim? If yes, has any evidence like that been presented by the president's counsel?

Mr. Manager CROW. Thank you, Mr. Chief Justice. Thank you, Senators, for the question.

The answer is yes. There are well-established processes, mechanisms, and agencies in place to pursue valid and legitimate national security interests of the United States—like the National Security Council; like the National Security Advisor, as in Ambassador John Bolton; and many other folks within the State Department and the Department of Defense. And as we have well established over the last week, none of those folks, none of those agencies, would have been involved in having that deliberation, reviewing that evidence, having that discussion, or incorporated into any type of interagency review process during the vast majority of the time that we are talking about here.

From the time of the President's call on July 25 to the time the hold was lifted, those individuals, those agencies were in the dark. They didn't know what was happening, and, more so, not only were they in the dark, but the President violated the law by violating the Impoundment Control Act to execute his scheme. None of that suggests a valid, legitimate policy objective.

More so, the President himself and his counsel are bringing at issue the question of documents and witnesses. If over and over again, as we have heard in the last few days, the President was simply pursuing a valid, legitimate policy objective, if this was a specific debate about policy, a debate about corruption, a debate about burden-sharing, then, let's have the documents that would show that. Let's hear from the witnesses that would show that. The documents and the witnesses that we have forwarded and we have talked about show the exact opposite.

The American people in this Chamber deserve to have a fair trial. The President deserves to have a fair trial. In fact, if he is arguing that there is evidence, that there was a policy debate, then, I think everybody would love to see those documents, would love to see the witnesses and hear from them directly about what exactly was being debated.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from South Carolina.

Mr. GRAHAM. I send a question to the desk from myself and Senator CRUZ.

The CHIEF JUSTICE. Senator GRAHAM and Senator CRUZ pose this question for the House managers:

In Mr. SCHIFF's hypothetical, if President Obama had evidence that MITT ROMNEY's son was being paid \$1 million per year by a corrupt Russian company—and MITT ROMNEY had acted to benefit that company—would Obama have authority to ask that that potential corruption be investigated?

Mr. Manager SCHIFF. First of all, the hypothetical is a bit off because it presumes in that hypothetical that President Obama was acting corruptly or there was evidence he was acting corruptly with respect to his son. But, nonetheless, let's take your hypothetical on its terms.

Would it have been impeachable if Barack Obama had tried to get Medvedev to do an investigation of MITT ROMNEY, whether it

was justified or unjustified? The reality is, for a President to withhold military aid from an ally—or, in the hypothetical, to withhold it to benefit an adversary—to target their political opponent is wrong and corrupt—period, end of story.

If you allow a President to rationalize that conduct, rationalize jeopardizing the Nation's security to benefit himself because he believes that his opponent should be investigated by a foreign power, that is impeachable.

If you have a legitimate reason to think that any U.S. person has committed an offense, there are legitimate ways to have an investigation conducted. There are legitimate ways to have the Justice Department conduct an investigation.

I would suggest to you that for a President to turn to his Justice Department and say, "I want you to investigate my political rival," taints whatever investigation they do. Presidents should not be in the business of asking even their own Justice Department to investigate their rivals.

The Justice Department ought to have some independence from the political desires of the President, and one of the deeply troubling circumstances of the current Presidency is you do have a President of the United States speaking quite openly, urging his Justice Department to investigate his perceived enemies.

That should not take place either, but under no circumstances do you go outside of your own legitimate law enforcement process to ask a foreign power to investigate your rival, whether you think there is cause or you don't think there is cause, and you certainly don't invite that foreign power to try to influence an election to your benefit.

It is remarkable to me that we even have to have this conversation. Our own FBI Director has made it abundantly clear—and it shouldn't require an FBI Director to say this—that if we were approached with an offer of foreign help, we should turn it down. We should, of course, certainly not solicit a foreign country to intervene in our election. And whether we think there is grounds or we don't, the idea that we would hold our own country's security hostage by withholding aid to a nation at war to either damage our ally or help our adversary because they will conduct an investigation into our opponent, I can't imagine any circumstance where that is justified, and I can't imagine any circumstance where we would want to say the President of the United States can target his rival, can solicit, elicit foreign help in an election, can help him cheat and that is OK, because that will dramatically lower the bar for what we have a right to expect in the President of the United States; and that is, they are acting in our interests.

I would say it is wrong for the President of the United States to be asking for political prosecutions by his own Justice Department. I would say it is wrong for the President of the United States to ask a foreign power to engage in an investigation of his political rival, but, particularly, where, as we have shown here, there is no merit to that investigation is even more egregious. You know there is no merit to it because he didn't even want the investigation.

The more accurate parallel, Senator, would be if Barack Obama said: I don't even need you, Russia, to do the investigation; I just want you to announce it—because that portrays the fact there was

no legitimate basis, because the President didn't even need the investigation done. He just wanted it announced. There is no legitimate explanation for that except he wanted their help in cheating the next election.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Michigan.

Mr. PETERS. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The question is from Senator PETERS and is for the House managers.

Does the phrase "or other high Crimes and Misdemeanors" in Article II, Section 4 of the Constitution require a violation of the U.S. criminal code or is a breach of public trust sufficient? Please explain.

Ms. Manager LOFGREN. The Framers were very clear that abuse of power is an impeachable offense. In explaining why the Constitution must allow impeachment, Edmund Randolph warned that "the Executive will have great opportunities of abusing his power."

Alexander Hamilton described "high crimes and misdemeanors" as "offenses which proceed from the . . . abuse or violation of some public trust."

The Framers also described what it meant. It was impeachable for a President to abuse his pardon power to shelter people he was connected with in a suspicious manner. Future Supreme Court Justice James Iredell said the President would be liable to impeachment if he acted from some corrupt motive or other or if he was willfully abusing his trust.

As was later stated in a treatise summarizing centuries of common law, abuse of power occurs if a public officer, entrusted with definite powers to be exercised for the benefit of the community, wickedly abuses or fraudulently exceeds them.

So when the Framers said this—that abuse of power was impeachable—it was not just an empty, meaningless statement. Remember, the Founders had been participating with overthrowing the British Government, a King who was not accountable.

They incorporated the impeachment power into the Constitution late, actually, in the drafting of the Constitution. They knew they were giving the President many powers, and they specified, if he abused them, that those powers could be taken away.

Now, the prior articles that the Congress has had on impeachment did not include specific crimes. President Nixon was charged with abusing his power, targeting political opponents, engaging in a coverup.

There was conduct specified. Some of it was clearly criminal. Some of it was not. But it was all impeachable because it was corrupt, and it was abusing his power.

In the House Judiciary Committee, we had witnesses called by both Republicans and Democrats. The Republican-invited constitutional law expert Jonathan Turley testified unequivocally that it is possible to establish a case for impeachment based on a non-criminal allegation of abuse of power.

Every Presidential impeachment, including this one, has included conduct that violated the law, but each Presidential impeachment has included the charges directly under the Constitution.

It is important to note that a specific criminal law violation was not in the minds of the Founders, and it wouldn't make any sense today. You could have a criminal law violation, you could deface a post office box. That would be a violation of Federal law. We would laugh at the idea that that would be a basis for impeachment. That is not abuse of Presidential powers. It might be a crime. And yet, you could have activities that are so dangerous to our Constitution, that are not a crime, that would be charged as an impeachable offense because they are an abuse of power. That is what the Framers worried about. That is why they put the impeachment clause in the Constitution, and, frankly, they opined that, because of the impeachment clause, no Executive would dare exceed their powers. Regrettably, that prediction did not prove true, which is why we are here today with President Trump having abused his broad powers to the detriment of our national interest for a corrupt purpose, his own personal interests.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Senator.

Mr. ROUNDS. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator MURKOWSKI.

The CHIEF JUSTICE. Thank you, Senator.

The CHIEF JUSTICE. Senators ROUNDS and MURKOWSKI ask counsel for the President:

Describe in further detail your contention that all subpoenas issued prior to the passage of H. Res. 660 are an exercise of invalid subpoena authority by the House committees.

Mr. Counsel PHILBIN. Mr. Chief Justice.

Thank you, Senators, for that question.

As I explained the other day, this contention is based on a principle that has been laid out in several Supreme Court cases explaining that the Constitution assigns powers to each House of the legislative branch: to the House of Representatives or to the Senate. And in particular, the language of the Constitution is clear in article I that the sole power of impeachment is assigned to the House—as to the House of Representatives as a body. It is not assigned to any committee, to a subcommittee, or to any particular Member of the House.

And in cases such as *Rumely v. The United States* and the *United States v. Watkins*, the Court has been called—there are disputes about subpoenas. They are not specifically in the impeachment context, but they establish the general rule, a principle, that whenever a committee of either body of Congress issues a subpoena to someone and that person resists the subpoena, the courts will examine what was the authority of that committee or subcommittee to issue that subpoena.

It has to be traced back to some authorizing rule or resolution from the House of Representatives itself, for example, in a House subcommittee. And the courts will examine—the Supreme Court has made clear that that is the charter of the committee's authority. It gets its authority solely from an action by the House itself. That requires a vote of the House, either to establish the committee by resolution or to establish by rule the standing authority of that committee. And if the committee cannot trace its authority

to a rule or a resolution from the House, then its subpoena is invalid.

The Supreme Court made clear in those cases those subpoenas are null and void because they are ultra vires; they are beyond the power of the committee to issue. They can't be enforced. Our point here is very simple. There is no standing rule in the House that provides the committees that were issuing subpoenas here, under the leadership of Manager SCHIFF, the authority to use the impeachment power to issue subpoenas. Rule 10 of the House defines the legislative jurisdiction of committees. It doesn't mention the word "impeachment" even once. So no committee under rule 10 was given the authority to issue subpoenas for impeachment purposes.

This has always been the case in every Presidential impeachment in the history of the Nation. There has always been a resolution from the House, first, to authorize a committee to use the power of impeachment before it intended to issue compulsory process. So in this case, there was no resolution from the House. The authority, the sole power of impeachment, remained with the House of Representatives itself. And Speaker PELOSI, by herself, did not have authority merely by talking to a group of reporters on September 24, to give the powers of the House to any particular committee to start issuing subpoenas. So the subpoenas that were issued were invalid when they were issued.

And then 5 weeks later, on October 31, when the House finally adopted H. Res. 660, that authorized from that point—purported to authorize from that point the issuance of subpoenas. Nothing in that resolution addressed the subpoenas that had already been issued. It didn't even attempt or purport to say the ones that have already been issued, we are going to try to retroactively give authority to that. It is a separate question about whether that could have been done legally. They didn't even attempt to do it.

This is all explained in the opinion from the Office of Legal Counsel, which is in our trial memorandum attached as appendix C. It is a very detailed and thorough opinion; it is 37 pages of legal reasoning, but it explains all of this, the basic principle that applies, generally, and the history that it has always been done this way. There has always, in every Presidential impeachment, been an authorizing resolution from the House. And the fact that there was none here—so there was no authority for those subpoenas—that means that 23 subpoenas that were issued were invalid.

And this was explained, as I pointed out the other day, in letters from the administration to the committees—a letter from the White House, from OMB, I think the State Department—and in very specific terms, they set out this rationale. That is the basis on which those subpoenas were invalid, and they were properly resisted by the administration.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Pennsylvania.

Mr. CASEY. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

Senator CASEY's question is directed to the House managers:

In Federalist 65, Alexander Hamilton writes that the subjects of impeachment are "those offenses which proceed from the misconduct of public men, or, in other words,

from the abuse or violation of some public trust.” Could you speak broadly to the duties of being a public servant and how you believe the President’s actions have violated this trust?

Mr. Manager NADLER. Mr. Chief Justice, Members of the Senate.

President Trump used the powers of his office to solicit a foreign nation to interfere in our elections for his own benefit, and then he actively obstructed Congress in his attempts to investigate his abuses of power. These actions are clearly impeachable. The key purpose of the impeachment clause is to control abuses of power by public officials; that is to say, conduct that violates the public trust.

Since the founding of the Republic, all impeachments have been based on accusations of conduct that violates the public trust. When the Framers wrote the phrase “high Crimes and Misdemeanors,” they intended to capture the conduct of public officials, like President Trump, who showed no respect for their oath of office. President Trump ignored the law and the Constitution in order to gain a political favor. The Constitution and his oath of office prohibited him from using his official favor to corruptly benefit himself rather than the American people. That is exactly what the President did, illegally withholding military aid and a White House meeting until the President of Ukraine committed to announcing an investigation of President Trump’s opponent.

In the words of one constitutional scholar: “If what we’re talking about is not impeachable, then nothing is impeachable.”

This is precisely the misconduct that the Framers created the Constitution, including impeachment, to protect against.

I want to add in reference to some of the comments that were made by some of the President’s counsel a few minutes ago. They talk about the subpoena power, about the failure of the House to act properly in the subpoena power because they said the House did not delegate by rule—have a resolution authorizing the committees to offer subpoena power. They apparently haven’t read the fact that the House has generally delegated all subpoena power to the committees. It wasn’t true at the time of the Watkins case; it wasn’t true 15 years ago; but it is true now.

Second, the House power is the sole power of impeachment and the manner of its exercise may not be challenged from outside. Whether the President should be convicted upon our accusation is a question for the Senate, but how we reached our accusation is a matter solely for the House.

Thirdly, they talked about executive privilege, and they pointed to the Nixon case that established executive privilege; that the President has a right to private, candid advice and, therefore, executive privilege is established. The same case says that executive privilege cannot be used to hide wrongdoing and, in fact, President Nixon was ordered in that case to turn over all his material.

Thirdly, there is a doctrine of waiver. You cannot use executive privilege or any other privilege if you waive it. The moment President Trump said that John Bolton was not telling the truth when he said that the President told him of the improper quid pro quo, he waived any executive privilege that might have existed. He cannot characterize a conversation and put it into the public domain and then claim executive privilege against it. The President, by the

way, never claimed executive privilege ever. He has claimed, instead, absolute immunity—a ridiculous doctrine that the President has absolute immunity from any questioning by the Congress or by anybody else. It is a claim rejected by every court that has ever considered it.

Finally, the difference from this President and any other President claiming privilege of any sort is that this President told us in advance: I will defy all subpoenas, whatever their nature. I will make sure that the Congress gets no information. In other words: I am absolute. The Congress cannot question what I do because I will defy all subpoenas. I will make sure they get no information, no matter what their rights, no matter what their situation.

That is the subject of our article II of the impeachment because that is a claim of absolute monarchical power.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. McCONNELL. Mr. Chief Justice.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. I want to suggest that after two more questions on each side—I have been corrected, as I frequently am—one more question on each side, we take a 15-minute break.

The CHIEF JUSTICE. Thank you.

The Senator from Kansas.

Mr. ROBERTS. I send a question to the desk for the counsel to the President.

The CHIEF JUSTICE. Thank you.

Senator ROBERTS asks:

Would you please respond to the arguments or assertions the House managers made in response to the previous questions?

This is directed to the counsel for the President.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate. I want to respond to a couple.

First, with regard to the question or the issues that have been raised as it relates to witnesses, it is important to note that in the Clinton impeachment proceeding, the witnesses who actually gave deposition testimony were witnesses who had either been interviewed by deposition in the House proceedings, grand jury proceedings, and then, more specifically, was Sid Blumenthal, Vernon Jordan, and Monica Lewinsky. New witnesses were not being called. That is because the House, in their process, moved forward with a full investigation. That did not happen here.

There was another statement that was raised by Mr. Chairman SCHIFF, Manager SCHIFF, regarding the Chief Justice could make the determination on executive privilege. And again, with no disrespect to the Chief Justice, the idea that the Presiding Officer of this proceeding could determine a waiver or an applicability of executive privilege would be quite a step. There is no historic precedent that would justify it.

But there is something else. If we get to the point of witnesses, then, for instance, if one of the witnesses to be called by the President's lawyers was ADAM SCHIFF in the role, basically, of Ken Starr—Ken Starr presented the report and made the presentation before the House of Representatives. He had about 12 hours of questioning, I believe, is what Judge Starr had. If Representative SCHIFF was called as a witness, would, in fact, then issues of

speech and debate clause privilege be litigated and decided by the Presiding Officer or would it go to court or maybe they would waive it, but those would be the kind of issues that would be very, very significant.

Senator GRAHAM presented a hypothetical, which Manager SCHIFF said, well, that is not really the hypothetical, but hypotheticals are actually that; they are hypotheticals. To use Manager SCHIFF's words, he talked about how it would be wrong if FBI or the Department of Justice was starting a political investigation of someone's political opponent.

I am thinking to myself, but isn't that exactly what happened? The Department of Justice and the FBI engaged in an investigation of the candidate for President of the United States when they started their operation called Crossfire Hurricane.

He said it would be targeting a rival. That is what that did. He said it would be calling for foreign assistance in that. In the particular facts of Crossfire Hurricane, it has been well established now that, in fact, Fusion GPS utilized the services of a former foreign intelligence officer, Christopher Steele, to put together a dossier and that Christopher Steele relied on his network of resources around the globe, including Russia and other places, to put together this dossier, which then James Comey said was unverified and salacious. Yet it was the basis upon which the Department of Justice and the FBI obtained FISA warrants. This was in 2016, against a rival campaign. So we don't have to do hypotheticals. That is precisely the situation.

To take it an additional step, this idea that a witness will be called—if this body decides to go to witnesses—would be a violation of fundamental fairness. Of course, if witnesses are called by the House managers through that motion, the President's counsel would have the opportunity to call witnesses as well, which we would.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from California.

Ms. HARRIS. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The question from Senator HARRIS is for the House managers:

President Nixon said, "When the president does it that means that it is not illegal." Before he was elected, President Trump said, "When you're a star, they let you do it. You can do anything." After he was elected, President Trump said that Article II of the Constitution gives him "the right to do whatever [he] want[s] as president." These statements suggest that each of them believed that the president is above the law—a belief reflected in the improper actions that both presidents took to affect their reelection campaigns. If the Senate fails to hold the president accountable for misconduct, how would that undermine the integrity of our system of justice?

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, I think this is exactly the fear. I think, if you look at the pattern in this President's conduct and his words, what you see is a President who identifies the state as being himself. When the President talks about the people who report his wrongdoing—for example, when he describes a whistleblower as a traitor or a spy—the only way you can conceive of someone who reports wrongdoing as committing a crime against the country is if you believe that you are synonymous with the country, that any report of wrongdoing against the Presi-

dent—the person the President—is a treasonous act. It is the kind of mentality that says that under article II, I can do whatever I want, that I am allowed to fight all subpoenas.

Counsel has given a variety of explanations for the fighting of all subpoenas. They might have had a plausible argument if the administration had given hundreds of documents but reserved some and made a claim of privilege or if the administration has said: We will allow these witnesses to testify, but with these witnesses, with these particular questions, we want to assert the privilege.

Of course, that is not what was done here. What we have, instead, is a shifting series of rationales, of explanations, and duplicitous arguments—some made in court and some made here—the argument that the subpoenas aren't valid before the House resolution, and then with respect to subpoenas issued after the House resolution, like to Mulvaney, they are no good either. You have the argument made that, we have absolute immunity, and the court that addresses this says: No, you don't; you are not a King. That argument may have been thought of with favor by various Presidents over history, but it has never been supported by any court in the land, and there is no constitutional support for that either.

There are documents that are being released right now, as we sit here, and it is a mystery to the country, and it is a mystery to some of us. How are private litigants able to get documents through the Freedom of Information Act that the administration has withheld from Congress? If they were operating in any good faith, would that be the case? Of course, the answer is no. What we have instead is, we are going to claim absolute immunity, although the court says that doesn't exist.

They said: You know, the House withdrew the subpoena on Dr. Kupperman. Why would they withdraw the subpoena on Dr. Kupperman when he was only threatening to tie you up endlessly in court?

Now, we suggested to counsel for Dr. Kupperman that, if they had a good-faith concern about testifying—if this were really good faith and it were not just a strategy to delay; if it were not just part of the President's wholesale "fight all subpoenas"—they didn't need to file separate litigation because there was actually a case already in court involving Don McGahn on that very subject that was ripe for a decision. Indeed, the decision would come out very shortly thereafter. We said: Let's just agree to be bound by what the McGahn court decides.

They didn't want to do that, and it became obvious once the McGahn court decision came out because the McGahn court said: There is no absolute immunity. You must testify.

By the way, if you think people involved in national security—i.e. Dr. Kupperman and John Bolton, if you are listening—are somehow absolutely immune, you are not.

So did Dr. Kupperman say: "Now I have the comfort I need because the court has weighed in"? The answer is, of course not.

Counsel says: Well, we might have gotten a quick judgment in Kupperman.

Yes—in the lower court.

Do any of you believe for a single minute that they wouldn't appeal to the court of appeals and to the Supreme Court and that if

the Supreme Court struck down the absolute immunity argument, they wouldn't be back in the district court, saying: "OK. He is not asking for absolute immunity anymore, but we are going to claim executive privilege over specific conversations that go to the President's wrongdoing?"

That is the sign of a President who believes that he is above the law, that article II empowers him to do anything he wants.

I will say this: If you accept that argument—if you accept the argument that the President of the United States can tell you to pound sand when you try to investigate his wrongdoing—there will be no force behind any Senate subpoena in the future.

The "fighting all subpoenas" started before the impeachment. If you allow a President to obstruct Congress so completely in a way that Nixon could never have contemplated, nor would the Congress of that day have allowed, you will eviscerate your own oversight capability.

Thank you.

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess until 4 p.m.

There being no objection, the Senate, at 3:38 p.m., recessed until 4:06 p.m. and reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senator from Oklahoma.

Mr. INHOFE. Mr. Chief Justice, I have a question for the President's counsel, and it is cosponsored by Senators ROUNDS, WICKER, ERNST, BLACKBURN, TILLIS, CRAMER, COTTON, SULLIVAN, AND MCSALLY, all members of the Senate Armed Services Committee.

The CHIEF JUSTICE. The Senators ask the following question of the counsel for the President:

Mr. Cipollone, as Members of the Senate Armed Services Committee, we listened intently when Manager CROW was defending one of Senator SCHUMER's amendments to the organizing resolution last week as he explained how he had firsthand experience being denied military aid when he needed it during his service. As you know, David Hale, Under Secretary of State for Political Affairs, confirmed that the lethal aid provided to Ukraine last year was future aid. Which would you say had the greater military impact: President Trump's temporary pause of 48 days on future aid that will now be delivered to Ukraine, or President Obama's steadfast refusal to provide lethal aid to Ukraine for 3 years—more than 1,000 days—while Ukraine attempted to hold back Russia's invasion and preserve its sovereignty?

Mr. Counsel PHILBIN. Mr. Chief Justice. Thank you, Senators for that question.

I think it was far more serious and in far more jeopardy for the Ukrainians the decision of the Obama administration to not use the authority that was given by Congress—that many of you all, many Members of the House of Representatives voted for—giving the U.S. Government the authority to provide lethal aid to the Ukrainians, and the Obama administration decided not to provide that aid.

And multiple witnesses who were called in the House by the House Democrats testified that United States policy toward Ukraine got stronger under the Trump administration, in part, largely, because of that lethal aid.

Ambassador Yovanovitch, Ambassador Volker, others also testified that U.S. policy providing that aid was greater support for Ukraine than was provided in the Obama administration, particularly the provision of Javelin anti-tank missiles, which they explained were lethal and would kill Russian tanks and change the calculus for aggression from the Russians in the Donbas region in the eastern portion of Ukraine where that conflict is still ongoing.

In terms of the pause, the temporary pause on aid here, the testimony in the record—put aside what the House managers have said about their speculation and they know what it is like to be denied aid—the testimony in the record is that this temporary pause was not significant.

Ambassador Volker testified that the brief pause on releasing the aid was “not significant.”

And Under Secretary of State for Political Affairs David Hale explained that this is “future assistance, not to keep the Army going now.”

So, in other words, this isn’t money that had to flow every month in order to fund current purchases or something like that. It was money—it is 5-year money. Once it is obligated, it is there for 5 years, and it usually takes quite a bit of time to spend all of it.

So the idea, somehow, that during the couple of months in July, August, and up until September 11—55 or 48 days, depending upon how you count it—that this was somehow denying critical assistance to the Ukrainians on the frontlines right then is simply not true.

And now the House managers have tried to pivot away from that because they know it is not true. They say: No, it was a signal to the Russians. It was a signal of lack of support that the Russians would pick up on. But here again, it is critical, even the Ukrainians didn’t know that the aid had been paused, and part of the reason was they never brought it up in any conversations with representatives of the U.S. Government. And as Ambassador Volker testified, representatives of the U.S. Government didn’t bring it up to them because they didn’t want anyone to know; they didn’t want to put out any signal that might be perceived by the Russians or by the Ukrainians as any sign of lack of support. It was kept internal to the U.S. Government.

They pointed to some emails that someone at the Department of Defense or Department of State, Laura Cooper, received from unnamed Embassy staffers suggesting that there was a question about the aid, but her testimony was that she couldn’t even remember what the question really was, and she didn’t want to speculate.

There is not evidence that any decision makers in the Ukraine Government knew about the pause.

And just the other day, another article came out—I believe it was from, at the time, the Foreign Minister Danylyuk—explaining that when the POLITICO article was published on August 28, there was panic in Kyiv because it was the first time they realized there was any pause on the aid. So that was not something that was providing any signal either to the Ukrainians or the Russians because it wasn’t known. It was 2 weeks later, after it became public, that the aid was released.

The testimony in the record is that the pause was not significant; it was future money, not for current purchases; and it was released before the end of the fiscal year.

They point out that some of it wasn't out the door by the end of the fiscal year. That happens every year. There is some percentage that doesn't make it out the door by the end of the year.

Again, it is 5-year money. It is not like it is all going to be spent in the next 30, 60, 90 days anyway. So the fact that there was a little fix—Congress passed a fix to allow that \$35 million to be spent; something similar happens for some amount almost every year; and it was not affecting current purchases—it wasn't jeopardizing anything at the frontlines. There is no evidence about that in the record. The evidence is to the contrary.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Maine is recognized.

Mr. KING. Mr. Chief Justice, I have a question for both sets of counsel, which I send to the desk.

The CHIEF JUSTICE. The question from Senator KING is for both counsel for the President and House managers:

President Trump's former chief of staff, General John Kelly has reportedly said, "I believe John Bolton" and suggests Bolton should testify, saying, "If there are people that could contribute to this, either innocence or guilt, I think they should be heard." Do you agree with General Kelly that they should be heard?

I think, counsel for the President, it is your turn to go first.

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice, Members of the Senate, this was a bit of a topic that I discussed yesterday, and that was the information that came out of the New York Times piece about what is purportedly in a book by Ambassador Bolton.

Now, as I said, the idea that a manuscript is not in the book—there is not a quote from the manuscript in the book; this is a perception of what the statement might be. There have been very forceful statements, not just from the President but from the Attorney General. The Department of Justice stated that while the Department of Justice has not reviewed Mr. Bolton's manuscript, the New York Times account of this conversation grossly mischaracterizes what Attorney General Barr and Mr. Bolton discussed. There was no discussion of his getting any personal favors or undue influence for the investigation, nor did Attorney General Barr state that the President's conversations with foreign leaders were improper. So again, that goes to some of the allegations that were in the article.

The Vice President said the same thing. He said: In every conversation with the President and Vice President, in preparation for our trip to Poland, the President consistently expressed his frustration that the United States was bearing the lion's share of responsibility.

There is also an interview that Ambassador Bolton had given, I think in August, about the conversation, where he said it was a perfectly appropriate conversation. I think that information is publicly available now.

So again, to move that into a change in proceeding, so to speak, I think is not correct. The evidence that has already been presented, an accusation that if you get into witnesses, and I will do

this very briefly—if we get down the road on the witness issues, let's be clear, it should not be—I certainly can't dictate to this body—it should certainly not be, though, that the House managers get John Bolton, and the President's lawyers get no witnesses. We would expect that if they are going to get witnesses, we will get witnesses, and those witnesses would then—but all of that, just to be clear, changes the nature and scope of the proceedings. They didn't ask for it before.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Senators, Mr. Chief Justice: What is the significance of the President's former Chief of Staff saying that he believes John Bolton and implicitly does not believe the President, that Bolton should testify? It is really, at the end of the day, not whether I believe John Bolton or whether General Kelly believes John Bolton but whether you believe John Bolton or whether you will have an opportunity to hear directly from John Bolton or whether you will have the opportunity to evaluate his credibility for yourself.

There are a few arguments made against this. Some are rather extraordinary. It would be unprecedented, the suggestion, I think is, to have witnesses in the trial. What an extraordinary idea. But as my colleagues have said, it would be extraordinary not to. This would be the first impeachment trial in history that involves no witnesses, if you decide you don't want to hear from any, that you simply want to rely on what was investigated in the House. That would be unprecedented.

Yes, we should be able to call witnesses, and, yes, so should the President—relevant witnesses.

Now, the President says that you can't believe John Bolton, and Mick Mulvaney says you can't believe John Bolton. Well, let the President call Mick Mulvaney, another relevant witness with first-hand information. If he is willing to say publicly, not under oath, that Bolton is wrong, let him come and say that under oath. Yes, we are not saying that just one side gets to call witnesses; both sides get to call relevant witnesses.

Now, they also make the argument, implicitly, that this is going to take long. Senators, I warn you, if you want to have a real trial, it is going to require witnesses, and that is going to take time. I think the underlying threat—and I don't mean this in a harsh way—is: We are going to make this really time-consuming.

The depositions took place very quickly in the House. We have a perfectly good Chief Justice behind me that can rule on evidentiary issues. What is more, the President has waived and waived and waived any claim about national security here by talking about himself, by declassifying the call record.

We are not interested in asking Bolton about Venezuela or other places or other countries, just Ukraine. If there is any question about it, the Chief Justice can resolve it. These are relevant questions to the matter at hand. What you cannot do is use privilege to hide any wrongdoing of an impeachable kind and character.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Utah.

Mr. LEE. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators CRUZ and HAWLEY.

The CHIEF JUSTICE. The question is directed to counsel for the President:

Is it true that Sean Misko, Abigail Grace, and the alleged whistleblower were employed by or detailed to the National Security Council during the same time period between January 20, 2017, and the present? Do you have reason to believe that they knew each other? Do you have any reason to believe that the alleged whistleblower and Misko coordinated to fulfill their reported commitment to “do everything we can to take out the President”?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, the only knowledge that we have—that I have of this comes from public reports. I gather that there is a news report in some publication that suggests a name for the whistleblower, suggests where he worked, that he worked at that time while detailed to the NSC staff for then-Vice President Biden and that there were others who worked there. We have no knowledge of that, other than what is in those public reports, and I don’t want to get into speculating about that. It is something that, to an unknown extent, may have been addressed in the testimony of the inspector general of the intelligence community before Chairman SCHIFF’s committees, but that testimony, contacts with the whistleblower, contacts between members of Manager SCHIFF’s staff and the whistleblower are shrouded in secrecy to this day. We don’t know what the testimony of the ICIG was. That remains secret. It has not been forwarded.

We don’t know what Manager SCHIFF’s staff’s contact with the whistleblower have been and what connections there are there. It is something that would seem to be relevant, since the whistleblower started this entire inquiry, but I can’t make any representations that we have particular knowledge of the facts suggested in the question. We know that there was a public report suggesting connections and prior working relationships between certain people—not something that I can comment on other than to say that there is a report there.

We don’t know what the ICIG discussed. We don’t know what the ICIG was told by the whistleblower. Other public reports about inaccuracies in the whistleblower’s report to the ICIG, we don’t know the testimony on that. We don’t know the situation of the contacts, coordination, advice provided by Manager SCHIFF’s staff to the whistleblower. That all remains unknown, but something that obviously—to get to the bottom of motivations, bias, how this inquiry was all created could potentially be relevant.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from New Mexico.

Mr. HEINRICH. Mr. Chief Justice, I send a question to the desk for the President’s counsel.

The CHIEF JUSTICE.

When did the President’s Counsel first learn that the Bolton manuscript had been submitted to the White House for review, and has the President’s counsel or anyone else in the White House attempted in any way to prohibit, block, disapprove, or discourage John Bolton, or his publisher, from publishing his book?

Mr. Counsel PHILBIN. Thank you, Mr. Chief Justice, and thank you, Senator, for the question.

At some point—I don’t know off the top of my head the exact date—the manuscript had been submitted to the NSC for review. It is with career NSC staff for review. The White House Counsel’s

Office was notified that it was there. The NSC has released a statement explaining that it has not been reviewed by anyone outside NSC staff.

In terms of the second part of the question, has there been any attempt to prevent its publication or to block its publication, I think that there was some misinformation put out into the public realm earlier today, and I can read for you a relatively short letter that was sent from NSC staff to Charles Cooper, who is the attorney for Mr. Bolton, on January 23, which was last week.

It says:

Dear Mr. Cooper: Thank you for speaking yesterday by telephone. As we discussed, the National Security Council . . . Access Management directorate has been provided the manuscript submitted by your client, former Assistant to the President for National Security Affairs John Bolton, for prepublication review. Based on our preliminary review, the manuscript appears to contain significant amounts of classified information. It also appears that some of this classified information is at the TOP SECRET level, which is defined by Executive Order 13526 as information that "reasonably could be expected to cause exceptionally grave harm to the national security" of the United States if disclosed without authorization. Under federal law and the nondisclosure agreements your client signed as a condition for gaining access to classified information, the manuscript may not be published or otherwise disclosed without the deletion of this classified information.

The manuscript remains under review in order for us to do our best to assist your client by identifying the classified information within the manuscript, while at the same time ensuring that publication does not harm the national security of the United States. We will do our best to work with you to ensure your client's ability to tell his story in a manner that protects U.S. national security. We will be in touch with you shortly with additional, more detailed guidance regarding next steps that should enable you to revise the manuscript and move forward as expeditiously as possible. Sincerely,

And the signature of the career official. So it is with the NSC doing their prepublication review.

Through his lawyer, Ambassador Bolton was notified that the manuscript he submitted contains a significant amount of classified information, including at the top secret level, so that in its current form it can't be published but that they will be working with him as expeditiously as possible to provide guidance so it can be revised and so that he can tell his story.

That is the letter from the NSC that went out. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Iowa.

Ms. ERNST. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators BURR, MCSALLY, DAINES, MORAN, YOUNG, and SASSE.

The CHIEF JUSTICE. The Senators' question is directed to counsel for the President.

Is it true the Trump administration approved supplying Javelin anti-tank missiles to Ukraine? Is it also true this decision came on the heels of a nearly three-year debate in Washington over whether the United States should provide lethal defense weapons to counter further Russian aggression in Europe? By comparison, did President Obama refuse to send weapons or other lethal military gear to Ukraine? Was this decision against the advice of his Defense Secretary and other key military leaders in his administration?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators. Thank you, Senators, for the question.

Yes, the Trump administration made the decision to provide Javelin anti-tank missiles, and there was a significant debate about that for some time. Authorization had been granted by Congress,

and many of you voted for that statutory authorization during the Obama administration to provide lethal assistance to Ukraine, but the Obama administration decided not to provide that.

It was only the Trump administration that made that lethal assistance available, and there was a significant amount of testimony in the House proceedings that President Trump's policy toward Ukraine was actually stronger.

Ambassador Volker explained that America's policy toward Ukraine has been strengthened under President Trump and that each step, along the way in decisions that got to the Javelin missiles being provided, was made by President Trump. It is something that has substantially strengthened our relationship with Ukraine and strengthened their ability to resist Russian aggression.

Ambassador Yovanovitch said that President Trump's decision to provide lethal weapons meant that our policy actually got stronger over the last 3 years, and she called it "very significant."

Another point to make in relation to this is, again, that the pause—the temporary pause that took place over the summer—is something that the Ukrainian Deputy Defense Minister described it as being so short that they didn't even notice it. So President Trump's policies, across the board, have been stronger than the prior administration's in providing defensive capability—lethal defensive capability—to Ukrainians, and I think that that is significant.

As to the specific part of the question, Senators, whether it was contrary to the advice of the President's Defense Secretary and others, I believe that that is accurate. It was against the advice of the Secretary of Defense. It was President Trump's decision to provide the lethal assistance, and that has been made public in the past. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mrs. FEINSTEIN. Mr. Chief Justice.

The CHIEF JUSTICE. Senator FEINSTEIN.

Mrs. FEINSTEIN. Thank you, Mr. Chief Justice. I send a question to the desk on behalf of Senators CARPER, COONS, HIRONO, LEAHY, TESTER, UDALL, and myself to the House managers. Thank you.

The CHIEF JUSTICE. The question from Senator FEINSTEIN and the other Senators is to the House managers:

The President has taken the position that there should be no witnesses and no documents provided by the executive branch in response to these impeachment proceedings. Is there any precedent for this blanket refusal to cooperate, and what are the consequences if the Senate accepts this position here?

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, President Trump has taken really an extreme measure to hide this evidence from Congress. No President has ever issued an order to direct a witness to refuse to cooperate in an impeachment inquiry before this.

Despite his famous attempts to conceal the most damaging evidence against him, even President Nixon allowed senior officials to testify under oath. Not only did he allow them; he told them to go to Congress voluntarily and answer all relevant questions truthfully.

But President Trump issued a blanket order directing the entire executive branch to withhold all documents and testimony from the House of Representatives. His order was categorical. It was indiscriminate and unprecedented. Its purpose was clear: to prevent Congress from doing its duty under the Constitution to hold the President accountable for high crimes and misdemeanors.

Telling every person who works in the White House and every person who works in every department, agency, and office of the executive branch is just not precedent. It wasn't about specific, narrowly defined privileges. He never asserted privileges, and the President's counsel has mentioned over and over that he had some reason because of the subpoenas.

Well, I tell you, we adopt rules about subpoenas in the House. The Senate is a continuing body, but the House isn't. In January, we adopted our rules, and it allows the committee chairman to issue subpoenas, and that is what they did.

He refused to comply with those subpoenas, not because he exerted executive privilege but because he didn't like what we were doing. He tried to say it was invalid, but it was valid.

Actually, he doesn't have the authority to be the arbiter of the rules of the House. The House is the sole arbiter of its rules when it comes to impeachment.

Now, this refusal to give testimony, documents, and the like is still going on. We still have former or current administration officials who are refusing to testify. You know, we would not allow this in any other context. You know, if a mayor said that I am not going to answer your subpoenas, they would be dealt with harshly if it was to cover up misdeeds and crimes, as we have here. The mayor would actually go to jail for doing that.

If we allow the President to avoid accountability by simply refusing to provide any documents, any witnesses—unlike every single President who preceded him—we are opening the door not just to eliminating the impeachment clause in the Constitution. Try doing oversight. Try doing oversight, Senators, working without that in the House. If the President can just say, we are not sending any witnesses; we are not sending any documents; we don't have to; we don't like your processes; we have a wholesale rejection of what you are doing—that is not the way our Constitution was created. Each body has a responsibility. There is sharing of power. I, and I know you, cherish the responsibility that we have that would be eviscerated if the President's complete stonewalling is allowed to persist and be accepted by this body. You have to act now in this moment in history.

I yield back.

The CHIEF JUSTICE. Thank you.

Mrs. CAPITO. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from West Virginia.

Mrs. CAPITO. Thank you. I send a question to the desk for the President's counsel.

The CHIEF JUSTICE. Senator CAPITO's question is for counsel for the President:

You said that Ukrainian officials didn't know about the pause on aid until August 28, 2019, when it was reported in POLITICO. But didn't Laura Cooper, the deputy assistant secretary of defense for Russia, say that members of her staff received

queries about the aid from the Ukrainian Embassy on July 25? Does that mean that Ukrainian officials knew about the hold on aid earlier than the POLITICO article?

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, Senator, thank you for your question.

It does not mean that. As we explained on Saturday, the overwhelming body of evidence indicates that the Ukrainians, at the very highest levels—President Zelensky and his top advisers—only became aware of the pause in the security assistance through the August 28 POLITICO article.

I addressed this on Saturday—and so those comments will stand—the emails that Deputy Assistant Secretary of Defense Laura Cooper testified about previously. What she had said was that she—her staff—had gotten emails from someone at the State Department who had had some sort of conversation with Ukrainian officials here that somehow related to the aid at a time prior to August 28. She did not know the substance of the emails or whether they mention “hold,” “pause,” “review,” or anything of that nature. And she even said herself that she didn’t want to speculate as to what the emails meant and cannot say for certain what they were about.

I presented on Saturday the evidence, which, again, is referencing the common sense that would be in play here. This was something that on August 28 caused a flurry of activity among the highest ranking Ukrainian officials. Never before did they raise any questions at any of the meetings they had with the high-ranking U.S. officials through July and August. There were meetings on July 9, July 10, July 25 call, July 26, and August 27. At none of those meetings was the pause on aid revealed or inquired about. However, as soon as the POLITICO article came out on August 28, within hours of that POLITICO article coming out, Mr. Yermak texted the article to Ambassador Volker and asked to speak with him. That is consistent with someone finding out about it for the first time. The Ukrainians have also made statements that they learned about it for the first time.

And then Mr. Philbin just referenced an article that came out yesterday in the Daily Beast, which is an interview with Mr. Danyliuk, who was, at the time, a high-ranking defense official with the Ukrainians. This is interesting, and I am going to read this article because I think it is important, and I suggest it to the Senate if they wish to have something to consider further on this.

Danyliuk said he first found out that the U.S. was withholding aid to Ukraine by reading POLITICO’s article published Aug. 28. U.S. officials and Ukrainian diplomats, including the country’s former Foreign Minister Olena Zerkal, have said publicly that Kyiv was aware that there were problems with the U.S. aid as early as July.

That is the article that they have mentioned in the statement that the House managers have mentioned.

Here is Mr. Danyliuk:

“I was really surprised and shocked. Because just a couple of days prior to that . . . I actually had a meeting with John Bolton. Actually, I had several meetings with him. And we had extensive discussions. The last thing I expected to read was an article about military aid being frozen,” Danyliuk said. “After that . . . I was trying to get the truth. Was it true or not true?”

Danyliuk said that “it was a panic” inside the Zelensky administration after the initial news broke, saying Zelensky was convinced there had been some sort of mistake.

That is President Zelensky.

Danyliuk put in calls to the National Security Council and asked other officials in Washington what to make of the news.

Again, this is on August 28, or right after August 28.

“The next time we met in September . . . it was in Poland for the commemoration of the beginning of the Second World War”—

The Warsaw meeting we discussed previously—

Danyliuk said, adding that he met with Bolton on the sidelines of the commemoration. “I had my suspicions. There was a special situation with one of our defense companies that were acquired by the Chinese. And the U.S. was concerned about this. Bolton actually made the public comments about this as well. So somehow I linked this to things and tried to understand. OK, maybe this could be related to this.”

So not only did they not know until August 28—when they did find out—but they didn’t link it to any investigation. Where is the quid pro quo? If it is such at the forefront of their minds, such pressure on them that the Ukrainians have to do these investigations to get the aid, when the aid was held up, they didn’t think it was connected to the investigations.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Maryland.

Mr. CARDIN. Mr. Chief Justice, I have a question on behalf of Senator BALDWIN and myself, and I send it to the desk.

The CHIEF JUSTICE. The question is addressed to the House managers:

Is the White House correct in its trial memorandum and in presentations of its case that “President Zelensky and other senior Ukrainian officials did not even know that the security assistance had been paused” before seeing press reports on August 28, 2019, which was more than a month after the July 25 phone call between Presidents Zelensky and Trump?

Mr. Manager CROW. Thank you, Chief Justice and Senators, for the question.

The answer is no. The evidence does not show that. We know that Defense Department official Laura Cooper testified that her staff received 2 emails from the State Department on July 25 revealing that the Ukrainian Embassy was “asking about security assistance,” and, in fact, counsel for the President brought up these emails just now. I would propose that the Senate subpoena those emails and we can all see for ourselves what exactly was happening. [Slide 563]

We also know that career diplomat Catherine Croft stated that she was “very surprised at the effectiveness of my Ukrainian counterparts’ diplomatic tradecraft, as in to say they found out very early on, or much earlier than I expected them to,” and that Lieutenant Colonel Alex Vindman testified that by mid-August he was getting questions from Ukrainians about the status of security assistance.

So the evidence shows over and over again from the House inquiry that there was a lot of discussion, and there should be because we also know that delays matter. They matter a lot. You don’t have to take my word for it. This is not just about a 48-day

delay. Ukrainians were consistently asking about it because it was urgent. They needed it. They needed it.

You know who else was asking for it—American businesses. The contractors who were going to be providing this were also making inquiries about it because there is a pipeline.

As my esteemed Senate Armed Services colleagues know very well, providing aid is not like turning on and off a light switch. You have to hire employees. You have to get equipment. You have to ship it. It takes a long time for that pipeline to go. In fact, we had to come together as a Congress to pass a law to extend that timeline because we were at risk of losing it. And to this day, \$18 million of that aid has still not been spent.

Let's just assume for a minute, also broadly speaking, that the President's counsels' argument that support for Ukraine has never been better than it is today, that under the Trump administration, they are the strongest ally Ukraine has seen in years. Just assuming for a minute that argument to be true, it kind of makes our own argument. It kind of makes our argument: Then why hold the aid? Why hold the aid? Because nothing had changed in 2016; nothing had changed in 2017; and nothing had changed in 2018. One thing had changed in 2019, and that was Vice President Biden was running for President.

Lastly, the previous question by my Senate Armed Services colleagues framed this in terms of the military impact. They asked: What was greater in terms of military impact, not providing lethal aid or a 48-day delay?

Let's not forget the reason for the delay, because there is a lot of discussion today about the technicalities of the delay and that the President's mentality, his mindset, doesn't matter. It doesn't matter what he intended to do. I would posit that is exactly why we are here—that it does matter what the President intended to do because in matters of national security, the American people deserve to go to bed every night knowing that the President, the Commander in Chief, the person who is ultimately responsible for the safety and security of our Nation every night, has the best interests of them and their families and this country in mind, not the best interests of his political campaign. That is why we are here.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Ms. COLLINS. Mr. Chief Justice.

The CHIEF JUSTICE. Senator.

Ms. COLLINS. I send a question to the desk on behalf of myself and Senator MURKOWSKI.

The CHIEF JUSTICE. Thank you.

The question is to counsel for the President:

Witnesses testified before the House that President Trump consistently expressed the view that Ukraine was a corrupt country. Before Vice President Biden formally entered the 2020 presidential race in April 2019, did President Trump ever mention Joe or Hunter Biden in connection with corruption in Ukraine to former Ukrainian President Poroshenko or other Ukrainian officials, President Trump's cabinet members or top aides, or others? If so, what did the President say to whom and when?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

Of course, I think it is important at the outset to frame the answer by bearing in mind I am limited to what is in the record, and

what is in the record is determined by what the House of Representatives sought. It was their proceeding. They were the ones who ran it. They were the ones who called the witnesses. Part of the question refers to conversations between President Trump and other Cabinet members and others like that. There is not something in the record on that. It wasn't thoroughly pursued in the record, so I can't point to something in the record that shows President Trump, at an earlier time, mentioning specifically something related to Joe or Hunter Biden.

It is in the record that he spoke to President Poroshenko twice about corruption in Ukraine, both in June of 2017 and again in September of 2017. But there is other information publicly available and in the record that I think is important for understanding the timeline and understanding why it was that the information related to the Bidens and the Burisma affair came up when it did.

One important piece of information to bear in mind is that from the tapes we have seen, President Poroshenko was the person who Joe Biden himself went to have the prosecutor fired. So as long as President Poroshenko was still in charge in Ukraine, he was the person who Joe Biden had spoken to get the prosecutor, Shokin, fired when, according to public reports, Shokin was looking into Burisma. As long as he was still the President in Ukraine, it questioned the utility of raising an incident in which he was the one who was taking the direction from Vice President Biden to fire the prosecutor.

When you have an election in April of 2019 and you have a new President—President Zelensky—who has run on an anti-corruption platform, and there is a question “Is he really going to change things; is there going to be something new in Ukraine?” it opens up an opportunity to really start looking at anti-corruption issues and raising questions.

The other thing to understand in the timeline is that we have heard a lot about Rudy Giuliani, the President's private lawyer, and what was he interested in in Ukraine and what was his role? Well, as we know—it has been made public—Mr. Giuliani, the President's private lawyer, had been asking a lot of questions in Ukraine dating back to the fall of 2018, and in November 2018, he said publicly he was given some tips about things to look into.

He gave a dossier to the State Department in March of this year. Remember, Vice President Biden announced his candidacy in April—April 25. In March, Rudy Giuliani gave documents to the State Department, including interview notes from interviews he conducted both with Shokin and with Yuriy Lutsenko, who was also a prosecutor in Ukraine. Those interview notes are from January 23 and January 25, 2019—so months before Vice President Biden announced any candidacy—and it goes through in these interview notes, Shokin explaining that he was removed at the request of Mr. Joseph Biden, the Vice President. It explains that he had been investigating Burisma and that Hunter was on the board, and it raises all of the questions about that.

So it was Mr. Giuliani who had been, as Jane Raskin as counsel for the President explained the other day—Mr. Giuliani as counsel for the President is looking into what went on in Ukraine: Is there anything related to 2016? Are there other things related there?

And he is given this information—tips about this—and starts pursuing that as well. He is digging into that in January of 2019.

We know that Mr. Giuliani is the President's private counsel. I can't represent specific conversations they had. They would be privileged. But we do know from testimony that the President said in a May 23 Oval Office meeting with respect to Ukraine: Talk to Rudy. Rudy knows about Ukraine. It seems from that that the President gets information from Mr. Giuliani.

Months before Vice President Biden announced his candidacy, Mr. Giuliani is looking into this issue, interviewing people, and getting information about it.

In addition, in March of 2019, articles began to be published. Then three articles were published by ABC, by the New Yorker, and by the Washington Post before the July 25 call.

On July 22, 3 days before the call, the Washington Post has an article specifically about the Bidens and Burisma. That is what makes it suddenly current, relevant, probably to be in someone's mind.

That is the timeline.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Counsel PHILBIN. Thank you, Senator.

Ms. HARRIS. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from California.

Ms. HARRIS. Thank you. I send a question to the desk on behalf of Senator PATTY MURRAY and myself.

The CHIEF JUSTICE. Senators HARRIS and MURRAY ask the House managers:

The House of Representatives is now in possession of a tape of President Trump saying of Ambassador Maria Yovanovitch, "Get rid of her! Get her out tomorrow. I don't care. Get her out tomorrow. Take her out. Okay? Do it." President Trump gave this order to Lev Parnas and Igor Fruman, two men who carried out Trump's pressure campaign in Ukraine at the direction of Rudy Giuliani. Does the discovery of this tape suggest that if the Senate does not pursue all relevant evidence—including witnesses and documents—that new evidence will continue to come to light after the Senate renders a verdict?

Mr. Manager SCHIFF. The answer is yes.

What we have seen, really, over the last several weeks, since the passage of the articles in the House of Representatives, is that every week—indeed, sometimes every day—there is new information coming to light.

We know there is going to be new information coming to light on March 17, when the Bolton book comes out; that is, if the NSC isn't successful in redacting it or preventing much of its publication.

On that issue, I do want to mention one other thing in response to the question about the Bolton manuscript and what the White House lawyers knew. I listened very carefully to the answer to that question, and maybe you listened more carefully than I did. What I thought I heard them say in answer to the question "What did they know about the manuscript and when did they know it?"—their statement was very precisely worded: The NSC unit reviewing the book did not share the manuscript.

Well, that is a different question than whether the White House lawyers found out what is in it, because you don't have to circulate the manuscript to have someone walk over to the White House and say: You do not want John Bolton to testify. Let me tell you, you

do not want John Bolton to testify. You don't need to read his manuscript because I can tell you what is in it.

The denial was a very carefully worded one. I don't know what White House lawyers knew and when they knew it, but they did represent to you repeatedly that the President never told a witness that he was freezing the aid to get Ukraine to do these investigations.

We know that is not true. We know that from the witnesses we have already heard from, but we also know—at least if the reporting is correct, and you should find out if it is—that John Bolton tells a very different story.

There are going to continue to be revelations, and Members of this body on both sides of the aisle are going to have to answer a question each time it does: Why didn't you want to know that when it would have helped inform your decision?

In every other trial in the land, you call witnesses to find out what you can. Again, we are not a court of appeals here. We are the trial court. We are not confined to the record below. There is no "below." Counsel says in answer to the Senator's question about whether Donald Trump ever brought up the Hunter Biden problem with President Poroshenko in the past, counsel says: Well, we are confined to the record before us.

You are not confined to the record in the House, nor is the President. The President could call witnesses if they existed. There is nothing to prevent them from saying: As a matter of fact, tomorrow we are going to call such and such, and they are going to testify that, indeed, Donald Trump brought up Hunter Biden to President Poroshenko. There is nothing prohibiting them from doing that.

At the end of the day, we are going to continue to see new evidence come out all the time. Among the most significant evidence, we know what that is going to be. And the effort to suggest, well, because this President was stronger in Javelins than his predecessor—when we know from the July 25 call, the moment that Zelensky brings up the Javelins, what is the very next thing the President says? He wants a favor.

The question is, Why did he stop the aid? Why did he stop the aid this year and no prior year? Was it merely a coincidence? Are we to believe it was merely a coincidence that it was the year that Joe Biden was running for President? Are we to believe that, of all the companies in all the land—of all the gin joints in all the land—of Ukraine, that it was just Hunter Biden walking into this one; that was the reason why; that he was interested in Burisma was just a coincidence that involved the son of his opponent?

But, look, more and more is coming out. Let's make sure that you learn whatever you feel you need to know to render a judgment now, when it can inform your decision, and not later.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Nebraska.

Mrs. FISCHER. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senator CRAPO, and Senator RISCH.

The CHIEF JUSTICE. The Senators ask counsel for the President:

The President's counsel has underscored the Administration's ongoing anticorruption focus with our allies. At what point did the United States Govern-

ment develop concerns about Burisma in relation to corruption and concerns with Russia?

Mr. Counsel PHILBIN. Mr. Chief Justice, I thank the Senators for that question. I think it bears on the answer that I was last giving to the last question.

This is something that became—of course, President Trump, in his conversation with President Zelensky in the July 25 call, as the transcript shows us, brought up a couple of things. He brought up burden-sharing specifically, and he raised the issue of corruption in two specifics: the specific case of potential Ukraine interference in the 2016 election, which he had heard about and asked about, and the incident involving the firing of a prosecutor who, according to public reports, had been looking into Burisma, the company that the Vice President's son was on the board of. That was the President's way of pinpointing specific issues related to corruption.

So when did it become a part of the President's concern, those issues related to corruption in Ukraine? Of course, we have the evidence that everyone in the government—and Fiona Hill testified to this—thought that anti-corruption was a major issue for U.S. policy with respect to Ukraine. When there was a new President elected in April, President Zelensky, that brought the possibility of reform to the forefront.

Then we know that the President was receiving information from his private attorney, Rudy Giuliani, and he spoke in the Oval Office of, Rudy knows about Ukraine. You guys go talk to him.

He was explaining to the delegation that had just returned from the inauguration for the President, for President Zelensky, that he had concerns about Ukraine because they are all corrupt. He kept saying: It is a corrupt country. I don't know. They tried to get me in the election.

So it draws again on, there is his specific experience with Ukrainian corruption because he knew from the public reports, as in the POLITICO article that has been referenced many times. The POLITICO article in January of 2017 explained a laundry list of Ukrainian Government officials who had been out there attempting to assist the Hillary Clinton campaign and spread misinformation or bad information or assist in digging up dirt on members of the Trump campaign.

Mr. Giuliani had been investigating things related to Ukraine in 2016 and was led to the information about the Burisma situation and Vice President Biden having the prosecutor fired. So that was in January that he had these interviews he turned over to the State Department in March.

Then there were a series, also, of public articles published. John Solomon, in *The Hill*, published an article in March. Rudy Giuliani tweeted about it in March. There was an ABC story in June. There was a two-part *New Yorker* story about the Bidens and Burisma in July. Then, on July 22, the *Washington Post* had an article and explained specifically on just July 22—this is 3 days before the July 25 call—the *Washington Post* reported that Mr. Shokin, the prosecutor, believed “his ouster was because of his interest in the company,” referring to Burisma, and he said that “had he remained in his post, he would have questioned Hunter Biden.”

So I think it is a reasonable inference that, as there were these articles being published in close proximity to the time, this was information that was available to the President, and it became available to him as something that was a specific example of potentially serious corruption. And remember, everyone who testified, who was asked about it—does it seem like there is an appearance of a conflict of interest? Does it seem like that is fishy? Everyone testified: Well, yes, there is at least an appearance of a conflict of interest there.

I think it was after the information had come to Mr. Giuliani—long before Vice President Biden had announced his candidacy—that it came to the attention of the President and became something worth raising. Again, President Poroshenko is the one who fired the prosecutor. While he is still the President, there is not really as much of an opportunity or a possibility of raising that. So I think it was in that timeframe, along that arc of the timing, that it came to the President's attention, and that is why it was raised in that timing.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Connecticut.

Mr. BLUMENTHAL. Mr. Chief Justice, I have a question for the counsel for the President.

The CHIEF JUSTICE. Senator BLUMENTHAL asks:

Did anyone in the White House, or outside the White House, tell anyone in the White House Counsel's Office that publication of the Bolton book would be politically problematic for the President?

Mr. Counsel PHILBIN. Mr. Chief Justice, I thank the Senator for the question.

No, no one from inside the White House or outside the White House told us that the publication of the book would be problematic for the President. I think we assumed that Mr. Bolton was disgruntled, and we didn't expect he was going to be saying a lot of nice things about the President, but no one told us anything like that.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Texas.

Mr. CRUZ. I send a question to the desk on behalf of myself and Senators MORAN and HAWLEY. It is a question for the House managers.

The CHIEF JUSTICE. The question from the Senators to the House managers:

An August 26, 2019, letter from the Intelligence Community Inspector General to the Director of National Intelligence discussing the so-called whistleblower stated that the Inspector General "identified some indicia of an arguable political bias on the part of the Complainant in favor of a rival political candidate." Multiple media outlets reported that this likely referred to the whistleblower's work with Joe Biden.

Did the so-called whistleblower work at any point for or with Joe Biden? If so, did he work for or with Joe Biden on issues involving Ukraine, and did he assist in any material way with the quid pro quo in which then-Vice President Biden has admitted to conditioning loan guarantees to Ukraine on the firing of the prosecutor investigating Burisma?

Mr. Manager SCHIFF. Mr. Chief Justice, I thank the Senators for the question, and I want to be very careful in how I answer it

so as not to disclose or give an indication that may allow others to identify the identity of the whistleblower.

First, I want to talk about why we are making such an effort to protect the identity of the whistleblower.

If you could put up slide 48, [Slide 564] this slide shows—it may be difficult for some of you to read, so let me try to—actually, if you could hand me a copy of that as well. I haven't had a chance to distribute that to everyone.

It is not just that we view the protection of whistleblowers as important. Members of this body have also made strong statements about just how important it is to protect whistleblowers. Senator GRASSLEY said: "This person appears to have followed the whistleblower protection laws and ought to be heard out and protected. We should always work to respect whistleblowers' requests for confidentiality."

Senator ROMNEY: "Whistleblowers should be entitled to confidentiality and privacy because they play a vital function in our democracy."

Senator BURR: "We protect whistleblowers. We protect witnesses in our committee."

Even my colleague, the ranking member, Mr. NUNES: "We want people to come forward, and we will protect the identity of those people at all cost."

This has been a bipartisan priority and one that we have done our best to maintain, so I want to be very careful, but let me be clear about several things about the whistleblower.

First of all, I don't know who the whistleblower is. I haven't met them or communicated with them in any way. The committee staff did not write the complaint or coach the whistleblower what to put in the complaint. The committee staff did not see the complaint before it was submitted to the inspector general. The committee, including its staff, did not receive the complaint until the night before the Acting Director of National Intelligence—we had an open hearing with the Acting Director on September 26, more than 3 weeks after the legal deadline by which the committee should have received the complaint.

In short, the conspiracy theory, which I think was outlined earlier, that the whistleblower colluded with the Intel Committee staff to hatch an impeachment inquiry is a complete and total fiction. This was, I think, confirmed by the remarkable accuracy of the whistleblower complaint, which has been corroborated by the evidence we subsequently gathered in all material respects.

So I am not going to go into anything that could reveal or lead to the revelation of the identity of the whistleblower, but I can tell you, because my staff's names have been brought into this proceeding, that my staff acted at all times with the most complete professionalism.

I am very protective of my staff, as I know you are, and I am grateful that we have such bright, hard-working people working around the clock to protect this country and who have served our committee so well. It really grieves me to see them smeared. Some of them mentioned here today have concerns about their safety, and there are online threats to members of my staff as a result of some of the smears that have been launched against them.

I can tell you there is no one who could understand the plight of Ambassador Yovanovitch more than some of my staff who have been treated to the same kind of smears and now have concerns over their own safety. They acted at all times with the utmost propriety and integrity.

Your Senate Intelligence Committee—and your chairman and vice chairman can tell you—encourage whistleblowers to come to their committee, and so do we. When they do, we try to figure out, is their complaint within the scope of jurisdiction of the intelligence community? And if it is, then we suggest they get a lawyer or we suggest they talk to the inspector general, which is what happened here. The whistleblower did exactly what they should—except, for the President, that is unforgivable because the whistleblower exposed the wrongdoing of the President. In the President's view, that makes him or her a traitor or a spy, and, as the President tells us, there is a way we used to treat traitors and spies.

You wonder why we don't want to call the whistleblower. First of all, we know firsthand what the whistleblower wrote secondhand in that complaint. There is no need for that whistleblower anymore, except to further endanger that person's life. That, to me, does not seem a worthwhile object for anyone in this Chamber or on the other side of this building, in the Oval Office, or anywhere else.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. Chief Justice, on my own behalf and on behalf of Senators BLUMENTHAL, BOOKER, COONS, KLOBUCHAR, LEAHY, MARKEY, PETERS, and UDALL, I send a question to the desk.

The CHIEF JUSTICE. The question is from Senator WHITEHOUSE and other Senators to the House managers:

The “missing-witness rule”—which dates back to 1893 Supreme Court case *Graves v. United States*—allows one party to obtain an adverse inference against the other for failure to produce a witness under that party's control with material information. Here, one party, the President, has prevented witnesses within his control from testifying or providing documents. Do the House managers believe Senators should apply the missing witness rule here, and if so, what adverse inferences should we draw about the missing testimony and documents?

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, we do believe that you should draw an adverse inference against the party resisting the testimony of these witnesses, like John Bolton. Courts have long recognized that when a party has relevant evidence within his control, which he fails to produce, that failure gives rise to an inference that that evidence is unfavorable to him.

Courts have frequently drawn adverse inferences where a party acts in bad faith to conceal evidence or preclude witnesses from offering testimony.

I would suggest that it is bad faith when counsel comes before you and says that if you really wanted these witnesses, you should have sued to get them in the House and goes into the courtroom down the street and says: You can't sue to get witnesses before the House.

But that is what has happened here. And you are, I think, not only permitted but absolutely should draw an adverse inference that when a party is making that argument on both sides of the

courthouse, that the evidence those witnesses would provide runs against them.

Now, the administration hasn't produced a single document, not one single document. That is extraordinary. They can argue executive privilege and absolute immunity. Most of that has nothing to do with the overwhelming majority of these documents, not a whit. There is no absolute immunity from providing documents. The vast, vast majority don't have anything to do with privilege, and, if they did, there would be redactions, very specific redactions. None of that happened.

Are you allowed to draw an adverse inference that the reason why the President's team, which has possession of those emails regarding inquiries by Ukraine into why the aid was frozen—are you allowed to draw an inference—if they won't show you those emails. Those emails would confirm that Ukraine knew the aid was withheld, just like the former Deputy Foreign Minister of Ukraine said publicly when she told the New York Times: Yes, we knew; by the end of July, we knew—this is the Deputy Foreign Minister at the time—we knew the aid was frozen, but I was instructed by Andriy Yermak not to mention it. I had a trip planned to Washington to talk to Congress, and I was told not to go. Why? Because they didn't want it public.

Are you entitled to draw an inference that those records they refused to turn over—all the State Department records; the fact that they won't allow John Bolton's notes to be turned over; they won't let Ambassador Taylor's notes to be turned over—should you draw an adverse inference? You are darned right you should.

They say: Well, the President only told Sondland “no quid pro quo.” They leave out the other half where Sondland told Taylor: But he said, no quid pro quo, but you have to go to the mike and announce these investigations.

Well, Ambassador Taylor wrote down the notes of that conversation. That took place right after that call with the President. Are you allowed to draw an adverse inference from the fact that they don't want you to see Ambassador Taylor's notes, from the fact they don't want you to see Ambassador Taylor's cable? You are darned right you should draw an adverse inference.

Finally, with respect to who has become a central witness here, I think the adverse inference screams at you as to why they don't want John Bolton. But you shouldn't rely on an inference here, not when you have a witness who is willing to come forward. There is no need for inference here. It is just a need for a subpoena.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. THUNE. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from South Dakota.

Mr. THUNE. I have a question to send to the desk.

The CHIEF JUSTICE. Senator THUNE's question is for counsel for the President:

Would you please respond to the arguments or assertions the House Managers just made in response to the previous questions?

Mr. Counsel PHILBIN. Mr. Chief Justice.

Thank you, Senator, for the question.

I haven't read recently the case that was cited about the missing witness rule. So I can't say specifically what is in it, but I am will-

ing to bet that the missing witness rule does not apply when there has been a valid assertion of a privilege or other immunity for keeping the witness out of court. For example, if they tried to subpoena the defendant's lawyer and the defendant said, "Wait, I have attorney-client privilege; you can't subpoena him," they are not going to be able to get an adverse inference from that.

That is critical because, as I have gone through multiple times—and you know, we keep going back and forth on this—they keep representing that there was a blanket defiance and there was no explanation and there was no legal basis for what the President was doing. And it is just not true. There were letters back and forth. I put them up on the screen. There were specific immunities asserted. There were specific legal deficiencies in the subpoenas that were sent.

This is important because if you are going to impeach the President of the United States, turning square corners and proceeding by the law matters. For the House managers to come here and say it was blanket defiance, it was unprecedented, you have to draw an adverse inference against them because they didn't respond to any of our document subpoenas—all the document subpoenas were issued without authorization. Maybe they disagree with us, but they can't just say we provided no rationale and you have to draw an adverse inference. There is a specific legal rationale provided.

They didn't try to engage in the accommodation process, and they didn't try to go to court. And now, yes, it is true that our position is that when they go to the court, article III courts don't have jurisdiction over that. Their position is, article III courts do have jurisdiction over that.

They believe that they can get a court order to require us to comply with a valid subpoena, but they never tried to establish in court that their subpoenas were valid. We have an assertion of a legal deficiency on one side. They think it is different. They don't want to go to court to get it resolved.

We have the assertion of absolute immunity from congressional compulsion for senior advisers to the President. It has been asserted by virtually every President since Nixon. They try to say: Oh, it is preposterous. It is irrelevant. We don't have to worry about that.

Every President since Nixon, virtually, has asserted that. It has only been addressed by two district courts—trial-level courts. The first one rejected it, and its decision was stayed by the appellate court, which means the appellate court thought probably you got it wrong or, at a minimum, it is a really difficult question; we are not sure about that. And the second district court decision is being litigated right now. They are litigating it. And when Charlie Kupperman went to court, they were trying to do something reasonable to say: Oh, well, we don't want to litigate this with you; you should just agree to be bound by the McGahn decision. What is the saying? Every litigant gets his day in court. Why shouldn't Charlie Kupperman get to have his counsel argue that issue on his behalf? That is what he wanted. He didn't want to say: I am going to trust it to the other people litigating the other case. I've got my case. I want to make the arguments.

But they wouldn't have that. So they mooted out the case. They withdrew the subpoena to moot out the case because they didn't want to go to the hearing in front of Judge Leon on December 10.

They have also pointed out, as if it is some outrage, that documents have been more readily produced under FOIA than in response to their subpoenas. But what that actually shows is that when you turn square corners and follow the law and make a request to the administration that follows the law, the administration follows the law and responds. And that is right. The documents were produced. Information came out. But they didn't get it because they issued invalid subpoenas, and they didn't try to do anything to establish the validity of their subpoenas.

If you are going to be sloppy and issue invalid subpoenas, you are not going to get a response. But if some private litigant follows FOIA and submits a FOIA request, they get a response.

To act like the Trump administration has done some blanket denial of everything simply isn't accurate, and there is no basis for any adverse inference because there is a specific privilege or basis for every reason not to produce something.

The CHIEF JUSTICE. Thank you, counsel.

Ms. HASSAN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from New Hampshire.

Ms. HASSAN. Thank you, Mr. Chief Justice.

I send a question to the desk for the House managers.

The CHIEF JUSTICE. Senator HASSAN's question is for the House managers:

Did acting Chief of Staff Mick Mulvaney waive executive privilege in his October 17 press conference in which he stated that there was "political influence" in the Trump administration's decision to withhold aid to Ukraine?

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, I thank you for that question.

Mick Mulvaney has absolutely waived executive privilege. He has never asserted executive privilege. In fact, as President's counsel has acknowledged, they have not asserted executive privilege once. President's counsel has said, when we made that point during our opening arguments, that that was technically true. No, it is true. It is not an alternate fact; it is a fact. You have never asserted executive privilege in connection with Mick Mulvaney's testimony or anyone else. It was not asserted as it relates to any of the 17 witnesses who testified, 12 of whom testified publicly.

The other phony arguments that have been articulated, respectfully, are that the House needed to vote in order for the subpoenas to be valid. There is nothing in the Constitution that required the full House to vote, nothing in Supreme Court precedent, nothing under Federal law, nothing under the House rules. It was a phony argument. Yet the House, after the initial stages of the investigation, did fully vote and fully voted on October 31.

Interestingly enough, Mick Mulvaney was subpoenaed thereafter—not before, thereafter—after the House had voted, subpoenaed on November 7. Here it is. The next day, the White House responded. They responded with a two-page letter dated November 8. There is no mention of executive privilege in the November 8 letter, but here is what it does say: "The Department of Justice (the 'Department') has advised me that Mr. Mulvaney is absolutely im-

mune from compelled congressional testimony with respect to matters related to his service as a senior adviser to the President.”

What is interesting about this letter from Mr. Cipollone is that it doesn’t cite a single legal case for that outrageous proposition—a single legal case for the proposition that Mick Mulvaney is absolutely immune. Why? Because there is no law to support it. The President tried to cheat, he got caught, and then he worked hard to cover it up.

The Senate can get to the truth. You can get to the truth by calling witnesses who can testify. Any privilege issues can be worked out by the Chief Justice of the Supreme Court. The American people deserve a fair trial. The President deserves a fair trial. The Constitution deserves a fair trial. That includes Mulvaney. That includes Bolton. That includes other relevant witnesses.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Alaska.

Ms. MURKOWSKI. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator YOUNG and Senator CRAPO. The question is to be directed to both parties.

The CHIEF JUSTICE. Thank you.

The question directed to counsel for the President and the House managers:

The Constitution does not specify the standard of proof to be used in trials of impeachment, and the Senate has not adopted a uniform standard by rule, thus, the standard of proof is arguably a question for each individual Senator. In the Clinton trial and now with President Trump, it appears that Republicans and Democrats apply different standards depending on whether the President is a member of their party. What standard of proof should be used in trials of impeachment—preponderance of the evidence, clear and convincing, beyond a reasonable doubt—and why?

I think it is the turn of the House managers to go first.

Ms. Manager LOFGREN. Mr. Chief Justice, Senators, there is no court case on this. The House needs strong evidence, but it has never been decided beyond a reasonable doubt, as the President’s counsel has suggested, and, as the question notes, the Constitution does not specify either the House’s evidentiary burden of proof or the Senate’s.

I would note that the House Judiciary Committee held itself to a clear and convincing standard of proof in the Nixon matter, which requires that the evidence of wrongdoing must be substantially more probable to be true than not and that the trier of fact must have a firm belief in its factuality. In the Clinton case, the House did not commit to any particular burden of proof. And I would recommend against including an express standard; instead, like in Clinton’s, simply finding the facts and any inferences from those facts without legal technicalities.

It has been opined that, in the end, it is up to each Senator to make a judgment, and I think there is much truth to that. Your oath holds you to a finding of impartial justice, and I trust that each and every one of you is holding that oath very dear to your heart and will find the facts and lead to a just result for our country, the Constitution, and for a future that hopefully is as free as our past has been.

I yield back.

The CHIEF JUSTICE. Thank you.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I think that the Constitution makes it clear in the terms that it speaks of impeachment, all are related to the criminal law. It speaks of an offense. It speaks of conviction. It speaks of a trial in saying that crimes shall be tried by a jury except in the case of impeachment.

In both that and the gravity of a Presidential impeachment, which is an issue of breathtaking importance for the country and could cause tremendous disruption to our government, both counsel are in favor of traditional criminal standard of proof beyond a reasonable doubt.

In the Clinton impeachment, Senators—both Republicans and Democrats—repeatedly advocated in favor of that standard.

Senator Russ Feingold then said:

In making a decision of this magnitude, it is best not to err at all. If we must err, however, we should err on the side . . . of respecting the will of the people.

Similarly, Senator Barbara Mikulski said:

The U.S. Senate must not make the decision to remove a President based on a hunch that the charges may be true. The strength of our Constitution and the strength of our Nation dictate that the Senate be sure beyond a reasonable doubt.

The preponderance standard is wholly insufficient. That means just 50.1 percent. You think it is a little more likely than not. That is not sufficient to remove the President. Even clear and convincing evidence is not. It has to be beyond a reasonable doubt. As Senator Rockefeller explained at the time of the Clinton impeachment, that means “it is proven to a moral certainty the case is clear.” That is the standard the Senators should apply because the gravity of the issue before you would not permit applying any lesser standard.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. BOOKER. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from New Jersey.

Mr. BOOKER. Thank you, sir.

Mr. Chief Justice, I send a question to the desk to be asked of the House manager.

The CHIEF JUSTICE. Senator BOOKER’s question is for the House manager:

Even if a communication or a document is covered by executive privilege, that privilege can be overcome by showing the evidence is important and unavailable elsewhere. On January 22, while this trial was underway, President Trump said, “I thought our team did a very good job. But honestly, we have all the material. They don’t have the material.” Can you comment on whether executive privilege allows a President to conceal information from Congress, particularly if the evidence cannot be obtained elsewhere?

Mr. Manager JEFFRIES. Thank you, Mr. Chief Justice, and I thank the distinguished Senator from New Jersey for his question.

President Trump alone has the power to assert executive privilege. As counsel admitted on Saturday, the President had not formally invoked it over any document requested in this impeachment inquiry. This has not been asserted as it relates to any single document. Executive privilege gives President Trump a qualified form of confidentiality when he does get advice from his aides in order to carry out the duties of his office.

As I know you are all aware, it is often the case in congressional investigations that a President will claim executive privilege over a very small subset of materials. In that case, what the executive branch usually does and should do is to produce everything that it can and then provide a log of documents in dispute or permit a private review of the documents that have been contested.

That is not what has occurred in this case because the President has ordered the entire executive branch to defy our constitutionally inspired impeachment inquiry. Blanket defiance is what has taken place, and there is no right to do that.

Every court that has considered the matter has asserted that the President cannot assert a privilege to protect his own misconduct, to protect wrongdoing, to protect evidence that the Constitution may have been violated. The President cannot do it.

In an impeachment inquiry, the congressional need for information and its constitutional authority, of course, are at their greatest. It is imperative to investigate serious allegations of misconduct that might constitute high crimes and misdemeanors, and that is what is before you right now.

Let's look at what the Supreme Court has said in circumstances that are closest to what we face today—in *U.S. v. Nixon*—in the context of a grand jury subpoena. The Supreme Court found that President Nixon's generalized assertion of privilege must yield to the demonstrated need for evidence in the pending trial, and the Federal court here in DC has recognized that Congress's need for information and for documents during an impeachment inquiry is particularly compelling.

Turning to the facts of this matter briefly, any argument that every single document requested by Congress is subject to privilege or some form of absolute immunity is absurd. There are calendar invitations, scheduling emails, photographs, correspondence with outside parties like Rudolph Giuliani. These are all important pieces of evidence for you to consider and are not the types of materials subject to any reasonable claim of executive privilege.

If you want a fair trial, it should involve documents. Given the nature of these proceedings, documents like Ambassador Bolton's notes and Lieutenant Colonel Vindman's Presidential decision memo should also be provided to you so you can seek the truth, the whole truth, and nothing but the truth.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Louisiana.

Mr. KENNEDY. Senator MORAN, my colleague from Kansas, and I send a question to the desk for counsel for the President.

The CHIEF JUSTICE. Thank you.

The question is for counsel for the President:

What did Hunter Biden do for the money that Burisma Holdings paid him?

Ms. Counsel BONDI. Thank you for the question.

Mr. Chief Justice, Senators, as far as we know, Hunter Biden has said he "attended a couple of board meetings a year." Here is what we do know: Hunter Biden did attend one board meeting in Monaco. Now, we also heard that when Zlochevsky—the owner of Burisma—fled the Ukraine, he was living in Monaco. So Hunter Biden did attend a board meeting in Monaco. We also know that

Hunter Biden went to Norway on a fishing trip, and he took his daughter and his nephew. So he took two of Joe Biden's children with him on a fishing trip to Norway with Zlochevsky. That is as much as we know, other than his statement that he attended one or two board meetings.

Factually, that is what he said, and the timeline shows that. Again, Devon Archer was on the board with him, and then Hunter Biden remained on the board. Factually, in the record, that is as much as we know that he did involving Burisma and Zlochevsky.

The Norway trip was in June of 2015. He remained on the board until April of 2019. We also know that, prior to then, a Ukrainian court in September of 2016 canceled Zlochevsky's arrest warrant. We also know, on December 15, Vice President Biden called President Poroshenko. Then, in mid-January 2017, Burisma announced all legal proceedings against the company and Zlochevsky had been closed.

The CHIEF JUSTICE. The Democratic leader is recognized.

Mr. SCHUMER. Mr. Chief Justice, I send a question to the desk for both the counsel for the President and the House managers.

The CHIEF JUSTICE. Senator SCHUMER's question reads as follows:

The House Managers say the President demands absolute immunity. The President's counsel disputes this. Can either of you name a single witness or document to which the President has given access to the House when requested?

I believe it is time for counsel for the President to go first.

Mr. Counsel PHILBIN. Mr. Chief Justice, I thank you and Minority Leader SCHUMER for the question.

Let me try to be clear and distinguish a couple of things.

The House managers have said there was blanket defiance. That is the way they characterized it—that we are not going to give you anything and that that is all we said. It was just a blanket defiance. We are not going to respond.

What I have tried to explain several times is that that was not the President's response. There were specifically articulated responses to different requests based on different legal rationales because there were different problems with different subpoenas.

One problem is that all of the subpoenas up until October 31 were not validly authorized. So those subpoenas we said we were not going to respond to because they were not validly issued. It was not an assertion of executive privilege. It was not an assertion of absolute immunity. It wasn't anything else. It was the fact that they were not validly authorized.

They pointed out that, aha, we subpoenaed—I think they mentioned—Acting Chief of Staff Mulvaney after October 31. That is true, but we didn't rely on the fact that the subpoena was not authorized. We pointed out the doctrine of the absolute immunity of senior advisers to the President. This is not some blanket absolute immunity for the entire executive branch. It doesn't apply to all of the subpoenas they issued. As we explained in our brief, it applies to three. There were three people they subpoenaed as witnesses that, on this basis alone, the President declined to make available—Acting Chief of Staff Mulvaney, Legal Advisor to the National Security Council John Eisenberg, and Deputy National Security Adviser Mr. Kupperman, I believe, but it is in our brief. It was

those three who had immunity—a doctrine asserted by every President since Nixon.

Then there was a different problem with some of the subpoenas. As to some of the other witnesses who were not senior advisers to the President, the President did not assert that they had absolute immunity. Instead, those subpoenas refused to allow those executive branch personnel to have executive branch counsel accompany them. There is an OLC opinion that has been published—it is online and cited in our trial memorandum—stating it is unconstitutional to refuse to allow executive branch personnel to have the assistance of executive branch counsel to protect privileged information during questioning, and, therefore, it is not valid to force them to appear without that counsel.

The CHIEF JUSTICE. Thank you, Counsel.

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, you know, we have received nothing as part of our impeachment inquiry.

It is worth pointing out that the House committees that subpoenaed before the House vote had standing authority under the House rules, and they were the Oversight Committee, which has the standard authority to investigate any matter at any time, as does the Foreign Affairs Committee. It has the authority, under the rules of the House, adopted January 11, to issue subpoenas. They did, and they were defied.

The idea of absolute immunity has never been upheld by any court, and it is really incomprehensible to think that somehow this concept of absolute immunity has lurked in hiding, for centuries, for Presidents to use it in this day. When you think of the two cases—the Miers case and the McGahn case—the courts completely rejected the idea of absolute immunity.

On the slide, [Slides 565 and 566] there was a decision recently made in the McGahn case, and here is what it reads: “Stated simply, the primary takeaway from the past 250 years of recorded American history is that Presidents are not Kings . . .” Those are the judge’s words, not mine. “[C]ompulsory appearance by dint of a subpoena is a legal construct, not a political one, and per the Constitution, no one is above the law.”

The President is not permitted by the Constitution or by the law to assert any kind of absolute immunity. That does not exist in America, and as the judges pointed out, that would be something that a King would assert. I am not saying that, but I will say this. It is something our Founders set up our checks and balances to prevent. Nobody has absolute power in our system of government—not the Senate and House, not the President, not the judiciary. This is unprecedented and just wrong as a matter of law and as a matter of the Constitution.

Thank you.

The CHIEF JUSTICE. Thank you.

The Senator from Georgia.

Mr. PERDUE. Thank you, Mr. Chief Justice.

I send a question to the desk for both the counsel to the President and the House managers on behalf of Senator CRUZ and myself.

The CHIEF JUSTICE. The question, on behalf of Senators CRUZ and PERDUE, reads as follows:

You refused to answer the question on political bias. Are the House Managers refusing to tell the Senate whether or not the so-called whistleblower had an actual conflict of interest? There are 7 billion people on planet earth; almost all had no involvement in Biden's quid pro quo. Are the House Managers unwilling to say whether the so-called whistleblower was a FACT WITNESS who directly participated in (and could face criminal or civil liability for) Joe Biden's demanding Ukraine fire the prosecutor who was investigating Burisma? And why did you refuse to transmit to the Senate the Inspector General's transcript?

It is addressed to both sides. I think, perhaps, the House managers should go first.

Mr. Manager SCHIFF. With respect to the ICIG, the President and his allies have tried to shift the focus to the inspector general of the intelligence community—a highly respected veteran of the Justice Department—in his handling of the whistleblower's complaint. There was an effort to insinuate wrongdoing on the part of the whistleblower, and there has been an effort to insinuate wrongdoing on behalf of the inspector general.

The briefings that we had with the ICIG related to the unusual and problematic handling of this particular whistleblower's complaint within the executive branch, which diverts sharply from any prior whistleblower's complaint by anyone within the intelligence community. The Intelligence Committee is continuing its ongoing oversight to determine why and how this complaint was initially concealed from the committee in violation of the law.

ICIG Michael Atkinson continues to serve admirably and independently as he is supposed to do.

Like the Senate Intelligence Committee, the House Intelligence Committee does not release the transcripts of its engagements with inspectors general on sensitive matters because doing so risks undercutting an important mechanism for the committee to conduct oversight. The transcripts remain properly classified, in conformity with IC requirements, to protect sensitive information. The ICIG made every effort to protect the whistleblower's identity and briefed us with the expectation that it would not be made public, and we are trying to honor that expectation.

With respect to allegations of bias on the part of the whistleblower, let me just refer you to the conclusion of the inspector general which is, after examining the whistleblower, the whistleblower's background, any potential allegations of any bias, the whistleblower drew two conclusions: The whistleblower was credible. Meaning, given whatever issue—perceived or real—the inspector general found that whistleblower to be credible. The inspector general also found that the whistleblower's complaint was urgent and that it needed to be provided to Congress. The inspector general further found that it was withheld from Congress in violation of the law, in violation of the statute. For that, he is being attacked.

Now, counsel for the President rely on an opinion of the Office of Legal Counsel as its justification for violating the Whistleblower Protection Act and not transmitting the complaint to Congress.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice and Members of the Senate.

Page 5 of the inspector general's report states: "Although the inspector general's preliminary review identified some indicia of an arguable political bias on the part of the Complainant—" now, that is in the actual statement. He goes on to say "[involving] a rival political candidate, such evidence does not change his view about the credible nature of the concern," or what appears to be credible; but to argue that it does not include an issue of political bias, the inspector general himself says that that is, in fact—at least he said the preliminary reviews indicate some political bias.

Now, there have been reports in the media that the individual may have worked for Joe Biden when he was Vice President, that he may have had some area under his watch involving Ukraine.

I also thought it was interesting that Manager SCHIFF just talked about the importance of how they control the process as it relates to a whistleblower's reports because of the sensitive nature of those. Do we not think that the sensitive nature of information shared by the President's most senior advisers should not be subject to the same type of protections? Of course, it has to be.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from West Virginia.

Mr. MANCHIN. Mr. Chief Justice, I send a question to the desk for both the President's counsel and the House managers.

The CHIEF JUSTICE. The question from Senator MANCHIN reads as follows:

The Framers took the words "high crimes and misdemeanors" straight out of English law, where it had been applied to impeachments for 400 years before our Constitution was written. The Framers were well aware when they chose those words that Parliament had impeached officials for "high crimes and misdemeanors" that were not indictable as crimes. The House has repeatedly impeached, and the Senate has convicted, officers for "high crimes and misdemeanors" that were not indictable crimes. Even Mr. Dershowitz said in 1998 that an impeachable offense "certainly doesn't have to be a crime." What has happened in the past 22 years to change the original intent of the Framers and the historic meaning of the term "high crimes and misdemeanors?"

It is counsel for the President's turn.

Mr. Counsel DERSHOWITZ. Mr. Chief Justice, Senators, what happened since 1998 is that I studied more, did more research, read more documents, and like any academic, altered my views. That is what happens. That is what professors ought to do, and I keep reading more, and I keep writing more, and I keep refining my views.

In 1998 the issue before this Senate was not whether a crime was required; it was whether the crime that Clinton was charged with was a high crime. When this impeachment began, the issue was whether a crime was required.

Actually, 2 years earlier, in a book and then an op-ed, I concluded—not on partisan grounds—on completely academic grounds that you could not impeach for abuse of power and that technical crime was not required but criminal-like behavior was required. I stand by that view.

The Framers rejected maladministration. That was the prime criteria for impeachment under British law. Remember, too, the British never impeached Prime Ministers. They only impeached middle-level and low-level people.

So the Framers didn't want to adopt the British approach. They rejected it by rejecting maladministration. And what is a metaphor or what is a synonym for maladministration? Abuse of power. And when they rejected maladministration, they rejected abuse of power.

Mr. Congressman SCHIFF asked a rhetorical question: Can a President engage in abuse of power with impunity? In my tradition we answer questions with questions, and so I would throw the question back: Can a President engage in maladministration with impunity?

That is a question you might have asked James Madison had you been at the Constitutional Convention. And he would say: No. A President can engage in that with impunity, but it is not an impeachable crime. Maladministration is not impeachable, and abuse of power is not impeachable.

The issue is not whether a crime is required. The issue is whether abuse of power is a permissible constitutional criteria, and the answer from the history is clearly, unequivocally no. If that had ever been put to the Framers, they would have rejected it with the same certainty they rejected maladministration.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager NADLER. Mr. Chief Justice, Members of the Senate, it was always understood that the prime purpose of impeachment was to deal with abuse of power.

The first draft at the Constitutional Convention said "treason or bribery." That was rejected because it wasn't inclusive enough.

Somebody put—Mason proposed maladministration. Found too vague—so they said "high Crimes and Misdemeanors." That was a well-understood term in English law. It was a well-understood term in the Warren Hastings impeachment going on in England right then, and it meant, primarily, abuse of power. That is the main meaning of high crimes and misdemeanors.

Charles Pinckney said those "who behave amiss or betray their public trust"; Edmund Randolph, "misbehaves"; I quoted Justice Story the other day. Every impeachment in American history has been for abuse of power in one form or another.

The idea that you have to have a crime—bribery is right there in the Constitution: "Treason, Bribery or other . . . crimes." Bribery was not made a statutory crime until 1837. So there couldn't have been impeachment?

The fact of the matter is that crimes and impeachment are two different things. Impeachments are not punishments for crimes. Impeachments are protections of the Republic against a President who would abuse his power, who would aggrandize power, who would threaten liberty, who would threaten the separation of powers, who would threaten the powers of the Congress, who would try to arrogate power to himself.

That is why punishment upon conviction for impeachment only goes to removal from office. You can't put him in jail, as you could for a crime. You can't fine him, as you could for a crime.

They are two different things. An impeachable offense need not be a crime, and a crime need not be an impeachable offense—two completely different tests understood that way throughout Amer-

ican history and by all scholars—all scholars—in our history except for Mr. Dershowitz.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from North Carolina.

Mr. BURR. Mr. Chief Justice, I send a question to the desk for counsel to the President.

The CHIEF JUSTICE. Senator BURR asks:

We have seen the House managers repeatedly play video clips of Acting Chief of Staff Mick Mulvaney's press conference, in which they claim he said there was a quid pro quo. How do you respond to the House managers' allegation that Mr. Mulvaney supported their claims in his press conference?

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, Senator, thanks for the question.

We respond as Mr. Philbin did earlier today with that, which is Mr. Mulvaney has issued two statements—one after his press conference and then one Monday after the New York Times article concerning Mr. Bolton's alleged manuscript—alleged statements in his manuscript.

So I think the easiest thing is just to read them to understand what he said and to put it into context for everyone in the Chamber.

This is from—this is the day of the press conference.

Once again, the media has decided to misconstrue my comments to advance a biased and political witch hunt against President Trump. Let me be clear, there was absolutely no quid pro quo between Ukrainian military aid and any investigation into the 2016 election. The president never told me to withhold any money until the Ukrainians did anything related to the server. The only reasons we were holding the money was because of concern about lack of support from other nations and concerns over corruption. Multiple times during the more-than 30 minute briefing where I took over 25 questions, I referred to President Trump's interest in rooting out corruption in Ukraine, and ensuring taxpayer dollars are spent responsibly and appropriately. There was never any connection between the funds and the Ukrainians doing anything with the server—this was made explicitly obvious by the fact that the aid money was delivered without any action on the part of the Ukrainians regarding the server.

There was never any condition on the flow of the aid related to the matter of the DNC server.

Then, on January 27, which was Monday, there was a statement from Bob Driscoll, who is Mr. Mulvaney's attorney. Now I will read it in its full.

The latest story from the New York Times, coordinated with a book launch, has more to do with publicity than the truth. John Bolton never informed Mick Mulvaney of any concerns surrounding Bolton's purported August conversation with the President. Nor did Mr. Mulvaney ever have a conversation with the President or anyone else indicating that Ukrainian military aid was withheld in exchange for a Ukrainian investigation of Burisma, the Bidens, or the 2016 election. Furthermore, Mr. Mulvaney has no recollection of any conversation with Mr. Giuliani resembling that reportedly described in Mr. Bolton's manuscript, as it was Mr. Mulvaney's practice to excuse himself from conversations between the President and his personal counsel to preserve any attorney-client privilege.

So I wanted to read those statements in full so that everyone had the full context.

Even after Mr. Philbin referenced the statement after the press conference, the House managers again came back and said Mr. Mulvaney indicated or admitted there was a quid pro quo. That is not true.

If Mr. Mulvaney misspoke or if the words were garbled, he corrected it that day and has been very clear.

Thank you. Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Maryland.

Mr. VAN HOLLEN. Mr. Chief Justice, I send a question to the desk to the President's counsel and the House managers.

The CHIEF JUSTICE. Senator VAN HOLLEN's question is to both parties and the House managers will go first:

What did National Security Advisor John Bolton mean when he referenced "whatever drug deal Sondland and Mulvaney are cooking up on this" and did he ever raise that issue in any meeting with President Trump?

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, when John Bolton—and this is according to Dr. Hill's testimony—brought up the drug deal, it was in the context of a July 10 meeting at the White House. There were two meetings that day. There was a meeting that Ambassador Bolton was present for, and then there was a follow-on meeting after Ambassador Bolton abruptly ended the first meeting.

In the first meeting, the Ukrainians naturally wanted to raise the topic of getting the White House meeting that President Zelensky so desperately wanted.

And after raising the issue, at some point Ambassador Sondland said: No, no, we have got a deal. They will get the meeting once they announce the investigations.

And this is the point where Ambassador Bolton stiffened. You can look up Dr. Hill's exact words. I am paraphrasing here. But this is the point where Ambassador Bolton stiffens and he ends the meeting.

Hill then goes, follows Sondland and the delegation into another part of the White House where the meeting continues between the American delegation and Ukrainian delegation, and there it is even more explicit, because in that second meeting, Sondland brings up the Bidens specifically.

Hill then goes to talk to Bolton and informs him what has taken place in the following meeting, and Bolton's response is: Go talk to the lawyers, and let them know I don't want to be part of this drug deal that Sondland and Mulvaney have got cooking up.

So at that point, that specific conversation is a reference to the quid pro quo over the White House meeting. And we know, of course, from other documents, the testimony about the quid pro quo, about the White House meeting, and all the efforts by Giuliani to make sure that the specific investigations aren't mentioned in order to make this happen.

But don't take my word for it. We can bring in John Bolton and ask him exactly what he was referring to when he described the drug deal.

Now, did Bolton describe and discuss this drug deal with the President? Well, it certainly appears from what we know about this manuscript that they did talk about the freeze on aid.

And whether John Bolton understood and at what point he understood that the drug deal was even bigger and more pernicious than he thought, that it involved not just a meeting but involved the military aid, there is one way to find out.

And I would add this in terms of Mr. Mulvaney—

The CHIEF JUSTICE. Thank you, Mr. SCHIFF.

Mr. Manager SCHIFF. Maybe I will add it later.

Mr. HOEVEN. Mr. Chief Justice.

The CHIEF JUSTICE. The President's counsel has 2½ minutes.

Mr. Counsel PHILBIN. Thank you, Mr. Chief Justice. Thank you, Senator, for the question.

The question asks about what Ambassador Bolton meant in a comment that is purported hearsay by someone else saying what he supposedly said. But what we know is that there are conflicting accounts of the July 10 meeting at the White House.

Dr. Hill says that she heard Ambassador Sondland say one thing. He denies that he said that. Dr. Hill says she went and talked to Ambassador Bolton, and Bolton said something to her about what was said in the meeting where he wasn't there, and he was saying something about it, calling it a drug deal.

And what he meant by that—I am not going to speculate about it. It is a hearsay report of something he said about a meeting that he wasn't in, characterized in some way, and I am not going to speculate about what he meant by that.

The CHIEF JUSTICE. Thank you.

The Senator from North Dakota.

Mr. HOEVEN. Thank you, Mr. Chief Justice. I have a question for myself and also for Senator PORTMAN and Senator BOOZMAN. It is for the President's counsel, and I am sending it to the desk.

The CHIEF JUSTICE. The question from the Senators is as follows:

In September of 2019, the security assistance aid was released to Ukraine. Yet, the House managers continue to argue that President Trump conditioned the aid on an investigation of the Bidens. Did the Ukrainian President or his government ultimately meet any of the alleged requirements in order to receive the aid?

Mr. Counsel PURPURA. Mr. Chief Justice.

Thanks, Senator, for the question. The very short answer is no. I think that is fair. I think we demonstrated in our presentation on Friday and Monday that the aid was released. The aid flowed. There was a meeting at the U.N. General Assembly. There was a meeting previously scheduled in Warsaw, precisely as President Zelensky suggested, and there was never any announcement of any investigations undertaken regarding the Bidens, Burisma, the 2016 election, no statements made, and no investigations announced or begun by the Ukrainian Government.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Virginia.

Mr. WARNER. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Senator WARNER's question is:

Do you know about additional information related to Russia disseminating President Trump's or Rudolph Giuliani's conspiracy theories? Should the Senate have this information before we deliberate on the Articles of Impeachment?

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, I think there are three categories of relevant material here.

The first, you do have access to, and that is the supplemental testimony of Jennifer Williams, and I would encourage you all to read it. I think it sheds light very specifically on the Vice President

and what he may or may not know vis-a-vis this scheme. So I would encourage you to read that submission.

There was a second body of intelligence that the committees have been provided that is relevant to this trial that you should also read, and we should figure out the mechanism that would permit you to do so because it is directly relevant to the issues we are discussing and pertinent.

There is a third category of intelligence, too, which raises a very different problem, and that is that the intelligence communities are for the first time refusing to provide to the Intelligence Committee. That material has been gathered. We know that it exists. But the NSA has been advised not to provide it.

Now the Director says that this is the Director's decision, but nevertheless there is a body of intelligence that is relevant to the requests that we have made that is not being provided. That raises a very different concern than the one before this body, and that is, are now other agencies like the intelligence community that we require to speak truth to power, that we require to provide us with the best intelligence, now also withholding information at the urging of the administration? That is, I think, a deeply concerning and new phenomenon. That is a problem that we had previously with other Departments that have been part of the wholesale obstruction, but now it is rearing its ugly head with respect to the IC.

But the shorter answer to the question of, apart from Jennifer Williams, are there other relevant materials? The answer is yes, and I would encourage that you and we work together to find out how you might access them.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The majority leader.

Mr. McCONNELL. Mr. Chief Justice, the next two questions—one from each side—would be the last before we break for dinner. I would ask that following the next two questions, the Senate stand in recess for 45 minutes.

The CHIEF JUSTICE. Thank you.

The Senator from Alabama.

Mr. SHELBY. I send a question to the desk.

The CHIEF JUSTICE. Thank you.

Senator SHELBY's question is directed to counsel for the President:

How does the noncriminal "abuse of power" standard advanced by the House Managers differ from "maladministration"—an impeachment standard rejected by the Framers? Where is the line between such an "abuse of power" and a policy disagreement?

Mr. Counsel DERSHOWITZ. Mr. Chief Justice, I will address this.

Senators, thank you very much for that question because that question I think hits the key to the issue that is before you today.

When the Founders rejected maladministration—and recall that it was introduced by Mason and rejected by Madison on the ground that it would turn our new Republic into a parliamentary democracy where a Prime Minister—in this case, a President—can be removed at the pleasure of the legislature.

Remember, too, that in Britain, impeachment was not used against the Prime Minister, and all you needed was a vote of no confidence; it was used against lower level people.

So maladministration was introduced by Mason, and Madison said no, it was just too vague and too general.

What is maladministration? If you look it up in the dictionary and you look up synonyms, the synonyms include abuse, corruption, misrule, dishonesty, misuse of office, and misbehavior.

Even Professor Nikolas Bowie, a Harvard professor who was in favor of impeachment, so this is an admission against interest by him—he is in favor of impeachment—he says abuse of power is the same as misconduct in office, and he says that his research leads him to conclude that a crime is required.

By the way, the Congressman was just completely wrong when he said I am the only scholar who supports this position. In the 19th century, which was closer in time to when the Framers wrote, Dean White of Columbia Law School wrote that “the weight of authority”—by which he meant the weight of scholarly authority and the weight of judicial authority—this was in 1867—“the weight of authority is in favor of requiring a crime.” Justice Curtis came to the same conclusion. Others have come to a similar conclusion.

You ask what happened between 1998 and the current time to change my mind. What happened between the 19th century and 20th century to change the minds of so many scholars? Let me tell you what happened. What happened is that the current President was impeached.

If, in fact, President Obama or President Hillary Clinton would have been impeached, the weight of current scholarship would clearly be in favor of my position because these scholars do not pass the “shoe on the other foot” test. These scholars are influenced by their own bias, by their own politics, and their views should be taken with that in mind. They simply do not give objective assessments of the constitutional history.

Professor Tribe suddenly had a revelation himself. At the time Clinton was impeached, he said: Oh, the law is clear. You cannot—you cannot—charge a President with a crime while he is a sitting President.

Now we have our current President. Professor Tribe got woke, and with no apparent new research, he came to the conclusion: Oh, but this President can be charged while sitting in office.

That is not the kind of scholarship that should influence your decision.

You can make your own decisions. Go back and read the debates, and you will see that I am right that the Framers rejected vague, open-ended criteria—abuse of power.

And what we had was the manager making a fundamental mistake again. She gave reasons why we have impeachment. Yes, we feared abuse of power. Yes, we feared criteria like maladministration. That was part of the reason. We feared incapacity. But none of those made it into the criteria because the Framers had to strike a balance. Here are the reasons we need impeachment, yes. Now, here are the reasons we fear giving Congress too much power. So we strike a balance. How did they strike it? Treason, a serious crime; bribery, a serious crime; or other high crimes and mis-

demeanors—crimes and misdemeanors akin to treason and bribery. That is what the Framers intended. They didn't intend to give Congress a license to decide whom to impeach and whom not to impeach on partisan grounds.

I read you a list of 40 American Presidents who have been accused of abuse of power. Should every one of them have been impeached? Should every one of them have been removed from office? It is too vague a term.

Reject my argument about crime. Reject it if you choose to. Do not reject my argument that abuse of power would destroy—destroy—the impeachment criteria of the Constitution and turn it, in the words of one of the Senators at the Johnson trial, to make every President, every Member of the Senate, every Member of Congress, be able to define it from within their own bosom.

We heard from the other side that every Senator should decide whether you need proof beyond a reasonable doubt or proof by a preponderance. Now we hear that every Senator should decide on abuse of power.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Counsel DERSHOWITZ. Thank you, Mr. Chief Justice.

The Senator from Maryland.

Mr. CARDIN. Mr. Chief Justice, I have a question on behalf of Senator MARKEY and myself, and I send it to the desk.

The CHIEF JUSTICE. Thank you.

The question is as follows:

Supreme Court Justice Byron White, in a concurring opinion in *Nixon v. United States* (1993), acknowledged that the Senate “has very wide discretion in specifying impeachment trial procedures,” but stated that the Senate “would abuse its discretion” if it were to “insist on a procedure that could not be deemed a trial by reasonable judges.” If the Senate does not allow for additional evidence and the testimony of key witnesses with firsthand knowledge of President Trump’s actions and intentions, would a “reasonable judge” conclude these proceedings constitute a constitutionally fair trial?

Mr. Manager SCHIFF. I think the answer is yes. I don't know that we need to look to the words of a prior Justice to tell us that a trial without witnesses is not really a trial. It is certainly not a fair trial. If the House moves forward with impeachment and it comes before the Senate and wants to call witnesses and wants to make its case and is told “Thou shalt not call witnesses,” that is not a fair trial.

I think the American people understand that without reading the case law. They go to jury duty themselves every year, and they see that the first thing that takes place after a jury is sworn in is the government makes its opening statement, the defense makes theirs, and then begins the calling of witnesses.

I do want to take this opportunity to respond to Professor Dershowitz’s arguments while they are fresh. You can say a lot of things about Alan Dershowitz, but you cannot say he is unprepared. He is not unprepared today. He was not unprepared 21 years ago. And to believe that he would not have read 21 years ago what Mason had to say or Madison had to say or Hamilton had to say—I am sorry, I don't buy that. I think 21 years ago he understood that maladministration was rejected but so was a provision that confined the impeachable offenses to treason and bribery alone was rejected.

I think the Alan Dershowitz from 21 years ago understood that, yes, while you can't impeach for a policy difference, you can impeach a President for abuse of power. That is what he said 21 years ago. Nothing has changed since then.

I don't think you can write off the consensus of constitutional opinion by saying they are all Never Trumpers. All the constitutional law professors—in fact, let's play a snippet from Professor Turley, who was in the House defending the President, and see what he had to say recently.

(Text of Videotape presentation:)

Professor TURLEY. Abuse of power, in my view, is clear. You can impeach a President for abuse of power and you can impeach a President for noncriminal conduct.

Mr. Manager SCHIFF. We can't argue plausibly that his position is owing to some political bias, right? Just a few weeks ago, he was in the House arguing a case for my GOP colleagues that the President shouldn't be impeached.

Now, he did say: Well, if you can actually prove these things, if you can prove—as, indeed, we have—that the President abused his power by conditioning military aid to help his reelection campaign, yes, that is an abuse of power. You can impeach with that kind of abuse of power, and that is exactly what we have here.

We are not required to leave our common sense at the door. If we are to interpret the Constitution now as saying that a President can abuse their power—and I think the professor suggested before the break that he can abuse his power in a corrupt way to help his reelection and you can't do anything about it—you can't do anything about it because if he views it as in his personal interest, that is just fine. He is allowed to do it.

None of the Founders would have accepted that kind of reasoning. In fact, the idea that the core offense that the Founders protected against—that core offense is abuse of power—is beyond the reach of Congress through impeachment would have terrified the Founders. I mean, you can imagine any number of abuses of power—a President who withholds aid from another country at war as a thank you for that adversary allowing him to build a Trump Tower in a country. OK, that may not be criminal, but are we really going to say that we are going to have to permit a President of the United States to withhold military aid as a thank you for a business proposition?

Now, counsel acknowledges that a crime is not necessary but something akin to a crime. Well, we think there is a crime here of bribery or extortion—conditioning official acts for personal favors. That is bribery. It is also what the Founders understood as extortion. And you cannot argue—even if you argue, well, under the modern definition of bribery, you have got to show such and such—you cannot plausibly argue that it is not akin to bribery. It is bribery. But it is certainly akin to bribery.

That is the import of what they would argue—that, no, the President has a constitutional right. Under article II, he can do anything he wants. He can abuse his office and do so sacrificing national security, undermining the integrity of the elections, and there is nothing Congress can do about it.

The CHIEF JUSTICE. Thank you, Mr. Manager.

RECESS

The CHIEF JUSTICE. We are in recess.

There being no objection, at 6:32 p.m., the Senate, sitting as a Court of Impeachment, recessed until 7:25 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senate will come to order.

Ms. MCSALLY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Arizona.

Ms. MCSALLY. I send a question to the desk on behalf of myself and Senators SCOTT of Florida, HAWLEY, and HOEVEN.

The CHIEF JUSTICE. Thank you.

The question is for counsel for the President from Senator MCSALLY, Senator SCOTT from Florida, Senator HAWLEY, and Senator HOEVEN:

Chairman SCHIFF just argued that “we think there’s a crime here of bribery or extortion,” or “something akin to bribery.” Do the articles of impeachment charge the President with bribery, extortion, or anything akin to it? Do they allege facts sufficient to prove either crime? If not, are the House Managers’ discussion of crimes they neither alleged nor proved appropriate in this proceeding?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

No, the Articles of Impeachment do not charge the crime of bribery, extortion, or any other crime. And that is a critical point because, as the Supreme Court has explained, “No principle of procedural due process is more clearly established than that of notice of the specific charge, and a chance to be heard in a trial of the issues raised by that charge . . . are among the constitutional rights of every accused.” That was the Supreme Court in *Cole v. Arkansas*.

The Court has also explained that for over 130 years, a court cannot permit—it has been the rule that “a court cannot permit the defendant to be tried on charges that are not made in the indictment against him.” That is the rule in criminal law, and it is also the case for impeachments.

It is the House’s responsibility to make an accusation and a specific accusation in Articles of Impeachment. The House had the opportunity to do that, and they did that. The charges that they put in the articles were abuse of power on a vague standard that they made up and obstruction of Congress. They put some discussion about other things in a House Judiciary Committee report, but they did not put that in the Articles of Impeachment.

And if this were a criminal trial in an ordinary court and Mr. SCHIFF had done what he just did on the floor here and start talking about crimes of bribery and extortion that were not in the indictment, it would have been an automatic mistrial. We would all be done now, and we could go home. Mr. SCHIFF knows that because he is a former prosecutor.

It is not permissible for the House to come here, failing to have charged—failing to have put in Articles of Impeachment any crime at all, and then to start arguing that, actually, oh, we think there is some crime involved, and, actually, we think we actually proved it, even though we provided no notice we were going to try to prove that.

It is totally impermissible. It is a fundamental violation of due process.

Scholars have pointed out those rules apply equally in cases of impeachment. Charles Black and Philip Bobbitt explained in their work “Impeachment: A Handbook” that is regarded as one of the authorities—collecting sources of authority on impeachments:

The senator’s role is solely one of acting on the accusations (Articles of Impeachment) voted by the House of Representatives. The Senate cannot lawfully find the president guilty of something not charged by the House, any more than a trial jury can find the defendant guilty of something not charged in the indictment.

So what Manager SCHIFF just attempted here was totally improper. It would have resulted in a mistrial in any court in this country. There is nothing that has been introduced in the facts that would satisfy the elements of the crime of extortion or bribery either.

To attempt—after making their opening, after not charging anything in the articles that is a crime, after not specifying any crime, after providing no notice that they are going to attempt to argue a crime—in the question-and-answer session, to try to change the charges that they have made against the President of the United States and to say that actually there is bribery and extortion is totally unacceptable. It is not permissible, and this body should not consider those arguments. They are not permissible bounds for argument. They are not included in the Articles of Impeachment, and they should be ignored.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from New Mexico.

Mr. UDALL. Thank you for the recognition, Mr. Chief Justice. Mr. Chief Justice, I have sent a question to the desk. I am joined in this question by Senators BLUMENTHAL, LEAHY, and WHITEHOUSE.

The CHIEF JUSTICE. Thank you. The question from Senator UDALL, joined by Senators BLUMENTHAL, LEAHY, and WHITEHOUSE, to the House managers:

The President’s Counsel has argued that Hunter Biden’s involvement with Burisma created a conflict of interest for his father Joe Biden. President Trump, the Trump organization, and his family, including those who serve in the White House, maintain significant business interests in foreign countries and benefit from foreign payments and investments. By the standard the President’s counsel has applied to Hunter Biden, should Mr. Kushner and Ms. Trump’s conflicts of interest with foreign governments also come under investigation?

Mrs. Manager DEMINGS. Mr. Chief Justice, and to the Senators, thank you so much for that question. Let me just preface what I am about to say with this statement: This has been a tough few days. It has been a trying time for each of us and for our Nation.

But I just want to say this in response to the question that has been posed. I stand before you as the mother of three sons. I am sure that many of you in this Chamber have children—sons and daughters—and grandchildren that you think the world of. My children’s last name is Demings. So, when they go out to get a job, I wonder if there are people who associate my sons with their mother and their father.

I just believe, as we go through this very tough, very difficult debate about whether to impeach and remove the President of the United States, that we stay focused. The last few days we have

seen many distractions. Many things have been said to take our minds off of the truth, off of why we are really here.

In my former line of work, I used to call it working with smoke and mirrors, anything that will take your attention off of what is painfully obvious, what is there in plain view.

The reason why we are here has nothing to do with anybody's children, as we have talked about. The reason why we are here is because the President of the United States, the 45th President, used the power of his office to try to shake down—I will use that term because I am familiar with it—a foreign power to interfere into this year's election. In other words, the President of the United States tried to cheat and then tried to get this foreign power, this newly elected President, to spread a false narrative that we know is untrue about interference in our election.

That is why we are here. And it really would help, I believe, the situation if the Attorney General, perhaps—the Department of Justice has been pretty silent—would issue a ruling or an opinion about any person of authority, especially the President of the United States, using or abusing that authority to invite other powers into interfering in our election.

So, Mr. Chief Justice, I will just close my remarks as I began them. Let us stay focused. This doesn't have anything to do with the President's children or the Bidens' children. This is about the President's wrongdoing.

Thank you.

The CHIEF JUSTICE. Thank you.

The Senator from Idaho.

Mr. CRAPO. Mr. Chief Justice, on behalf of myself and Senators RISCH, CRUZ, GRAHAM, BRAUN, MORAN, and BOOZMAN, I send a question to the desk for the counsel for the President.

The CHIEF JUSTICE. The question from Senator CRAPO and the other Senators for the counsel for the President:

Does the evidence in the record show that an investigation into the Burisma-Biden matter is in the national interest of the United States and its efforts to stop corruption?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question. And the straightforward answer is, yes, the evidence does show that it would be in the interest of the United States. In fact, the evidence on that point is abundant.

Here is what we know: Hunter Biden was appointed to the board of an energy company in Ukraine without any apparent experience that would qualify him for that position. He was appointed shortly after his father, the Vice President, became the Obama administration's point man for policy on Ukraine.

We know that his appointment raised several red flags at the time. Chris Heinz, the stepson of the then-Secretary of State, severed his business relationship with Hunter citing Hunter's lack of judgment in joining the board of that company, Burisma, because Burisma was owned by an oligarch who was repeatedly under investigation for corruption, for money laundering, and other offenses.

Contemporaneous press reports speculated that Hunter's role with Burisma might undermine U.S. efforts led by his father then,

at that time, to promote the U.S. anticorruption message in Ukraine.

The Washington Post said: "The appointment of the Vice President's son to a Ukrainian oil board looks nepotistic at best, nefarious at worst."

There were other articles. There was one that reported: "The credibility of the United States was not helped by the news that . . . Hunter had been on the board of the directors of Burisma."

There was another article saying: "Sadly, the credibility of Mr. Biden's message may be undermined by the association of his son with a Ukrainian natural-gas company, Burisma Holdings, which is owned by a former government official suspected of corrupt practices."

And it went on: Reports from the Wall Street Journal said that activists here—that is, in the Ukraine—say that the U.S.'s anti-corruption message is being undermined as his son receives money from a former Ukrainian official who is being investigated for graft.

At the same time, within the Obama administration, officials raised questions. The Special Envoy for Energy Policy, Amos Hochstein, raised the matter with the Vice President. Similarly, Deputy Assistant Secretary of State Kent testified that he, too, voiced concerns with Vice President Biden's office.

Everyone who was asked in the proceedings before the House of Representatives agreed that there was at least an appearance of a conflict of interest when Mr. Biden's son was appointed to the board of this company. That included Ambassador Yovanovitch, Deputy Assistant Secretary Kent, Lieutenant Colonel Vindman, Jennifer Williams, Ambassador Sondland, Dr. Fiona Hill, and Ambassador Taylor. They all agreed there was an appearance of a conflict of interest.

Even in the transcript of the July 25 telephone call, President Zelensky himself acknowledged the connection between the Biden and Burisma incident, the firing of the prosecutor who reportedly had been looking into Burisma, when Vice President Biden openly acknowledged he leveraged a billion dollars in U.S. loan guarantees to make sure that that particular prosecutor was fired. He openly acknowledged it was an explicit quid pro quo: You don't get a billion dollars in loan guarantees unless and until that prosecutor is fired. My plane is leaving in 6 hours, he said on the tape.

And when the President, President Trump, raised this in the July 25 call, President Zelensky recognized that this related to corruption, and he said: "The issue of the investigation of the case"—and he's referring to the case of Burisma—"is actually the issue of making sure to restore the honesty, so we will take care of that . . ." And he later said in an interview that he recognized that President Trump had been saying to him things are corrupt in Ukraine, and he was trying to explain, no, we are going to change that; there is not going to be corruption.

So that explicit exchange in the July 25 call shows that President Zelensky recognized that that Biden-Burisma incident had an impact on corruption and anti-corruption. And so it was definitely undermining the U.S. message on anti-corruption, and it was a perfectly legitimate issue for the President to raise with President Zelensky to make clear that the United States did not condone any-

thing that would seem to interfere with legitimate investigations and to enforce the proper anti-corruption message.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Illinois.

Mr. DURBIN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you. Senator DURBIN's question is directed to the House managers:

Would you please respond to the answer that was just given by the President's counsel?

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senators, the President sought Ukraine's help in investigating the Bidens only after reports suggested Vice President Biden might enter the 2020 Presidential race and would seriously challenge President Trump in the polls. President Trump had no interest in Biden's Obama-era Ukraine work in 2017 or 2018 when Biden was not running against him for President.

None of the 17 witnesses in the impeachment inquiry provided any credible evidence—no credible evidence—to support the allegation that former Vice President Biden acted inappropriately in any way in Ukraine. Instead, witnesses testified that the former Vice President was carrying out official U.S. policy in coordination with the international community when he advocated for the ouster of a corrupt Ukrainian official.

In short, the allegations are simply unfounded. President Trump's own handpicked special envoy to Ukraine, Ambassador Kurt Volker, knew they were unfounded too. He testified that he confronted the President's attorney, Mr. Giuliani, about these conspiracy theories and told him that [Slide 567] "it is simply not credible to me that Joe Biden would be influenced in his duties as Vice President by money or things for his son or anything like that. I've known him a long time. He's a person of integrity, and that is not credible."

Giuliani acknowledged that he did not find one of the sources of these allegations, a former Ukrainian prosecutor, to be held credible. So even Giuliani knew the allegations were false.

Our own Justice Department confirmed that the President never spoke to the Attorney General about Ukraine or any investigation into Vice President Biden. If President Trump genuinely believed that there was a legitimate basis to request Ukraine's assistance in law enforcement investigations, there are specific formal processes that he should have followed. Specifically, he could have asked the DOJ to make an official request for assistance through the mutual legal assistance treaty.

It is worth noting, the President only cares about Hunter Biden to the extent that he is the Vice President's son and, therefore, a means through which to smear a political opponent. But President Trump specifically mentioned Vice President Biden in asking for the removal of the former prosecutor on that July 25 call. That is what he wanted, not an investigation into Hunter Biden. This is yet another reason you know that there is no basis for investigating Vice President Biden.

Can we get slide 52 up?

The timing shows clearly that despite the fact that this conduct occurred in 2015, [Slide 568] it wasn't until Vice President Biden began consistently beating Trump in national polls in the spring of 2019 by significant margins that the President targeted Biden. He was scared of losing. The President wanted to cast a cloud over a formidable political opponent. This wasn't about any genuine concern of wrongdoing. The evidence proves that. This was solely about the President wanting to make sure that he could do whatever it took to make sure that he could win. So he froze the critical money to Ukraine to coerce Ukraine to help him attack his political opponent and secure his reelection.

The President of the United States cannot use our taxpayer dollars to pressure a foreign government to do his personal bidding. No one is above the law.

I yield back.

The CHIEF JUSTICE. The Senator from South Carolina.

Mr. SCOTT of South Carolina. Thank you, sir.

I send a question to the desk on behalf of myself, Senators CRAPO and GRAHAM, for the White House counsel.

The CHIEF JUSTICE. The question is from Senator SCOTT of South Carolina and other Senators to the White House counsel:

House managers claim that the Biden/Burisma affair has been debunked. What agency within the government or independent investigation led to the debunking?

Mr. Counsel HERSCHMANN. Mr. Chief Justice, Members of the Senate, there is no evidence in the record about any investigation, let alone debunked, shammed, discredited, or, as Manager JEFFRIES told you tonight, phony.

The House managers haven't cited any evidence in the record because none exists. A couple of days ago, I read to you a quote and statement from Vice President Biden dealing with corruption in Ukraine. What I didn't tell you was he made those statements before the Ukrainian Parliament directly.

He spoke about the historic battle of corruption. He spoke about fighting corruption, specifically in the energy sector. He spoke about no sweetheart deals. He said oligarchs and nonoligarchs must play by the same rules:

Corruption siphons away resources from the people. It blunts economic growth, and it affronts the human dignity.

Those were Vice President Biden's words. So the real question is this. Is corruption related to the energy sector in Ukraine run by a corrupt Ukrainian oligarch who is paying our Vice President's son and his son's business partner millions of dollars for no apparent legitimate reason while his father was overseeing our country's relationship with Ukraine merit any public inquiry, investigation, or interest? The answer is yes.

Simply saying it didn't happen is ridiculous. With all due respect to the House managers and citing to our children, the message to our children, especially when you oversee a corruption in trying to root it out in another country, is to make sure your children aren't benefiting from it. That is what should be happening—not to sit there and say that it is OK.

The House managers don't deny that there is a legitimate reason to do an investigation. They just say it was debunked; it is a sham; it is delegitimate; but they don't tell you when it happened.

We all remember the email that Chris Heinz sent. Keep this in mind. He is the stepson of the then-Secretary of State, John Kerry. He sends an official email to the State Department, to the chief of staff to John Kerry, and special assistant. The subject is Ukraine. There is no question when you look at that email that it is a warning shot to say: I don't know what they are doing, but we are not invested in it.

He is taking a giant step back.

Think about the words, and remember the video that we saw about Hunter Biden. What did he say? I am not going to "open my kimono"—I am not going to "open my kimono"—when he was asked how much money he was making. In one month—in one month alone—Hunter Biden and his partner made almost as much as every Senator and Congressman—just in one month alone—what you earn in a year. And you don't think that merits inquiry?

Does anyone here think, when they say it is a debunked investigation that didn't happen, that we wouldn't remember if there was testimony of Hunter Biden, Joe Biden, Secretary of State John Kerry, his stepson, their business partner, his chief of staff, and special assistant? How can you tell the American people it doesn't merit inquiry when our Vice President's son is supposedly doing this for corporate transparency in Ukraine? He is going to oversee the legal department of a Ukrainian company; he is going to help them.

And if you look at his statement that I read to you beforehand, there is another part of it from October 2019. If you want to know whether he thought it dealt with outside of Ukraine in just Burisma—he said he was "advising Burisma on its corporate reform initiatives, an important aspect of fueling Burisma's international growth and diversity."

Listen to this statement by Hunter Biden's attorney: "Vibrant energy production, particularly natural gas, was central to Ukraine's independence and to stemming the tide of Vladimir Putin's attack on the principles of a democratic Europe."

Do you think he understood, when he was getting the millions of dollars, what his father was doing? The only problem is, that statement didn't come out until October of 2019. Only when the news stories started to break, only when the House managers raised these issues, did people start to talk about it.

Tell us where we saw Joe Biden, Hunter Biden, and John Kerry testify about it. Tell us where you did it when you did your impeachment hearings. I don't remember seeing that testimony. I don't remember seeing the bank records. We put the bank records in front of you. The people are entitled to know exactly what was going on.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Oregon.

Mr. MERKLEY. Thank you, Mr. Chief Justice.

On behalf of the Senator from New Mexico, MARTIN HEINRICH, and myself, I have a question to send to the desk.

The CHIEF JUSTICE. The question from Senator MERKLEY and other Senators is for counsel to the President:

Please clarify your previous answer about the Bolton manuscript. When, exactly, did the first person on the President's defense team first learn of the allegations in the manuscript? Secondly, Mr. Bolton's lawyer publicly disputes that any information in the manuscript could reasonably be considered classified. Was the determination to block its publication on the basis that it contains classified information made solely by career officials, or were political appointees in the White House Counsel's office, or elsewhere in the White House, involved?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, to address your question specifically, the allegation that came out in the New York Times article about a conversation that is allegedly reported in the manuscript between the President and Ambassador Bolton officials, lawyers in the White House Counsel's Office learned about that allegation for the first time on Sunday afternoon when the White House was contacted by the New York Times.

In terms of the classification review, it is conducted at the NSC. The White House Counsel's Office is not involved in classification review, determining what is classified or not classified.

I can't state the specifics. My understanding is that it is conducted by career officials at the NSC, but it is handled by the NSC. I am not in a position to give you full information on that. My understanding is, it is being done by career officials. But it is not being done by lawyers in the White House Counsel's Office.

I hope that answers your question, Senator.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Alaska.

Mr. SULLIVAN. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator LANKFORD for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senators SULLIVAN and LANKFORD to the counsel for the President:

There has been conflicting testimony about how long the Senate might be tied up in obtaining additional evidence. At the beginning of this trial, the minority leader offered 11 amendments to obtain additional evidence in the form of documents and depositions from several federal agencies. If the Senate had adopted all 11 of these amendments, how long do you think this impeachment trial would take?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, it would take a long time. It would take a long time just to get through those motions.

But there have been 17 witnesses. We are talking about, now, additional witnesses that the managers have put forward and that Democratic Leader SCHUMER has discussed. He has discussed four witnesses in particular, as if this body—if it were to grant witnesses—would say: Yes, you get those four witnesses. And the White House and the President's counsel get what?

Mr. SCHUMER. Whatever you want.

Mr. Counsel SEKULOW. Whatever I want. That is what you said, Mr. SCHUMER.

Whatever I want? Here's what I want. I want ADAM SCHIFF. I want Hunter Biden. I want Joe Biden. I want the whistleblower. I want to also understand there may be additional people within the House Intelligence Committee that have had conversations

with that whistleblower—that I get anybody we want. By the way, if we get anybody we want, we will be here for a very long time.

The fact of the matter is, we are not here to argue witnesses tonight, which, obviously, is an undercurrent. But to say that this is not going to extend this proceeding—months, because understand something else: Despite the, you know, executive privilege and other nonsense, I suspect Manager SCHIFF—smart guy—he is going to say: Wait a minute, I have some speech and debate privileges that may be applicable to this.

I am not saying that they are. But they may raise it. It would be legitimate to raise it. So this is a process that we would be—this would be the first of many weeks.

I think we have to be clear. They put this forward in an aggressive and fast-paced way, and now they are saying “Now we need witnesses”—after 31 or 32 times you said you proved every aspect of your case. That is what you said.

He just said he did. Well, then, I don’t think we need any witnesses.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from New Jersey.

Mr. MENENDEZ. Mr. Chief Justice, I send a question to the desk and refer it to the House managers.

The CHIEF JUSTICE. The question is from Senator MENENDEZ to the House managers:

President Trump has maintained that he withheld U.S. security assistance to Ukraine because he was concerned about corruption. Yet, his purported concern about corruption did not prevent his Administration from sending congressionally-appropriated assistance to Ukraine more than 45 times between January 2017 and June 2019, totaling more than \$1.5 billion. So why did the President suddenly become concerned about corruption in early 2019?

Mr. Manager CROW. Mr. Chief Justice, Senator, thank you for the question.

He became concerned about corruption supposedly in early 2019 because Vice President Biden was running for election for the Presidency. That is what the overwhelming amount of the evidence shows because there is no other legitimate reason, as your question points out.

First, the publicly released records of President Trump’s April 21 and 25 calls to President Zelensky never mentioned the word “corruption” despite the fact that the talking points for these calls prepared by his own staff listed “corruption.”

Second, in May 2019, [Slide 569] the State Department certified to Congress Ukraine had “taken substantial actions for the purposes of decreasing corruption” and met the anti-corruption benchmarks this very body established when it appropriated \$250 million of those funds.

Third, by the time of the July 25 call, President Zelensky had already established his anti-corruption bona fides, having introduced a number of reform bills in Ukraine.

Fourth, on July 26, the day after his call with President Zelensky, President Trump spoke to Ambassador Sondland, who was in Ukraine. The one question the President asked Ambassador

Sondland was not about corruption but about whether or not President Zelensky was going to do the investigations.

Fifth, the released aid—as your question points out, Senator, the President released the aid in 2017 and in 2018, and he released it in 2019 only after having gotten caught. In the words of Lieutenant Colonel Vindman and other witnesses, the conditions on the ground had not changed.

So we are hearing a lot tonight about the concerns about corruption, Burisma, Russia, but the facts still matter here. We are here for one reason and one reason only: The President of the United States withheld foreign aid that he was happy to give in the 2 prior years; that suddenly, we are to believe, something changed, the conditions on the ground changed, and he had an epiphany about corruption within a week of Vice President Biden announcing his candidacy. It doesn't make any sense.

One other thing I will say with regard to the aid is, this assertion that President Trump has been the strongest supporter of Ukraine—I talked about this earlier. Let's just assume that to be the case, and if it is the case, as the President's counsel has contended over and over again, then there is, of course, no reason to withhold the aid, because nothing has changed.

This leads us inevitably to only one conclusion, and that is that the President of the United States used taxpayer dollars—the American people's money—to withhold aid from an ally at war to benefit his political campaign.

Do not be distracted by Russian propaganda, by conspiracy theories, by people asking you to look in other directions. That is what this is about. That will not change. The facts will continue to come out. Whether this body subpoenas them or not, the facts will come out. The question now is, Will they come out in time, and will you be the ones asking for them when you are going to be making the decision in a couple of days to sit in judgment?

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Wisconsin.

Mr. JOHNSON. Mr. Chief Justice, I send a question to the desk for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question is from Senator JOHNSON for the President's counsel:

If House Managers were certain it would take months to litigate a subpoena for John Bolton, why shouldn't the Senate assume lengthy litigation and make the same decision as the House made—reject a subpoena for John Bolton?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, I think that is precisely the point. And the fact is that if, in fact, we are to go down that road of a witness or witnesses that had national—in the case of Ambassador Bolton, high-ranking NSA—this is an individual that is giving the President advice at the highest level. The Supreme Court has been very consistent on that. That is where privileges are at their highest level. The presumed privilege, actually, is what the Supreme Court has said.

And in a situation like this, I think we are going down a road—if the Senate goes down this road—of a lengthy proceeding with a lot more witnesses. And then I want to ask this question and just plant it as a thought: Is that going to be the new norm for im-

peachment? You put an impeachment together in a couple of weeks. We don't like what the President did. We get it through in a 2-day proceeding in front of the Judiciary Committee. We wrap it up and we send it up here and say: Now go figure it out. Because that is what this is really becoming. That is what this actually is.

So I think, if we are looking at the institutional interests that are at stake here, this is a very dangerous precedent because what they are doing—what they are saying is basically: We have enough to prove our case—that is what Manager Schiff says—but not really, so we really need more evidence—not because we need it; because we want it. But we didn't want it bad enough when we were in the House, so we didn't get it. So now you issue the subpoena, and then let's duke it out in court and see what happens.

It sounds like, to me, that this is—they are acting like this is some municipal traffic court proceeding. I remind everybody that we are talking about—under their Articles of Impeachment, they are requesting the removal of the President of the United States. So, you know, they are already saying in the media that their ongoing investigation here—they are going to continue to investigate. So are we going to be doing this every 3 weeks, every month except in the summer? There is an election months away. The people should have a right to vote. My colleague Pat Cipollone, the White House counsel, said that.

So when I look at all of this, whether it is the late need of witnesses after you prove your case, whether privileges apply or not apply—Senator SCHUMER said: We get anybody we want—we would be here for a very, very long time, and that is not good for the United States.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Democratic leader is recognized.

Mr. SCHUMER. I have a question for the desk.

The CHIEF JUSTICE. Senator SCHUMER's question is for the House managers:

Would you please respond to the answer that was just given by the President's counsel?

Mr. Manager SCHIFF. I think we can all see what is going on here, and that is, if the House wants to call witnesses, if you want to hear from a single witness, if you want to hear what John Bolton has to say, we are going to make this endless. We, the President's lawyers, are going to make this endless. We promise you, we are going to want ADAM SCHIFF to testify. We want Joe Biden to testify. Hunter Biden. We are going to want the whistleblower. We are going to want everyone in the world. If you dare, if you have the unmitigated temerity to want witnesses in a trial, we will make you pay for it with endless delay. The Senate will never be able to go back to its business.

That is their argument.

How dare the House assume there will be witnesses in a trial? Shouldn't the House have known when they undertook its investigation that the Senate was never going to allow witnesses; that this would be the first impeachment trial in the history of the Republic with no witnesses?

So Mr. Sekulow wants me to testify. I would like Mr. Sekulow to testify about his contact with Mr. Parnas or Mr. Cipollone about the efforts to implement the President's fight on all subpoenas. I would like to ask questions about—well, I would like to ask questions of the President and put him under oath. But we are not here to indulge in fantasy or distraction; we are here to talk about people with pertinent and probative evidence.

And you know something? I trust the man behind me, sitting way up, whom I can't see right now, but I trust him to make decisions about whether a witness is material or not, whether it is appropriate to out a whistleblower or not, whether to—whether a particular passage in a document is privileged or not. It is not going to take months of litigation, although that is what the President's counsel is threatening.

They are doing the same thing to the Senate they did to the House, which is, you try to investigate the President, you try to try the President, we will tie you and your entire Chamber up in knots for weeks and months. And you know something? They will if you let them.

You don't have to let them. You can subpoena John Bolton. You can allow the Chief Justice to make a determination in camera whether something is relevant, whether it deals with Ukraine or Venezuela, whether it is privileged or it isn't, whether the privilege is being misapplied to hide criminality or wrongdoing. We don't have to go up and down the courts; we have a perfectly good Chief Justice sitting right behind me who can make these decisions in real time.

So don't be thrown off by this claim: Oh, if you even think about it, we are going to make you pay with delays like you have never seen. We are going to call witnesses that will turn this into a circus.

It shouldn't be a circus. It should be a fair trial. You can't have a fair trial without witnesses.

I think when I was asked that question before, I answered in the affirmative—in the negative. You can't have a fair trial without witnesses, and you shouldn't presume that when a House impeaches, the Senate trials from now on will be witness-free, will be evidence-free. That is not what the Founders intended. If it was, they would have made you the court of appeals. But they didn't. They made you the triers of fact. They expected you to hear from witnesses. They expected you to evaluate their credibility.

Don't take my word for it about John Bolton. Look, I am no fan of John Bolton's—although I like him a little more than I used to—but you should hear from him. You should want to. Don't take General Kelly's view for it. Make up your own mind whether you are to believe him or Mick Mulvaney. Will you believe John Bolton or the President? Make up your own mind.

Yes, we proved our case, counsel. We proved it overwhelmingly. But you chose to contest the fact that the President withheld military aid to coerce an ally. You chose to contest it. You chose to make John Bolton's testimony relevant, pertinent. If you had stipulated the President did as he is charged, then you might make the argument that you are making here, but you haven't. You contested it. And now you want to say: But the Senate shall not hear

from this witness. That is not a fair trial. It is not even the appearance of fairness. You can't have a fair trial without basic fairness.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Louisiana.

Mr. CASSIDY. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator RISCH, both to the White House counsel and the House managers.

The CHIEF JUSTICE. Thank you.

Question from Senator CASSIDY and Senator RISCH to both parties, beginning with the President's counsel first:

We saw a video of Mr. NADLER saying: "There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by the other. Such an impeachment will lack legitimacy, will produce divisiveness and bitterness in our politics for years to come, and will call into question the very legitimacy of our political institutions." Given the well-known dislike of some House Democrats for President Trump and the stated desire of some to impeach before the President was inaugurated, and the strictly partisan vote in favor of impeachment, do the current proceedings typify that which Mr. NADLER warned against 20 years ago?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question. The simple answer is yes. These are exactly the sort of proceedings that Manager NADLER warned against 20 years ago. It is a purely partisan impeachment. And it has been clear that at least some factions on the other side of the aisle—the Democratic side of the aisle—have been intent on finding some way to impeach the President from the day he was sworn in and even before the day he was sworn in, and that is dangerous for our country.

To allow partisan venom and enmity like that to take hold and become the norm for driving impeachments is exactly what the Framers warned against. It is in Federalist No. 65. Hamilton warned against it. He warned against persecution by an intemperate and designing majority in the House of Representatives, and that is exactly what the Framers did not want impeachment to turn into. Yet that is clearly what it is turning into here.

Both Manager NADLER and Democratic Leader SCHUMER, in the video that we saw, were prescient in forewarning that, if we start to go down this road, one thing that seems to be sure in Washington is that what goes around comes around. If it is done once to one party, it will happen again to the other party and then to the other party once the Office of the President changes hands. Then we will be in a cycle. It will get worse and worse, and it will be more and more, and every President will be impeached. That is not what the Framers intended, and this body shouldn't allow it to happen here.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager JEFFRIES. The evidence is overwhelming that President Trump pressured a foreign government to target an American citizen for personal and political gain as part of President Trump's corrupt effort to cheat and solicit foreign interference in the 2020 election.

There is a remedy for that type of stunning abuse of power, and that remedy is in the Constitution. That remedy is impeachment and the consideration of removal, which is what this distinguished

body is doing right now. That is not partisan. That is not the Democratic Party's playbook. That is not the Republican Party's playbook. That is the playbook in a democratic republic given to us in a precious fashion by the Framers of the Constitution.

The impeachment in this instance, of course, and the consideration of removal is necessary because President Trump's conduct strikes at the very heart of our free and fair elections. As North Carolinian delegate William Davie noted at the Constitutional Convention, "If he be not impeachable whilst in office, he will spare no efforts or means whatsoever to get himself reelected."

The Framers of the Constitution understood that perhaps this remedy would one day be necessary. That is why we are here right now.

The American people should decide an American election, not the Ukrainians, not the Russians, not the Chinese—the American people. That is why this President was impeached. That is why it is appropriate for the Democrats and the Republicans—both sides of the aisle—not as partisans but as Americans, to hold this President accountable for his stunning abuse of power.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Vermont.

Mr. SANDERS. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

Senator SANDERS asks the House managers:

Republican lawyers have stated—on several occasions—that two people, Senator JOHNSON and Ambassador Sondland, were told directly by President Trump that there was no quid pro quo in terms of holding back Ukraine aid in exchange for an investigation into the Bidens. Given the media has documented President Trump's thousands of lies while in office—more than 16,200 as of January 20—why should we be expected to believe that anything President Trump says has credibility?

Mr. Manager SCHIFF. Well, I am not quite sure where to begin with that question except to say that if every defendant in a trial could be exonerated just by denying the crime, there would be no trial. It doesn't work that way.

I think it is telling that when Ambassador Sondland spoke with President Trump, the first words out of his mouth, according to Sondland, were "no quid pro quo." That is the kind of thing you blurt out when you have been caught in the act and say: It was not me. I didn't do it.

Even then, the President couldn't help himself because the other half of that conversation was "no quid pro quo" but that Zelensky needs to go to the mic, and what is more, he should want to—no quid pro quo but quid pro quo.

This reminds me of something that came up earlier. Why would the President—when he is on the call of July 25 and knows that there are other people listening, why on Earth would the President engage in this kind of shakedown with others being within earshot? You know, I think this question comes up in almost every criminal trial. Why would the defendant do that?

Sometimes it is very hard to fathom, and sometimes it is just that people make mistakes. In this case, I think the President truly believes that he is above the law. He truly believes that he is above the law. It doesn't matter who is listening. It doesn't matter who

is listening. If it is good for him—I guess this is a version of Dershowitz's argument—if it is good for him, it is good for the state because he is the state. If it helps his reelection, it is good for America, and whatever means he needs to effectuate his election, whether it is withholding military aid or what have you, as long as it helps him get elected, well, it is good for America because he is the state. This is why I think he is so irate when people come forward and blow the whistle, not just the whistleblower but people like John Bolton or General Kelly.

You might ask the question: Why do so many people who leave this administration walk away from this President with such conviction that he is undermining our security that you cannot believe what he says? Think about this: The President's now former Chief of Staff, General Kelly, doesn't believe the President of the United States; he believes John Bolton.

I mean, can everybody be disgruntled? Can it all be a matter of bias? I think we know the answer. I think we know the answer. I mean, how do you believe a President to whom the Washington Post has documented so many false statements? The short answer is, you can't.

I remember, early in his Presidency, many of us talked about how once as President, you lose your credibility, and once as President, your country or your friends or allies around the world cannot rely on your word and just how disruptive and dangerous it is to the country. So we can't accept the denial. It is a false denial.

Indeed, if you look at the Wall Street Journal article that Senator JOHNSON was interviewed in, when he had that conversation with Sondland and had that sinking feeling because he didn't want those two things tied together, everyone understood they were tied together. It was as simple as two plus two equals four.

So can you rely on a false exculpatory? You can't with this President any more than you can with any other accused and probably, given the President's track record, a lot less than others accused. But at the end of the day, we have people with firsthand knowledge who don't have to rely on his false exculpatory. You don't have to rely on Mick Mulvaney's recanting what you all saw so graphically on TV. How does somebody say, without a doubt, this was a factor, that this is why he did it?

By the way, Alan Dershowitz lost a criminal case in which he argued that if a corrupt motive is only part of the motive, you can't convict. And the court said: Oh, yes, you can. If a corrupt motive is any part of it, you can convict. So he has lost that argument before, and he makes this argument again before this court. It shouldn't be any more availing here than it was there.

At the end of the day, though, there is no more interested party here than the President of the United States, and I think we have seen he will say whatever he believes suits his interest. Let's instead rely on the evidence and rely on others, and one is just a subpoena away.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Colorado.

Mr. GARDNER. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you. The question from Senator GARDNER is for counsel to the President:

Arguments have been made that any assertion of protection from disclosure is indicative of guilt and that the House's assertion of Impeachment power cannot be questioned by the Executive. Is that interpretation of the House's Impeachment power consistent with the Constitution, and what protects the Executive from the House abusing the Impeachment power in the future?

Mr. Counsel PHILBIN. Mr. Chief Justice and Senators, thank you for that question.

The House managers' assertion that any effort to assert a privilege or assert a legal immunity to decline disclosing information is somehow a sign of guilt is not the law. It is, actually, fundamentally contrary to the law.

Legal privileges exist for a reason. We allow people to assert their rights. It is a basic part of the American justice system. Asserting your rights—asserting privileges and immunities to process rights even if it means limiting the information that might be turned over to a tribunal—is not and cannot be treated as evidence of guilt.

To the second part of the question, as to the House managers' theory that the power of impeachment means that the President can't resist any subpoena that they issue pursuant to the power of impeachment, it is not consistent with the Constitution. The Constitution gives the House the sole power of impeachment, which means only that the House is the only place—the only part of the government—that has that power. It doesn't say that they have a paramount power of impeachment that destroys all other constitutional rights or privileges or immunities. It doesn't mean that executive privilege suddenly disappears.

The House managers a number of times have cited *Nixon v. United States* or—I might get it reversed now—*United States v. Nixon*. It was the case involving the President in 1974. The Supreme Court determined that, in that particular case, after a balancing of interests, assertions of executive privilege would have to give way, but it did not say that there was just an absolute, blanket rule that anytime there is an allegation of wrongdoing or that there is an impeachment going on in the background, that executive privilege just disappears. That is not the rule from that case. In fact, even in that context, the Court pointed out that there may be an absolute immunity or privilege in the field of foreign relations and national security, which is the field we are dealing with here.

The Framers recognized that there could be partisan and illegitimate impeachments. They recognized that the House could impeach for the wrong reasons, but they didn't leave the executive branch totally defenseless to that. Executive privilege and immunities rooted in executive privilege, such as the absolute immunity for senior advisers, still applies even in the context of an impeachment. That is part of the checks and balances in the Constitution. They don't fall away simply because the House says: Ah, now we want to proceed on impeachment.

It is necessary for the proper functioning of the government and the separation of powers for the executive branch to retain that ability to protect confidentiality interests, to protect the prerogatives of the Office of the Presidency. For any President to fail to assert those rights and to protect them would do lasting damage to the Office of the Presidency for the future.

I think that is a critical point to understand in that there is a danger in the legal theory that the House managers are proposing here because it would do lasting damage to the separation of powers—to the structure of our government—to have the idea be that, as soon as the House flips the switch that they want to start proceeding on impeachment, the executive has no defenses and has to open every file and display everything. That is not the way the Framers had it in mind, because the executive branch has to have still its defenses for its sphere of authority under the Constitution. That is part of the checks and balances.

And before I sit down, I would just like to close by going back to the Senator who asked the question about the review process in the Bolton book. I believe I was clear about this, but I just want to make 100 percent sure to the extent the Senator was asking for an assurance that only career officials in the NSC review it for classification review.

I can't make that assurance because it is an NSC process, and I am not sure. At the levels of the process, there might be other reviews. So I didn't intend to give and I don't want it to be understood as giving that assurance to you.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Massachusetts.

Ms. WARREN. Mr. Chief Justice, I send a question to the desk for House managers and counsel to the President.

The CHIEF JUSTICE. Thank you. The House managers will respond first to this question from Senator WARREN:

If Ukrainian President Zelensky called President Trump and offered dirt on President Trump's political rivals in exchange for President Trump handing over hundreds of millions in military aid, that would clearly be bribery and an impeachable offense. So why would it be more acceptable—and somehow not impeachable—for the reverse, that is, for President Trump to propose the same corrupt bargain?

Mr. Manager NADLER. Bribery is obviously an impeachable offense. Bribery is contained within the accusation at the House level of abuse of power.

We explained in the Judiciary Committee report that the practice of impeachment in the United States has tended to envelope charges of bribery within the broader standard of other high crimes and misdemeanors. That is the historical standard.

The elements of bribery are clearly established here. The abuse of power is clearly established. When the President of the United States offers something—extorts a foreign power to get a benefit for himself, withholds military aid in order to get that foreign power to do something that would help him politically—that is clearly bribery, it is clearly an abuse of power, and there is no question about it.

Now, by the way, the question was raised earlier as to what the proper standard of proof is. People pointed out the Constitution doesn't say. But the highest standard of proof is beyond a reasonable doubt, and these facts have been proven not beyond a reasonable doubt, beyond any doubt.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I think what this hypothetical shows, what Manager NADLER shows, is this is an effort to try to smuggle into Articles of Impeachment that do not mention any crime the idea that there is some crime alleged here. There is not, and I went through that earlier.

The Articles of Impeachment specify a theory of the charge here that is abuse of power. They do not allege the elements of bribery or extortion. They don't mention bribery or extortion.

If the House managers had wanted to bring those charges, they had to put them in the Articles of Impeachment, just the way a prosecutor, if he wants to put someone on trial for bribery, he has got to put it in the indictment.

If you don't, and you come to trial and then try to start arguing that, "well, actually, we think there is bribery going on here," that is impermissible. It is prosecutorial misconduct.

And so a hypothetical that is contrary to what the facts were here, to try to suggest that maybe there is some element of bribery, that is all beside the point. We have specific facts. We have evidence that has been presented in the record. We have a specific Article of Impeachment. It doesn't say bribery. It doesn't say extortion. And there is no way to get that into this case at this point because the House managers had the opportunity to frame their case. They had every opportunity to frame it any way they wanted because they controlled the whole process. They controlled all the evidence that went in. They controlled all the evidence with the witnesses that were called, and they could frame it any way they wanted, and they didn't put in any crime. There is no crime asserted here. It is not part of the Articles of Impeachment, and it can't be considered now.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Kansas.

Mr. MORAN. Thank you, Mr. Chief Justice. I submit to the desk a question on my behalf and on behalf of Senator CORNYN.

The CHIEF JUSTICE. The question from Senator MORAN and Senator CORNYN is for counsel to the President:

Is it true that in these proceedings that the Chief Justice can rule on the issue of productions of exhibits and the testimony of witnesses over the objection of either the managers or the President's counsel? Would a determination by the Chief Justice be subject to judicial review?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question, and let me answer it this way—lay out my understanding of the process.

If we were going to start talking about subpoenaing witnesses, subpoenaing documents, having things come into evidence that way, the first question would be subpoenas would have to be issued to the witnesses or for the documents, and if those subpoenas were resisted on the grounds of some privilege or immunity, then that would have to be sorted out because if the President asserted, for example, the immunity of a senior adviser to the President or an executive privilege over certain documents, then the Senate would have to determine whether it was going to fight that assertion and how—through some accommodation process and negotiation—or if the Senate were going to go to court to litigate that. And that

whole process would have to play out. That would be the first stage, and that would have to be gone through anytime the President resisted the subpoena on the witnesses or documents. That would take a while.

That is what the House managers decided not to do in the House of Representatives.

Then, once there had been everything resolved on a subpoena, or something like that, it sounds like the question asks further, in terms of questions here in the trial, of admissibility of particular evidence. It is my understanding, then, that the Presiding Officer—the Chief Justice—could make an initial determination if there were objections to admission of evidence, but that all such determinations can be challenged by the Members of the Senate and would be subject to a vote.

So it would not be—I think there were some suggestions earlier—that we don't need any other courts; we don't need anything involved with anyone else because the Chief Justice is here.

That is not correct. On the subpoenas at the front end, that is not going to be something that is determined just—with all respect, sir—just by the Chief Justice. That is something that would have to be sorted out at the courts or by negotiation with the executive branch.

Then, once we are here on specific evidentiary objections, if we have a witness and there are objections during depositions that have to be resolved, or by a witness on the stand, if there are objections to particular documents—authentication or things like that—the Chief Justice could make an initial ruling, but every one of those rulings could be appealed to this body to vote by a majority vote on whether the evidence would come in or not.

And you might have to consider rules, whether you are going to have the Federal Rules of Evidence apply or some modified rules of evidence, and all of that would have to be sorted out.

I don't think that we would get to the stage, then, of any determinations in evidence here being in any way appealed out to the courts, but that would be a process that this body would have to decide what would be admissible in evidence in the trial.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Minnesota.

Ms. SMITH. Thank you. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator SMITH is to the House managers:

The President has stated multiple times in public that his actions were perfect—yet he refuses to allow Bolton, Mulvaney, and others to testify under oath. If the President's actions are so perfect, why wouldn't he allow fact witnesses to testify under oath about what he has said publicly?

Mr. Manager SCHIFF. Well, the short answer is, if the President were so confident that this was a perfect call and that those around him would agree that there was nothing nefarious going on, he would want witnesses to come and testify. But, of course, he doesn't. He doesn't want his former National Security Advisor to testify. He doesn't want his current Chief of Staff to testify. He

doesn't want those that were heading OMB to testify. He doesn't want you to hear from any of them.

Now, I think that is pretty indicative that he knows what they have to say and he doesn't want you to hear what they have to say. He doesn't want you to see any of the myriad of documents that he has been withholding from this body as he did from the House.

But I also want to address the last question, if I could. Is the Chief Justice empowered under the Senate rules to adjudicate questions of witnesses and privilege? And the answer is yes.

Can the Chief Justice make those determinations quickly? The answer is yes.

Is the Senate empowered to overturn the Chief Justice? Under certain circumstances.

Is the vote 50 or is the vote two-thirds? That would be something that we would have to discuss with the Parliamentarian and with the Chief Justice.

But the Chief Justice has the power to do it, and, what is more, under the Senate rules, you want expedited process? We are here to tell you: We will agree with the Chief Justice's ruling on witnesses, on their materiality, on the application or nonapplication of privilege. We agree to be bound by the Chief Justice. We will not seek to litigate an adverse ruling, and we will not seek to appeal an adverse ruling.

Will the President's counsel do the same? And, if not, just as the President doesn't trust what these witnesses have to say, the President's lawyers don't want to rely on what the Chief Justice's rulings might be.

Now, why is that? They, as we, understand the Chief Justice will be fair. I am not for a moment suggesting they don't think the Chief Justice is fair—quite the contrary. They are afraid he will be fair. They are afraid he will make a fair ruling. That should tell you something about the weakness of their position.

They don't want a fair trial with witnesses. They don't want a fair Justice to adjudicate these questions. They just want to suggest to you that they will delay and delay and delay.

I think it was Thomas Paine who said: Those who would enjoy the blessings of liberty must undergo the rigors of defending it—the fatigues of defending it.

Is it too much fatigue for us to hear from a witness? Is that how little effort we are willing to put into the blessings of freedom and liberty? Is that how little fatigue we are willing to incur?

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Nebraska.

Mr. SASSE. I send a question to the desk on behalf of myself, TIM SCOTT, and MARCO RUBIO.

The CHIEF JUSTICE. Thank you.

The question from Senator SASSE and also on behalf of Senator SCOTT from South Carolina and Mr. RUBIO, directed to counsel for the President:

Mr. Cipollone pointed Senators to the "golden rule of impeachment." In elaborating on that rule, can you offer your views on the limiting principles—both in the nature of offenses that should be considered and in the proximity to elections—for future impeachments, toward the end of safeguarding public trust by putting guardrails on both parties?

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

In elaborating on the golden rule of impeachment, I would say principle No. 1, if we listen to what the Democratic Senators said in the past and the House managers and other Members of the House, that should guide us, and that principle is—and it is a principle based on precedent that you shouldn't have a partisan impeachment.

If you have a partisan impeachment, that, in and of itself, is a danger sign because that means that there is not the bipartisan support that even the Speaker of the House has said you would need to even begin to consider the impeachment of a President because it is the overturning of an election. They don't dispute that it is the overturning of an election.

In addition, it is the removal of this President from an election that is occurring just months from now, which I think is another important principle.

I think the other important fact here is that there is actually bipartisan opposition to this impeachment. Democrats voted against it in the House of Representatives. That is an important principle.

The other principle would be that if you have a process that is unprecedented—if you have a process that is unprecedented—that should be something that ought to be considered. Always in the past there has been a vote authorizing an impeachment. Why? Because they say the House is the sole authority of impeachment—but that is the House, not the Speaker of the House at a press conference. That is another important consideration.

Another important consideration is all of the historical precedents related to rights given to a President in a process have been violated. We haven't seen anything like that in our history. The President's counsel wasn't able to attend, wasn't allowed to cross-examine witnesses, wasn't allowed to call witnesses; and they are coming here and basically asking you, No. 1, to call witnesses that they had refused to pursue, but, more importantly, I think what they are saying is, do what they did—only call witnesses that they want. Don't allow the President to call witnesses that the President wants. That doesn't work. That is not due process.

The other important principle there is, we hear a lot about fairness, but in the American justice system fairness is about fairness to the accused. Fairness is about fairness to the accused. So how can you suggest that what we are going to do is, we are going to have a trial. We will get the witnesses and prosecutors that we want, even though you got to call no witnesses in the House. You got to cross-examine none of the witnesses that we called, and have we got a deal for you: Let's call another witness, but you call none. That is another principle.

And I think the reality is that what Professor Dershowitz said is true. I think, when you are thinking about impeachment, as much as we can as human beings, we should think about it in terms of a President is a President regardless of party, and how would we treat a President of our own party in similar circumstances? I think that is the golden rule of impeachment.

I don't think we have to guess here because I think we have lots of statements from Democrats when we were here last time around

and principles. As I said, I agree with them, I agree with those principles. I just ask that they be applied here.

That is my answer. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Illinois.

Mr. DURBIN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

Senator DURBIN asks the House managers:

If President Trump were to actually invoke executive privilege in this proceeding, wouldn't he be required to identify the specific documents or communications containing sensitive material that he seeks to protect?

Mr. Manager NADLER. As stated before, executive privilege is a very limited privilege that must be claimed by the President. He has at no time claimed executive privilege. Rather, he has claimed absolute immunity, a nonexistent concept that every court that has ever considered it has rejected. Instead, he has simply said: We will oppose all subpoenas. We will deny to the House all information—all information. Whatever they want, they can't have. This is way beyond the pale, and it is intended to be because he fears the facts.

The facts are, he tried to extort a foreign government through withholding military aid that this Congress had voted—he broke the law to withhold the aid that this Congress had mandated be sent to them in order to pressure them into announcing an investigation of his political opponent. Those are the facts. Those facts are proven beyond any doubt at all.

So what do we have? We have a diversion after diversion, diversions about what Hunter Biden may have done in Ukraine—irrelevant, whatever he did in Ukraine. The question is, Did the President withhold foreign military aid in order to extort a foreign government into helping him rig an American election?

We hear diversions about privilege. We hear questions about witnesses. We know he is telling the Senators don't allow witnesses. Why? Because he knows what the witnesses will say.

We hear arguments from his counsel: Well, we have taken enough time with witnesses. The House shouldn't have voted if it didn't have proof positive. We had proof positive. We voted it. It doesn't mean we shouldn't have more proof if it comes forward.

There is no argument that Mr. Bolton shouldn't be permitted to testify. He is not going to waste our time. He has told us he will testify with a subpoena.

So all of these questions are diversions. They are diversions by a President who is desperate because we have proven the facts that he threatened a foreign government—not just threatened them, did, in fact, withhold mandated American military aid from them in order to blackmail them into serving his political purposes, for private political purposes. We know that. Everything else is a diversion.

No witnesses—because maybe those witnesses will testify in a way he doesn't want.

Privilege—when you are dealing with accusations of wrongdoing against the President, the Supreme Court told us in the Nixon case, privilege yields.

So all of these arguments are diversions. Keep your eye on the facts. The facts we have proven. And let's see if the additional wit-

nesses—and as Mr. SCHIFF said, witnesses should not be a threat, not to the Senate, not to anybody else. And it is not going to waste too much time because the Chief Justice can rule on relevant questions—questions of relevancy or privilege or anything else.

But the facts are the facts. The President is a danger to the United States. He has tried to rig the next election. He has abused his power and he must be brought to heel and the country must be saved from his continuing efforts to rig our elections.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Utah.

Mr. ROMNEY. Mr. Chief Justice, I submit a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator ROMNEY is for the counsel for the President:

On what specific date did President Trump first order the hold on security assistance to Ukraine and did he explain the reason at that time?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for the question.

I don't think that there is evidence in the record of a specific date—the specific date—but there is testimony in the record that individuals at OMB and elsewhere were aware of the hold as of July 3, and there is evidence in the record of the President's rationale from even earlier than that time. There is an email from June 24 that has been publicly released. It was publicly released in response to a FOIA request that is from one DOD staffer up to the Chief of Staff of DOD—excuse me, sorry—from the Chief of Staff down to a staffer from DOD relating on the subject line: POTUS follow-up. Follow-up from a meeting with POTUS, President of the United States, explaining questions that had been asked about Ukraine assistance, which were specifically: What was the funding used for, i.e., did it go to U.S. firms; who funded it; and what do other NATO members spend to support Ukraine?

So from the very beginning, in June, the President had expressed his concern about burden-sharing, what do other NATO members do. Similarly, in the July 25 transcript, there was—the President asked President Zelensky specifically. He raised the issue of burden-sharing. Again, showing that was his concern. In addition, there was, I believe, Mr. Morrison, who testified that he was aware from OMB that the President had expressed concerns about corruption and that there was a review process to consider corruption in Ukraine.

So the evidence in the record shows that the President raised concerns at least as of June 24; that people were aware of the hold as of July 3; the President's concerns about burden-sharing were in the email on June 24; they were reflected in the July 25 call. Similarly, there is testimony from later in the summer that the President had raised concerns about corruption in Ukraine. So that is the evidence in the record that reflects the President's concerns. Thank you.

The CHIEF JUSTICE. Thank you, counsel. The Senator from Nevada.

Ms. CORTEZ MASTO. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The question from Senator CORTEZ MASTO is to the House managers:

The President's counsel has claimed that the President was unfairly excluded from House impeachment processes. Can you describe the due process President Trump received during House proceedings compared to previous presidents? Did President Trump take advantage of any opportunities to have his counsel participate?

Mrs. Manager DEMINGS. Mr. Chief Justice, and to Senators, thank you so much for that question.

Let me make this plain. The President is not the victim here. The victim in this case is the American people. President Trump was invited to attend and participate in all of the Judiciary Committee hearings. He could have had Mr. Cipollone, Mr. Sekulow, or any of the other attorneys who have joined at the counsel table participate throughout the Judiciary Committee proceedings in the House. They could have attended all of the Judiciary hearings, and imagine this—cross-examine witnesses, raise objections, present evidence favorable to the President, if they had any to present, and they could have requested to have President Trump's own witnesses called.

But President Trump refused to participate. He wrote to the House, and I quote: "If you are going to impeach me, do it now, fast, so we can have a fair trial in the Senate. . . ."

In every event, President Trump was asked, and indeed legally required, to provide evidence during the Intelligence Committee investigation, but he refused, as we have already said over and over again, to produce any documents or allow witnesses to testify. We thank God for the 17 public servants who came forward in spite of the President's efforts to obstruct.

In addition, Republican Members in Congress had an equal opportunity to ask questions during the depositions and the hearings in both the Intelligence and the Judiciary Committee hearings. Republican Members called three witnesses during the Intelligence Committee's hearings and an additional witness during the Judiciary Committee hearing.

Of course, a House impeachment inquiry is not a full-blown criminal trial. We do know that. But this is a trial, and, obviously, the President is being afforded every due process right during these proceedings.

The CHIEF JUSTICE. Thank you.

Ms. MURKOWSKI. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Alaska.

Ms. MURKOWSKI. I send a question to the desk.

The CHIEF JUSTICE. Thank you. Senator MURKOWSKI's question is for the House managers:

In early October, Mr. Cipollone sent the letter saying none of the subpoenas issued by the House were appropriately authorized and thus invalid. When the House passed their resolution authorizing the impeachment inquiry, and granting subpoena power to the Intelligence and Judiciary Committees, the body could have addressed the deficiency the White House pointed out and proclaimed those subpoenas as valid exercises of the impeachment inquiry. Alternatively, the House could have reissued the subpoenas after the resolution was adopted. Please explain why neither of those actions took place.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, Senator, I appreciate your question.

These arguments, plain and simple, are a red herring. The House's impeachment inquiry and its subpoenas were fully authorized by the Constitution, House rules, and precedent. It is for the House, not the President, to decide how to conduct an impeachment inquiry.

The House's autonomy to structure its own proceedings for impeachment inquiry is rooted in two provisions of article I of the Constitution. First, article I vests the House with the "sole Power of Impeachment." It contains no requirements—no requirements—as to how the House must carry out that responsibility.

Second, article I states that the House is empowered to determine the rules of proceedings. Taken together, these provisions give the House sole discretion to determine the manner in which they investigate, deliberate, and vote for grounds of impeachment.

In exercising its responsibility to investigate and consider the impeachment of a President of the United States, the House is constitutionally entitled to relevant information from the executive branch concerning the President's misconduct. The Framers, the courts, and past Presidents have recognized and honored Congress's right to information in an impeachment investigation and is critical as a safeguard to our system of divided powers; otherwise, a President could hide his own wrongdoing to prevent Congress from discovering impeachable misconduct, effectively nullifying—nullifying—Congress's impeachment power.

That is precisely what President Trump has tried to achieve here. The President has asserted the power to determine for himself which congressional subpoenas he will respond to and those that he will not. The President's counsel would have you believe that each time anyone in the executive branch gets a subpoena, it is open season for creative lawyers in the White House and DOJ to start inventing theories about House rules and parliamentary precedent.

This is not how the separation of powers works, and to accept that argument would wholly undermine the House's and Senate's ability to provide oversight of the executive branch. It would also make impeachment a nullity.

The President argues that there was no resolution fully authorizing the impeachment inquiry, but, again, there is no requirement for the full House to take a vote before conducting an impeachment inquiry. President Trump and his lawyers invented this theory.

As Chief Judge Howell of the U.S. District Court in DC has stated, and this is a direct quote: "This [claim] has no textual support in the U.S. Constitution [or] the governing rules of the House."

The Constitution itself says nothing about how the House may exercise its sole power of impeachment, but instead confirms the House shall have the sole power to determine the rules of its own proceedings. This conclusion is also confirmed by precedent. Numerous judges have been subjected to impeachment investigations in the House and even impeached by the House and convicted by the Senate without any previous vote of the House authorizing an impeachment inquiry.

As recently as the 114th Congress, the Judiciary Committee considered impeaching the IRS Commissioner following a referral from another committee and absent a full House vote. The Judiciary

Committee began an investigation into President Nixon's misconduct for 4 months before approval of a full House resolution.

The House rules also do not preclude committees from inquiring into the potential grounds for impeachment. Instead, those rules vest the relevant committees of the House with robust investigatory powers, including the power to issue subpoenas.

Each of the three committees that conducted the initial investigation of President Trump's conduct in Ukraine—Intelligence, Oversight, and Foreign Affairs—indisputably had oversight jurisdiction over these matters. The President's counsel has pointed to the Nixon impeachment with a full House.

The CHIEF JUSTICE. Thank you very much. Thank you.

Ms. Manager GARCIA of Texas. Thank you. I yield back.

The CHIEF JUSTICE. The Senator from Rhode Island.

Mr. WHITEHOUSE. Mr. Chief Justice, I send a question to the desk, and because my question references an earlier question, I have attached that earlier question as a reference to provide it to the Office of the Parliamentarian in case it should be of interest.

The CHIEF JUSTICE. Thank you. The question from Senator WHITEHOUSE is to counsel for the President:

White House counsel refused to answer a direct question from Senator COLLINS and Senator MURKOWSKI, saying he could only cite to the record. Five minutes afterward White House counsel read recent newspaper stories to the Senate from outside the House record. Could you please give an accurate and truthful answer to the Senators' question: Did the President ever mention the Bidens in connection to corruption in Ukraine before Vice President Biden announced his candidacy in April 2019? What did the President say, to whom, and when?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for the question.

I don't think that I refused to answer the question at all. We had been advised by the House managers that they were going to object if we attempted to introduce anything that was not either in the public domain—so things that are in newspaper articles, things like that that are out there we could refer to—or things that were in the record. And so I can't—I am not in a position to go back into things that the President might have said in private, and there has been no discovery into that. It is not part of this inquiry, so I can't go telling now about things that the President might have said to Cabinet Members. I am not in a position to say that. I can tell you what is in the public, and I can tell you what is in the record. I answered the question fully to the best of my ability based on what is in the public domain and what is in the record.

I would like to take a moment to also respond to the last question that was posed by Senator MURKOWSKI with respect to the vote on authorizing the issuance of subpoenas because there has always been a vote from the full House to authorize any impeachment inquiry into a Presidential impeachment. It was that way in the Johnson impeachment. It was that way in the Nixon impeachment.

There have been references to the fact that the House Judiciary Committee began some investigatory work before the House actually voted on the resolution—I think it was Resolution 803—to authorize the impeachment inquiry. But all that work was simply gathering things that were in the public domain or that had been already gathered by other committees, and there was no compul-

sory process issue. And in fact, Chairman Rodino of the House Judiciary Committee specifically determined, when there was a move to have the House Judiciary Committee issue subpoenas after the Saturday Night Massacre, that the committee lacked the authority to issue any compulsory process until there had been a vote by the full House authorizing the committee to do that.

This is not some esoteric special rule about impeachments. As I have tried to explain, this is just a fundamental rule under the Constitution about how authority had been given by “we the people” to Chambers of the legislature, either the House or the Senate. Once it is given there to the House, how does it get to a committee? It can only get down to a committee if it is delegated by the House. That can only happen if the House votes. There is no standing rule that gives the House Judiciary Committee authority to use the power of impeachment as opposed to the authority to legislate. There is no rule that gives you the power to use the authority of impeachment to issue compulsory process.

Rule 10 doesn’t mention impeachment at all. The word doesn’t appear in it. That is why it has always been the understanding that there must be a vote from the House to authorize the House Judiciary Committee or in this case—it was contrary to all prior practice—it was given to Manager SCHIFF’s committee and other committees the authority to use the power of impeachment to issue subpoenas.

It was very clear to the House of Representatives that the position of the executive branch was that all of the subpoenas issued before H. Res. 660 were invalid on their face, and Senator MURKOWSKI’s question is exactly correct: There was no effort in H. Res. 660 either to attempt to retroactively authorize those subpoenas or to say that those subpoenas—to retroactively authorize those subpoenas or then to reissue them under H. Res. 660, so the subpoenas remained invalid. There was no response from the House to that. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. HAWLEY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Missouri.

Mr. HAWLEY. Mr. Chief Justice, I send to the desk a question for both counsel for the President and the House managers on my own behalf and on behalf of Senator CRUZ, Senator DAINES, and Senator BRAUN.

The CHIEF JUSTICE. Thank you. The President’s counsel will respond first to the question from Senator HAWLEY and the other Senators:

When he took office, Viktor Shokin, Ukraine’s Prosecutor General, vowed to investigate Burisma. Before Vice President Joe Biden pressed Ukrainian officials on corruption, including pushing for the removal of Shokin, did the White House Counsel’s Office or the Office of the Vice President legal counsel issue ethics advice approving Mr. Biden’s involvement in matters involving corruption in Ukraine or Shokin, despite the presence of Hunter Biden on the board of Burisma, a company widely considered to be corrupt? Did Vice President Biden ever ask Hunter Biden to step down from the board of Burisma?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

We are not aware of any evidence that then-Vice President Biden sought any ethics opinion. We are aware that both Amos Hochstein

and Deputy Assistant Secretary of State Kent testified—excuse me—Amos Hochstein is in the public domain. Deputy Assistant Secretary of State Kent testified in the proceedings before the House that they each raised the issue with Vice President Biden of the potential appearance of a conflict of interest with his son Hunter being on the board of Burisma. Deputy Assistant Secretary Kent testified that although he raised that issue with the Vice President's office, the response was that the Vice President's Office—the Vice President was busy dealing then with the illness of his other son, and there was no action taken. So from what we know, there wasn't any effort to seek an ethics opinion. We are not aware of an ethics opinion having been issued. Although the issue was flagged for the Vice President's Office, we are not aware that Vice President Biden asked his son to step down or that any other action was taken. And I believe that Vice President Biden has said that he never discussed—he said publicly he never discussed his son's overseas business dealings with him.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mrs. Manager DEMINGS. Mr. Chief Justice and Senator, I appreciate your question. The facts about Vice President Biden's conduct are clear and do not change. Let's go through them.

First, every witness asked about this topic testified that Mr. Shokin was widely considered to be a corrupt and ineffective prosecutor who did not prosecute corruption. Shokin was so corrupt that the entire free world—the United States, the European Union, the International Monetary Fund—pressed for his office to be cleaned up. So I would caution you to be skeptical of anything that Mr. Shokin claims.

Second, witnesses, including our own anti-corruption advocate, Ambassador Yovanovitch—remember that very dedicated anti-corruption Ambassador—testified that Shokin's removal made it more likely that investigations of corrupt—Ukrainian companies would move forward. Let me repeat that. The dismissal of Shokin made it more likely that Burisma would be investigated.

Third, Burisma was not under scrutiny at the time Joe Biden called for Shokin's ouster, according to the National Anti-Corruption Bureau of Ukraine, an organization several witnesses testified is effective at fighting corruption.

Shokin's office investigated Burisma, but the probe focused on a period before Hunter Biden joined the company. But, again, another investigation was warranted. Dismissing Shokin would have made that more likely.

The CHIEF JUSTICE. Thank you.

Mr. KING. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Maine.

Mr. KING. Mr. Chief Justice, I have a question for the House managers I will send to the desk.

The CHIEF JUSTICE. Thank you.

Senator KING's question for the House managers reads as follows:

Mr. Rudolph Giuliani was in Ukraine exclusively on a political errand—by his own admission—so doesn't the President's mention of Giuliani by name in the July 25th call conclusively establish the real purpose of the call?

Mr. Manager NADLER. Mr. Chief Justice, Members of the Senate, Mr. Giuliani played a key role in President Trump's monthslong scheme to pressure Ukraine to announce political investigations to benefit the President's reelection campaign. Remarkably, the President's defense is wrapping themselves in Rudy Giuliani's involvement in Ukraine while trying to minimize his role.

There is overwhelming evidence—not just testimony but texts, call records, and other corroborating documents—establishing Mr. Giuliani's key role in executing the President's pressure campaign beginning in early spring 2019 with a smear campaign against Ambassador Yovanovitch and then throughout the summer. Everyone knew that Rudy Giuliani was the gatekeeper to the President on Ukraine.

On May 10, Mr. Giuliani canceled the trip to Ukraine, during which he planned to dig up dirt on former Vice President Biden and on a discredited conspiracy theory after his plans became public. He admitted: "We're not meddling in an election, we're meddling in an investigation." He explained that someone can say it is improper, and this isn't—"[Someone] could say it's improper. And this isn't foreign policy—I'm asking them to do an investigation that they're already doing and that other people are telling them to stop." He was talking about the investigations of the Bidens.

During a May 10 appearance on FOX News, Giuliani also said that he canceled his trip because there are enemies of Trump's around President Zelensky.

Mr. Giuliani's associate Lev Parnas produced a set of documents to the House Intelligence Committee that included a letter—[Slide 570] and I believe we have slide 50 here—Mr. Giuliani sent to President-elect Zelensky during this time period. In the letter dated May 10, Mr. Giuliani informed Zelensky that he represented President Trump as a private citizen, not as President of the United States.

He also requested a meeting with President Zelensky on May 13 or 14, along with Victoria Toensing, in his "capacity as personal counsel to President Trump and with his knowledge and consent."

Mr. Giuliani confirmed President Trump's knowledge of actions with regard to Ukraine, stating: "He . . . knows what I'm doing, sure, as his lawyer." He added:

My only client is the president of the United States. He's the one I have an obligation to report to, tell him what happened.

President Trump repeatedly instructed senior American and Ukrainian officials to talk to Rudy, demonstrating that Mr. Giuliani was a key player in the corrupt scheme.

In the May 23 Oval Office meeting to discuss Ukraine policy, President Trump directed his handpicked three amigos to talk to Rudy. In response, Ambassador Sondland testified: "Secretary Perry, Ambassador Volker and I worked with Mr. Rudy Giuliani on Ukraine matters at the express direction of the President of the United States."

After two explosive White House meetings on July 10 in which Ambassador Sondland explicitly conveyed the President's demand for political investigations to Ukrainian officials, top Ukrainian

aide Andriy Yermak texted Ambassador Volker: “I feel that the key for many things is Rudy.”

And what was Rudy asking? Investigations of two American citizens—not corruption in general; investigations. In fact, he wasn’t even asking for an investigation; he was just asking for an announcement of an investigation so that American citizens—the Bidens—could be smeared.

On the July 25 call with President Zelensky, President Trump mentioned Rudy Giuliani by name no less than four times and informed Zelensky that Rudy very much knows what is happening. He told President Zelensky: “Mr. Giuliani is a highly respected man.” He added, “Rudy very much knows what is happening.”

In August, Mr. Giuliani met with a top Ukrainian aide and conveyed that Ukraine must issue a public statement announcing investigations.

Ambassador Sondland and Volker then worked closely with Giuliani and the Ukrainians to ensure that the planned statement would meet Mr. Giuliani’s demands. Specifically, Mr. Giuliani insisted that the statement include specific references to Burisma and the 2016 election and Biden.

Throughout this process, Sondland stated that he knew that they needed the approval of Giuliani for the press statement and that they knew Giuliani represented the interest of the President.

Rudy Giuliani admitted on live television to pressuring Ukraine to look into Joe Biden—not into corruption; into Joe Biden.

In September 2019, Chris Cuomo asked Giuliani: “So you did ask Ukraine to look into Joe Biden?”

In response, Giuliani insisted: “Of course I did.”

Mr. Giuliani insisted that Ukraine look at an American citizen on behalf of his client, President Trump.

Finally, during the pendency of the impeachment proceedings, Mr. Giuliani has not ceased in his efforts to dig up dirt to benefit the President.

In December, he again traveled to Ukraine to meet with Ukrainian officials, which he described as a secret assignment, and after which, the President reportedly called him immediately upon landing and asked, “What did you get?” to which Mr. Giuliani responded, “More than you can imagine.”

It is worth noting that in Ms. Raskin’s presentation about Giuliani—

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Manager NADLER.—he repeated requests for investigations into Biden, not into corruption.

Mr. RUBIO. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Florida.

Mr. RUBIO. I send a question to the desk on behalf of myself, Senators SASSE, BRAUN, RISCH, MCSALLY, ROBERTS, and HOEVEN.

The CHIEF JUSTICE. Thank you.

The question from Senator RUBIO and the other Senators is for counsel for the President:

How would the Framers view removing a President without an overwhelming consensus of the American people and on the basis of Articles of Impeachment supported by one political party and opposed by the other?

Mr. Counsel DERSHOWITZ. Mr. Chief Justice, thank you.

Senators, Alexander Hamilton addressed that issue very directly. He said the greatest danger of impeachment is if it turns on the votes of one party being greater than the votes of another party in either House. So I think they would be appalled to see an impeachment going forward in violation of the Schumer rule and the rules of other Congressmen that were good enough for us during the Clinton impeachment but seemed to have changed dramatically in the current situation.

The criteria that have been set out are so lawless, they basically paraphrase Congresswoman MAXINE WATERS, who said: There is no law. Anything the House wants to do to impeach is impeachable. That is what is happening today. That places the House of Representatives above the law.

We have heard much about, no one is above the law. The House of Representatives is not above the law. They may not use the MAXINE WATERS—Gerald Ford made the same point, but it was about the impeachment of a judge. Judges are different; there are many of them. There is only one President.

But to use that criteria, that it is whatever the House says it is, whatever the Senate says it is, turns those bodies into lawless bodies, in violation of the intent of the Framers.

Manager SCHIFF confused my argument when he talked about intent and motive.

You have said I am not a constitutional lawyer, but you admitted I am a criminal lawyer. And I have taught criminal law for 50 years at Harvard.

There is an enormous distinction between intent and motive. If somebody shoots somebody, the intent is that when you pull the trigger, you know a bullet will leave and will hit somebody and may kill them. That is the intent to kill them. Motive can be revenge. It could be money. It almost never is taken into consideration, except in extreme cases. There are cases where motive counts.

But let's consider a hypothetical growing out of a situation that we have discussed. Let's assume that President Obama had been told by his advisers that it really is important to send lethal weapons to Ukraine, but then he gets a call from his pollster and his political adviser, who says: We know it is in the national interest to send lethal weapons to Ukraine, but we are telling you that the leftwing of your party is really going to give you a hard time if you start selling lethal weapons and getting into a lethal war, potentially, with Russia. Would anybody here suggest that was impeachable? Or let's assume President Obama said: I promised to bomb Syria if they had chemical weapons, but I am now told by my pollsters that bombing Syria would hurt my electoral chances. Certainly not impeachable at all.

So let me apply that to the current situation. As you know, I said previously there are three levels of possible motive.

One is, the motive is pure—only interest is in the way of what is good for the country. In the real world, that rarely happens.

The other one is, the motive is completely corrupt—I want money, kickback.

But then there is the third one that is so complicated and that is often misunderstood. When you have a mixed motive—a motive

in which you think you are doing good for the country, but you are also doing good for yourself. You are doing good for me; you are doing good for thee. You are doing good, and you altogether put it in a bundle in which you are satisfied that you are doing absolutely the right thing. Let me give you a perfect example of that from the case.

The argument has been made that the President of the United States only became interested in corruption when he learned that Joe Biden was running for President. Let's assume hypothetically that the President was in his second term, and he said to himself: You know, Joe Biden is running for President. I really should now get concerned about whether his son is corrupt because he is not only a candidate—he is not running against me; I am finished with my term—but he could be the President of the United States. And if he is the President of the United States and he has a corrupt son, the fact that he has announced his candidacy is a very good reason for upping the interest in his son. If he wasn't running for President, he is a has-been. He is the former Vice President of the United States. OK, big deal. But if he is running for President, that is an enormous big deal.

So the difference—the House managers would make—is whether the President is in his first term or in his second term, whether he is running for reelection or not running for reelection. I think they would have to concede that, if he was not running for reelection, this would not be a cross motive but would be a mixed motive but leaning on the side of national interest. If he is running for reelection, suddenly that turns it into an impeachable offense.

The CHIEF JUSTICE. Thank you. Thank you, counsel.

The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. Chief Justice, I submit a question to the desk directed to the House managers.

The CHIEF JUSTICE. Thank you. The question is from Senator KLOBUCHAR to the House managers:

I was on the trial committee for the last impeachment trial in the Senate, which involved Judge Thomas Porteous, who was ultimately removed. During that time, the Senate trial committee heard from 26 witnesses, 17 of whom had not previously testified in the House. What possible reason could there be for allowing 26 witnesses in a judicial impeachment trial and hearing none for a President's trial?

Mr. Manager SCHIFF. Mr. Chief Justice, Senator, as you know, I am quite familiar with the Porteous impeachment. Someone asked me the last time I tried a case. The answer is probably 30 years ago except for the impeachment of Thomas Porteous, when I last spent some quality time with you.

There is no difference in terms of the Constitution. I would say that the need for witnesses in the impeachment trial of a President of the United States is a far more compelling circumstance than the impeachment of a judge. Now, you might say, well, in the impeachment of a judge, how is it possible that the time of the Senate could be occupied by calling witnesses; that, as precious as your time is, we would occupy your time calling dozens of witnesses, but in the impeachment of a President, it is not worth the time; it is too much of an imposition.

Again, I would argue that the imperative of calling judges and having a fair trial when we are adjudicating the guilt of a President of the United States is paramount.

Now, we have always argued that the trial should be fair to the President and the American people. And, yes, it is a big deal to impeach a President and remove that President from office. It is also a big deal if you leave in place a President when the House has proven that President has committed impeachable misconduct and is likely to continue committing it—because there is no doubt, I think, from the record that not only did the President solicit Russian interference in 2016 but solicited Ukraine's interference in the upcoming election, solicited China's interference—as my colleague just said, had Rudy Giuliani, his personal agent, in Ukraine doing the same kind of thing just last month.

And Senator, in response to that question, isn't it dispositive that Giuliani, the personal agent of the President, is running this Biden operation rather than any department of government? Isn't that really dispositive of whether this was policy or politics? And I think the answer is yes.

Giuliani has made it abundantly clear: I am not here doing foreign policy. That is the President's own lawyer. I am not here to do foreign policy.

Now, Professor Dershowitz just made a rather astounding argument that an investigation of Joe Biden that is unwarranted, unmerited, suddenly becomes warranted if he runs for President. Now, he posited that in the President's second term, but it doesn't matter whether he is in his first term or his second term. An illegitimate investigation of Joe Biden doesn't somehow become legitimate because he is running for President unless you view your interests as synonymous with the Nation's interests.

I think it is the most profound conflict for a President of one party, whether he is running for reelection or not, to suggest that all of a sudden an investigation of a leading candidate in the opposite party is justified because now they are running for President. I mean, you really have to step aside from what is going on to imagine that anyone could make that argument; that running for office, running for President now, means that you are a more justified target of investigation than when you weren't. That cannot be. That cannot be. But that is essentially what is being argued here.

To get to conclude, Senator, the case for witnesses in a Presidential impeachment where either, on the one side, you remove a President or, on the other side, you leave in place a President who may pose a continuing risk to the country is far more compelling to take the time to hear from witnesses than a corrupt Louisiana judge who only impacts those who come before his court.

All of us come before the court of the American people.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Montana.

Mr. DAINES. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator LANKFORD and Senator HAWLEY.

The CHIEF JUSTICE. Thank you. The question from Senators DAINES, LANKFORD, and HAWLEY is for counsel for the President:

Over the past 244 years, eight judges have been removed from office by the U.S. Senate but never a President. The eight judges have been removed for bribery, per-

jury, tax evasion, waging war against the United States, and other unlawful actions. How do the current impeachment articles differ from previous convictions and removals by the Senate?

Mr. Counsel DERSHOWITZ. Mr. Chief Justice, there is an enormous difference between impeaching and removing a judge, even a justice, and impeaching and removing a President. No judge, not even a Chief Justice, is the judicial branch. You are the head of the judicial branch, but there is a judicial branch.

The President is the executive branch. He is irreplaceable. There isn't always a Vice President. Remember, we had a period of time when there was no Vice President. We needed a constitutional amendment.

So there is no comparison between impeaching a judge and impeaching a President. Moreover, there is a textual difference. The Constitution provides that judges serve during good behavior. That is the Congressman SCHIFF standard, and it is a great standard. We wish everybody served only during good behavior. But the Constitution doesn't say that the President shall serve during good behavior. The big difference is the President runs every 4 years, and the public gets to judge his good behavior. Judges don't run, and so there is only one judge of the good behavior; namely, the impeachment process.

So to make a comparison is to make the same mistake that when people compare the British system to the American system. We have heard a lot of argument that we adopted the British system by adopting five words: "other high crimes and misdemeanors." Yes, those words may have been borrowed from Great Britain, but the whole concept of impeachment was not. First of all, impeachment no longer exists in Great Britain; but when it did, it only operated for low-level and middle-level people. All the impeachment trials that have been cited involve this guy in India, this guy in the commerce, this guy here, this guy there—utterly replaceable people.

In the British system, on the other hand, you can get rid of the head of state—the head of government, rather, by a simple vote of no confidence. That is what the Framers rejected. The Framers rejected that for a President. And so the notion that we borrowed the British system has it exactly backward. We rejected the British system.

We did not want a President to serve at the pleasure of the legislature. We wanted the President to serve at the pleasure of the voters.

Judges don't serve at the pleasure of the voters, so there needs to be different criteria and broader criteria, and those criteria have been used in practice. For the most part, judges have been impeached for criminal and removed for criminal behavior.

But take an example that was given. If a judge is completely drunk and incapacitated and cannot do his job, it is easy to imagine how a judge might have to be removed for that.

But the President—there is an amendment to the Constitution, the 25th Amendment, specifically provided because there was a gap in the Constitution. And, please, Members of the Senate, it is important to understand, your role is not to fill gaps that the Framers deliberately left open.

Good arguments have been made: Why is it important to make sure people don't abuse their power, people don't commit maladministration? But the Framers left open, left those gaps. Your job is not to fill in the gaps. Your job is to apply the Constitution as the Framers wrote it, and that doesn't include abuse of power and obstruction of Congress.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Delaware.

Mr. COONS. Mr. Chief Justice, I send a question to the desk for the President's counsel.

The CHIEF JUSTICE. Thank you. The question from Senator COONS to the President's counsel is this:

The President's brief states, "Congress has forbidden foreigners' involvement in American elections." However, in June 2019, President Trump said if Russia or China offered information on his opponent, "[t]here's nothing wrong with listening," and he might not alert the FBI because: "Give me a break. Life doesn't work that way." Does President Trump agree with your statement that foreigners' involvement in American elections is illegal?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for the question.

I think Congress has specified specific ways in which foreigners cannot be involved in elections. Foreigners can't vote in elections. There are restrictions on foreign contributions to campaigns—things like that.

When the whistleblower originally made a complaint about this July 25 call, and that was reviewed by the inspector general for the intelligence community, he framed that whistleblower's complaint and wrote a cover letter framing it in terms of those laws. And he said that there might be an issue here related to soliciting a foreign contribution to a campaign, a thing of value, foreign campaign interference.

That was specifically reviewed by the Department of Justice. The Department of Justice concluded that there was no such violation here. So that is not something that is involved in this case.

President Trump's interview with ABC that you cited does not involve something that is a foreign campaign contribution, something that is addressed by the law as passed by Congress. He was referring to the possibility that information could come from a source, and I think he pointed out in that interview that he might contact the FBI, he might listen to something.

But mere information is not something that would violate the campaign finance laws. And if there is credible information, credible information of wrongdoing by someone who is running for a public office—it is not campaign interference for credible information about wrongdoing to be brought to light, if it is credible information.

So I think that the idea that any information that happens to come from overseas is necessarily campaign interference is a mistake. That is a non sequitur. Information that is credible, that potentially shows wrongdoing by someone who happens to be running for office, if it is credible information, is relevant information for the voters to know about, for people to be able to decide on who is the best candidate for an office.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, I recommend we take a break until 10 p.m. and then finish up for the evening.

There being no objection, at 9:44 p.m., the Senate, sitting as a Court of Impeachment, recessed until 10:07 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

Mr. McCONNELL. Mr. Chief Justice, my understanding is we will finish up at about 11 p.m.

The CHIEF JUSTICE. Thank you.

The Senator from Georgia.

Mrs. LOEFFLER. I send a question to the desk on behalf of myself, Senators BLACKBURN, HYDE-SMITH, COTTON, HAWLEY, BARRASSO, PERDUE, FISCHER, and CORNYN.

The CHIEF JUSTICE. Thank you.

The question from Senator LOEFFLER and Senators BLACKBURN, HYDE-SMITH, COTTON, HAWLEY, BARRASSO, PERDUE, FISCHER, and CORNYN is for counsel for the President:

As a fact witness who was coordinating with the whistleblower, did Manager Schiff's handling of the impeachment inquiry create material due process issues for the President to have a fair trial?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

And I believe the short answer is yes, it did create a material due process issue. And as I explained the other day in a portion of my argument, there were three major due process violations: the lack of an authorization, so that the whole proceeding started in an illegitimate and constitutionally invalid manner; second, the lack of basic due process protections related to fundamental rights to present evidence, cross-examine witnesses, present witnesses; and the final one is that Manager SCHIFF or his staff had some role in consulting with the whistleblower that remains secret to this day. And all attempts to find out about that, to ask questions about that were shut down. Manager SCHIFF said today that he had no contact with the whistleblower, that it was only his staff. But the extent to which there was some consultation there hasn't actually been probed by any question.

All the questions that Republican Members of the House tried to ask about that were shut down. And any questions as a result of questions into determining who the whistleblower was and what his motivations and bias were also shut down.

The inspector general for the intelligence community noted—we heard that earlier this evening—in his letter to the Acting Director of the DNI that the whistleblower had the indicia of political bias because the whistleblower had connections with a Presidential candidate of another party.

But the testimony from the inspector general of the intelligence community remains secret. It was in executive session. It hasn't been forwarded from HPSCI to the House Judiciary Committee and, therefore, is not part of the record here. There hasn't been any ability to probe into the relationships between the whistleblower

and others who are materially relevant to the issues in this inquiry.

If the whistleblower, as is alleged in some public reports, actually did work for then-Vice President Biden on Ukraine issues, exactly what was his role? What was his involvement when issues were raised? We know from testimony the questions were raised about the potential conflict of interest that the Vice President then had when his son was sitting on the board of Burisma. Was the alleged whistleblower involved in any of that and in making decisions to not do anything related to that? Did he have some reason to want to put the deep six on any question raising any issue about what went on with the Bidens and Burisma and firing Shokin and withholding \$1 billion in loan guarantees and in forcing a very explicit quid pro quo: You won't get this \$1 billion until you fire him.

We don't know. And because Manager SCHIFF was guiding this whole process, because he was the chairman in charge of directing the inquiry and directing it away from any of those questions, that creates a real due process defect in the record that has been presented here.

So yes, that is a major problem and major defect in the way the House proceedings occurred that infects this record. It means that it is not a record that could be relied upon to reach any conclusion other than an acquittal for the President.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Michigan.

Mr. PETERS. Mr. Chief Justice, I have a question for the House managers that I will send to the desk.

The CHIEF JUSTICE. Thank you.

Senator PETERS asks the House managers:

Does an impeachable abuse of power require that a President's corrupt plan actually succeed?

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, the answer is no. Just as, although this is not a criminal offense, if you attempted murder but didn't succeed, you would not be innocent. The President has attempted to upend the constitutional order for his own personal benefit. He used the powers of the—let's put up slide 11, if we could. He has used the powers of his office to solicit foreign interference, [Slide 571] and we know this by the President's own statements, the Acting Chief of Staff's confession, substantial documentary evidence, and witness testimony. And this has grave consequences for our national security, for threatened election security, as well as undermining U.S. credibility and our values abroad.

Now, because the President continues to act in this manner, we believe that this is an ongoing threat. While the impeachment was going on, the President's personal lawyer, Mr. Giuliani, was in Ukraine, continuing this scheme, and when he landed—he was still taxiing—the President and he were on the phone.

The President was asking him: What did you get? What did you get?

So this is an ongoing matter. The fact that he had to release the aid after his scheme was revealed does not end the problem.

I have listened with great interest to the back-and-forth in the questions. It is hard because I want to get up and answer all of the questions, and I can't, but I do think that the President has made it clear that he believes he can do whatever he wants—whatever he wants—and there is no constraint that is being recognized by the Congress.

Mr. Mulvaney, as we have noted, has acknowledged that the President directly tied his hold on military aid to his desire to get Ukraine to conduct a political investigation, and he told us to just get over it.

The President's lawyers have suggested we should not believe our eyes because Mr. Mulvaney—when I was a kid, they would say: Don't believe your lying eyes—walked that back later. We have an opportunity, actually, to hear from a witness who directly spoke to the President, who, apparently, can tell us that the President told him that the only reason why this aid was held up was to get dirt on the Democrats.

If we just think about it—put Ukraine to one side—if a Chief Executive called the Department of Justice and said, "I want you to investigate my political opponents. I want you to announce an investigation," there wouldn't be any question that that would be an improper use of Presidential power. It is really no different when you follow a foreign government except that it is worse because one of the things that the Founders worried about was the involvement of foreign governments in our matters, in our elections. So, yes, the fact that he didn't succeed in that particular instance does not mean that we are safe.

I was stunned to hear that now, apparently, it is OK for the President to get information from foreign governments in an election. That is news to me, you know, that the election campaign laws prohibit accepting anything of value. A thing of value is information. If you or I accepted material information from a source—an email, a database, and the like—without paying for it or from a foreign nation, that would be illegal; but the thought that this—as we go forward in this trial itself, we are creating additional dangers to the Nation by suggesting that things that have long been prohibited are now suddenly going to be OK because they have been asserted in the President's defense.

I yield back.

The CHIEF JUSTICE. Thank you.

The Senator from Wyoming.

Mr. BARRASSO. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators RISCH, HAWLEY, and MORAN.

The CHIEF JUSTICE. Thank you.

The question is from Senators BARRASSO, RISCH, HAWLEY, and MORAN for counsel to the President:

Can the Senate convict a sitting U.S. President of obstruction of Congress for exercising the President's constitutional authorities or rights?

Mr. Counsel PHILBIN. Mr. Chief Justice and Senators, thank you for the question.

I think the short answer is, constitutionally, no, the Senate may not convict the President for exercising his constitutional authorities.

The theory that the House managers have presented—I think Professor Turley, in testifying before the House, made it very clear—is itself an abuse of power by Congress and is dangerous for the structure of our government because the fundamental proposition at the heart of the obstruction of Congress charge that the House managers have brought is that the House can simply demand information.

If the executive branch resists, even if it provides lawful rationales—perhaps ones that the House managers disagree with but that are consistent with longstanding precedents and principles applied by the executive branch—and if the House managers disagree with them, they jump immediately to impeaching the President. That is dangerous for our structure of government. We are talking about principles here—one based on simply the failure of the House to proceed lawfully.

We have heard a lot about the President is not above the law, but as Professor Dershowitz pointed out, the House of Representatives is not above the law. It has to turn square corners. It has to proceed by the proper methods to issue subpoenas to the executive branch.

So, if the House has an issue about subpoenas and if the House attempts to subpoena a senior adviser to the President and the President asserts the immunity of the senior adviser—a doctrine that has been asserted by virtually every President since President Nixon and goes back earlier than that—then there is a confrontation between the branches. That doesn't suggest an impeachable offense. What it suggests—what it shows—is a separation of powers in operation. That friction between the branches is part of the constitutional design.

It was Justice Louis Brandeis who explained that the separation of powers was enshrined in the Constitution not because it was the most efficient way to have government, but because the friction that it caused and the interaction between the branches was part of a way of guaranteeing liberty by ensuring that no one branch could aggrandize power to itself.

What the House managers are suggesting here is directly antithetical to that fundamental principle. What they are suggesting is, once they decide they want to pursue impeachment and when they make demands for information to the Executive, the Executive has no defenses. It can have no constitutional authorities or prerogatives to raise in response to those subpoenas. It has to just turn over everything or it is an impeachable offense. What that would lead to, as Professor Turley explained, is transforming our system of government by elevating the House and making it, really, a parliamentary system.

As Professor Dershowitz was explaining, in the parliamentary system, the Prime Minister can simply be removed by a vote of no confidence, but if you make it so easy to impeach the President—all the House has to do is demand some information, goad a response from a President that this is contrary to the principles that all Presidents before me have asserted, and I am going to stick by the executive branch's prerogatives—then the House can say: Well, that is it. You will be impeached.

If the votes are there to remove the President, you make the President dependent on the legislature, and that is what Gouverneur Morris warned against specifically during the Constitutional Convention. He warned the Framers, when we make a method for making the President amenable to justice, we should make sure that we do not make him dependent on the legislature.

It was the parliamentary system's making it easy to remove the Chief Executive that the Framers wanted to reject, and this theory of obstruction of Congress would create exactly that system of easy removal, effectively a parliamentary system of a vote of no confidence. That is not the structure of the government that the Framers enshrined in the Constitution for us.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Connecticut.

Mr. BLUMENTHAL. Thank you, Mr. Chief Justice.

Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators WARNER, HEINRICH, and HARRIS.

The CHIEF JUSTICE. Thank you.

The question from Senator BLUMENTHAL and Senators WARNER, HEINRICH, and HARRIS reads as follows:

Before the break, the President's Counsel stated that accepting "mere information" from a foreign source is not something that would violate campaign finance law, and that it is not campaign interference to accept "credible information" from a foreign source about someone who is running for office. Under this view, acceptance of the kinds of propaganda disseminated by Russia in 2016—on Facebook and other social media platforms, using bots, fake accounts and other techniques to spread disinformation—would be perfectly legal and appropriate. Isn't it true that accepting such a thing of value is, in fact, a violation of law? And isn't it true that it is one of the highest priorities of our Intelligence Community, including the CIA, NSA, DNI, and FBI, to do everything possible to prevent such foreign interference or intervention in our elections?

Mr. Manager SCHIFF. It is, without question, among the very highest priorities of our intelligence agencies and our law enforcement to prevent foreign interference in our election of the type and character that we saw in 2016.

When Russia hacked the databases of the Democratic National Committee—the DCCC—when they began a campaign of leaking those documents and when it engaged in a massive and systemic social media campaign, our intel agencies and law enforcement had been devoting themselves to preventing a recurrence of that type of foreign interference.

If I am understanding counsel for the President correctly—and I think that I am—they are saying that not only is that OK to willingly accept that but that the very allegation against the President that Bob Mueller spent 2 years investigating didn't amount to criminal conspiracy. That is, Did he prove beyond a reasonable doubt the crime of conspiracy? Again, we are talking about something separate from collusion here, although my colleagues keep confusing the two. Bob Mueller didn't address the issue of collusion. What he did address was whether he could prove the elements of criminal conspiracy, and he found that he could not.

What counsel for the President is now saying is that, even if he could have, that is OK. It is now OK to criminally conspire with another country to get help in a Presidential election, as long as

the President believes it would help his campaign, and, therefore, it would help our country. That is now OK. It is OK to ask for that help. It is OK to work with that power to get that help. That is now OK.

It has been a remarkable evolution of the Presidential defense. It began with “none of that stuff happened here.” It began with “nothing to see here.” It migrated to, OK, they did seek investigations of the President’s political rival, and then it became, OK, those investigations were not sought by official channels to official policy. They were sought by the President’s lawyer in his personal capacity. Then it migrated to, OK, we acknowledge that, while the President’s lawyer was conducting this personal political errand, the President withheld the money, but we think that is OK.

We have witnessed over the course of the last few days and the long day today a remarkable lowering of the bar to the point now where everything is OK as long as the President believes it is in his reelection interest. You could conspire with another country to get their help in your election either by its intervening on your behalf to help you or by its intervening to hurt your opponent.

Now, we are told that that is not only OK, but it is beyond the reach of the Constitution. Why? Because abuse of power is not impeachable. If you say abuse of power is impeachable, well, then, you are impeaching Presidents for mere policy. Well, that is nonsense. They are not the same thing.

They are not the same thing as Professor Turley has argued. They are not the same thing as Bill Barr has argued. They are not the same thing as Professor Dershowitz argued 21 years ago, and they are not the same thing today. They are just not. You can’t solicit foreign interference, and the fact that you are unsuccessful in getting it doesn’t exonerate you. The failed scheme doesn’t make you innocent.

A failed scheme doesn’t make you innocent. If you take a hostage and you demand a ransom and the police are after you and you release the hostage before you get the money, it doesn’t make you innocent. It just makes you unsuccessful—an unsuccessful crook—but it doesn’t mitigate the harmful conduct.

And this body should not accept nor should the American people accept the idea put out by the President’s lawyers today that it is perfectly fine—unimpeachable—for the President of the United States to say “Hey, Russia” or “Hey, Ukraine” or “Hey, China, I want your help in my election” because that is the policy of the President. We are calling that policy now. It is the policy of the President to demand foreign interference and withhold money from an ally at war unless they get it. That is what they call policy.

I am sorry; that is what I call corruption, and they can dress it up in fine legalese, but corruption is still corruption.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Maine.

Ms. COLLINS. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator COLLINS is for the House managers:

The House Judiciary Committee report accompanying the Articles of Impeachment asserted the President committed criminal bribery as defined in 18 U.S.C., section 201, and Honest Services Fraud as defined in 18 U.S.C., section 1346, but

these offenses are not cited in the Articles of Impeachment. Did the President's actions as alleged in the Articles of Impeachment constitute violations of these Federal criminal laws, and if so, why were they not included in the Articles?

Mr. Manager JEFFRIES. Thank you, Mr. Chief Justice, and thank you, Senator, for your question.

Our article I alleges corrupt abuse of power—corrupt abuse of power connected to the President's effort to try to cheat in the 2020 election by pressuring Ukraine to target an American citizen, Joe Biden, solely for personal and political gain and then to solicit foreign interference in the 2020 election. And the scheme was executed in a variety of ways.

Now, Professor Dershowitz has indicated, based on his theory of what is impeachable, that it has to either be a technical criminal violation, though the weight of constitutional authority says the contrary, but he said that it should be something that is either a criminal violation or something akin to a criminal violation—akin to a criminal violation.

And what we allege in article I falls into that category because what happened here is that President Trump solicited a thing of value in exchange for an official act. The thing of value was phony political dirt in the form of an investigation sought against Joe Biden, his political opponent, and he asked for it explicitly on that July 25 call and through his intermediaries repeatedly in the spring, throughout the summer, into the fall—solicited a thing of value in exchange for two official acts.

One official act was the release of \$391 million in security aid that was passed by this Senate and by the House on a bipartisan basis, and the President withheld it without justification. Witnesses said there was no legitimate public policy reason, no legitimate substantive reason, no legitimate foreign policy or national security reason for withholding the aid. It was withheld to solicit foreign interference.

Yes, that is akin to a crime. That is your standard, sir.

The President also solicited that political dirt in exchange for a second official act: the White House meeting that the Ukrainian leader desperately wanted—so much so that he mentioned it on the July 25 call, and even when President Trump met with President Zelensky at the sidelines of the U.N. in late September, the President of Ukraine brought up the Oval Office meeting again because it was valuable to him. The President withheld it—withheld that official act—to solicit foreign interference in the 2020 election.

That is not acceptable in America. That undermines our democracy. That is a stunning, corrupt abuse of power. And yes, sir, it is akin to a crime.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from New York.

Mrs. GILLIBRAND. Mr. Chief Justice, I send a question to the desk on behalf of Senators CASEY, MURPHY, ROSEN, and myself for the House managers.

The CHIEF JUSTICE. Thank you, Senator from New York.

The question from Senators GILLIBRAND, CASEY, MURPHY, and ROSEN is to the House managers:

How do the President's actions differ from other holds on foreign assistance, and how is the hold and release of congressionally appropriated assistance to foreign countries supposed to work?

Mr. Manager CROW. Chief Justice, thank you, Senators, for the question.

To be very clear, what the President did is not the same as a routine withholding or reviewing of foreign aid to ensure that it aligns with the President's policy priorities or to adjust the geopolitical developments because, indeed, if that were the case, if the President had engaged that process, had gone through the inter-agency review process, had gone through the routine congressional certification process, we would have the documents, we would have the testimony, we would have the facts to back that up.

But, indeed, what we have are none of those facts, none of those documents, and in an almost 2-month period, none of the individuals who would normally be involved in that process were aware of the reason for the hold.

Now, let's look at some prior holds in the cases of Obama's—President Obama's—temporary holds. Congress was notified of the reasons for those holds, and it was always done in the national interest, whether it be corruption, national security, in support of our alliances—never the President's own personal interests.

But let's look at even President Trump's other holds in Afghanistan because of concerns about terrorism or in Central America because of immigration concerns. They were done for reasons related to official U.S. policy. They weren't concealed. They were public—widely publicized—and had engaged not only Congress but the Department of Defense, Department of State, and the entire apparatus that is involved in conducting those holds—again, none of which happened here.

So all of this goes to show—the evidence shows that there is no legitimate policy reason. Why violate the Impoundment Control Act? Why keep all of the people involved in these holds in the dark?

The President's agencies and advisers confirmed repeatedly that the aid was in the best interests of our country's national security, including Secretary Esper, Secretary Pompeo, Vice President PENCE, Ambassador Bolton. Over and over again, everybody was imploring the President to release the hold—to no avail.

The evidence also shows that even the process was unusual, as I talked about earlier, and you have heard, over the last week, a career OMB official, Mr. Sandy, explain that Mr. Duffey, the President's handpicked political appointee who has refused to testify at the President's direction, took over responsibility to authorize the aid.

Mr. Sandy confirmed that, in his entire career at OMB, he had never seen or experienced career officials having their apportionment authority removed by a political appointee. Senators, this is what we are talking about. There has been a lot of discussion.

You haven't heard from me in a little while. I suspect there is a reason for that. I suspect it is because we don't want to talk about the big issue. We don't want to talk about what happened here.

The President abused his authority, put the interests of himself over the interests of the country, over the interests of our national security, over the interests of our free and fair elections. That is what we are here to talk about. That is what happened. That is what the evidence shows.

There is no evidence that shows a legitimate engagement of U.S. policy processes to forward legitimate ends.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Missouri.

Mr. BLUNT. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senators McCASKILL—MCSALLY, rather—LANKFORD—it was a terrifying moment—on behalf of myself, Senator MCSALLY, Senator LANKFORD, Senator GARDNER, Senator CAPITO, and Senator WICKER. This is a question for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senator BLUNT and other Senators is for the counsel for the President:

What does the supermajority threshold for conviction in the Senate, created by the Framers, say about the type of case that should be brought by the House and the standard of proof that should be considered in the Senate?

Mr. Counsel DERSHOWITZ. Mr. Chief Justice, Senators, there were several debates among the Framers, of course: Should you have impeachment at all? We talked about that—what the criteria for impeachment should be. But then there was another debate: Who should have the ultimate responsibility for deciding whether the President should be removed?

James Madison suggested the Supreme Court of the United States as a completely nonpartisan institution.

Alexander Hamilton was concerned about that issue, as well, but he said the Supreme Court would be inappropriate because the judicial branch should not become involved directly as a branch—OK to preside over the trial—because ultimately an impeached President can be put on trial for crimes if he committed crimes.

And Hamilton said that if he were to be put on trial, he would then be put on trial in front of the same institution—the judiciary—that had already impeached him, and they might have a predisposition.

So in the course of the debate, it was finally resolved that the Senate, which was a very different institution back at the founding—obviously, Senators were not directly elected; they were appointed by the legislature. They were supposed to serve as an institution that checked on the House of Representatives—more mature, more sober, elected for longer periods of time, with an eye to the future, not so concerned about pleasing the popular masses.

Remember, the Framers were very concerned about democracy. Nobody ever called the United States a democracy—"a Republic, if you can keep it," not a democracy—very great concern about that.

And then, when it came time to assign it to the Senate, there was discussion about what the criteria and what the—obviously—vote should be. The selection of a two-thirds supermajority was plainly designed—plainly designed—to avoid partisan impeachments, plainly designed to effectuate the very wise philosophy es-

poused by the Congressman and the Senator during the Clinton campaign; that is, during the Clinton impeachment.

Never ever have an impeachment or removal that is partisan. Always demand that it be a widespread consensus, a widespread national agreement, and bipartisan support. What better way of assuring bipartisan support than requiring a two-thirds vote because almost in every instance, in order to get a two-thirds vote, you need Members of both parties.

The Johnson case was a perfect example. In order to get that vote, you needed not only the party that was behind the impeachment, but you needed people from the other side as well, and when seven Republicans dissented based, I believe, largely on the arguments of Justice Curtis and others—arguments I paraphrased here the other day—it lost by merely one vote. The Clinton impeachment, if you remember correctly, achieved a 50/50 split. Am I right about that? I think I am right about that. And it only lost—and it could have been 51-to-49. It wouldn't have been enough.

So I think it is plain that not only does the two-thirds requirement serve as a check on the House, but I think it sends a message to every Senator. It sends a message even to those Senators who would be in the one-third to reconsider because if you are voting for a partisan impeachment, you are violating the spirit of the two-thirds requirement.

There are many institutions where at the end of the day—for example, political conventions—they seek a unanimous vote just to show unity. I would urge some Senators who favor impeachment to look at the two-thirds and say: If there is not going to be a two-thirds, there shouldn't be an impeachment, and therefore, we are going to vote against impeachment even though we might think that the criteria for impeachment has been satisfied.

Do not vote for impeachment, do not vote for removal, unless you think the criteria articulated by the Senator and the Congressman and, I believe, by the Constitution and by Hamilton are met, namely, bipartisan, almost universal concern by the United States of America. That criteria is not met, and the two-thirds requirement really illustrates the importance the Framers gave to that criteria.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Connecticut.

Mr. MURPHY. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The majority leader.

Mr. McCONNELL. Mr. Chief Justice, while the question is coming up, I understand that there are two more Democratic questions and two more Republican questions.

The CHIEF JUSTICE. Thank you.

The question from Senator MURPHY is to the President's counsel:

The House Managers have committed to abide by rulings by the Chief Justice regarding witness testimony and the admissibility of evidence, and that they will not appeal such rulings. Will the President's Counsel make the same commitment, thus obviating any concerns about an extended trial?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, we had this question. We will say it very clearly. We are not willing to do that, and we are not willing to do that because of the constitutional framework upon which an impeachment is based and

the constitutional privileges that are at stake, with no disrespect at all to the Chief Justice.

That is not the constitutional design. It is the same thing they are doing again. Surrender the constitutional prerogatives you have, and then we will proceed in this way. Give us documents, give us witnesses, and if you don't, we are going to charge you with obstruction of Congress.

In this case, it is "We are willing to live," according to the managers, "by whatever the Chief Justice decides." But that is not the way the constitutional framework is set up, and it is putting us in exactly the same spot again: Give up your right to challenge a subpoena in court; rely only on the person who is here—by the way, again, with no disrespect to the Chief Justice. The Chief Justice is here as the Presiding Officer of this proceeding.

So the President is not willing to forgo those rights and privileges that he possesses under the Constitution, under article II, for expediency. They tried that below in the House. We trust that will not be the decision here in the Senate.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Mississippi.

Mr. WICKER. Mr. Chief Justice, I send a question to the desk for Professor Dershowitz on behalf of myself and Senators MCSALLY and MORAN.

The CHIEF JUSTICE. The question for counsel to the President, directed to Professor Dershowitz, by Senators WICKER, MCSALLY, and MORAN, is this:

Professor Dershowitz: You stated during your presentation that the House grounds for impeachment amount to the "most dangerous precedent." What specific danger does this impeachment pose to our republic? To its citizens?

Mr. Counsel DERSHOWITZ. Thank you, Mr. Chief Justice. Thank you, Senators.

I came of age during the period of McCarthyism. I then became a young professor during the divisive time of the Vietnam war. I, as you, lived through the division during the Iraq war and 9/11 and following 9/11.

I have never lived at a more divisive time in the United States of America than today. Families have broken up. Friends don't speak to each other. Dialogue has disappeared on university campuses. We live in extraordinarily dangerous times. I am not suggesting that the impeachment decision by the House has brought that on us. Perhaps it is merely a symptom of a terrific problem that we have facing us and likely to face us in the future.

I think it is the responsibility of this mature Senate, whose job it is to look forward, whose job it is to ensure our future, to make sure the divisions don't grow even greater.

Were the President of the United States to be removed today, it would pose existential dangers to our ability to live together as a people. The decision would not be accepted by many Americans. Nixon's decision was accepted—easily accepted. I think that decisions that would have been made in other cases would be accepted. This one would not be easily accepted because it is such a divided country, such a divided time.

If the precedent is established that a President can be removed on the basis of such vague and recurring and open-ended and targeted terms as “abuse of power”—40 Presidents have been accused of abuse of power. I bet you all of them have. We just don’t know some of the charges against some of them, but we have documentation on so many. If that criteria were to be used, this would just be the beginning of a recurring weaponization of impeachment whenever one House is controlled by one party and the Presidency is controlled by another party.

Now the House managers say there are dangers of not impeaching, but those dangers can be eliminated in 8 months. If you really feel there is a strong case, then campaign against the President. But the danger of impeachment will last my lifetime, your lifetime, and the lifetime of our children.

So I urge you respectfully, you are the guardians of our future. Follow the constraints of the Constitution. Do not allow impeachment to become a normalized weapon, in the words of one of the Framers. Make sure that it is reserved only for the most extraordinary of cases, like that of Richard Nixon. This case does not meet those criteria.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Arizona.

Ms. SINEMA. Mr. Chief Justice, I send a question to the desk for President’s counsel.

The CHIEF JUSTICE. Thank you.

The question from Senator SINEMA to President’s counsel is this:

The administration notified Congress of the hold of the Northern Triangle countries’ funds in 2019, announced its decision to withhold aid to Afghanistan in September 2019, and worked with Congress for months in 2018 regarding funds being withheld due to Pakistan’s lack of progress meeting its counterterrorism responsibilities. In these instances, the receiving countries knew the funds were being withheld to change behavior and further publicly-stated American policy. Why, when the administration withheld the Ukraine security assistance, did it not notify Congress, or make Ukraine or partner countries publicly aware of the hold and the steps needed to resolve the hold?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for the question.

I think that, in all of those instances that were listed in the question, it was clear that withholding the aid was meant to send a signal. It was done publicly, and it was meant to send a signal to the country. I think that in the testimony before the House here, Ambassador Volker made clear that he and others hoped that the hold would not become public because they did not want there to be any signal to the Ukrainians or to others.

People have talked here—the House managers talked about how, well, even if the aid, when it was withheld, didn’t lead to anything not being purchased over the summer, it was still dangerous because it sent a signal to the Russians. The whole point was, it wasn’t public. The Ukrainians didn’t know. The Russians didn’t know. It wasn’t being done to send a signal; it was to address concerns.

The President had raised concerns, and he wanted time to have those concerns addressed. He wanted to understand better burden-sharing—the issue that is reflected in the June 24 email that I referred to earlier; it is referred to in the July 25 call transcript—

and he wanted to understand corruption issues. He raised corruption issues.

Over the course of the summer, the testimony of Mr. Morrison in particular below explained that there were developments on corruption. President Zelensky had just been elected in April. At that time, multiple witnesses testified that it was unclear. He had run on a reform agenda, but it was unclear what he would be able to accomplish because it was unclear whether or not he would secure a majority in the Ukrainian Parliament. Those elections didn't occur until July. That is when the July 25 call occurred.

He won the majority in Parliament, but the Parliament was not actually going to be seated until later in August. Mr. Morrison testified that when he and Ambassador Bolton were in Kyiv in August, around August 27, that the Parliament had just been seated, and Zelensky and his Ministers were tired because they had been up all night. They kept the Parliament up late in session to pass the reform legislative agenda right then, including things like eliminating immunity for members of the Parliament from corruption, prosecutions, and the legislature just set up the newly formed corruption court.

So these developments were positive developments, but then Mr. Morrison testified that President Zelensky, when he spoke to Vice President PENCE in Warsaw, discussed these things, and President Zelensky went through what he was doing, and then that information was relayed back to the President.

So the hold had been in place so that the President could, within the U.S. Government, privately consider this information, not to send a signal to the outside world.

This plays into some of the ideas that the House manager presented that somehow this was terrible; it sent a signal to the Russians. Part of the whole point, Ambassador Volker explained, was that there was concern that it not become public because it would then not send a signal. That is what happened until the POLITICO article came out on August 28. I think that is the best way to understand the difference and approach there. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. YOUNG. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Indiana.

Mr. YOUNG. I send a question to the desk on behalf of myself and Senator BRAUN.

The CHIEF JUSTICE. Thank you. The Senators from Indiana ask both parties the following question:

We were promised by House managers that the evidence supporting each article of impeachment would be "overwhelming" and "uncontested." Virtually every day, House managers have insisted that the Senate cannot have a trial without witnesses. Do both parties agree that the Senate has included in evidence in this trial the testimony of every single witness from which the House heard before they voted, except for the intelligence community IG report that Chairman SCHIFF kept secret?

We begin with the House managers.

Mr. Manager SCHIFF. Let me take this opportunity, if I can, to answer a few questions. First, is the fact that the testimony of the witnesses before the House sufficient to relieve the Senate of an obligation to have a trial? And the answer is no. There is no reason, and, indeed, every other Senate trial—impeachment trial in his-

tory—has involved witnesses who did not testify before the House. This will be the first departure. It shouldn't be if it is to be a fair trial.

I want to quickly respond to a couple of other points. The question was asked: Why didn't we charge bribery? And the answer is we could have charged bribery. In fact, we outlined the facts that constitute bribery in the article, but "abuse of power" is the highest crime. The Framers have it in mind as the highest crime. The facts we allege within that do constitute bribery, but had we charged bribery within the "abuse of power" article, I can assure you that counsel here would be arguing: You have charged two offenses within the same article. That makes that invalid. We wouldn't have had Alan Dershowitz making that argument because he says abuse of power is not impeachable. They would have had Jonathan Turley here making that argument. If we split them into two separate articles—one for abuse of power and one for bribery—they would have argued you have taken one crime and made it into two.

The important constitutional point here is not that the acts within abuse of power constitute bribery—although they do. The important point is we charged a constitutional crime—the most serious crime. The Founders gave the President enormous powers, and their most important consideration was that the President not abuse that power, and they provided a remedy, and that remedy is impeachment.

One final point. Mr. Sekulow said that is not how the Constitution works. The Constitution doesn't allow the Chief Justice to make those decisions, but, you know, he didn't say the Constitution prohibits it. The Constitution permits it if they will agree, but they won't. And he said it is the same as in the House, and it is the same as in the House. And it is the same in this way: If they were operating in good faith, if they really wanted a fair resolution, if they weren't just shooting for delay, they would allow the Chief Justice to make these decisions.

But what they do not want is they do not want you to hear John Bolton. And why? Because when you hear, graphically, a man saying the President of the United States told me to withhold aid from our ally, to coerce foreign assistance in his election, when the American people hear that firsthand—not filtered through our statements—they will recognize impeachable conduct when they see it.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Sekulow, you have 2½ minutes.

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice.

With regard to the last statement, I am just going to say: Asked and answered. I have answered the question about the issue of moving forward if there were witnesses and our view on that. I don't have to say anything else.

Now, with regard to the question that was actually presented, 29 times—29 times—the House managers have used the phrase "overwhelming, uncontested, sufficient." "Proved" they said 31 times. Now, that is just what the record says.

It is true that the record from the House was accepted provisionally subject to evidentiary objections, but they are the ones who have said "overwhelmingly" and "proved." Now, we, of course, dis-

agree with their conclusions as a matter of fact and as a matter of law. But for them to come up here and to argue “proved” and “overwhelmingly” a total of, I guess, 64 times in a couple of days, tells me a lot about what they want.

What we are asking for is this proceeding to continue, and with that, we are done.

Thank you, Mr. Chief Justice

The CHIEF JUSTICE. Thank you, counsel.

The majority leader is recognized.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m., Thursday, tomorrow, January 30, and this order also constitute the adjournment of the Senate.

There being no objection, at 11:05 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Thursday, January 30, 2020, at 1 p.m.

[From the CONGRESSIONAL RECORD, January 30, 2020]

The Senate met at 1:05 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will lead us in prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

Eternal Lord God, send Your Holy Spirit into this Chamber. Permit our Senators to feel Your presence during this impeachment trial. Illuminate their minds with the light of Your wisdom, exposing truth and resolving uncertainties. May they understand that You created them with cognitive capabilities and moral discernment to be used for Your glory. Grant that they will comprehend what really matters, separating the relevant from the irrelevant. Lord, keep them from fear, as they believe that Your truth will triumph through them. Eliminate discordant static with the music of Your wisdom.

We pray in Your great Name. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. The Senators will please be seated.

If there is no objection, the Journal of proceedings of the trial is approved to date.

The Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Jennifer Hemingway, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, the Senate will conduct another question and answer period today. We were able to get through nearly 100 questions yesterday. Senators posed constructive questions, and the parties were succinct and responsive. I would like to compliment all who participated yesterday.

We will again break every 2 to 3 hours and look to take a break for dinner around 6:30.

We have been respectful of the Chief Justice's unique position in reading our questions. I want to be able to continue to assure him that that level of consideration for him will continue.

The CHIEF JUSTICE. Thank you.

SENATORS' QUESTIONS

Mrs. MURRAY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Washington.

Mrs. MURRAY. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

Senator MURRAY asks the House managers:

Yesterday, when asked about why the House did not amend or reissue subpoenas after it passed its resolution authorizing its impeachment inquiry, the House Managers touched upon the House having the sole Power of Impeachment as specified by Article I of the Constitution. Could you further elaborate as to why that authority controls despite any arguments brought forth by members of the defense team contesting the validity of those subpoenas?

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, that is a good question.

The answer is that these were validly issued subpoenas under the House rules. The White House argument to the contrary is wrong, and it would have profound negative implications for how Congress and our democracy function.

On January 9, 2019, the House adopted its rules, like we do every Congress, and these rules gave the committee the power to issue subpoenas. They are not ambiguous rules. Here is the relevant portion of rule XI on slide 55: The House's standing rules give each committee [Slide 572] subpoena power "for the purpose of carrying out any of its functions and duties" as it considers necessary. This investigation began on September 9, before the Speak-

er's announcement on September 24 that it would become part of the impeachment inquiry umbrella.

The President doesn't dispute that the subpoenas issued by these committees were fully within their respective jurisdiction. The argument is that somehow, by declaring that this investigation also falls under an inquiry to consider Articles of Impeachment, which gives Congress actually greater authority, somehow it nullifies the traditional oversight authority. And this just doesn't make any sense.

The President counters that we have to take a full vote on impeachment first because that is what has been done in the past. In the Nixon inquiry, however, the Judiciary Committee needed a House resolution to delegate subpoena power, and that is different than the Committee's standing rules today.

The President actually compels the opposite conclusion. Several Federal judges have been investigated and impeached and convicted in the Senate without the House having ever taken an official vote to authorize the inquiry, and a Federal court recently confirmed there was no need for a formal vote of the full House to commence impeachment proceedings.

Even assuming a House vote was necessary, there was a vote. The text of H. Res. 660 declared that the six investigative committees of the House were directed to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether there were sufficient grounds for the House of Representatives to exercise its constitutional power to impeach. And the committee report, which accompanies the resolution, specifically described the subpoenas that had been issued by the investigating committees and said "all subpoenas to the executive branch remain in full force."

So why didn't the House committee just reissue these subpoenas after the resolution? The short answer is they didn't need to. The subpoenas were already fully authorized.

In any event, even after the resolution passed, the committees issued subpoenas to Mick Mulvaney, Robert Blair, and four other witnesses, and the President continued to block those subpoenas. The argument about a full House vote really is just an excuse about President Trump's obstruction. The President refused to comply with the House subpoenas before the House vote and after the House vote. The only logical explanation is the one that President Trump gave us all along: He was determined to fight all the subpoenas because, in President Trump's view, according to what he said, he can do what he wants.

That is not what the constitutional Republic entrusted to us by the Founders had in mind. This argument doesn't just apply to impeachment. It would apply to ordinary oversight investigations. And it doesn't just apply to the House. It would also apply to the Senate.

By sanctioning the President's blanket obstruction, the Senate would be curtailing its own subpoena power in the future, as well as the House's, and the oversight obligation that we have, as we now know it, would be permanently altered.

I yield back.

The CHIEF JUSTICE. Thank you, Ms. Manager.

Mr. PAUL. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Kentucky.

Mr. PAUL. I have a question to present to the desk for the House Manager SCHIFF and for the President's counsel.

The CHIEF JUSTICE. Thank you.

The Presiding Officer declines to read the question as submitted.

The Senator from Wisconsin.

Ms. BALDWIN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator BALDWIN is addressed to the House managers:

Given that the White House Counsel couldn't answer Senator ROMNEY's question that asked for the exact date the President first ordered the hold on security assistance to Ukraine, what witness or witnesses could answer Senator ROMNEY's question?

Mr. Manager CROW. Thank you, Mr. Chief Justice. Thank you, Senator, for the question.

You are right. They were not able to directly answer that question, and we believe that there is a tremendous amount of material out there in the form of emails, text messages, conversation, and witness testimony that can shed additional light on that, including an email from last summer between Mr. Bolton and Mr. Blair, where we know from witness testimony this issue was discussed.

What we do know is from multiple witnesses. Ukrainian officials knew that President Trump had placed a hold on security assistance soon after it was ordered in July of 2019. So we know that not only did U.S. officials know about it and OMB communicated about it, Ukrainians knew about it as well.

We know from former Deputy Foreign Minister of Ukraine, Olena Zerkal—she stated publicly, in fact, that the Ukrainian officials knew about it and had found out about it in July. [Slide 573] We also know from the testimony of Laura Cooper that her staff received two emails from the State Department on July 25 revealing that the Ukrainian Embassy was “asking about security assistance” and that “the Hill knows about the FMS situation to an extent and so does the Ukrainian embassy.” That was on July 25, the same day as President Trump's call with President Zelensky.

What we also know is that career diplomat, Catherine Croft, stated that she was “very surprised at the effectiveness of my Ukrainian counterparts' diplomatic tradecraft, as if to say they found out very early on or much earlier than I expected them to.”

We also know that Lieutenant Colonel Alexander Vindman testified that by mid-August he was getting questions from Ukrainians about the status of security assistance. So there is a lot of evidence surrounding it.

The administration continues to obstruct wholly our efforts to get the emails and correspondence that we have asked for. That obviously can be remedied by this body with the appropriate subpoenas; namely, a subpoena to Ambassador Bolton to testify and a subpoena to the State Department—the Department of State, the Department of Defense, and others to actually provide that material.

The last thing I would like to say is, last evening, counsel for the President was asked the question about why did the hold for

Ukraine differ from holds in the Northern Triangle and other holds like Afghanistan. He provided an explanation that I am still trying to wrap my brain around because he seems to be the only person in the administration that actually has an explanation. As far as I could tell, the explanation was somewhere along the lines of one was public, trying to put public pressure on the countries in question, and one was not. It was a private conversation, a private effort to put pressure.

If that were true, then, of course, there would be plenty of evidence, plenty of emails, text messages, and other correspondence within the entire interagency process that we know is robust that would illustrate that to be the case, but they have failed to provide any evidence to corroborate that.

Let me finish with this. I happen to know that a lot of people in this Chamber, a lot of people in the Chamber on the other side of the Capitol, including me, have often described much consternation about redtape and bureaucracy and layers of government that run too slow. And I sometimes share that concern, right, that sometimes it takes a long time. There are memos for everything, emails for everything. There are paper trails for everything in this town. I think that is true with respect to this issue, and it is time that we actually see that information so we can get to the bottom of what actually happened. This body could get that information.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Pennsylvania.

Mr. TOOMEY. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators SASSE, MCSALLY, CRAPO, THUNE, YOUNG, ERNST, and BRAUN.

The CHIEF JUSTICE. The question from Senator TOOMEY and others is for counsel for the President:

Given that the election of the president is one of the most significant political acts in which we as citizens engage in our democratic system, how much weight should the Senate give to the fact that removing the president from office and disqualifying him from ever holding future federal office would undo that democratic decision and kick the President off the ballot in this year's election?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate.

One of the concerns that we have raised throughout this process over the last several months, going back to the time when the House was dealing with this in their various committees, is we are in an election year. There are some in this room that are days away from the Iowa caucuses taking place. So we are discussing the possible impeachment and removal of the President of the United States not only during election season, in the heart of the election season. And I think that this does a disservice to the American people.

Again, we think the basis upon which this has moved forward is irregular, to say the least. But I do think it complicates the matter for the American people that we are literally at the dawn of a new season of elections. I mean, we are at that season now, and yet we are talking about impeaching a President.

And I want to tie this into the urgency that was so prevalent in December with my colleagues, the managers. It was so urgent to move this forward that they had to do it by mid-December, before

Christmas, because national security was at stake, and then they waited 33 days to bring it here. And now they are asking you to do all the investigation, although they say they proved their case but still need more to prove it.

Whereas, we believe—and I want to be clear here—that their entire process was corrupt from the beginning, and they are just putting it on this body. But to do it while the American people are selecting candidates for nomination to be the head of their party, to run as President of the United States—some of you in this very room—and to talk about the removal of a President of the United States, I think that is all part and parcel of the same pattern and practice of irregularities that have taken place with this impeachment proceeding since the beginning. The Speaker allowed the articles to linger. It was such a nationally urgent matter that they could linger for a month.

So we think that this points to the exact problem of what is taking place here and that is, as my colleague Mr. Cipollone said, this is really taking the vote away from the American people.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Montana.

Mr. TESTER. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

Senator TESTER asks the House managers:

Yesterday Mr. Dershowitz stated, “If a President does something which he believes will help him get elected in the public interest that cannot be the kind of quid pro quo that results in impeachment.” Do you believe there is any limit to the type or scope of quid pro quo a sitting President could engage in with a foreign entity, as long as the intent of the sitting President is to get reelected in what he or she believes is in the public’s best interest?

Mr. Manager SCHIFF. Mr. Chief Justice, Senator.

There is no limiting principle to the argument that we heard last night from the President’s team; that is, if there is a quid pro quo that the President believes will help him get reelected and he believes his reelection is in the national interest, then it doesn’t matter how corrupt that quid pro quo is. It is astonishing that on the floor of this body someone would make that argument.

Now, it didn’t begin that way, in the beginning of the President’s defense, but what we have seen over the last couple days is a descent into constitutional madness because that way madness lies. If we are to accept the premise that a President, essentially, can do whatever he wants, engage in whatever quid pro quo he wants—I will give you this if you will give me that to help me get elected. I will give you military dollars if you will give me help in my reelection, if you will give me illicit foreign interference in our election.

Now, the only reason you made that argument is because you know your client is guilty and dead to rights. That is an argument made of desperation.

Now, what is so striking to me is almost half a century ago we had a President who said: “Well, when the President does it, that means it is not illegal.” That, of course, was Richard Nixon. Watergate is now 40 to 50 years behind us. Have we learned nothing in

the last half century? Have we learned nothing at all? It seems like we are back to where we were: The President says it is not illegal or Donald Trump's version under article II, "I can do whatever I want," or Professor Dershowitz' point, if the President believes it helps his reelection, it is, therefore, in the national interest; he can do whatever he wants.

In fact, much as we thought that we progressed post-Watergate: We enacted Watergate reforms; and we tried to insulate the Justice Department from interference by the Presidency; we tried to put an end to the political abuses of that Department—as much as we thought we enacted campaign finance reforms, we are right back to where we were a half century ago. And I would argue, we may be in a worse place because this time—this time that argument may succeed.

That argument—if the President says it, it can't be illegal—failed, and Richard Nixon was forced to resign. But that argument may succeed here now. That means we are not back to where we were; we are worse off than where we are. That is the normalization of lawlessness.

I would hope that every American would recognize that it is wrong to seek foreign help in an American election; that Americans should decide American elections. I would hope—and I believe that every American understands that, and every American understands that is true for Democratic Presidents and Republican ones. I would hope that we would understand it. I would hope that this trial would be one conducive of the truth.

The Senator asked what witnesses could shed light on when the President ordered the hold and why. Well, we know Mick Mulvaney would. That instruction came from OMB. You remember the testimony of Ambassador Taylor, the shock that went through the National Security Council and the shock he experienced in that video conference when it was first announced, and the instruction was, this comes through the President's Chief of Staff, OMB, but it is a direct order from the President.

Well, Mick Mulvaney knows when that order went into place and he knows why that order went into place and he made that statement publicly, which he now wishes to recant. I am sure he got an earful from the President after he did, but, apparently, it doesn't matter. None of that matters because if the President believes it is in his interest, it is OK.

Now, there was an argument also, what if it was a credible reason? Of course, there is no evidence that this was a credible reason to investigate the President's political rival, but let's say it was a credible reason; does that make it right?

What President is not going to think he has a credible reason to investigate his opponent? What President is going to think he doesn't have a credible reason or wouldn't be able to articulate one or come up with some fig leaf?

They compounded the dangerous argument that they made that no quid pro quo is too corrupt if you think it will help your reelection. They compounded it by saying, if what you want is to target your rival, it is even more legitimate. That way, madness lies.

The CHIEF JUSTICE. The Senator from North Dakota.

Mr. CRAMER. I send a question to the desk on behalf of myself and Senator YOUNG.

The CHIEF JUSTICE. Thank you.

The question from Senators CRAMER and YOUNG is for the counsel for the President:

Manager SCHIFF regularly states that if the President is innocent he would agree to all of the witnesses and documents that the Managers want. Is the President the first innocent defendant not to waive his rights?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question because the answer is, obviously, no. The President is not the first innocent defendant who decided not to waive his rights, and I think it is striking and shocking that it is one of the arguments that has been repeatedly deployed by the House managers throughout these proceedings.

You heard Manager NADLER say only the guilty hide evidence, only the guilty don't respond to subpoenas, and Manager SCHIFF say that this is not the way innocent people act. Well, of course, that is contrary to the very spirit of our American justice system, where people have rights, and asserting those rights cannot be interpreted as an indication of guilt. That is expressly forbidden by the laws and by the Constitution.

The Supreme Court explained in *Bordenkircher v. Hayes*—a case that is cited in our trial memorandum—that the very idea of punishing someone, which is what the House managers are attempting to do here with their obstruction of Congress charge—they said that if the President insists on the constitutional prerogatives of his office; if the President insists that, like virtually every President—at least since Nixon and some going further back than that—he is going to assert the immunity of his senior advisers to compel congressional testimony; if he is going to assert those rights grounded in the separation of powers and essential for protecting constitutionally based executive branch confidentiality interests, we are going to call that obstruction of Congress and impeach him.

It is this fundamental theme running throughout both their obstruction charge and their arguments generally here that if the President stands on his constitutional rights—if he tries to protect the institutional prerogatives of his office, which he is duty-bound to do for future occupants of that office—that it is somehow an indication of guilt and shows that he ought to be impeached.

That is fundamentally antithetical to the American system of justice and to our principles of due process, to our principles of acknowledging that rights can be defended, that rights exist to be defended, and that asserting those rights cannot be treated either as something punishable or as evidence of guilt.

There would be a long line of past Presidents—as Professor Dershowitz pointed out, there are a lot of Presidents who have been accused of abuse of power. There would also be a long line of Presidents who could have been impeached for “obstruction of Congress” if every time a President insisted upon the prerogatives of the office of the Presidency and insisted on defending the separation of powers, it could be treated as something impeachable and as evidence of guilt.

President Obama himself refused to turn over a lot of documents to the House in the Fast and Furious investigation, and his Attor-

ney General was held in contempt, but no one thought that it was an impeachable offense.

So the concept of saying that when the President asserts the constitutionally grounded prerogatives of his office, that it is evidence of guilt is a completely bogus assertion. It is contrary to all of the principles of our American justice system and to the fundamental principles of fairness, and it ought to be rejected by this body.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Alabama.

Mr. JONES. Thank you, Mr. Chief Justice. I send a question to the desk.

The CHIEF JUSTICE. Thank you.

Senator JONES' question is for the House managers:

Aside from the House's Constitutional impeachment authority, please identify specifically which provision or provisions, if any, in the House rules or a House Resolution authorized the subpoenas issued by the House Committees prior to the passage of House Resolution 660.

In addition, please list the subpoenas that were issued after House Resolution 660.

Mr. Manager SCHIFF. Senator, we will compile the list. We don't have it accessible at the moment. Oh, we do have it.

Specifically, the subpoenas that went out after the passage of the House resolution were the subpoena to John Eisenberg and the subpoenas to Brian McCormack, Robert Blair, Michael Ellis, Preston Wells Griffith, and Mick Mulvaney.

Let me underscore something that my colleague Manager LOFGREN had to say, and let me break this down, if I can, in very practical terms.

What is the practical import of what counsel for the President would argue? It is this: Let's say that a Democrat is elected in November, and let's say that any one of you who chairs a committee in the Senate determines that you think that the next President is engaged in something questionable, maybe even in some wrongdoing, and you begin an investigation. I would imagine that in your Senate rules, like in our House rules—and it is House rule X, Senator, that has the specific language authorizing the issuance of subpoenas as a part of our normal oversight responsibility. That power didn't exist at the time of Watergate, [Slide 572] so they had to have a separate resolution. But that House rule, passed each session, empowers us to issue subpoenas, as committee chairs, as part of our oversight jurisdiction.

So there you are with a Democratic President. You are a chair, and you start to do oversight. You issue subpoenas. You start to learn more, and what you learn becomes more and more concerning, and you issue more subpoenas.

The administration's effort to cover up its misconduct says: We are not going to comply with any of your subpoenas. We are going to fight all subpoenas.

And they come up with one bad-faith excuse after another as to why they don't have to comply.

As you investigate further and you are able to overcome the wall of obstruction, then you begin an impeachment inquiry, and that leads to the passage of yet another resolution.

They would argue to you that all of the work you did before you determined that it merited potential impeachment must be thrown out, that they were perfectly empowered to obstruct you in your oversight responsibility, that you must begin with your conclusion and you must begin with the conclusion that you were prepared to impeach the President before you issued a single subpoena; otherwise, they can say whatever you did before you got to that place should be thrown out.

Now, we did not have the Justice Department do the initial investigation here. Why? Because Bill Barr turned it down. The same Attorney General that mentioned that July 25 call said there was nothing to see here. So there was no DOJ investigation. There was no special counsel investigation. It was not as if someone like Ken Starr handed us a package and said: Here is the evidence. Now you can take up an impeachment resolution because we have done the investigative work. No. We had to do that work ourselves.

They would have you believe that any subpoena you issue as a part of your oversight responsibility that, down the road, reveals evidence that leads you to embark on an impeachment inquiry must be disregarded. That cannot and is not the law. It would render the oversight function meaningless.

Court after court has looked at the Congress's power to issue subpoenas, and they have all reached the same conclusions. That is, if you have the power to legislate, you have the power to oversee. Here, we have a violation of the Impoundment Control Act. That is, Congress passes military spending. The President doesn't spend it, and he gives no reason. He keeps it a secret. We are investigating that. That can't be more squarely within the oversight power of Congress—to find out why aid we appropriated was not going out the door.

They would say: You can't look into that unless you are prepared to impeach the President and announce it firsthand. That is the import of that argument. It would cripple your oversight capacity, and without your oversight capacity, your legislative capacity is crippled. That is the real-world import of this legal window dressing. They would strip you of your ability to do meaningful oversight.

Particularly here, where we are talking about the misconduct of an impeachable kind and character, it would mean that a President could obstruct his own investigation.

If you need any evidence of his bad faith, which is abundant—of the shifting and springing rationalizations and explanations—when we had Corey Lewandowski in the Intelligence Committee, they said, under instructions of the White House, he wouldn't answer questions because they might claim executive privilege. Now, this was someone who had never worked for the executive, but they made the claim he might use executive privilege.

The CHIEF JUSTICE. Time is expired.

Mr. Manager SCHIFF. Thank you.

The CHIEF JUSTICE. The Senator from Texas.

Mr. CRUZ. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators HAWLEY and GRAHAM.

The CHIEF JUSTICE. Thank you.

The question from Senator CRUZ, along with Senators HAWLEY and GRAHAM, is for both sides—counsel for the President and the House managers:

Yesterday, Manager DEMINGS refused to answer whether Joe Biden sought any legal advice concerning his conflict of interest on Burisma, the corrupt Ukrainian company that was paying his son Hunter \$1 million per year.

USA Today reported that, when asked about it, Vice President Biden said, “He hadn’t spoken to his son Hunter Biden about his overseas business.”

That account was contradicted by Hunter Biden, who told the New Yorker that he told his father about Burisma, and “Dad said, ‘I hope you know what you’re doing,’ and I said, ‘I do.’”

Why do Joe and Hunter Bidens’ stories conflict? Did the House ask either one that question?

The White House Counsel goes first.

Ms. Counsel BONDI. Chief Justice, Senators, you heard our answer regarding that yesterday, but it is very interesting that he said he never spoke to his son about overseas dealings and that his son said different things.

Joe Biden was the point man for Ukraine. The Ukrainians were investigating at that time a corrupt company, Burisma, and Zlochevsky, its owner—an oligarch—who, by all media accounts, as we have discussed, was extremely corrupt.

Hunter Biden was paid \$83,000 a month—a month—to sit on that board with having no experience in energy, no experience in the Ukraine, and didn’t speak the language. We clearly know that he had a very fancy job description, and he did none of those things. He attended one or two board meetings—one in Monaco. Then he went on a fishing trip with Joe Biden’s family in Norway.

The entire time, Joe Biden knows that this oligarch is corrupt. Everyone knows that. There are news reports everywhere. No one will dispute that. In fact, it raised eyebrows worldwide. Yet the Vice President, by his account, never once asked his son to leave the board. We wouldn’t be sitting here if he did. He never asked his son to leave the board. Instead, he started investigating the prosecutor who was going after Burisma and this corrupt oligarch, who they say was corrupt even by oligarch standards, who had fled the country—fled the country—and was living in Monaco.

He does not ask him to leave the board. He does the opposite.

In 2015, what does he do? We know by reports he has close contact with President Poroshenko. He travels to Ukraine twice. He links it to the—he links their aid to the firing.

Same thing in 2016 at a White House meeting—links the aid to the firing of the prosecutor; calls him four times in the 8 days up—leading to the prosecutor—the prosecutor investigating Hunter Biden. Yet he never says that. All cases closed.

Days before Biden leaves office, he jokes to Poroshenko that he may have to call him every couple weeks to check in. Hunter Biden stays on that board for 3 years—3 years.

Then we hear the video of Joe Biden bragging about firing the prosecutor, linking it to aid. Then we have a 6-minute phone call.

Ms. ROSEN. Mr. Chief Justice.

The CHIEF JUSTICE. I am sorry. The House managers have 2½ minutes.

Mrs. Manager DEMINGS. Mr. Chief Justice and to our Senators, Senators, thank you so much for that question. I know you have

asked about a conversation between a father and his son, and what I can tell you, probably like just about everybody in this Chamber, there are probably some conversations that I can't repeat to you about my conversations with my son. So I don't know the answer to your question, Senator, what that exact conversation was.

But what I can tell you is this: If we are serious about why we are here—and I have no reason to doubt that we are—we are serious about seeking the truth because the truth matters, not just for those who have paid the price in our history to form a more perfect union and protect our democracy, but it is important for our future. And in this case, if we are serious about that, then I can tell you this: that we are serious, then, about hearing from fact witnesses.

Looking at the Bidens, no matter how many times we call their names, we have no evidence to point to the fact that either Biden has anything at all to tell us about the President shaking down a foreign power to help him cheat in the next election—the precious election, trying to steal each individual in this country's vote.

I don't believe either Biden has any information about that, but let me tell you who I think does. Maybe we should call Ambassador Bolton. If we are serious about the truth, maybe we should call him because we have a good idea about what he might say. Or what about Mr. Mulvaney, who had day-to-day contact with the principal in our investigation—the President of the United States.

That is not good enough? Well, what about—the question was asked about when did we know—or when did the President first put the hold on. Well, we do have reports that say on June 19 of 2019, Mr. Blair personally instructed the Director of OMB to hold up security assistance from Ukraine—over a month before the infamous July 25 call.

The CHIEF JUSTICE. Thank you, Mrs. Manager DEMINGS.

Mrs. Manager DEMINGS. Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Nevada.

Ms. ROSEN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator ROSEN is addressed to the House managers:

Over the course of your arguments, you have tried to make a case that the President put his personal interests over those of the Nation, risking our national security in the process. What precedent do you believe the President's actions set for future Presidents?

Mr. Manager CROW. Mr. Chief Justice, Senator, thank you for that question. It is one that I have wanted to answer for some time now.

You have heard me speak before about some of my personal experience in service to the country, and one thing that experience has taught me is that we are strong not just because of the service and the sacrifice of our men and women in uniform, which is extreme and pure in all of its sense and something that I think everybody in this Chamber actually appreciates and respects, but we are also strong because we have friends. We are strong because America doesn't go it alone.

You know, when I was in Iraq and Afghanistan, I worked frequently with Afghan Army partners, Iraqi Army partners and others, not because it was important but because it was essential. We

couldn't accomplish the mission without it. But if those partners feel like our policies—what we say publicly—don't matter; if they feel like we are not a reliable and predictable partner; if they feel like the American handshake isn't worth anything, then they will not stand by us. They will not stand by us.

For over 70 years, since the end of World War II, the partnerships, the alliances that we have built, that we have strived to create, that have ushered in an unprecedented period of peace and prosperity throughout the world, will start to fray because the American handshake will not matter. Ukraine has started to learn that.

Our 68,000 troops throughout Europe deserve better because every day, they get up and they do their job—the job we have asked them to do—and they rely on our consistency, our predictability. They rely on the interest being in the national interest, not the whims and the personal interest of the President, whether that be President Trump or any other President.

It will continue to call into question our broader alliances, and it will send a message that the American handshake doesn't matter.

We have a slide that shows the evolution of some of the different arguments that we have seen on the other side that I think is important to see.

(Text of Videotape presentation:)

PRESIDENT TRUMP. Russia, if you are listening, I hope you are able to find the 30,000 emails that are missing. I think you will probably be rewarded mightily by our press. Let's see if that happens.

REPORTER. The campaign this time around, if foreigners, if Russia and China, if someone else offers information on an opponent, should they accept it or should they call the FBI?

PRESIDENT TRUMP. I think maybe they do both. I think you might want to listen. There is nothing wrong with listening. If somebody called from a country—Norway: We have information on your opponent—I think I would want to hear it.

REPORTER. You want that kind of interference in our elections?

PRESIDENT TRUMP. It's not an interference. They have information. I think I would take it.

REPORTER. Let's move to the third excerpt there related to Vice President Biden, and it says, "The other thing, there's a lot of talk about Biden's son—" this is President Trump speaking—"that Biden stopped the prosecution and a lot of people want to find out about that so that whatever you can do with the Attorney General would be great. Biden went around bragging that he stopped the prosecution so if you can look into it . . . It sounds horrible."

PRESIDENT TRUMP. Well, I would think that if they were honest about it, they'd start a major investigation into the Bidens. It's a very simple answer.

PRESIDENT TRUMP. If we feel there is corruption, like I feel there was in the 2016 campaign, there was tremendous corruption against me—if we feel there's corruption, we have a right to go to a foreign country.

And by the way, likewise, China should start an investigation into the Bidens because what happened in China is just about as bad as what happened with—Ukraine.

MR. MANAGER CROW. The American people deserve to know what happened. The American people deserve to know when they go to bed tonight that there is a President that has their interests in mind, that will put the national security of the country above his own political self-interest. The American people deserve answers. And, yes, it is still a good time to call Ambassador Bolton to testify.

THE CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Ohio.

Mr. PORTMAN. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senators TOOMEY, CORNYN, CRAPO, ERNST, and MORAN.

The CHIEF JUSTICE. Thank you.

The question from Senator PORTMAN and the other Senators is for the counsel for the President:

I have been surprised to hear the House managers repeatedly invoke constitutional law Professor Jonathan Turley to support their position, including playing a part of a video of him. Isn't it true that Professor Turley opposed this impeachment in the House and has also said that abuse of power is exceedingly difficult to prove alone without an accompanying criminal allegation, abuse of power has never been the sole basis for a presidential impeachment and was not proven in this case?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

And that is exactly correct. Professor Turley was very critical of the entire process in the House and of the charges that the House—House Democrats were considering here, both the abuse of power charge and the obstruction charge. He explained that this was a rushed process; they did not adequately pursue an investigation; that, as the Senators point out in the question, abuse of power is an exceedingly difficult theory to use to impeach a President, and it has never been used without alleging violations of the law. I think that in the discussions we have had over the past week and a half, we have pointed that out multiple times.

Every Presidential impeachment in our history, including even the Nixon impeachment proceedings, which didn't actually lead to impeachment, have used charges that include specific violations of the law and the criminal law.

Andrew Johnson was charged mostly in counts that involved violation of the Tenure of Office Act, which Congress had specifically made punishable by fine and imprisonment and even wrote into the statute that violation would constitute either a high crime or a high misdemeanor—one of those terms—to make it clear that it was going to be used to trigger an impeachment.

In the proceedings in the Nixon impeachment inquiry, each of the Articles of Impeachment there—except for the obstruction of Congress charge is sort of treated separately on the obstruction theory—included specific violations of law. There were specific violations alleged in the second Article of Impeachment, which is often sort of referred to loosely as the abuse of power article. It wasn't actually entitled "abuse of power." It didn't charge abuse of power. The specifications there were violations of the law—violating the constitutional rights of the citizens, violating the laws governing executive branch agencies, unlawful electronic surveillance, using the CIA and others. Specific violations of law.

Clearly, in the Clinton impeachment, President Clinton was impeached for perjury and obstruction of justice. Those are crimes.

While Professor Turley does not take the view that a crime is necessarily required, he pointed out here that there was not nearly a sufficient basis and not nearly a sufficient record compiled in the House of Representatives to justify an abuse of power charge.

He also was very critical of the obstruction of Congress theory, and he pointed out that it would be an abuse of power by Congress under these circumstances where Congress has simply demanded

information, gotten a refusal from the executive branch based on constitutionally based prerogatives of the executive or refusal to provide that information, then to simply go straight to impeachment without going through the accommodations process, without considering contempt, without going to the courts. That is Professor Turley's view on how incrementally the House of Representatives would have to proceed if they were going to try to reach ultimately some theory of obstruction of Congress.

So to cite Professor Turley, it is true, in his academic writing and in his testimony, he did not adopt the view that you must have a crime and only a crime as the charge for an Article of Impeachment. He still thought that neither of the Articles of Impeachment here could be justified or sufficient or could be used to impeach the President—both the abuse of power article and the obstruction article. So taking snippets out of what he said really does an injustice to the totality of his testimony, because the totality of his testimony was entirely against what the House ended up doing here.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Ohio.

Mr. BROWN. Mr. Chief Justice, on behalf of Senator WYDEN and myself, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

Senators BROWN and WYDEN ask the following question to the House managers:

During yesterday's proceedings, the President's counsel failed to give an adequate response to a question related to whether acceptance of information provided by a foreign country to a political campaign or candidate would constitute a violation of the law and whether offers of such information should be reported to the FBI. FBI Director Christopher Wray, who was appointed by President Trump, has said "if any public official or member of any campaign is contacted by any nation-state about influencing or interfering with our election, then that [is] something that the FBI would want to know about," and "we'd like to make sure people tell us information promptly so that we can take appropriate steps to protect the American people." If President Trump remains in office, what signal does that send to other countries intent on interfering in our elections in the future, and what might we expect from those countries and the President?

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, thank you for that question.

I will take the last part first. It would send a terrible message to autocrats and dictators and enemies of democracy and the free world for the President and his team to essentially put out there for all to consume that it is acceptable in the United States to solicit foreign interference in our free and fair elections or accept political dirt simply to try to cheat in the next election.

I was certainly shocked by the comments from the President's Deputy White House Counsel yesterday, right here on the floor, when he said: "I think that the idea that any information that happens to come from overseas is necessarily campaign interference is a mistake."

No. It is wrong. It is wrong in the United States of America.

He also added "Information that is credible, that potentially shows wrongdoing by someone that happens to be running for office, if it's credible information, is relevant information for the voters to know . . . to be able to decide on who is the best candidate. . . ."

This is not a banana republic. It is the democratic Republic of the United States of America. It is wrong.

The single most important lesson that we learned from 2016 was that nobody should seek or welcome foreign interference in our elections. But now we have this President and his counsel essentially saying it is OK.

It is not OK. It strikes at the very heart of what the Framers of the Constitution were concerned about—abuse of power, betrayal by the President of his oath of office, corrupting the integrity of our democracy and our free and fair elections by entangling oneself with foreign powers. That is at the heart of what the Framers of the Constitution were concerned about.

Don't just trust me. We have several folks who have made this observation. The FBI Director—the Trump FBI Director—said that the FBI would want to know about any attempt at foreign election interference.

The Chair of the Federal Elections Commission also issued a statement reiterating the view of U.S. law enforcement. She said in part:

Let me make something 100 percent clear to the American public and anyone running for [public] office: It is illegal for any person to solicit, accept, or receive anything of value from a foreign national in connection with a U.S. election.

This is not a novel concept. Election intervention from foreign governments has been considered unacceptable since the beginning of our Nation. It is wrong, it is corrupt, it is lawless, it is an abuse of power, it is impeachable, and it should lead to the removal of President Donald John Trump.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Missouri.

Mr. HAWLEY. I send a question to the desk on behalf of myself and on behalf of Senator LEE.

The CHIEF JUSTICE. Thank you.

The question from Senators HAWLEY and LEE is for counsel to the President:

The U.S. Federal Courts have held, most prominently in the Blagojevich case, that it is not unlawful for a public official to condition his official acts on official acts performed by another public officer. Is there any application to the allegations against President Trump?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I think an important threshold point to make here is that we are not even in the realm of exchanging official acts, because there has been no proof of a quid pro quo here. We are not in the realm of a situation where there is one official act being traded for another.

I think that we have gone through the evidence that makes it quite clear that, both with respect to a meeting with the President—a bilateral meeting—and with respect to the temporary pause of security assistance, the evidence just doesn't stack up to show that President Trump linked either of those. Both took place—the meeting and the release of the aid—without Ukrainians doing anything, announcing or beginning any investigations. There is nothing in the transcript linking them to a quid pro quo. The Ukrainians didn't even know that there had been a temporary pause on the aid, and I could go on with a list of points on that.

I think if there were any application hypothetically, it would come in the realm of the fact that in foreign policy there are situations where there can be situations where one government wants some action from another and wants that action from another in a way that would condition other policies of one country.

You can say: We would like you—and this happens. For example, with the Northern Triangle countries: We want you to do more to stop the flow of illegal immigration. We are going to be conditioning some of our policies toward you, unless and until you do a better job stopping the flow of illegal immigration. It is a real problem on our southern border.

That happens all the time, and when there is something legitimate to look into, there could be a situation where the United States would say: You've got to do better on corruption. You've got to do better on these specific areas of corruption, or we are not going to be able to keep the same relationship with you.

One example like that, I believe it was pointed out that aid was held up to Afghanistan. President Trump held up aid to Afghanistan specifically because of concerns about corruption. In situations like that, there would be nothing wrong whatsoever with conditioning one policy approach on a foreign country modifying their policy to be more in line, to attune more directly to U.S. foreign interests. That is what foreign policy is all about. That could arise in situations of even calling for investigations.

I think it is interesting to point out that in May of 2018, three Democratic Senators sent a letter to the then-prosecutor in Ukraine suggesting that we have heard some things that you might not be cooperating with the Mueller investigation. And there was sort of an implicit indication behind the letter that there is not going to be as much support for Ukraine. This is something that is important. You have got to be helping with that election.

There is nothing wrong with encouraging the prosecutor general to assist with something important to the United States. That is part of foreign policy. It happens all the time. So to the extent that the Blagojevich case is relevant, it is in the general concept that were there some linkage between “we want your country to pursue these policies; it is going to affect our policies towards you,” that is entirely legitimate. That is not something that is a violation of any law or is improper. Again, I come back to the point that there is no proof that there was any sort of, as we have come to call it, “quid pro quo” in this case. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Washington.

Ms. CANTWELL. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

Senator CANTWELL's question is for the House managers:

In his opening remarks, Chairman SCHIFF said the Ukraine scheme was expansive and involved many people. Is there any evidence that Acting White House Chief of Staff Mick Mulvaney, Secretary of State Pompeo, Attorney General Barr or anyone on the outside were involved in this scheme to withhold military aid or obstruction of Congress?

Mrs. Manager DEMINGS. Mr. Chief Justice and Senator, thank you so much for that question.

If we remember Ambassador Sondland's testimony, where he said, "everyone was in the loop," we don't just have to take his word for it. During his hearing, Mr. Sondland discussed a July 19 email he sent to the President's top aides, including Secretary Mike Pompeo, Acting Chief of Staff Mick Mulvaney, Mr. Mulvaney's senior adviser, Robert Blair, Secretary Rick Perry, and Brian McCormick, Secretary Perry's Chief of Staff.

We should at least start with, if we are serious about getting to the truth, issuing a subpoena for State Department emails. If you pay attention to the slide, in the email, Sondland stated: [Slide 574]

I talked to Zelensky just now.

He is prepared to receive POTUS's call. Will assure him that he intends to run a fully transparent investigation and will "turn over every stone". He would greatly appreciate a call prior to Sunday so that he can put out some media about a "friendly and productive call" (no details). . . .

Mr. Mulvaney, in the email, acknowledges receipt and responds shortly: I asked the NSC to set up the call for tomorrow—6 days before President Trump's now infamous July 25th call in which he told President Zelensky to conduct investigations into the Bidens and the 2016 election. Mr. Sondland sent an email to the President's top aides updating them on the status of the scheme.

Again, "everyone was in the loop." On August 11, Ambassador Sondland emailed Mr. Brechbuhl to ask him to brief Secretary Pompeo on the statement he was negotiating with President Zelensky with the aim of "making the boss happy"—the boss being the President—enough to authorize the investigation.

Ambassador Sondland wrote to Mr. Brechbuhl:

Kurt and I negotiated a statement from Z—

Mr. Zelensky.

to be delivered for our review in a day or two. The content will hopefully make the boss happy enough to authorize an invitation.

And he is talking about the invitation for a White House Oval Office meeting, which we know was much more critical and important than a sideline meeting at the U.N.

Yet, further evidence that "everyone was in the loop," Attorney General Barr reportedly responded at some point—there was a New York Times article that was done, and Attorney General Barr responded to that article by stating that he was aware of DOJ investigations into some countries, and that he was concerned President Trump was giving world leaders the impression he had undue influence over what would ordinarily be independent investigations. He cited conversations the President had with leaders of Turkey and China, further demonstrating that there was concern about the President abusing the power of his office for personal, political reasons. Again, it proves that everybody was in the loop, and we should want to subpoena and review those emails involving the State Department and others.

The CHIEF JUSTICE. Thank you, Mrs. Manager.

Mr. THUNE. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from South Dakota.

Mr. THUNE. I send a question to the desk on behalf of myself and Senators MORAN, DAINES, ERNST, SCOTT of Florida, and CRAPO.

The CHIEF JUSTICE. Thank you. Senator THUNE and the other Senators ask the counsel for the President:

On March 6, 2019, Speaker Nancy Pelosi said, “impeachment is so divisive to the country that unless there’s something so compelling and overwhelming and bipartisan, I don’t think we should go down that path because it divides the country.” Alexander Hamilton also warned in Federalist 65 against the “persecution of an intemperate or designing majority in the House of Representatives” with respect to impeachment. In evaluating the case against the President, should the Senate take into account the partisan nature of the impeachment proceedings in the House?

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice and Members of the Senate.

Absolutely you should take that into account. That is dispositive. That should end it. Based on the statements that we heard the last time from our friends on the Democratic side, that is a reason why you shouldn’t have an impeachment. Speaker PELOSI was right when she said that. Unfortunately, she didn’t follow her own advice.

We have never been in a situation where we have the impeachment of a President in an election year with the goal of removing the President from the ballot. As I have said before, that is the most massive election interference we have ever witnessed. It is domestic election interference; it is political election interference; and it is wrong.

They don’t talk about the horrible consequences to our country of doing that, but they would be terrible. They would tear us apart for generations, and the American people wouldn’t accept it.

Let me address, in that context, the importance of the vote for their inquiry, which also had bipartisan opposition. Now they said: Well, we were fine when Speaker PELOSI announced it. We didn’t need a vote. The subpoenas were authorized.

Then why did they have a vote? They had a vote because they understood they had a big problem that they needed to fix. But what is more important about the vote than the procedural issue? The important thing about the vote is that if you are going to start an impeachment investigation, particularly in an election year, there needs to be political accountability to the American people. You can’t just go have a press conference. If you are going to say that the votes of the American people need to be disallowed and that all of the ballots need to be torn up, then at the very least you need to be accountable to your home district for that decision, and now they are—and now they are.

If the American people decide—if they are allowed to vote—if the American people decide that they don’t like what has happened here; that they don’t like the constitutional violations that have happened; that they don’t like the attack on a successful President for purely partisan political purposes, then they can do something about it, and they can throw them out. That is why a vote is important.

We should never even consider removing the name of a President from a ballot on a purely partisan basis in an election year. Important? I will say it is important. For that reason alone and for the interest of uniting our country, it must be rejected.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

Mr. REED. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Rhode Island.

Mr. REED. Mr. Chief Justice, I send a question to the desk on behalf of Senators DUCKWORTH and HARRIS and myself for the House managers and for the President's counsel.

The CHIEF JUSTICE. Thank you. The question from Senator REED and the other Senators is for both parties, beginning with the House managers:

It has been reported that President Trump has not paid Rudy Giuliani, his personal attorney, for his services. Can you explain who has paid for Rudy Giuliani's legal fees, international travel, and other expenses in his capacity as President Trump's attorney and representative?

Mr. Manager SCHIFF. A short answer to the question is, I don't know who is paying Rudy Giuliani's fees, and if he is not being paid by the President to conduct this domestic political errand for which he has devoted so much time, if other clients are paying and subsidizing his work in that respect, it raises profound questions—questions that we can't answer at this point.

There are some answers that we do know. As he has acknowledged, he is not there to inform policy. So when counsel for the President says this is a policy dispute and you can't impeach a President over policy, what Rudy Giuliani was engaged in, by his own admission, has nothing to do with policy—has nothing to do with policy.

And let me mention one other thing about this scheme that Giuliani was orchestrating and the consequence of the argument that they would make that quid pro quos are just fine. Let's say Rudy Giuliani does another errand for the President—this time an errand in China—and he says to the Chinese: We will give you a favorable deal with respect to Chinese farmers as opposed to American farmers. We will betray the American farmer in the trade deal, but here is what we want. The quid pro quo is we want you to do an investigation of the Bidens. You know the one, the one the President has been calling for. They would say that is OK. They would say that is a quid pro quo to help his reelection. He can betray the American farmer; that is OK. That is their argument. Where does that argument lead us? That is exactly the kind of domestic, corrupt, political errand that Rudy Giuliani was doing gratis, without payment—at least not payment, apparently, from the President.

So who is paying the freight for it? I don't know who is directly paying the freight for it, but I can tell you the whole country is paying the freight for it because there are leaders around the world who are watching this, and they are saying the American Presidency is open for business. This President wants our help, and if we help him, he will be grateful.

He will be grateful. Is that the kind of message we want to send to the rest of the world? That is the result of normalizing lawlessness of the kind that Rudy Giuliani was engaged in.

One other thing, if I have—my time is not expired.

The CHIEF JUSTICE. I am sorry; your time is expired. Counsel.

Mr. Counsel SEKULOW. Mr. Chief Justice and Members of the Senate, it is hard for me to believe the words that just came out of the manager's mouth: "open for business." I will tell you who was open for business. You know who was open for business? The Vice President of the United States was charged by the then-President of the United States with developing policies to avoid and assist in removing corruption from Ukraine, and his son was on the board of a company that was under investigation for Ukraine, and you are concerned about what Rudy Giuliani, the President's lawyer, was doing when he was over trying to determine what was going on in Ukraine?

And by the way, it is a little bit interesting to me—and my colleague, the Deputy White House Counsel referred to this. It is a little bit ironic to me that you are going to be questioning conversations with foreign governments about investigations when three of you—three Members of the Senate—Senator MENENDEZ, Senator LEAHY, and Senator DURBIN sent a letter that read something—quickly—like this. They wrote the letter to the prosecutor general of Ukraine. They said they are advocates—talking about the Congressmen—they are "strong advocates for a robust and close relationship with Ukraine [and] we believe that our cooperation . . . extend to such legal matters, regardless of politics." And their concern was ongoing investigations and whether the Mueller team was getting appropriate—appropriate—responses from Ukraine regarding investigations of what? The President of the United States. And you are asking about whether foreign investigations are appropriate? I think it answers itself.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

Mr. LANKFORD. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Oklahoma.

Mr. LANKFORD. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senator ERNST, and Senator CRAPO.

The CHIEF JUSTICE. Thank you. The question from Senator LANKFORD and the other Senators is for the counsel for the President:

House managers have described any delay in military aid and State Department funds to Ukraine in 2019 as a cause to believe there was a secret scheme or quid pro quo by the President. In 2019, 86% of the DOD funds were obligated to Ukraine in September, but in 2018, 67% of the funds were obligated in September and in 2017, 73% of the funds were obligated in September. In the State Department, the funds were obligated September 30 in 2019, but they were obligated September 28 in 2018. Each year, the vast majority of the funds were obligated in the final month or days of the fiscal year. Was there a national security risk to Ukraine or the United States from the funds going out at the end of September in the 2 previous years? Did it weaken our relationship with Ukraine because the vast majority of our aid was released in September each of the last 3 years?

Mr. Counsel PHILBIN. Mr. Chief Justice and Senators, thank you for that question. And the short, straightforward answer is there was no jeopardy to the national security interest of the United States from the timing of the release of this money. As the question indicated, the vast bulk of the funds in each of the prior 2 fiscal years were also obligated in September. So the fact that the funds were released here on September 11 and obligated by the end of the fiscal year was consistent with the timing in past years.

There was—and it is also the case that at the end of every fiscal year, there is some funding in this Ukrainian military assistance that doesn't actually make it out the door. It isn't obligated by the end of the fiscal year. We heard the House managers point to the fact that Congress had to put something in the continuing resolution, a special provision, to get \$35 million of the aid extended so it can be used in the next fiscal year. My understanding is that every fiscal year there is some amount of money. It is not always that same amount, but there is some amount of money that has to be done for every year because it doesn't get out the door by the end of the year.

Now, it is not just from the raw data that we can see that the funds went out roughly the same timing toward the end of the year that, therefore, it doesn't suggest any great risk to Ukraine or risk to the national security of the United States. We know that from testimony as well.

Ambassador Volker testified that the brief pause on the aid was not significant, and the Under Secretary of State for Political Affairs, David Hale, explained that this is future assistance, and I mentioned this the other day. It is not like this money is being spent month by month to supply current needs in Ukraine. It is 5-year money. Once it is obligated, it can go to U.S. firms who are providing materiel to the Ukrainians, and it doesn't get spent down finally and materiel shipped to Ukraine for a long time. So a delay of 48 or 55 days—depending on how you count it—and the money being released before the end of the fiscal year ends up having no real effect. It is not current money. It is supplying immediate needs.

Despite what we have heard about the idea that on the frontlines in the Donbas, Ukrainian soldiers are being put at risk, that is just not accurate.

And we know that also from Oleg Shevchuk, the Ukrainian Deputy Minister of Defense, who gave an interview to the New York Times and explained that the hold came and went so quickly that he didn't even notice any change.

And, remember, the Ukrainians didn't even know. President Zelensky and his advisers—Yermak and others—have made it abundantly clear. There was another interview just the other day with Danylyuk, who—I might get his title wrong. I think he was the Foreign Minister at the time. But there was an interview just the other day that was published. And he explained, again, that they didn't know the aid had been held up until the POLITICO article on August 28. And then he said there was a panic in Kyiv because they were just trying to figure out what to do. Well, within 2 weeks, it had been released.

And so we have also heard the idea that, well, it was just the fact of the delay that gave the Russians a signal, and it gave the Ukrainians a signal, and that was what the damage to the national security was. But the whole point is, leaders of the Government in Ukraine didn't know. It wasn't made public. So they weren't being given a signal by that, and the Russians weren't being given a signal by that. So that theory for damage to the national security also doesn't work.

There was a pause temporarily so that there could be some assessment to address concerns the President had raised. The money was released by the end of the fiscal year. There was no damage to the national security either in terms of materiel not being available to the Ukrainians or in terms of any signal sent to any foreign power. The money got out the door roughly the same time as in prior years. A little bit more left over at the end that had to be fixed, but there is some left over at the end every year that has to be fixed with a rider on the next appropriations bill or continuing resolution. So no damage whatsoever to the national security of the United States.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Hawaii.

Ms. HIRONO. Aloha. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator HIRONO for the House managers reads as follows:

In contrast to arguments by the President's counsel, acting White House Chief of Staff Mick Mulvaney stated that President Trump held up aid to Ukraine to get his politically-motivated investigations. He claimed: "We do that all the time with foreign policy" and "Get over it." What was different about President Trump's withholding of aid to Ukraine from prior aid freezes? Are you aware of any other Presidents who have withheld foreign aid as a bribe to extract personal benefits?

Mr. Manager SCHIFF. Thank you, Senator.

I will respond to the question, but let me begin with something in the category of: You can't make this stuff up.

Today, while we have been debating whether a President can be impeached for essentially bogus claims of privilege for attempting to use the courts to cover up misconduct, the Justice Department, in resisting House subpoenas, is in court today and was asked: Well, if the Congress can't come to the court to enforce subpoenas because, as we know, they are in here arguing, Congress must go to court to enforce its subpoenas, but they are in the court saying: Congress, thou shall not do that, so the judge says: If the Congress can't enforce its subpoenas in court, then what remedy is there? And the Justice Department lawyers' response is impeachment—impeachment. You can't make this up. I mean, what more evidence do we need of the bad faith of this effort to cover up?

I said the other day they are in this court making this argument; they are down the street making the other argument. I didn't think they would make it on the same day, but that is exactly what is going on.

Now, in response to the question about how is this aid different, this hold different from other holds, it is certainly appropriate to ask that question.

The laws Congress passed authorizing this appropriation did not allow for the hold by this President. And as the GAO—the Government Accountability Office—found, it violated the law to hold the aid the way it did.

Once the Department of Defense, in consultation with the Department of State, certified that Ukraine had met the anti-corruption

tion benchmarks required under the law, there was nothing that would allow for a hold. The money had to flow.

And that was intentional. Military assistance to Ukraine is critical to our national security. It has overwhelming bipartisan support.

And recall that in the spring of 2019, the Defense Department certified Ukraine had met all of the anti-corruption benchmarks. The Department of State sent the Senate a letter saying that the benchmarks had been met. It issued a press release saying that the aid was moving forward. It began to spend the funds to help Ukraine, but then the President stepped in. Without legal authority, he secretly had placed a hold on the aid.

Now, the President's counsel, in their presentation, gives specific examples of past holds, as if we cannot distinguish one for a corrupt reason and one that is for a policy reason.

In many of their examples, the law explicitly provided the executive branch the authority to pause, reevaluate, or cancel foreign aid programs as the situation in a recipient country evolved.

For example, with regard to foreign assistance to El Salvador, Honduras, or Guatemala, the law explicitly allows the Secretary of State to "suspend, in whole or in part" that "assistance" if at any time the Secretary deems "that sufficient progress has not been made by a central government."

On a host of priorities, from respecting human rights to upholding the law, those are the priorities that you, the Senate, agreed to, and the President was required to implement them; similarly, aid to Afghanistan, the subject of periodic reevaluations by law. And the law explicitly directs the Secretary of State should "suspend assistance for the Government of Afghanistan" should be it assessed that the Afghan Government is "failing to make measurable progress" in meeting certain anti-corruption, human rights, and counterterrorism benchmarks.

The overthrow of the democratically elected Government in Egypt, we have had that brought up as another example. Members of this body, including Senators McCain, LEAHY, and GRAHAM, pressed the Obama administration to suspend military aid. It wasn't hidden from the Senate. It was urged on the administration by the Senate. Senators pressed for that aid to be withheld because the law was clear, in instances of a military coup, aid must be suspended. Senators McCain and GRAHAM wrote an op-ed in the Washington Post:

Not all coups are created equal, but a coup is still a coup. Morsi—

That is the deposed leader of Egypt.

was elected by a majority of voters, and U.S. law requires the suspension of foreign assistance.

I could go on and on with examples. No one has suggested you can't condition aid, but I would hope that we would all agree that you can't condition aid for a corrupt purpose, to try to get a foreign power to cheat in your election.

Now, counsel says that if you decide the prosecution has proved that he engaged in this corrupt scheme, if you decide, as impartial jurors, that the Constitution requires his removal from office, that

the public will not accept your judgment. I have more confidence in the American people.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. BOOZMAN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Arkansas.

Mr. BOOZMAN. I send a question to the desk on behalf of myself, Senators COTTON, ERNST, YOUNG, HAWLEY, RISCH, FISCHER, and HOEVEN.

The CHIEF JUSTICE. Thank you.

Senator BOOZMAN and the other Senators pose a question to both sides:

In the House Managers' opening statement, they argue that it is necessary to pursue impeachment because "The President's misconduct cannot be decided at the ballot box. For we cannot be assured that the vote would be fairly won." How would acquitting the President prevent voters from making an informed decision in the 2020 presidential election?

The President's counsel goes first.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

That is exactly who should decide who should be President, the voters. All power comes from the people in this country. That is why you are here; that is why people are elected in the House; and that is why the President is elected. It is exactly who should decide the question, particularly in a case like this, where it is purely partisan.

Here is the other thing, when we are talking about impeachment as a political weapon, they didn't tell you what they told the court over the holidays when they were waiting to deliver the Impeachment Articles. They went and told the court: They are actually still impeaching over there in the House; did you know that? They are actually still impeaching.

They are coming here, and they are telling you: Please do the work that we didn't do, where we had 2 days in the House Judiciary Committee; we had to rush delivery for Christmas; and then we waited and waited and waited. But now we want you to call witnesses that we never called; that we didn't subpoena. They want to turn you into an investigative body. In the meantime, they are saying: By the way, we are still doing it over there. We are still impeaching. And they want to slow down now. They don't want to speed up. They want to slow it down and take up the election year and continue this political charade. It is all so wrong. It is all so wrong.

Let's leave it to the people of the United States. Let's trust them. They are asking you not to trust them. Maybe they don't trust them. Maybe they won't like the result. We should trust them. That is who should decide who the President of this country should be. It will be a few months from now, and they should decide.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, I appreciate the question.

President Trump must be removed from office because of his ongoing abuse of power. It threatens the integrity of the next election.

As we saw from the video montage, the President has made no bones about the fact that he is willing to seek foreign intervention to help him cheat in the next election.

Now, counsel for the President says the next election is the remedy. It is not the remedy when the President is trying to seek to cheat in that very election. This is why the Founders did not put a requirement that a President can only be impeached in their first term. Indeed, at that time, of course, there weren't term limits on the Presidency.

If it were the intent of the Framers to say that a President can't be impeached in an election year, they would have said so. Now, they didn't for a reason, because they were concerned about a President who might try to cheat in that very election.

Now, counsel—as I was getting to a moment ago—made the argument: If you make the decision as impartial jurors that the President has violated the Constitution, he has abused his power, he should be convicted and removed from office, that the country will not accept it. I have more confidence in the American people than that. But I will assure you of this: If you make the decision that a fair trial can be conducted without hearing from witnesses, the American people will not accept that judgment because the American people understand what goes into a fair trial, and they understand that a fair trial requires both sides to have the opportunity to present their case.

We would like to present our case. We would like to call our witnesses. We would like to rely on more than our argumentation.

There are few things about this trial that Americans agree on, but one thing they are squarely in agreement on—well, two. They believe a trial should have witness testimony, and they want to hear from John Bolton. That is the overwhelming consensus of the American people, and it is consistent with common sense.

Let's give the country a trial they can be proud of. Let's show that at least the process worked and that we followed the Founders' intent that a trial have witnesses. I don't think anyone can quarrel with the fact, when you look at the history of this body and evidence of impeachment—

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Virginia.

Mr. KAINE. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you. The question from Senator KAINE for the House managers:

If the Senate acquits the President on article II, after he violated both the Impoundment Control Act and the Whistleblower Act to hide the Ukraine scheme from Congress, what is to stop President Trump from complete refusal to cooperate with Congress on any matter?

Mr. Manager SCHIFF. Mr. Chief Justice, in short, the consequence is there is no constraint on this President or any other. This gets to a point—you have heard counsel for the President repeat over and over: Can you be impeached for asserting privileges—and, I would add, no matter how bogus or in bad faith those assertions may be, no matter whether they are in court today arguing the opposite of what they are arguing before you today?

And the answer is, yes, the President can be impeached for using the assertion of baseless claims to cover up his misconduct.

The House did not impeach the President over a single assertion of privilege. We impeached him for a far more fundamental reason: because he issued an order categorically directing the executive branch to defy every single part of every single subpoena served by the House.

A President who issues orders like this is a President who can place himself above the law and a system of checks and balances. He can do whatever he wants and get away with it by using his powers to orchestrate a massive coverup. The President's lawyers haven't disputed that point. They can't. It is obvious that a President who ignores and can ignore all oversight is a threat to the American people.

Instead, they have argued assertion of a grab bag of legal privileges warranting this categorical defiance. These arguments are unprecedented and wrong.

The first thing to note is the President's arguments conveniently ignore the October 8 letter sent at the President's behest declaring that the President will not "participate" in the impeachment investigation.

I will not participate. This blanket defiance preceded all of the other letters and creative OLC opinions the President relied upon. It made clear that the rationale for blanket defiance was the President's belief that he can declare his own innocence and make it illegitimate to investigate him. This was not about privileges or legal arguments. Those came later, as his lawyers rushed to justify that Congress has no power whatsoever to enforce subpoenas against anyone.

Let's be clear. They may claim that their October 8 letter where they said they will not participate was somehow an offer to accommodate, but what the real condition was, was that the House simply drop the impeachment investigation or place the President in charge of its direction. That wasn't a real offer. That was a poison pill.

Now, what about the remaining arguments? The first point is that none of them justify his order to defy all the subpoenas. He never asserted executive privilege over any documents, and his remaining arguments that absolute immunity or agency counsel not being allowed to attend depositions have nothing to do with documents—nothing. So none of his legal arguments even applies to his direction that every single office and agency defy every single subpoena for documents.

And what about the total obstruction of the witnesses? Here, too, he never invoked executive privilege. Absolute immunity obviously couldn't apply to many of the lower level officials we subpoenaed.

The only remaining legal ground for defiance was the argument it is unconstitutional for Congress to prevent agency counsel from going to depositions—the fallback of fallback of fallbacks—except this rule was originally passed by a Republican Congress and has been used repeatedly by both Republican- and Democratic-led majorities and committees. It can't possibly justify obstruction of witness subpoenas. It is nothing more than a phony cover for an obstruction that President Trump decided upon at the outset.

These arguments are, thus, incorrect on their own terms and fail to explain this categorical order.

One final irony, even before the argument in court today: At a recent oral argument in the DC Circuit, they made the same claim they made today. Let's pull up slide 56. In litigation, again, to enforce subpoenas, the judge said they can make it grounds for impeachment for obstruction of Congress. [Slide 575] And the President's own lawyers said impeachment is certainly one of the tools that Congress has. We agree; it is one of the tools that you have for when a President would use a categorical obstruction of investigation into his own wrongdoing.

It is a tool that should be applied here. There cannot be a better case for impeachment on obstructing a coequal branch of Congress than the one before you where the obstruction is so complete and so categorical.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Florida.

Mr. SCOTT of Florida. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator BRAUN, and it is to the President's counsel.

The CHIEF JUSTICE. Thank you. The question from Senators SCOTT of Florida and BRAUN for counsel for the President:

If Speaker Pelosi, Chairman Schiff, Chairman Nadler, and House Democrats were so confident in the gravity of the President's conduct and the "overwhelming evidence" of an impeachable offense that prompted the inquiry, why were the House Republicans denied the procedural accommodations and substantive rights afforded to the minority party in the Clinton impeachment? Additionally, why were the President's counsel and agency attorneys denied access to cross-examine witnesses during committee testimony and present the testimony of witnesses in defense of the issues under review?

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate. I don't know why they would do that. I don't know. They violated every past precedent. They violated all forms of due process.

Now, they say that is a process argument, and it is, but it is more than that. It is more than that. If you feel confident in your facts, then why do you design a process that completely shuts out the President? Why do you cook up the facts in a basement SCIF instead of in the light of day? Why do you do that?

Why don't you allow the minority to call witnesses, as they have had the right to do in all past impeachments? And then they come here and say: By the way, we were fully in charge, so completely in charge that we locked out the President's counsel, denied all rights, denied the minority any witnesses at all. But when we come here, they don't—they still don't get witnesses. They want you not only to do their job but to make the same mistake, the same violation of due process, that they did. They said: Well, let's just pick the witnesses that we want. The other ones are irrelevant—not relevant.

In listening to Mr. SCHIFF over these months, I have come to a determination about what he means by "irrelevant." He means bad for them, OK. He means witnesses that the President wants to call. So I don't know why they did that.

I will say something else. I will say something else. I have respect for you, and I have respect for the House. And when I first

got this job, I went—one of the first things I did is I went to visit Mr. SCHIFF, Chairman SCHIFF. I went to visit Chairman NADLER. I went to visit Chairman Cummings at that time. And I said: We are here to work with you, to cooperate where we can, but in the institutional interest, obviously. We will participate in oversight, but if we have constitutional points to make, we will make them and we will make them directly.

And the administration has participated in oversight. Many, many witnesses have testified in oversight hearings. A large number of documents have been produced in oversight hearings.

And in fact, in the letter that I sent on October 8, I made the same offer. I said: Look, this is not really a valid impeachment proceeding, for all of the reasons that we have stated, but if the committees wish to return to the regular order of oversight requests, we stand ready to engage in that process. But that never happened.

So I respect Congress. The administration respects Congress, but we respect the Constitution. We respect the Constitution, too, and we have an obligation to the executive branch and to the future Presidency—future Presidents—to vindicate the Constitution and vindicate those rights.

Thank you.

The CHIEF JUSTICE. The Senator from Oregon.

Mr. WYDEN. Mr. Chief Justice, I send a question to the desk for the House floor managers.

The CHIEF JUSTICE. Thank you. The question from Senator WYDEN for the House managers:

The Intelligence Community is prohibited from requesting that a foreign entity target an American citizen when the Intelligence Community is itself prohibited from doing so. In 2017, during [Director] Mike Pompeo's confirmation hearing to be the Director of the Central Intelligence Agency, he testified that "it is not lawful to outsource that which we cannot do." So when President Trump asked a foreign country to investigate an American when the U.S. government had not established a legal predicate to do so, how is that not an abuse of power?

Mr. Manager SCHIFF. It is absolutely an abuse of power. And what is more, if you believe that a President can essentially engage in any corrupt activity as long as he believes that it will assist his reelection campaign and that campaign is in the public interest, then what is to stop a President from tasking his intelligence agencies to do political investigations? What is to stop him from tasking the Justice Department? If it can come up with some credible or incredible claim that his opponent deserves to be investigated, their argument would lead you to the conclusion that he has every right to do that, to use the intelligence agencies or the Justice Department to investigate a rival. And when they become a rival, it is even more justified.

But you are absolutely right. If Secretary Pompeo was correct and you can't use your own intelligence agencies, you sure shouldn't be able to use the Russian ones or the Ukrainian ones.

And here we have the President on that phone call pushing out this Russian propaganda, this Russian intelligence service propaganda—CrowdStrike, the server, as if there was just one server and it was whisked away to Ukraine; the Ukrainians hacked the server and not the Russians. A made-for-you-in-the-Kremlin con-

spiracy theory that undermines our own intelligence agencies but suits the political interests of the President.

And his legal agent, Rudy Giuliani, is out there peddling this fiction. The President himself is out there promoting this fiction, standing side by side with Vladimir Putin.

But you are absolutely right. It would be a monumental abuse of power, and it is a monumental abuse of power. And if you don't think abuse of power is impeachable, well, don't take my word for it. Don't take, earlier, Professor Dershowitz' word for it or Jonathan Turley's word for it. Let's look to our Attorney General. This is what he said: [Slide 576] "Under the Framers' plan, the determination whether the President is making decisions based on improper motives"—something that Professor Dershowitz says we are not allowed to consider—"based on 'improper' motives or whether he is 'faithfully' discharging his responsibilities is left to the People, through the election process, and the Congress, through the Impeachment process. . . . The fact that [the] President is answerable for any abuses of discretion and is ultimately subject to the judgment of Congress through the impeachment process means that the President is not the judge in his own cause."

Their own Attorney General doesn't agree with their theory of the case. But again, we don't have to rely on Bill Barr's opinion or Alan Dershowitz' opinion or my opinion or the consensus of constitutional scholars everywhere; we can rely on our common sense. The conclusion that a President can abuse his power by corruptly entering into a quid pro quo to get a foreign intelligence service or a foreign government or foreign leader to do their political dirty work and help them cheat in the election—our common sense tells us that cannot be compatible with the Office of the Presidency.

If we say it is, if we say it is beyond the reach of the impeachment power, or we engage in this sophistry and we say: Because you put it under the rubric of abuse of power—even though that was the Framers' core offense—and you didn't put it under some other rubric, well, we won't even consider it—if we are going to engage in that kind of legal sophistry, it leaves the country completely unprotected from a President who would abuse his power in this way. That cannot be what the Framers had in mind.

The Constitution is not a suicide pact. It does not require us to surrender our common sense. Our common sense, as well as our morality, tells us what the President did was wrong. When a President sacrifices the national security interests of the country, it is not only wrong, but it is dangerous. When a President says, as we saw just a moment ago, over and over again, he will continue to do it if left in office, it is dangerous. The Framers provided a remedy, and we urge you to use it.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. BRAUN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Indiana.

Mr. BRAUN. I ask to send a question to the desk on my behalf and Senator BARRASSO's for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senators BRAUN and BARRASSO for counsel for the President:

The House Managers have said the country must be saved from this President, and he does not have the best interests of the American people and their families in mind. Do you wish to respond to that claim?

Mr. Counsel HERSCHMANN. Mr. Chief Justice, Members of the Senate, while the House managers are coming before you and accusing the President of doing things, in their words, solely for personal and political gain and claiming that he is not doing things in the best interests of the American people, the American people are telling you just the opposite.

The President's approval ratings, while we are sitting here in the middle of these impeachment proceedings, have hit an alltime high. A recent poll shows that the American people are the happiest they have been with the direction of the country in 15 years. Whether it is the economy, security, military preparedness, safer streets, or safer neighborhoods, they are all way up. We, the American people, are happier. Yet the House managers tell you that the President needs to be removed because he is an immediate threat to our country.

Listen to the words that they just said: We—we, the American people—cannot decide who should be our President because, as they tell us—and these are their words—“we cannot be assured that the vote will be fairly won.” Do you really, really believe that? Do you really think so little of the American people? We don't. We trust the American people to decide who should be our President. Candidly, it is crazy to think otherwise.

What is really going on? What is really going on is that he is a threat to them, and he is an immediate, legitimate threat to them, and he is an immediate, legitimate threat to their candidates because the election is only 8 months away.

Let's talk about some of the things the President has done. We have replaced NAFTA with the historic MCA. We have killed a terrorist—al-Baghdadi and Soleimani. We secured \$738 billion to rebuild the military. There have been more than 7 million jobs created since the election. Illegal border crossings are down 78 percent since May, and 100 miles of the wall have been built. The unemployment rate is the lowest in 50 years. More Americans—nearly 160 million—are employed than ever before. The African-American unemployment, the Hispanic-American unemployment, the Asian-American unemployment has the lowest rate ever recorded. Women's unemployment recently hit the lowest rate in more than 65 years. Every U.S. metropolitan area saw per capita growth in 2018. Real wages have gone up by 8 percent for the low-income workers. Real median household income is now the highest level ever recorded. Forty million fewer people live in households receiving government assistance. We signed the biggest package of tax cuts and reforms in history. Since then, over \$1 trillion has poured back into the United States. Six hundred and fifty thousand single mothers have been lifted out of poverty. We secured the largest ever increase for childcare funding, helping more than 800,000 low-income families access high-quality, affordable care. We passed, as Manager JEFFRIES will recall, bipartisan criminal justice reform. Prescription drugs have received the largest price decrease in over half a century. Drug overdose deaths fell nationwide in 2018 for the first time in nearly 30 years.

The Gallup poll from just 3 days ago says that President Trump's upbeat view of the Nation's economy, military strength, economic opportunity, and overall quality of life will likely resonate with Americans when he delivers the State of the Union Address to Congress next week.

If all that is solely—solely, in their words—for his personal and political gain and not in the best interests of the American people, then I say: God bless him. Keep doing it. Keep doing it. Keep doing it.

Maybe if the House managers stop opposing him and harassing him and harassing everyone associated with him, with the constant letters and the constant investigations, maybe we can even get more done.

Let's try something different now. Join us. Join us. One Nation. One Nation. One people. Enough is enough. Stop all of this.

Thank you.

Mr. BENNET. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Colorado.

Mr. BENNET. Thank you. I send a question to the desk from myself and Senator SCHATZ and Senator MENENDEZ.

The CHIEF JUSTICE. Thank you.

The question from Senators BENNET, MENENDEZ, and SCHATZ is to the House managers:

If the Senate accepts the President's blanket assertion of privilege in the House impeachment inquiry, what are the consequences to the American people? How will the Senate ensure that the current president or a future president will remain transparent and accountable? How will this affect the separation of powers? And, in this context, could you address the President's counsel's claim that the President's advisers are entitled to the same protections as a whistleblower?

Mr. Manager NADLER. Mr. Chief Justice, Members of the Senate, privileges are limited. We have voted to impeach the President for, among other things—article II of the impeachment is total defiance of House subpoenas.

And the President announced it in advance: I will defy all the subpoenas. What does this mean? It means that there is no information to Congress. It means the claim of monarchical, dictatorial power. If Congress has no information, it cannot act. If the President can defy—now, he can dispute certain specific claims. You can claim privilege, et cetera. But to defy categorically all subpoenas, to announce in advance you are going to do that and to do it, is to say that Congress has no power at all, that only the executive has power.

That is why article II is impeaching him for abuse of Congress. That is why, for a much lesser degree of offense, Richard Nixon was impeached for abuse of Congress—for the same defiance of any attempt by the Congress to investigate.

What are the consequences? The consequences, if this is to be—if he is to get away with it, is that any subpoena you vote in the future, any information you want in the future from any future President may be denied you, with no excuses, announced in advance—I will defy all the subpoenas. It eviscerates Congress and establishes the executive department as a total dictatorship. That is the consequence.

I want to also talk about—and the motives are clearly dictatorial.

I want to also take a point, since I have the floor, to answer a question—to comment on a question that Senator COLLINS and Senator MURKOWSKI asked yesterday. They asked about the question of mixed motives. How do you define—how do you deal with a deed—with a President who may have a corrupt motive and a fine motive? How do you deal with it?

Professor Dershowitz said: Well, you have to look at the—you have to mix. You have to weigh the balances.

Nonsense. Nonsense. We never, in American law, look at decent motives if you can prove a corrupt motive. If I am offered a bribe and I accept the bribe for corrupt motive, I will not be heard in defense to say: Oh, I would have voted for the bill anyway; it was a good bill. You don't inquire into other motives. Maybe you had good motives, but once the corrupt motive and the corrupt act was established, there is no comparison.

All of this is just nonsense to point away from the fact that the President has been proven beyond a shadow of a doubt—and the defenders don't even bother, really, to defend; they just come out with distractions—has been proven beyond a reasonable doubt to have abused his power by violating the law to withhold military aid from a foreign country to extort that country into helping his reelection campaign by slandering his opponent. Corrupt—no question. Violation of the law—no question. Factually—no question. They don't even make a real attempt to deny it. Everything is a distraction.

And the one chief distraction is, once you prove a corrupt act, that is it. You never measure the degree of, maybe he had decent motives too. Professor Dershowitz, in talking about that and in talking about the absolute power of the Presidency, was just absent from American law or any kind of Western law.

I yield back.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. PERDUE. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Georgia.

Mr. PERDUE. I send a question to the desk for the President's counsel on behalf of myself, Senator ERNST, and Senator BARRASSO.

The CHIEF JUSTICE. Thank you.

The question from Senators PERDUE, ERNST, and BARRASSO for counsel for the President is as follows:

Please summarize the House of Representatives' three-stage investigation and how the President was denied due process in each stage. Combined with Manager SCHIFF's repeated leaks during the House's investigation, do these due-process violations make this impeachment the fruit of the poisonous tree?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question. The short answer, as I think I have indicated a couple of the times I have been up here, is, yes, this entire proceeding here is now the fruit of the poisonous tree. It is the fruit of a proceeding that was fatally deficient in due process from the start to the beginning. As a result of that, it produced a record that is totally unreliable, can't be relied on here for any conclusion other than acquitting the President.

Let me detail the three phases.

The first error was the House began the proceeding in a totally unconstitutional, unlawful, and illegitimate manner that started

with an impeachment inquiry without any vote of the House to authorize that inquiry. I want to spend a second on this because the House managers have spent a lot of time today trying to go back and argue about why their proceeding was all right, but they are not actually engaging the real issues.

In order for the House to exercise the power of impeachment, there has to be a delegation of that authority to a committee. That is just a fundamental principle that the Constitution gives power to the House itself, not to individual Members of the House, not to the Speaker. Just as here in the Senate you wouldn't think that the majority leader could say—if an impeachment arrived, the majority leader could say: Guess what. We are not going to do a trial with the whole Senate. I, the majority leader, will decide I will have one committee hear the evidence, provide a summary, and then you all can vote.

The majority leader doesn't have the authority on his own to do that. The Speaker doesn't have the authority in the House to give the power of impeachment to any committee to start pursuing an inquiry, and this is the key. There is no rule giving any committee in the House the authority to use the power of impeachment. Rule X speaks of legislative authority, not power of impeachment, and all the subpoenas that were issued came with letters saying on them: Pursuant to the House's impeachment inquiry. They purported to be using a power that hadn't actually been delegated to the committee. That is the first flaw—illegitimate, unlawful proceeding from the start.

Then there are the due process flaws. Three stages of the hearings: One, secret hearings in the basement bunker; the President is locked out. No opportunity to cross-examine witnesses, to see the evidence, to present evidence.

And then, they go from that to the public hearings, what was really just a public show trial, because the President is still cut out, totally unprecedented in any Presidential impeachment—that there would be that second phase of public hearings where the President is still cut out, can't present evidence. The minority Members don't have equal subpoena authority.

In the third phase in front of the House Judiciary Committee, they purport to have offered rights, but I have explained that. It was illusory because they had already decided. Before the President was even supposed to respond to what rights he would like to exercise, the Speaker had announced the result that there were going to be Articles of Impeachment. The Judiciary Committee decided they weren't going to hear from any fact witnesses. They had no plans for hearings. It was all a foregone conclusion because they had to get it done by Christmas.

And the third error: Chairman SCHIFF was in charge of all the fact-finding and he had an interest, because of the interactions of his office with the whistleblower that we still don't know about, to shut down questioning about the motives, the bias, the reasons that the whistleblower—how this all came about.

All three of those errors affected this process from the very beginning. They resulted in a one-sided, slanted fact-finding that was rushed by a person controlling the fact-finding who had a motive to limit what facts would be allowed to get into the proceedings and

produced a record that cannot possibly be relied on here. We said many times that the Supreme Court has made clear that cross-examination is the greatest legal engine ever invented for the discovery of truth. And they didn't permit the President the opportunity to cross-examine anyone. And that is an indication that the goal was not a search for the truth. It was a partisan charade intended to justify a preordained result and to get it done by Christmas, and it is not a record that can be relied on here.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Illinois.

Ms. DUCKWORTH. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator DUCKWORTH for the House managers:

If the hold on aid to Ukraine was meant to be kept secret until the President could gather internal U.S. government information on Ukraine corruption and European cost sharing, then is there any documentary evidence of this? For example, is there any evidence that the President was briefed on those issues by the NSC, DOD or State Department during the period of the hold in the summer of 2019, or any evidence that he requested specific information on anti-corruption reform measures in Ukraine? Prior to releasing the aid on September 11, 2019, did the President order any changes to Administration policy to address corruption in Ukraine or burden sharing with our European allies?

Mr. Manager CROW. Mr. Chief Justice. Thank you, Senator, for that question.

Let's just take a moment and address what the process should have looked like, because, as we have already established and as President's counsel has conceded and we have conceded, this does happen. Right? There is a legitimate policy process for review and for determination on hold because there is, indeed, legitimate policy reasons to hold aid. And we have never said that corruption is not one of those or burden-sharing wouldn't be one of those. What we are saying is that there is no evidence that what we are talking about today—that the President was concerned or engaged in that process.

So what would normally happen is Congress would come together as we did. We passed appropriations bills, and we made the determination that funding was appropriate for the aid, which 87 Members of the Senate did this past year. The President would then rely on the advice of government experts from the National Security Council, the Department of Defense, State Department, and the Office of Management and Budget regarding that aid. That is the interagency process that we have talked so much about—the interagency process that we went through earlier last year. And at the conclusion of that interagency process, it was determined that it had met all the conditions for the aid and all the agencies determined that it should go forward. The President would then seek permission from Congress that he intended—normally, if there was a reason, the President would go back and seek permission from Congress—to hold the aid. So let me repeat that. If there were a reason to hold it, the President—and President Trump has done this in the past under legitimate processes, as has President Obama and prior Presidents—would go back to Congress under prescribed processes and make sure that they are not violating

the Impoundment Control Act and seek permission to hold it. That did not happen.

Congress would then weigh in on the request by approving or denying the President's request. Unless Congress specifically approves the President's request, the aid must be made available. Of course, none of that happened.

In this instance, a hold was put in place. We don't know exactly when because the President and his agencies have prevented us, and his counsel prevented us, from getting that information. But a hold was put in place. No reason was given. The only one in the United States Government who apparently knows why that hold was put in place is President's counsel, who tried to tell us last night why he thinks the hold was put in place, but nobody else knows.

So yes, the answer is if there was a legitimate policy process put in place, there will be a lot of information about burden-sharing, about corruption, about any of the other concerns to which we have no evidence.

And if burden-sharing—to the last point of the question—was a concern, then the person who should have been asked to discuss those concerns with the EU and our European partners would have been Ambassador Sondland, because he is the United States Ambassador to the European Union. And not once did President Trump go to Ambassador Sondland and say: Discuss these issues with the EU and the Europeans, saying they need to provide more money. Not once did that happen, and it didn't happen because it wasn't the real concern.

All the evidence shows the President withheld taxpayer money, foreign aid to our partner at war to coerce them to start a political investigation to benefit his 2020 election campaign. That is what the evidence shows, and that is why we are still here. And there is one person that can provide additional information on that, and that is Ambassador Bolton. And, yes, it is still a good time to subpoena Ambassador Bolton.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Maine.

Ms. COLLINS. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators CRAPO, BLUNT, and RUBIO.

The CHIEF JUSTICE. Thank you.

The question from Senator COLLINS and the other Senators for both parties:

Are there legitimate circumstances under which a President could request a foreign country to investigate a U.S. citizen, including a political rival, who is not under investigation by the U.S. government? If so, what are they and how do they apply to the present case?

The House goes first.

Mr. Manager SCHIFF. Mr. Chief Justice, Senator.

It would be hard for me to contemplate circumstances where that would be appropriate, where it would be appropriate for the President of the United States to seek a political investigation of an opponent.

One of the, I think, most important post-Watergate reforms was to divorce decisions about specific cases, specific prosecutions from the White House to the Justice Department, to build a wall. One

of the many norms that has broken down in this Presidency is that wall has been obliterated, where the President has affirmatively and aggressively sought to investigate his rivals. I cannot conceive of circumstances where that is appropriate.

It may be appropriate for the Justice Department, acting independently and in good faith, to initiate an investigation. There is a process for doing that. We heard testimony about doing that. You can make a request under the mutual legal assistance treaty, MLAT, process when a foreign country has evidence involving a criminal case involving a U.S. person. There is a legitimate way to do that.

That didn't happen here. In fact, when Bill Barr's name was first revealed, when that transcript was brought to light, the Justice Department immediately said: We have nothing to do with this—nothing to do with this. Here, this particular domestic political errand was being done by the President's personal lawyer.

I want to just follow up also while I can, Senator, on my colleague's comments in terms of mixed motives. If you conclude the President acted with mixed motives—some of them corrupt and forbidden, some of them legitimate—you should vote to convict. That principle is deeply rooted in our legal tradition. It is commonplace in civil and criminal law going back centuries.

For example, in describing the standard for corrupt motive for obstruction, the Seventh Circuit rejected any requirement that a defendant's only or even main purpose was to obstruct the due administration of justice and, instead, the court explained a defendant is guilty if his motives included any corrupt, forbidden goals. That case, *United States v. Cueto*, which I cited earlier, is not only relevant here, but that case was argued by Professor Dershowitz and he lost. He made the argument he has made and the President's lawyers have made today. They lost that case and for a good reason. It is contrary to the history of our legal traditions. If someone, and this is—the Founders were concerned, for example, that a President might be charged with bribing members of the electoral college.

The CHIEF JUSTICE. The President's counsel.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I would like to start by pointing out that the question sort of assumes that there is a request for an investigation in a foreign country of a United States person.

I would just like to bring it back, though, here, to the transcript of the July 25 call, where President Trump didn't ask President Zelensky, specifically, for an investigation or investigation into Vice President Biden or his son Hunter. There is a lot of loose talk in sort of shorthand reference to it that way.

What he refers to is the incident in which the prosecutor was fired. The first thing that he says in that whole exchange is talking about the prosecutor being fired—and he says it sounds horrible to him—and the situation with Burisma. And all the President says is: "So if you can look into it. . . . It sounds horrible." It sounds like a bad situation.

That is not calling for an investigation, necessarily, into Vice President Biden or his son, but the situation in which the pros-

ecutor had been fired which affected anti-corruption efforts in the Ukraine.

President Zelensky responded by saying the issue of the investigation of the case is actually the issue of making sure to restore the honesty. So we will take care of that. He is explaining that he understands that it is an issue that has to do with, was an investigation over there, which their prosecutor was handling, derailed in a way that affected their anti-corruption efforts, and was it something worth looking into?

It is the President's making clear that we are not saying that it is off-limits. It sounds bad to the U.S. as well.

Let me get more specifically to the question of, Is there any situation where it might be legitimate to ask for an investigation overseas?

Yes. If there were conduct by a U.S. person overseas that potentially violated the law of that country but didn't violate the law of this country but there were a national interest in having some information about that and understanding what went on, then it would be perfectly legitimate to suggest that this was something worth looking into.

We have an interest in knowing about this, even if it is not something that would mean a criminal investigation here in the United States. So that could arise in various circumstances where a person had done something overseas, but there was a national interest in knowing what they had done.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Democratic leader is recognized.

Mr. SCHUMER. Mr. Chief Justice, I send a question to the desk for President's counsel and the House managers.

The CHIEF JUSTICE. Thank you.

The Democratic leader's question is this:

Yesterday I asked the President's Counsel about the President's claim of absolute immunity. Specifically, I asked the President's lawyers to name a single document or witness that the President turned over to the House impeachment inquiry in response to their request or subpoena. Mr. Philbin spoke for 5 minutes and talked about the various types of immunities and privileges the President could invoke, but did not answer my question. So I ask once again, can you name a single witness or document that the President turned over to the House impeachment inquiry?

It is directed to both parties, and the President's counsel goes first.

Mr. Counsel PHILBIN. Mr. Chief Justice, Minority Leader SCHUMER, thank you for that question. I apologize if I was not direct at getting to the nub of the question yesterday.

I was intending to explain the rationales that the administration had provided for its actions and to explain, contrary to the question, that there was not simply absolute defiance and not simply a blanket assertion that we won't do anything. That is the way the House managers have tried to characterize it.

So let me be clear. There were document subpoenas issued prior to the adoption of H. Res. 660. The President explained—the administration explained—in various letters that all of those were invalid, and there were no documents produced in response. There were no documents produced in response because all of those sub-

poenas were invalid. There was no attempt to reissue those subpoenas or to retroactively attempt to authorize them.

There were then subpoenas for witnesses who were senior advisers to the President. The President advised the head of the committees that had issued those that those senior advisers had absolute immunity, and they were not produced for testimony. Those three senior advisers were not produced.

There were then subpoenas for witnesses to others whom the House Democrats insisted would be required to testify without the benefit of agency counsel, and I have explained that principle. The Office of Legal Counsel advised that those subpoenas attempting to require executive branch officials to testify without the benefit of agency counsel were unconstitutional, and so those witnesses were not produced. Still, there were 17 witnesses who testified, not including the 18th witness, the ICIG, whose testimony is still secret.

So there was quite a bit of testimony, and there have been, subsequently, some documents relevant to this produced under FOIA. I just want to raise that because it makes clear that, if you follow the law and you follow the rules and you make a document request that is valid, documents get produced. If you don't follow the law, the administration resists. That is why the documents were not produced—because the subpoenas were invalid. We made that very clear.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. The quick answer, Senator, is that not a single document was turned over and not a single witness was produced. The witnesses who did come came in defiance of the orders of the President.

Counsel has, obviously, made all of these claims that we think are completely spurious, but what they don't answer is, what was the motivation to fight all of these subpoenas?

They argue this interpretation which the courts have rejected—that the courts have looked at it and that somehow these subpoenas were invalid. But why didn't they produce the documents? Why did they insist on this now discredited by the courts legal theory? Because they were covering up the President's misconduct.

I want to return briefly to finish the comments I was making earlier about the Senator's question earlier on mixed motives.

There is a good reason mixed motives are no defense. Otherwise, officials who commit misconduct could always claim that, even if they did it and even if it were corrupt, they must be acquitted because they were able to invent some phony motivation and insist it played some minor role in their scheme.

Imagine how that principle would apply to a President charged with bribing members of the electoral college. Multiple Framers cited this specific threat while discussing impeachment at the Constitutional Convention. Could a President defend himself on the ground that he was motivated, in part, by a noble desire to reward members of the electoral college for their public service? Could he defend it on the ground that, even as he handed over the bribes, he wasn't just acting corruptly but was also seeking to advance the public interest by keeping himself in power? According to the President's lawyers, yes, he could.

Indeed, for all of the reasons we provided, there is no doubt that the President's quid pro quo, the solicitation of foreign interference, and his use of official acts to compel that interference were a fundamentally corrupt scheme, by which I mean the motive and intent was to benefit himself—to obtain personal political gain while ignoring and injuring core national interests in our democracy and our security.

We have demonstrated, we believe, that the scheme was entirely corrupt, but if you have any question about that, ask John Bolton. If there is any question about whether the motive was mixed or not mixed, ask John Bolton. He has relevant testimony. You can ask, also, Mick Mulvaney.

You can subpoena the documents and answer the earlier questions as to what the documents say about when the President withheld the aid and whether there was any interagency discussion of reforms in the Rada. I mean, the President's counsel literally made the argument that the circumstance that changed was a change in the Rada, but there is no evidence to support that idea.

The CHIEF JUSTICE. The manager's time has expired.

The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess until 4 p.m.

There being no objection, at 3:37 p.m., the Senate, sitting as a Court of Impeachment, recessed until 4:03 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senator from Idaho.

Mr. CRAPO. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators RISCH, GRAHAM, ERNST, FISCHER, CRUZ, and PERDUE.

The CHIEF JUSTICE. Thank you.

The question from Senator CRAPO and the other Senators for counsel for the President:

How many witnesses have been presented to the Senate at this point in this trial, how many pages of documentary evidence have been put in the record before the Senate in this trial, and how many other clips and transcripts of evidence have been presented to the Senate in this trial?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I think it is important to recognize that—because the House managers keep talking about the need for witnesses, you can't have a trial without witnesses—you have seen a lot of witnesses. There were 17 witnesses who were deposed and testified—12 in public, 17 who were in closed hearings below.

So far you have seen in these presentations 192 video clips from 13 different witnesses. So testimony was shown here to you. Just as you would in a trial in an ordinary court sometimes play the video of a deposition instead of having the witness take the stand, you have seen video clips from 13 different witnesses.

The House managers dramatically wheeled into the Senate a record—I think it was reported as being 29,000 pages. I think the more official number is 28,578 pages. So you have got over 28,000 pages of documents submitted into the record provisionally in evi-

dence in this trial, subject later to potential objections for hearsay and other evidentiary objections.

You have also heard here the arguments that have been presented, along with presentation of both the documentary and testimonial evidence by video clip and by slides that were put up. You have heard arguments for up to 24 hours from each side. We didn't take all of our time. The House managers argued for over 21 hours, putting on, with their video clips and their excerpts from documents in the record, their case.

So at this point there has been a lot put on here in terms of a trial. You have seen the witnesses in the clips—all the most relevant parts. You have seen the documents put up in excerpts on screens.

And as a result of this, the House managers have consistently said over and over again—before they came here, they said they had an overwhelming case. It was already buttoned down. They didn't need anything else.

They said when they got here that it was proven—every single allegation, every line in each Article of Impeachment. They said: Proven, proven, proven.

We don't think that that is true, but those are their words. That is what they are telling you—that they have had sufficient evidence to make their case. They said “proven,” “sufficient,” “uncontested,” and “overwhelming” at least 68 times in the proceedings on the floor here.

Manager NADLER told us just today that they think they have not only proved it beyond a reasonable doubt but beyond any doubt because of the evidence that they have already put on in front of you.

We don't think that is true. We think we have demonstrated it is not.

But the point is that the House managers have already put on a substantial amount of testimony from witnesses through their clips of prior deposition and hearing testimony. They have already presented to you a large portion of the most relevant documents from those 28,000. You have heard from the witnesses; you have seen where their testimony conflicts. You can see which is the better, more persuasive version of the facts.

You have been able to see what it is that they have in the record that they say was overwhelming—already ready to go to trial—and this proceeding, therefore, has already had a lot of the earmarks of a trial.

So don't be taken in by the idea that we can't have a trial here, you can't have a valid proceeding unless they bring someone in here to testify live, because it wouldn't be just one person. If we start to go down that route, it is not presenting the case that was prepared in the hearings below; it is opening up discovery for an entirely new case, and there would have to be depositions and witnesses on both sides, and there is no need to do that if they really believe what they are telling you—that it is already overwhelming. It is already proven.

There is no need to go on to anything else when you have already seen so much and House managers had their chance to prepare their case.

And, again, I would also just make the point to bear in mind what is the set—what precedent would be set if this Chamber has to become the investigatory body for impeachments that were not prepared properly in the House.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Arizona.

Ms. SINEMA. Mr. Chief Justice, I submit a question to the desk for the President's counsel on behalf of myself, Senator MANCHIN, Senator MURKOWSKI, and Senator COLLINS.

The CHIEF JUSTICE. Thank you.

The question from Senator SINEMA and the other Senators for counsel for the President:

The Logan Act prohibits any U.S. citizen without the authority of the United States from communicating with any foreign government with the intent to influence that government's conduct in relation to any controversy with the United States. Will the President assure the American public that private citizens will not be directed to conduct American foreign policy or national security policy, unless they have been specifically and formally designated by the President and the State Department to do so?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

Let me preface—let me answer in several parts.

The first is, I just want to make clear that there was no conduct of foreign policy being carried on here by a private person.

The testimony was clear from Ambassador Volker—and I assume that the reference would be to Mr. Giuliani, the President's private counsel. Ambassador Volker was clear that he understood Mr. Giuliani just to be a source of information for the President and someone who knew about Ukraine and someone who spoke to the President.

And, in fact, it was the testimony that it was the Ukrainians, Andriy Yermak, who asked to be connected to Mr. Giuliani simply because he was someone who could provide information to the President.

And Ambassador Volker testified that it was not his understanding, he did not believe, that Mr. Giuliani was carrying out policy directives of the President but, rather, indicating his views of what he thought would be something useful for the Ukrainians to convince the President of their anti-corruption bona fides. So I just wanted to make that point.

It is, of course, the President's policy always to abide by the laws, and I am not in a position to make pledges for the President here, but the President's policy is always to abide by the laws, and we continue to do so.

I think it is worth pointing out that many Presidents, starting with President Washington, have relied on persons who are their trusted confidants but who are not actually employees of the government to assist in the conduct of foreign diplomacy.

President Washington relied on Gouverneur Morris to carry messages in certain circumstances, I believe, to the French. FDR had his confidants whom he relied on in certain circumstances to be a go-between with foreign powers, and there is a list of others. They were mentioned in some of the testimony during the House proceedings.

So I don't think that there is anything—again, as I said, it was not here, but there would not be anything improper for a President in some circumstances to rely on a personal confidant to be able to convey messages or receive messages back and forth from a foreign government that would relate to the President's conduct in foreign affairs. That is not prohibited but within his authority under the Constitution under article II.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. KENNEDY. Your Honor.

The CHIEF JUSTICE. The Senator from Louisiana.

Mr. KENNEDY. Thank you, Your Honor. On behalf of myself and Senator ERNST, I send a question to the desk for Mr. NADLER and Mr. Philbin.

The CHIEF JUSTICE. The question from Senator KENNEDY and Senator ERNST to both parties, and the House managers will be first:

If the president asks for an investigation of possible corruption by a political rival under circumstances that objectively are in the national interest, should the president be impeached if a majority of the House believes the president is in it for the wrong reason?

Mr. Manager NADLER. The President, of course, is entitled to conduct foreign policy; he is entitled to look into corruption in the United States or elsewhere; he is entitled to use the Department of State or any other Departments in that effort. He is not entitled to target an American citizen specifically, nor did he do so innocently here. It was only after Mr. Biden became an announced candidate for President that he suddenly decided that Ukraine ought to look into the Bidens.

And he made it very clear—he made it very clear—that he wasn't interested in an investigation; he was interested in an announcement of an investigation just so the Bidens could be smeared.

So it is probably never suitable for a President to order an investigation of an American citizen. If he thinks there is general corruption and there is an investigation ongoing, the Justice Department certainly can ask the foreign government to assist in an investigation. But that wasn't done here. The President specifically targeted an individual with an obvious political motive, and I would simply say that that is so clear that there is no question that it was a political motive against a specific individual.

There are about 1.8 million companies in Ukraine. The estimates were that about half of them were corrupt. The President chose one—the one with Mr. Biden.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I think the short answer is no; the President should not be impeached. And I think what the focus of the question is getting at is to the situation of mixed motives, which has come up a couple of times here.

If the President, as chief law enforcement officer, head of the executive branch, is in a situation where there is a legitimate investigation being pursued and he indicates that it should be pursued,

is it possible that he should be impeached for that if there is some dispute about his motives, whether there is a legitimate basis for that conduct? The answer is no, and the House managers themselves, in the way they framed their case, recognized this.

In the House Judiciary Committee report, they repeatedly say that the standard they are going to have to meet—they are going to have to show that these are sham investigations; these are baseless investigations that they are alleging that the President wanted to initiate; and they had no legitimate—there was not any legitimate basis for pursuing the investigation. I am pretty sure that is page 5 of the House Judiciary report.

They use that standard and they talk about there not being a scintilla of evidence about anything that anyone could reasonably want to ask about related to the Bidens and Burisma because they know they can't get into a mixed-motive scenario, because if you have a legitimate basis for asking a question about something, if there is a legitimate national interest there, it is totally unacceptable to start getting into the field of saying: Well, we are going to impeach the President and remove him from office by putting him on the psychiatrist's couch to try to get inside his head and find out was it 48 percent in this motive and 52 in the other—or did he have some other rationale? No. If it is a legitimate inquiry in the national interest, that is the end of it, and you can't say that we are going to impeach the President, remove him from office, decapitate the executive branch of the government, disrupt the functioning of the government of the country in an election year by trying to parse out subjective motives and which percentage of the motive was a good motive or some other motive—something like that. If it is a legitimate inquiry in the national interest, if that possibility is there, if the national interest is there, that is the end of it. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

I haven't specified this before, but I think it would be best if Senators directed their questions to one of the parties or both and leave it up to them to figure out who they want to go up to bat, rather than particular counsel.

The Senator from Illinois.

Mr. DURBIN. Mr. Chief Justice, now I send a question to the desk.

The CHIEF JUSTICE. The question from Senator DURBIN to the House managers:

Would you please respond to the answer that was given by President's counsel to Senator SINEMA's question?

Mr. Manager SCHIFF. Senators, Mr. Chief Justice, in answer to that question, we heard a rather breathtaking admission by the President's lawyer, and it was said in an understated way, so you might have missed it. But what the President's counsel said was that no foreign policy was being conducted by a private party here; that is, Rudy Giuliani was not conducting U.S. foreign policy. Rudy Giuliani was not conducting policy.

That is a remarkable admission because, to the degree that they have attempted to suggest or claim or insinuate that this is a policy difference, that a concern over burden-sharing or some big corruption was a policy issue, they have now acknowledged that the

person in charge of this was not conducting policy. That is a startling admission.

So the investigations that Giuliani was charged with trying to get Ukraine to announce into Joe Biden, into this Russia propaganda theory, they have just admitted were not part of policy. They were not policy conducted by Mr. Giuliani.

So what were they? They were, in the words of Dr. Hill, “a domestic political errand,” not to be confused with policy. They have just undermined their entire argument—even as to mixed motives—because the man in charge of it was undergoing a domestic errand.

You heard a suggestion that he was only doing this because he was asked by Andriy Yermak. That is laughable. Giuliani tried to get the meeting with Zelensky, remember? And he couldn’t get in the door, and then he announced that there were enemies around President Zelensky. And then they go into the phone call on July 25, and the Ukrainians try to persuade the President: You don’t have enemies in Ukraine; we are only friends. And what was the President’s response? I want you to “talk to Rudy.” That is not policy being conducted; that is a personal political errand. They just undermined their entire argument.

Now the President’s counsel also essentially argues, in terms of witnesses, if their case is as strong as Mr. SCHIFF and Mr. NADLER and others say, then why do they need witnesses? You know, you can imagine a scene in any courtroom in America where, before the trial begins, defense counsel for the defendant stands up and says: Your Honor, if the prosecution’s case is so strong, let them prove it without witnesses. That is essentially what is being argued here.

Well, I will make an offer to opposing counsel, who have said that this will stretch on indefinitely if you decide to have a single witness: Let’s cabin the depositions to 1 week.

In the Clinton trial, it was 1 week of depositions, and do you know what the Senate did during that week? They did the business of the Senate. The Senate went back to its ordinary legislative business while the depositions were being conducted. If you want the Clinton model, let’s use the Clinton model. Let’s take a week.

Let’s take a week to have a fair trial. You can continue your business. We can get the business of the country done. Is that too much to ask in the name of fairness, that we follow the Clinton model, that we take 1 week?

I mean, are we really driven by the timing of the State of the Union? Should that be our guiding principle?

Can’t we take 1 week to hear from these witnesses? I think we can. I think we should. I think we must.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Alaska.

Ms. MURKOWSKI. Mr. Chief Justice, I send to the desk a question submitted on behalf of myself and Senator SCHATZ, directed to both White House counsel and the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senators MURKOWSKI and SCHATZ directed to both parties:

Would you agree that almost any action a President takes, or indeed any action the vast majority of politicians take, is, to one degree or another, inherently polit-

ical? Where is the line between permissible political actions and impeachable political actions?

The President's counsel will go first.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question, and I think that the question really hits the nail on the head.

As I mentioned the other day, in a representative democracy, elected officials almost always have at least one eye looking on to the next election and how their actions—their policy decisions, their actions in office—will be received by the electorate, and there is nothing wrong with that. That is good. It is part of the way representative democracy works. So having part of your motives being looking toward the next election, looking toward how that will affect electoral chances—that is part of the nature of elected office. And to start getting into motives about “Will this affect my prospects in the next election?” and calling that corrupt, and, if you have got that as part of your motive, looking into whether you were doing something for electoral advantage and saying “That is going to be a corrupt motive; we will say that you can be charged for wrongdoing with that or impeached” is very dangerous because there is almost no way to get inside someone's head and parcel out which percentage was one motive and which percentage was another motive.

If you start down that path, it is totally amorphous. This is part of the point that Professor Dershowitz was making and that was made here a couple of times. This idea of impeaching a President on a theory of abuse of power depends entirely on analyzing subjective motives because that is what the House managers have suggested—that we are assuming there is an act, on its face, that is legitimate and is within the President's authority and is not, on its face, in any way unlawful or unconstitutional, but solely based on motive, we are going to impeach him. And by saying “Well, if it was really directed at the next election, that is the corrupt motive,” that is a very dangerous path because there is always some eye on the next election.

It ends up becoming a standard so malleable that it really is a substitute for a policy difference: If we don't like your policy, we attribute it to bad motives. That is something that Justice Iredell warned about in the North Carolina ratifying convention, that if you base something just on motive because of what he called “malignity of party,” the other party will always attribute bad motives.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Counsel PHILBIN. Thank you.

Mr. Manager SCHIFF. Senators, I think the answer is yes.

I think the answer is yes, that public officials are inherently political animals. I don't mean that in the derogatory term. They run for office; they hold office; they conduct acts as political figures. But if we look at what Hamilton had to say about the core of offenses that warrant the impeachment power, he talked about the crimes being political in character and the remedies being political in character because we are not talking about imprisonment here. We are not talking about taking away someone's liberty.

So we are talking about a political punishment for a political crime. Now, what is a political crime? Yes, everyone in office has

a political motivation. But certainly that doesn't mean that we can't draw a line between corrupt activity that is undertaken, yes, for a political reason and noncorrupt activity. Indeed, we have to draw that line.

Let's show what Professor Dershowitz had to say about where we should draw the line.

(Text of Videotape presentation:)

Mr. DERSHOWITZ. If a President does something which he believes will help him get elected—in the public interest—that cannot be the kind of quid pro quo that results in impeachment. The fact that he has announced his candidacy is a very good reason for upping the interest in his son. If he wasn't running for President, he's a has-been. He is the former Vice President of the United States. OK, big deal. But if he is running for President, that is an enormous big deal.

Mr. Manager SCHIFF. So it is certainly true that when public officials take actions, they may have in mind, when they make a policy judgment, what is the impact on my political career going to be, or, what is the impact going to be on my reelection prospects, but that is a very different question than whether they can engage in a corrupt act to help their election—in this case, to get foreign help to cheat in an election.

I think we can distinguish between the fact that political actors have political interests with what the President's defense would argue, and that is, if he believes it is in his reelection interest, then no quid pro quo is too corrupt. If we go down that road, there is no limit to what this or any other President can do. There is no limit to what foreign powers will feel they can offer a corrupt President to help their reelection if that is the precedent we intend to establish.

The CHIEF JUSTICE. Thank you, counsel. Thank you, Mr. Manager.

The Senator from New Jersey.

Mr. MENENDEZ. Mr. Chief Justice, I have a question, which I send to the desk and ask the House managers to respond to it.

The CHIEF JUSTICE. Thank you. The question for the House managers from Senator MENENDEZ:

The President was seeking investigations from a foreign power based partly on what Fiona Hill called "a fictional narrative perpetrated and propagated by the Russian security services." The US Intelligence Community has warned that the Russian government is already preparing to attack our election in 2020, and the President has said publicly he would welcome foreign interference in our elections. Why should Americans be concerned about foreign interference and why does it matter that the President continues to solicit foreign interference in our elections?

Mr. Manager CROW. Mr. Chief Justice and Senator, thank you for the question.

Let's outline the facts that we do know about today. None of the 17 witnesses who testified as part of the House's impeachment inquiry were aware of any factual basis to support the allegations that it was Ukraine and not Russia that interfered in the 2016 election. FBI Director Christopher Wray, who was nominated by President Trump and confirmed by this body, stated as recently as this past December that we have no reason to believe that Ukraine interfered in the 2016 U.S. election. He said: "We have no information that indicates that Ukraine interfered with the 2016 Presidential election."

President Trump's own Homeland Security advisor, Tom Bossert, said about this allegation: [Slide 577] "It's not only a conspiracy theory, it is completely debunked." He added: "Let me just repeat here again, it has no validity."

And, of course, Ms. Hill, as the question indicated, said "fictional narrative that is being perpetrated and propagated by the Russian security services themselves."

The U.S. intelligence community has unanimously determined that there is no validity to this—our own intelligence and law enforcement. Special Counsel Mueller found that Russia's interference was "sweeping and systematic."

But don't take our own law enforcement and intelligence community's word for it; let's hear what Vladimir Putin himself said recently about this. In November of 2019, Mr. Putin was overheard saying: "Thank God no one is accusing us of interfering in the U.S. elections anymore. Now they are accusing Ukraine."

Let me end with that one because that one demonstrates to me why this matters. That one demonstrates to me why anyone in the United States should matter. Vladimir Putin could care less about delivering healthcare for the people of Russia and building infrastructure in Russia. Vladimir Putin, as many people in this Chamber know well—because I have worked with some of you on this—wakes up every morning and goes to bed every night trying to figure out how to destroy American democracy, and he has organized the infrastructure of his government around that effort.

This is a battle over resolve. It is the battle over the hearts and minds of our people. It is the battle over information and disinformation. And if a message from the very top of our government, from the very top of our leaders—if the message from some folks over the last couple of weeks is that facts don't matter, that our law enforcement doesn't matter, that our intelligence communities' unanimous consensus doesn't matter, that is dangerous. That is what Vladimir Putin and Russia are looking for, and that makes us less safe.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Wisconsin.

Mr. JOHNSON. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators HAWLEY, CRUZ, CRAMER, BRAUN, PERDUE, BARRASSO, RUBIO, RISCH, SULLIVAN, ERNST, SCOTT of Florida, DAINES, and FISCHER for both the House managers, with response from the counsel for the President.

The CHIEF JUSTICE. Thank you. The question from Senator JOHNSON and the other Senators for both parties:

Recent reporting described two NSC staff holdovers from the Obama Administration attending an "all hands" meeting of NSC staff held about two weeks into the Trump Administration and talking loudly enough to be overheard saying "we need to do everything we can to take out the President." On July 26, 2019, the House Intelligence Committee hired one of those individuals, Sean Misko. The report further describes relationships between Misko, Lt Col Vindman, and the alleged whistleblower. Why did your committee hire Sean Misko the day after the phone call between President Trump and Zelensky, and what role has he played throughout your committee's investigation?

The House will begin.

Mr. Manager SCHIFF. First of all, there have been a lot of attacks upon my staff, and, as I said when this issue came up earlier,

I am appalled at some of the spearing of the professional people that work for the Intelligence Committee.

Now, this question refers to allegations in a newspaper article which are circulating smears on my staff and asks me to respond to those smears, and I will not dignify those smears on my staff by giving them any credence whatsoever; nor will I share any information that I believe could or could not lead to the identification of the whistleblower.

I want to be very clear about something. Members of this body used to care about the protection of whistleblower identities. They didn't used to gratuitously attack members of committee staff, but now they do. Now they do. Now they will take an unsubstantiated, repressed article and use it to smear my staff. I think that is disgraceful. I think it is disgraceful.

You know, whistleblowers are a unique and vital resource for the intelligence community. And why? Because, unlike other whistleblowers who can go public with their information, whistleblowers in the intelligence community cannot because it deals with classified information. They must come to a committee. They must talk to the staff of that committee or to the inspector general. That is what they are supposed to do. Our system relies upon it. And when you jeopardize a whistleblower by trying to out them this way, then you are threatening not just this whistleblower but the entire system.

Now, the President would like to have nothing better than that, and I am sure the President is applauding this question because he wants his pound of flesh and he wants to punish anyone that has the courage to stand up to him. Well, I can't tell you who the whistleblower is because I don't know, but I can tell you who the whistleblower should be. It should be every one of us. Every one of us should be willing to blow the whistle on Presidential misconduct. If it weren't for this whistleblower, we wouldn't know about this misconduct, and that might be just as well for this President, but it would not be good for the country.

And I worry that future people that see what I am doing are going to watch how this person has been treated, the threats against this person's life, and they are going to say: Why stick my neck out? Is my name going to be dragged through the mud?

Will people join our staff if they know that their names are going to be dragged through the mud?

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel SEKULOW. Mr. Chief Justice and Members of the Senate, there are two responses that I would like to get to, one with regard to the issue of witnesses and, in this case, the whistleblower.

Mr. SCHIFF put the whistleblower issue front and center with his own words during the course of their investigation. He talked about the whistleblower testifying.

Retribution is what is prohibited under the statute, against a whistleblower. That is what the whistleblower statute protects, that there is no retribution. In other words, you are not being fired from blowing the whistle.

But this idea that there is complete anonymity—and I am not saying that we should disclose the individual's name. I would be

happy to handle that in executive session or any way you want. But we can't just say it is not a relevant inquiry to know who on the staff that conducted the primary investigation here was in communication with that whistleblower, especially after Mr. SCHIFF denied that he or his staff initially had even had any conversations with the whistleblower.

It goes back to the whole witness issue. I want to go to that for just 30 seconds here. It seems to me that the discussion on witnesses—I heard what Mr. SCHIFF said about the 30—we will do depositions in a week. The Democratic leader said I can have any witnesses I want yesterday. I got it from the transcript. And you couldn't get all the witnesses you want in a week. You couldn't get the discovery done in a week.

But if, in fact—if, in fact, they believe they have presented this overwhelming case that they have, all—they talked about subterfuge and smokescreens. The smokescreen here is that they used 13 of their 17 witnesses to try to prove their case, and we were able to use those very witnesses to undercut that case. So I think we just have to keep that in perspective.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

Mrs. MURRAY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Washington.

Mrs. MURRAY. Thank you, Mr. Chief Justice. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question for the House managers from Senator MURRAY:

If there are no consequences to openly defying a valid congressional subpoena, how will Congress be able to perform its constitutional oversight responsibility to make sure any administration is following the law and acting in the best interests of American families?

Ms. Manager GARCIA of Texas. Well, they could have very serious, devastating, and dire consequences. If the Senate ignores President Trump's ongoing obstruction of Congress, it would lead to the end of congressional oversight as we know it today.

President Trump's attorneys argued that our congressional subpoenas are constitutionally invalid until a court determines otherwise. Their argument is false, and it is an attack on congressional oversight powers.

A vote against article II is a vote to condone President Trump's corrupted view of America's constitutional balance. Voting against article II would grant President Trump—and every other President from now until forever—the power to simply ignore all congressional subpoenas unless and until we seek a court to enforce it.

Under President Trump's view, even if all of you Senators were to vote in favor to issue a subpoena for documents or witnesses, the administration could still ignore them until a court ruled on it.

I think Mr. SCHIFF addressed some of that earlier in another question. You could go to court to enforce it. Then, it would get appealed, then, go back to court. We could go on and on because, quite frankly, that is what their position is.

So, again, as Mr. SCHIFF said earlier, imagine yourselves having jurisdiction over an item that you care deeply about, and you needed information. You heard of some wrongdoing. You heard there

was a whistleblower complaint on something, and you decided that you wanted to do a hearing. It is very possible that the President would just flatly refuse your subpoena, because, if we ignore article II, that would be the precedent—to ignore all subpoenas.

But we need you to issue a subpoena for us today not only to get Mr. Bolton here but Mr. Duffey, Mr. Mulvaney, and everyone else with relevant evidence on this case.

Now, when the administration exerts executive privilege, there might be some privilege, one, that is available to them on any of these documents, but those have to be asserted with every document as we send a subpoena.

So don't buy the White House argument that our subpoenas are invalid because we don't have any authority to issue them. We know we do. You know we do. So let's make sure that this body will make sure that no future President will just simply defy, disrespect, and ignore subpoenas because some day you may be in our shoes wanting to get information, wanting to get to the bottom line to ensure that no President is above the law.

Thank you.

The CHIEF JUSTICE. Thank you, Ms. Manager.

Mr. SULLIVAN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Alaska.

Mr. SULLIVAN. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senators RISCH, BLUNT, KENNEDY, JOHNSON, and CAPITO for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senator SULLIVAN and the other Senators for counsel for the President:

Given that the Senate is now considering the very evidentiary record assembled and voted on by the House, which Chairman NADLER has repeatedly claimed constitutes overwhelming evidence for impeachment, how can the Senate be accused of engaging in, what Mr. NADLER described as "a coverup," if the Senate makes its decision based on the exact same evidentiary record the House did?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I think that is exactly right. I think it is rather preposterous to suggest that this Senate would be engaging in a coverup to rely on the same record that the House managers have said is overwhelming.

They have said it dozens of times. They have said that, in their view, they have had enough evidence presented already to establish their case beyond any doubt, not just beyond a reasonable doubt. And it is totally incoherent to claim at the same time that it would be improper for the Senate to rely on that record.

Your judgment may be and should be, we submit, different from the House managers' assessment of that evidence because it hasn't established their case at all. But if they are willing to tell you that it is complete and it has everything they need—it has everything they need to establish everything they want—I think you should be able to take them at their word that that is all that is there.

And to switch now to say, "Well, no, we need more; we need more witnesses," I think just demonstrates that they haven't proved their case. They don't have the evidence to make their case.

As I went through a minute ago, they have already presented a record with over 28,000 pages of documents that is here. They have already presented video clips of 13 witnesses. You have heard all of the key evidence that they gathered. It was their process. They were the ones who said what the process was going to be, how it had to be run, who ought to testify, when to close it, when to decide they had enough, and you heard all the key highlights from that, and that is sufficient for this body to make a decision.

In the time I have remaining, I just want to turn to one point in response to something that was said a couple of minutes ago. We keep hearing repeatedly today the refrain of the idea that President Trump was somehow trying to peddle Vladimir Putin's conspiracy theory that it was Ukraine and not Russia that interfered in the 2016 election. And the House Democrats tried to present this binary view of the world that only one country, and one country alone, could have done something to interfere in the election, and it was Russia. And if you mention any other country doing something related to election interference, you are just a pawn of Vladimir Putin, trying to peddle his conspiracy theories.

That is obviously not true. More than one country and foreign nationals from more than one country could be doing different things for different reasons in different ways to try to interfere in the election, and that is exactly what President Trump was interested in.

In the telephone call, the July 25 transcript, he mentions CrowdStrike. He mentions the server. But he talks about—he says:

There are a lot of things that went on, the whole situation. I think you're surrounding yourself with some of the same people.

So he is talking about much more than just the DNC server. And he closes it again, saying—he refers to Robert Mueller's testimony, and he says: "They say a lot of it started in Ukraine." There are just a lot of stuff going on. Twice in that exchange he says there is a lot of stuff—the whole situation.

And what is that referring to, surrounding yourself with the same people? President Zelensky refers immediately to changing out the Ambassador because the previous Ambassador, who had been there under Poroshenko, had written an op-ed criticizing President Trump during the election.

We also know that there was a POLITICO article in January 2017 cataloging multiple Ukrainian officials who did things either to criticize President Trump or to assist a DNC operative, Alexandra Chalupa, in gathering information against the Trump campaign.

And they said: There was no evidence in the record; no one said that there was anything done by Ukraine.

That is not true. One of their star witnesses, Fiona Hill, specifically testified in her public hearing, because she said she went back and checked because she hadn't recalled the POLITICO article. And then she said that she acknowledged that some Ukrainian officials "bet on Hillary Clinton winning the election." And so it was quite evident, in her words, that they were trying to favor the Clinton campaign, including trying to collect information on people working in the Trump campaign. That was Fiona Hill. She acknowledged the Ukrainian officials were doing that.

So this idea that it is a binary world—it is either Russia or Ukraine; if you mention Ukraine, you are just doing Vladimir Putin's bidding—is totally false, and you shouldn't be fooled by that.

Ukrainians—various Ukrainians—were doing things to interfere in the election campaign, and that is what President Trump was referring to.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Vermont.

Mr. LEAHY. Mr. Chief Justice, I ask to send a question to the desk on behalf of myself and Senator BLUMENTHAL to the House managers.

The CHIEF JUSTICE. Thank you, Senator.

The question for the House managers from Senator LEAHY and Senator BLUMENTHAL:

The President's counsel claimed, "If a president does something which he believes will help him get elected in the public interest that cannot be the kind of quid pro quo that results in impeachment." He added a hypothetical, "I think I'm the greatest president there ever was and if I'm not elected, the national interest will suffer greatly." That cannot be an impeachable offense." Under this view, there is no remedy to prevent a president from conditioning foreign security assistance, in violation of the Impoundment Control Act, on the recipient's willingness to do the president a political favor. If the Senate fails to reject this theory, what would stop a president from withholding disaster aid funding from a U.S. city until that mayor endorses him? What would stop the president from withholding nearly any part of the \$4.7 trillion annual federal budget subject to his personal political benefit?

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, I thank the Senators for that very important question.

Certainly, what we have alleged in this case is that the President solicited a personal political benefit in exchange for an official act, solicited dirt on a political opponent in exchange for the release of \$391 million in military aid, and solicited dirt in exchange for a White House meeting. And if this Senate were to say that is acceptable, then, precisely as was outlined in that question could take place all across America in the context of the next election and any election—grants allocated to cities or towns or municipalities across the country, where the President could say: You are not going to get that money, Mr. Mayor, Mrs. County Executive, Mrs. Town Supervisor, unless you endorse me for reelection. The President could say that to any Governor of our 50 States.

That is unacceptable. That cannot be allowed to happen in our democratic Republic.

Now, by my count, as of this afternoon, the Framers of the Constitution and the Founders of our great Republic had been quoted either directly or mentioned by name 123 times: Alexander Hamilton, 48 times; James Madison, 35 times; George Washington, 24 times; John Adams, 8 times; Thomas Jefferson and Ben Franklin, pulling up the rear, 4 times.

It seems to me that Ben Franklin and Thomas Jefferson need a little bit more love, and so let me try to do my part.

Thomas Jefferson once observed that "tyranny is defined as that which is legal for the government but illegal for the citizenry." "Legal for the government but illegal for the citizenry"—that is what we confront right now.

President Trump corruptly abused his power. He targeted an American citizen, pressured a foreign government to try to cheat in the upcoming election, and the President's counsel would have you believe that is OK because he is the President of the United States.

But our fellow citizens cannot cheat the Workers' Compensation Board by claiming a fake injury and escape accountability. Our fellow citizens cannot cheat the stock market by engaging in insider trading and then escape accountability. Our fellow citizens cannot cheat the college admissions process in order to get their child into an elite university and then escape accountability.

Why should the President of the United States be allowed to cheat in the upcoming election and escape accountability?

Tyranny is defined as that which is legal for the government and illegal for the citizenry.

The President's counsel has suggested that President Trump can do anything—anything that he wants—and escape accountability. President Trump can solicit foreign interference in the upcoming election and escape accountability. He can cheat and escape accountability. He can engage in a coverup and escape accountability. He can corruptly abuse his power, escape accountability; elevate his personal political interest, subordinate America's national security interest, and escape accountability.

That is the Fifth Avenue standard of Presidential accountability: I can do anything I want. I can shoot someone on Fifth Avenue, and it doesn't matter.

No. Lawlessness matters. Abuse of power matters. Corruption matters. The Constitution matters.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Louisiana.

Mr. CASSIDY. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator RISCH to both the House managers and the White House counsel. And although I cannot pick, ideally, it would be Manager LOFGREN.

The CHIEF JUSTICE. The question from Senators CASSIDY and RISCH for both parties is as follows:

In the Clinton proceedings, we saw a video of Manager LOFGREN saying, "This is unfair to the American people. By these actions you would undo the free election that expressed the will of the American people in 1996. In so doing, you will damage the faith the American people have in this institution and in the American democracy. You will set the dangerous precedent that the certainty of Presidential terms, which has so benefited our wonderful America, will be replaced by the partisan use of impeachment. Future Presidents will face election, then litigation, then impeachment. The power of the President will diminish in the face of the Congress, a phenomena much feared by the Founding Fathers."

What is different now? If the response is that the country cannot risk the President interfering in the next election, isn't impeachment the ultimate interference? How does this not cheat those who did and/or would vote for President Trump from their participation in the democratic process? I ask Manager LOFGREN to address the question directly and to not avoid, as Manager JEFFRIES did with a related question last night.

Oh. The President's counsel answers first.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

Well, as I have said before, I agree 100 percent with Manager LOFGREN's comments from the past, and I think they should guide the Senate. There is really no better way to say it.

What they are doing here—they keep falsely accusing the President of wanting to cheat, when they are coming here and telling you “take him off the ballot” in a political impeachment. Talk about cheating. You don’t even want to face him.

And let me say one more thing while I am up here. I listened to Manager SCHIFF come up here and say he won’t even dignify a legitimate question about his staff with a response because he won’t stand here and listen to people on his staff be besmirched—who will join his staff.

Since the beginning of this Congress, Manager SCHIFF, the other House managers, and others in the House have falsely accused the President—and they have come here and done it—the Vice President, the Secretary of State, the Attorney General, the Chief of Staff, lawyers on my staff—false accusations, calumny after calumny, in dulcet tones. And that is wrong.

And when you turn that around and say he will not respond to a legitimate question that I ask—it is a legitimate question: Who communicated with the whistleblower? Why were you demanding something that you already knew about?

I asked him, in another part of my October 8 letter that doesn’t get a lot of attention from Mr. SCHIFF—I said: You have the full ability to release these documents on your own. No response.

So I think—I think you deserve an answer to that question, and I think it is time in this country that we start—that we stop assuming that everybody has horrible motives, in the puritanical rage of just everybody is doing something wrong except for you—you cannot be questioned. That is part of the problem here.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, I was a member of the House Judiciary Committee during the Clinton impeachment, and I was a member of the staff of a member of the Judiciary Committee during the Nixon impeachment. And during the Clinton impeachment, I found myself comparing what we were doing in Clinton to what we were doing or had done with Nixon, and here is what I saw and I still see today: a special prosecutor started with Whitewater, spent several years, until they found DNA on a blue dress. And they had a lie. The President lied about a sexual affair under oath, and that was wrong. It was a crime, but it was not a misuse of Presidential power.

Any husband caught would have lied about it. It was wrong, but it was not a misuse of Presidential power. And so, throughout the Clinton matters, I kept raising the issue that it was a misuse—and it turned out to be a partisan misuse—of impeachment to equate a lie about a sexual affair to a high crime and misdemeanor.

Mr. MARKEY said they rubbed out the word “high” and made it “any crime and misdemeanors.” That was what was wrong in the Clinton impeachment, compared to the Nixon impeachment where Richard Nixon engaged in a broad scope, upending the constitutional order, corrupting the government for his own personal benefit in the election.

I would add, unfortunately, that I never thought I would be in a third impeachment. Unfortunately, that is what we see in this case with President Trump.

The CHIEF JUSTICE. Thank you, Ms. Manager.

The Senator from West Virginia.

Mr. MANCHIN. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senator GILLIBRAND, and Senator SCHATZ to the President's counsel and the House managers.

The CHIEF JUSTICE. Thank you. The question from Senators MANCHIN, GILLIBRAND, and SCHATZ for both parties:

Have you ever been involved in any trial—civil, criminal, or other—in which you were unable to call witnesses or submit relevant evidence?

I believe the House is first.

Mrs. Manager DEMINGS. Thank you, Mr. Chief Justice, and thank you to the Senator for the question.

I want us to imagine for just a moment someone broke into your house; stole your property; police caught them; they returned the property. Now, the fact that they returned the property changes nothing. They would still be held accountable.

But imagine if they had the power to obstruct every witness, prevent witnesses from appearing. Imagine if they had the power to destroy or obstruct any evidence in the case against them from being presented to the court.

I have had the opportunity to appear in a lot of hearings and be a part of building a lot of cases. We all know. I know everybody here knows that witness testimony and evidence or documentation in a case is everything. It is the life and breath of any case. It is the prosecutor's dream or the police officer's or detective's dream to have information and evidence.

It truly baffles me, really, as a 27-year law enforcement officer, that we would not accept or welcome or be delighted about the opportunity to hear from direct witnesses, people who have firsthand knowledge.

We know that the President cannot be charged with a crime. We know that. The Department of Justice has already ruled on that. But the remedy for that is impeachment. That is the tool that, as we know, has solely been given—that power, solely—to the House of Representatives, solely tried before the Senate.

So, to answer your question, it is extremely—let me say it this way: Only in a case where there are no available witnesses or no available evidence have I ever seen that occur.

Thank you.

The CHIEF JUSTICE. Thank you, Mrs. Manager.

Counsel.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

I would respond to that question in this way. Thank you for the question. The House managers controlled the process in the House. I think we can all agree to that. They were in charge, and they ran it. And they chose not to allow the President's counsel to have any witnesses. And they chose not to call the witnesses that they are now asking you to call, demanding you to call, accusing you of a coverup if you don't call.

I have never been in any proceeding, trial or otherwise, where you show up on the first day, and the judge says: Let's go. And you say: Well, I'm not ready yet. Let's stop everything. Let's take a bunch of depositions.

Well, did you subpoena the witnesses you are now seeking?

Well, some but not others.

Well, when you did subpoena them, did you try to enforce that subpoena in court?

No.

The other witnesses that you did subpoena, did they go to court?

Yes.

What did you do? I withdrew the subpoena and mooted out the case. And now I want them. I want them. Otherwise, you are doing the coverup.

Let me make another point because they keep making this point: What will we do? The President is not producing documents.

I would like to refresh your recollection about the Mueller investigation, OK. The Mueller investigation had 2,800 subpoenas, 500 search warrants, 500 witnesses. The President's Counsel, the Chief of Staff, and many, many others from the administration testified. Documents—voluminous documents—were produced. And what happened? Bob Mueller came back with a conclusion. He announced it. There was no collusion.

What did the House do? They didn't like it. Didn't like the outcome. So what did they do? They wanted a do-over. They wanted to do it all again themselves, despite the \$34 million or more that was spent.

So I don't think anybody really believes that the Trump administration hasn't fully cooperated with the investigations. The problem is, when they don't like the outcome, they just keep investigating. They keep wasting the public's money because they don't really care about truth; they care about a political outcome.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Utah.

Mr. LEE. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators HAWLEY, ERNST, and BRAUN.

The CHIEF JUSTICE. The question for counsel for the President from Senator LEE and other Senators:

Under the standard embraced by the House Managers, would President Obama have been subject to impeachment charges based on his handling of the Benghazi attack, the Bergdahl swap, or DACA? Would President Bush have been subject to impeachment charges based on his handling of NSA surveillance, detention of combatants, or use of waterboarding?

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate. Under the standard, which is no standard that they bring their impeachment to the Senate, any President would be subject to impeachment for anything. Presidents would be subject to impeachment for exercising longstanding constitutional rights, even when the House chose not to enforce their subpoenas under their vague theory of abuse of power.

I guess any President—as Professor Dershowitz, he had a long list of Presidents who might have been subject to impeachment. So I am not going to go through the particular incidents because I don't want to besmirch past Presidents.

I don't think the standard that they announced is helpful. I think it is very dangerous. I mean, you might want to get a lock on that door because they are going to be back a lot if that is the standard.

The truth of the matter is, you don't have to look at anything. They are talking about witnesses. You don't have to look at anything, except the Articles of Impeachment.

I tried to seek areas of agreement. I think we all agree that they don't allege a crime. That is why they spend all their time saying you don't need one. I remember one of the clips I showed where someone was saying, with a lot of passion, they are trying to cross out "high crime" and make it "any crime." Now they are trying to cross out "crime," any crime. No crime is necessary.

That is not what impeachment is about. This is dangerous. And it is more dangerous because it is an election year. So, yes, under the standardless impeachment, any President can be impeached for anything. And that is wrong. By the way, they should be held to their Articles of Impeachment. A lot of what they are trying to sell here, their own House colleagues weren't buying. They didn't make it into the Articles of Impeachment.

Read the Articles of Impeachment. They don't allege a crime. They don't allege a violation of law. You don't need anything else, except their Articles of Impeachment, your Constitution, and your common sense, and you can end this. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Michigan.

Ms. STABENOW. Thank you, Mr. Chief Justice.

I send a question to the desk on behalf of myself, Senator CORTEZ MASTO, and Senator ROSEN.

The CHIEF JUSTICE. The question for the House managers from Senators STABENOW, CORTEZ MASTO, and ROSEN to both parties:

In June 2019, Ellen Weintraub, then-chair of the Federal Election Commission, wrote in a statement that "It is illegal for any person to solicit, accept, or receive anything of value from a foreign national in connection with a U.S. election. This is not a novel concept. Electoral intervention from foreign governments has been considered unacceptable since the beginnings of our nation." In a 2007 advisory opinion, the FEC found that campaign contributions from foreign nationals are prohibited in federal elections, even if "the value of these materials may be nominal or difficult to ascertain." How valuable would a public announcement of an investigation into the Bidens be for President Trump's reelection campaign?

Begin with the White House Counsel.

Mr. Counsel PHILBIN. Mr. Chief Justice and Senators, thank you for the question.

The idea that these investigations were a thing of value—something that was specifically examined by the Department of Justice—as I explained the other day, the inspector general for the Intelligence Community wrote a cover letter on the whistleblower complaint, in which he had actually exaggerated in the complaint—the idea that there was a demand for some assistance with the President's reelection campaign. That was forwarded to the Department of Justice. They examined it, and they announced back in September that there was no election law violation because it did not qualify as a thing of value. I think that that issue has been thoroughly examined by the Department of Justice here.

I just want to clarify one thing. The other day there was—yesterday there was a question about information coming from overseas, and I was asked a question about that. And I want to be very precise; that I understood the question to be about was there a viola-

tion of a campaign finance law, would there be one if someone simply got information from overseas? And the answer is no, as a matter of law.

Think about this. If pure information—if information that came to someone in a campaign could be called a thing of value, if it comes from overseas, a thing of value is a prohibited campaign contribution; it is not allowed. If it comes from within the country, it has to be reported.

So that would mean that anytime a campaign got information from within the country about an opponent or about something else that maybe would be useful in the campaign, they would have to report the receipt of information as a thing of value under the campaign finance laws.

That is not how the laws work, and there would be tremendous First Amendment implications if someone attempted to enforce the laws that way. So that is simply the point that I wanted to make.

Pure information that is credible information is not something that is prohibited from being received under the campaign finance laws.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Mr. Chief Justice.

The CHIEF JUSTICE. Yes, Mr. Manager.

Mr. Manager SCHIFF. How valuable would it be for the President to get Ukraine to announce his investigations? And the answer is immensely valuable. And if it wasn't going to be immensely valuable, why would the President go to such lengths to make it happen? Why would he be willing to violate the law, the Impoundment Control Act; why would he be willing to ignore the advice of all of his national security professionals; why would he be willing to withhold hundreds of millions of dollars from an ally at war if he didn't think it was going to really benefit his campaign? You have only to look at the President's actions to determine just how valuable he believed it would be to him.

Now, how would he make use of this? Well, if we look in the past, we get a perfect illustration of how Donald Trump would have made use of this political help from Ukraine.

Let's look at 2016, when the Russians hacked the DCCC and the DNC, and they started dripping out these documents through WikiLeaks and other Russian platforms.

What did the President do? Did he make use of it? Did he condemn it? Oh, he made beautiful use of it. Over 100 times in the last 3 months of the campaign, the President brought up time after time after time, rally after rally after rally, the Clinton Russian stolen documents.

We have had a debate since then. What was the impact of the Russian interference in 2016? In an election that close, was it decisive? No one will ever know. Was it valuable? You only have to look at Donald Trump's actions to know just how valuable he thought it was. He thought it was immensely valuable.

And you can darn well expect that if he had gotten this help from Ukraine, he would be out there every day talking about how Ukraine was investigating Joe Biden, and Ukraine is conducting an investigation into Joe Biden. It would be proof of his argument against his feared opponent.

You are darn right it would be valuable. What is more, it is illegal. And do we have to go through all the turmoil of the Russian interference to have the President do it all over again?

One of the things I found so significant was the day after Bob Mueller reached his conclusion that this President was back on the phone asking yet another country to help cheat in another election. You are darn right that would have been valuable.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. GRAHAM. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from South Carolina.

Mr. GRAHAM. I send a question to the desk on behalf of myself, Senators CRUZ and CORNYN, for both parties.

The CHIEF JUSTICE. Thank you.

The question from Senators GRAHAM, CORNYN, and CRUZ is for both parties:

When DOJ Inspector General Horowitz testified before the Judiciary Committee, he said their DOJ had a "low threshold" to investigate the Trump campaign. At the hearing, Sen. FEINSTEIN said, "your report concluded that the FBI had an adequate predicate, reason, to open the investigation on the Trump campaign ties to Russia. Could you define the predicate?" Horowitz replied, "yeah, so the predicate here was the information that the FBI got at the end of July from the friendly foreign government." Why is the legal standard for investigating Trump so much lower than the standard for investigating Biden? And why was it OK to get the information from a "friendly foreign government?"

The House managers are first.

Mr. Manager SCHIFF. The inspector general's report found that the investigation was properly predicated. That was the bottom-line conclusion, that this was not a politically motivated investigation.

The inspector general also found, though, there were serious flaws with the FISA Court process, there were serious flaws in how the FISA applications were written, in the information that was used, and prescribed a whole series of remedies, which the FBI Director has now said should be implemented. But they found it was properly predicated. They found they did not have to ignore the evidence that had come to their attention that the campaign for the President was having illicit contacts, potentially; that it may be colluding or conspiring with a foreign power. Indeed, it would have been derelict for them to ignore it.

But the argument—the implicit argument here is, because there were problems, albeit serious problems, on the FISA Court application involving a single person, that somehow we should ignore the President's conduct here; that somehow that justifies the President's embrace of the Russian propaganda; that somehow that justifies the President's distrust of the entire Intelligence Community; that somehow that justifies his ignoring what his own Director of the FBI said, which his lawyers ignore today, which is there is no evidence that Ukraine interfered in the 2016 election. Because of a single FISA application against a single person and the flaws in it, you should ignore the evidence of the President's wrongdoing. Turn away from that. Let's not look at whether the President conditioned military aid and a White House meeting on help with an investigation. Let's look at flaws in how the FBI conducted a FISA application. The one does not follow from the other.

The reality is that what you must judge here is: Did the President commit the conduct he is charged with? Did the President withhold military aid and a coveted meeting to secure foreign interference in the election? And if he did, as we believe we have shown, does that warrant his removal from office? That is the issue before you, whether the FBI made one mistake or five mistakes with the FISA application.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, let me actually answer the question.

The inspector general said, in a response actually from Senator GRAHAM, when James Comey said he was vindicated by the inspector general's report, the inspector general said: No one who touched this was vindicated.

With regard to the FISA—you make so light, Manager SCHIFF, of what the FBI did. It wasn't a FISA warrant. There was an order unsealed just days ago saying the process was so tainted by the Federal Bureau of Investigation—so tainted—that not only was the NSD misled, but so was the FISA Court.

For those that don't know that are watching, the FISA Court—you can't blame the court on this, by the way. You have to blame the Federal Bureau of Investigations for allowing this to happen. That is the court that issues warrants on people that are alleged to be spies. There are no lawyers in those proceedings. There is no cross-examination. The court itself, in its order, said: We rely on the good faith of the officers presenting the affidavits.

Are there two standards for investigations? That is an understatement. But to belittle what took place in the FISA proceedings—frankly, Manager SCHIFF, you know better than that.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Illinois.

Mr. DURBIN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. The question from Senator DURBIN is to both parties.

Emails between DOD and OMB officials reveal that by August 12 the Pentagon could no longer guarantee that all of the \$250 million in DOD aid to Ukraine could be spent before it expired. Deputy Secretary of Defense Norquist drafted a letter and stated that the Pentagon had "repeatedly advised OMB officials that pauses beyond August 19 jeopardize the Department's ability to obligate USAI funding prudently and fully." Why did the President persist in withholding the funds when DOD officials were sounding the alarm that the hold would violate the law and short-change an ally of needed military aid?

It is the turn of the White House counsel to go first.

Mr. Counsel PHILBIN. Mr. Chief Justice and Senator, thank you for that question.

I think the thing to understand is, there was a series of communications reflected, I believe, in the letter that OMB has sent to the GAO and in some of the testimony in the proceeding below that the Office of Management and Budget was encouraging DOD to take what steps it could to get everything lined up, have everything ready to obligate the funds so everything would be able to move quickly when the pause was lifted.

As the email you mentioned suggests—was saying: We are running out of time. We are running out of time. We are going to have difficulty doing it.

But the fact was that the deadline for obligating the funds was not going to be until the end of the fiscal year. And as it turned out, as I explained earlier in response to Senator LANKFORD's question, the funds were released on September 11, and the vast majority of them were obligated by the end of the fiscal year, so that the procedures that had been used to try to get everything preplanned were mostly successful.

Yes, there were some funds—I believe it was \$35 million—that did not get out of the door by the end of the fiscal year—slightly more than in past years. But in every year—in fiscal year 2017, fiscal year 2018—there were funds in the security assistance program that didn't make it out of the door by the end of the year. Each of those years, there was also a little fix in either the appropriations bill or CR to allow those funds to carry over.

So the planning had been to try to ensure that when the decision was made to release the funds, it would be done by the end of the fiscal year. Not quite all of that got out of the door, that is true, but there is always some that doesn't get out of the door by the end of the fiscal year.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager CROW. Mr. Chief Justice, Members of the Senate, thank you for that question.

As we go further and further down this rabbit hole, I think we need to make it very clear that, you know, of the 17 witnesses that the House interviewed, nobody had an explanation. Yet again, like last night, Mr. Philbin seems to know more than anybody else in the government, more than anyone in the Department of Defense, more than anybody in the Department of State, more than anybody in OMB who had come forward with information about how exactly this happened.

But, again, here are the facts. OMB interviewed about an interagency process that they supposedly said was going on long after the interagency process had already ended. In fact, as OMB was doing those footnotes that we talked about last week—those footnotes that had never been done before, that Mr. Sandy said he had never seen in his 12 years of time working this process—as that was going on, DOD was asking the question about why we are doing this. They had no idea.

Then when the release was finally getting ready to be finally lifted—the hold, rather—OMB emailed DOD, saying: Listen, as we have been saying all along, under the Impoundment Control Act, there are no problems here, and if there is a problem, it is your fault. To which DOD replied back, as you may recall: You have got to be kidding me. “I’m speechless.” Because they did not know. Nobody had told them anything. None of the other 17 witnesses knew about it.

So I do want to address, before I finish one other point, this idea that the delay didn't matter. Listen, it doesn't matter if it was a 4-day delay, a 40-day delay, or a 400-day delay; every delay in combat matters. Every delay in combat matters.

And I will say—they talked about delays in the past. Well, in past years, there was about 3 to 6 percent of the funds unobligated because of unforeseen and legitimate reasons following the policy

process. In 2019, 14 percent of the funds went unobligated for foreseeable and avoidable reasons—because the President could have held them. And to this day, \$16 million is unspent.

The CHIEF JUSTICE. Thank you, Mr. Manager. Your time has expired.

The Senator from Wyoming.

Mr. BARRASSO. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators RISCH, YOUNG, FISCHER, BLUNT, and CAPITO.

The CHIEF JUSTICE. The question from Senator BARRASSO and the other Senators is for the counsel to the President:

Is it within a U.S. President's authority to personally address the issue of corruption with a head of a foreign government when he believes the established U.S. process has been unsuccessful in the past?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

The short answer is yes. The President is, under article II, vested with the entirety of the executive power, and it has been made clear since the founding, since the early part of the 1800s, in decisions by the Supreme Court, that the President is the sole organ of the Nation in foreign affairs. He is vested with the authority to speak on behalf of the Nation. As the Supreme Court has described it, he is to be the sole voice of the Nation in foreign affairs. And that is why that authority was assigned in the Constitution to the Executive.

Alexander Hamilton explained in the Federalist Papers that the Executive is characterized by unity and dispatch, the ability to have one view, to act quickly, and also the ability to maintain secrecy, and therefore it is the Executive that is uniquely suited and uniquely has the ability to carry out the responsibilities of engaging with foreign nations and carrying out diplomacy.

So when the President believes that there is an issue of interest to the United States, including corruption in another country, and there hasn't been the sort of progress that he would want to see in dealing with that issue in the foreign country—perhaps interactions with prior administrations, prior officials of prior administrations that don't look great from an anti-corruption perspective—it is entirely within the President's prerogative and his province to raise those issues with a foreign leader, to point out where he believes there needs to be something done in the interest of the United States. If there is an issue related to corruption or whether it is something else—an issue related to economic matters, trade matters, antitrust matters, cross-border trade—those are all things the President can raise with a foreign leader.

Corruption is not taken off the table. And it is also not taken off the table if it is an issue that happens to involve an official from a prior administration, whether that official is not or may have recently decided to run for another office. If it relates to the national interest of the United States, he has legitimate reason for raising it, and it is within his authority as the Chief Executive.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Massachusetts.

Ms. WARREN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator WARREN is for the House managers:

At a time when large majorities of Americans have lost faith in government, does the fact that the Chief Justice is presiding over an impeachment trial in which Republican senators have thus far refused to allow witnesses or evidence contribute to the loss of legitimacy of the Chief Justice, the Supreme Court, and the Constitution?

Mr. Manager SCHIFF. Senator, I would not say it contributes to a loss of confidence in the Chief Justice. I think the Chief Justice has presided admirably.

But I will say this: I was having a conversation the other day on the House floor with one of my colleagues, TOM MALINOWSKI, from Jersey—a brilliant colleague—and I was harkening back to what I thought was a key exchange during the course of this saga.

This is when Ambassador Volker, in September, is talking with Andriy Yermak. Volker is making the case that the new President of Ukraine should not do a political investigation and prosecution of the former President of Ukraine, Poroshenko. He is making the case we often make when we travel around the country and meet with other Parliamentarians about not engaging in political investigations. And when he makes that remark, Yermak throws it right back in his face and says: Oh, you mean like the investigation you want us to do with the Clintons and the Bidens?

I was lamenting this to my colleague. What is our answer to that? What is the answer to that from a country that prides itself on adherence to the rule of law? How do we answer that? And his response, I thought, was very interesting. He said: This proceeding is our answer. This proceeding is our answer.

Yes, we are a more than fallible democracy and we don't always live up to our ideals, but when we have a President who demonstrates corruption of his office, who sacrifices the national interest for his personal interests, unlike other countries, there is a remedy. So, yes, we don't always live up to our ideals, but this trial is part of our constitutional heritage, that we were given the power to impeach the President.

I don't think a trial without witnesses reflects adversely on the Chief Justice. I do think it reflects adversely on us. I do think it diminishes the power of this example to the rest of the world if we cannot have a fair trial in the face of this kind of Presidential misconduct. This is the remedy. This is the remedy for Presidential abuse. But it does not reflect well on any of us if we are afraid of what the evidence holds.

This will be the first trial in America where the defendant says at the beginning of the trial: If the prosecution case is so good, why don't they prove it without any witnesses? That is not a model we can hold up in pride to the rest of the world.

Yes, Senator, I think that will feed cynicism about this institution, that we may disagree on the President's conduct or not, but we can't even get a fair trial. We can't even get a fair shake for the American people. Oh my God, we can't hear what John Bolton has to say.

God forbid we should hear what a relevant witness has to say. Hear no evil. That cannot reflect well on any of us. It is certainly no cause for celebration or vindication or anything like it.

My colleague says that I am a Puritan who speaks in dulcitanes. I think that is the nicest thing he has ever said about me. I wouldn't describe myself as a Puritan, but, yes, I do believe in right and wrong, and I think right matters. I think a fair trial matters, and I think that the country deserves a fair trial.

Yes, Senator, if they don't get that fair trial, it will just further a cynicism that is corrosive to this institution and to our democracy.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Alabama.

Mr. SHELBY. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator SHELBY is for the counsel for the President:

Though not charged in the Articles of Impeachment, House Managers and others have stated the President's actions constituted criminal bribery. Can this claim be reconciled with the Supreme Court's unanimous decision in *McDonnell v. United States*?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for that question.

I think the answer is, no, it can't be reconciled with the *McDonnell* case. Let me make a couple of points in my answer.

The first is, of course, because there is no bribery or extortion charge in the Articles of Impeachment, the managers can't rely on that now to try to establish their case.

I pointed out yesterday, I believe, that that is a due process violation of the most fundamental sort to have a charging document and leave out certain charges in the charging document, then come to trial and say: Well, it is not in the indictment, and it is not in the charge, but, actually, what we have shown you is he did something else wrong. It was "this crime." As the House managers well know, that would result in an automatic mistrial in any actual trial in a court in this country. So that is the initial problem with trying to go there on bribery or something else.

Then, as the Senator's question raises, the *McDonnell* case made clear that simply arranging a meeting for someone—simply setting up a meeting with other government officials—couldn't be treated as a thing of value in an exchange under the bribery statute. It pointed out, particularly in terms of government officials who all the time are asked by their constituents to introduce them to someone else in the government, to arrange a meeting, that that is not an official act. It is not an official policy decision, an action that is determining some government policy. It is simply allowing someone to have a meeting and then talk about something. If that is the nature of the meeting, that can't be the thing of value that is being exchanged and can't support a charge of bribery.

So they can't raise it because it is not in the Articles of Impeachment. If they had wanted to charge that, they had to charge it in the Articles of Impeachment. They can't come here now and try to try a different case from the one they framed in the charging document that they had complete control over drafting. Even if they did, they can't make out the claim with respect to the White House meeting because the *McDonnell* case prohibits that.

I would like to make one other point because the House managers today have brought up a lot. There have been a lot of questions again and again about the subpoena power and were their subpoenas actually valid and how it is going to destroy oversight if the President's arguments are accepted. I just want to point something out.

The subpoenas that were issued—that were purported to have been issued—were not under oversight authority but pursuant to—every letter that came out said: pursuant to the House's impeachment inquiry. They purported to be exercising the authority of impeachment, and that makes a difference.

One of the House managers mentioned that the legislative oversight—the authority to acquire the information for legislative purposes—has to actually relate to something that legislation could be passed on. There are certain constraints on what information can be sought. It is slightly different if you are going under the impeachment power because then you can investigate into specific past facts more readily because that is relevant to an impeachment inquiry that might not be for legislative purposes. They purported to be using the impeachment authority. They didn't have that authorization because the Speaker's press conference did not validly give them that authorization. We pointed out that the subpoenas were invalid. They did nothing to try to cure that deficiency. They didn't reissue the subpoenas. They didn't have the votes to reissue them or anything.

To say now that all oversight will be destroyed forever if you accept the President's arguments is totally false. It is totally misleading because they were not purporting to do just regular oversight. As we pointed out several times in the October 8 letter that the White House Counsel sent to Chairman SCHIFF and others, it said, specifically, if you want to return to regular oversight, we are happy to do that. As we have in the past, subject to constitutional constraints, we will participate in the accommodation process. It was the House Democrats who didn't want to take that route. They insist on using the impeachment authority. We pointed out that they didn't have it, and they didn't seek to cure that problem.

Accepting the President's position here has nothing to do with destroying oversight by Congress for all time and all circumstances. It has to do with the mistake that they made in trying to assert a particular authority that they didn't have in this case.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Virginia.

Mr. WARNER. Mr. Chief Justice, on behalf of myself, Senator BENNET, Senator BLUMENTHAL, and Senator HEINRICH, I have a question to send to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senators WARNER, BENNET, BLUMENTHAL, and HEINRICH is for the House managers:

Our intelligence community and law enforcement leadership unanimously concluded Russia interfered in the 2016 election and that Russia continues those efforts toward the 2020 election. The Mueller report and the Senate Intelligence Committee reached the same conclusion. Yesterday the President's counsel said that foreign election interference could be legal if it's related to "credible" information. Does this mean it is proper for the President to accept or encourage Russia, China, or other

foreign countries to produce damaging intelligence or information targeting his domestic political opponents as long as he deems it to be from “credible information”?

This is for the House managers.

Mr. Manager SCHIFF. Senators and the Mr. Chief Justice, that is the natural conclusion of what the President’s lawyers are arguing.

Essentially, if the President believes that it would serve his reelection interest to seek the help of a foreign intelligence service to provide dirt on his opponent or in other ways assist his campaign, as long as he thinks his winning is in the national interest, then that is OK.

It is not only OK, but no restraint can be placed upon him. Even if he were to go so far as to proclaim a quid pro quo—hey, Russia, you have got among the best intelligence services on the planet. If you will engage those intelligence services on my behalf, I will refuse to enforce sanctions on you over your invasion of Ukraine. That may injure the security of our country, but, look, I think my reelection is more important—that is where this bastardization of the Constitution leads us—to the idea that no abuse of power is within reach of the Congress.

Now, I want to take this opportunity to respond to a couple of other quick points if I can.

First, counsel neglects the fact that, when we issued those subpoenas, we stated in the letters accompanying their issuance that they were being issued consistent with both the impeachment inquiry and our oversight authority. They neglected to tell you the latter part—that we explicitly made reference to our oversight capacity as legislators.

Finally, on the issue of bribery, in the Nixon impeachment, there was an umbrella Article of Impeachment that listed a series of specific acts. Some of those acts involved criminal activity, and some involved just unethical activity. If you were to accept counsel’s argument, you would have said that the articles that passed out of the House Judiciary Committee in Nixon were likewise infirm because, if they were going to charge the President with engaging in a criminal act, they needed to make a separate article of it. Otherwise, how dare they? It would be a violation of due process, and it would be thrown out of any court—prosecutorial misconduct and the like.

OK. That is nonsense. On the one hand, they want to argue there is no conduct here that is even akin to a crime, when, under McDonnell, in fact, this would constitute bribery. Withholding a White House meeting and withholding the provision of hundreds of millions of dollars in aid under the precedent of McDonnell would be bribery, but there is no doubt it is akin to bribery. But they say, unless you charge that—in the Nixon case, they had 15 articles on each particular act, criminal and noncriminal—then you could not make out a viable charge. That has never been a constitutional principle. Just as they would have had the House organize its impeachment investigation along the terms they dictate, they now want to dictate how we can charge an offense.

At the end of the day, the task is to determine whether the conduct that is charged has been committed and whether that abuse of power rises to the level warranting impeachment. But this tech-

nical legal argument that, no, you have to charge it as we would like you to charge it, that you can't make reference to the fact that, yes, these acts also constitute bribery, that that is somehow offensive to legal or constitutional principles—it is not. Yes, we could have charged bribery. We could have had two separate counts. That is not a constitutional requirement. Had we done that, as I said last night, they would have attacked that, saying you are taking one offense and making it into two.

That does not detract from the fact that the President's conduct violated our bribery laws, particularly as they were understood by the Framers, not as they were understood 200 years later. They violated what the Framers understood from British common law to constitute extortion. They violated the modern-day Impoundment Control Act. They violated the Whistleblower Protection Act. They violated multiple laws, but that is not even necessary.

What is necessary is that they abused their power. Counsel says: Well, claims are made of abuse of power all the time. Yes, that is true in political rhetoric, but these circumstances warranted impeachment. The President was not impeached over climate change or any of the other enumerable examples they gave of people rhetorically saying the President is abusing his office. That is not what brought us here. What brought us here was the President decided that he could withhold military aid to an ally at war to get help in his reelection.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Oklahoma.

Mr. INHOFE. Mr. Chief Justice, I have a question for the President's counsel, and I am being joined by Senators ROUNDS and YOUNG.

The CHIEF JUSTICE. Thank you.

The question from Senator INHOFE, joined by Senators ROUNDS and YOUNG, is for counsel to the President:

Even if additional witnesses are called, do you ever envision the House Managers agreeing there has been a fair Senate trial if it ends in the President's acquittal?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, the answer is no.

Now, they will not agree that it is fair because what will happen is, if there is a discussion of witnesses and if we go to witnesses, Mr. SCHUMER has laid out the four he wants, and he tells me we could have anybody we want. The reality is that also includes documents, and that includes other witnesses that it may lead to. So, at some point, this body will say—because this cannot go on forever, and we will be at the election—this has to come to an end, and they will say: Aha, it has been brought to an end as we were about to get the key evidence.

But what is so interesting here is they had 17 witnesses—that they had. When the hearing took place before the Judiciary Committee, if I am not mistaken, Manager NADLER, you had four witnesses at one point, when you had the law professors, and there were three law professors from the Democratic side and there was one from the Republican side. So if we are going to take that same four-to-one analysis, for every one of their witnesses, we should get four.

But there was a question earlier asked about the truth of the poisonous tree. The taint of the poison does not age well. The longer it goes does not make that poison go away. It gets deeper and deeper into the soil, and here, the soil we are talking about is a trial that would be not only ongoing, but they put up 17 witnesses. You have heard them. They are acting like there have been no witnesses presented here. They presented the testimony of 17. They may not have liked that we were able to respond to those 17 by playing those witnesses' words. By the way, those witnesses—the testimony of those witnesses—were never done with cross-examination by the counsel for the President.

So does this end? Will it ever be enough? No, it will only be enough if they got a conviction because that is what it is about, because let's not forget for a moment that this has been going on, in one stage or another, for 3½, 3 years now.

My concern is there is not a—where is the end point in that? So their end point is: Well, just give us John Bolton, and then, you know, you don't get anybody or then, you know, you get one and we get one, and then that one may lead to somebody else. It is not the way it works.

So they have said “overwhelming,” “proved,” 63 times—63 times. And as we are 3 hours away from answering the end of the question section, we are about to go into—I mean, it sounds like we have been arguing about witnesses for the last couple hours, but that starts tomorrow.

But do I think that there will be—is it our position that there will be—a recognition that there is due process that has been reached and we have reached a happy accord? No, I do not believe that.

I also don't believe that what can be cured here. I don't think what they did can be cured here by anything you were to do as far as witnesses or anything else. That process was so tainted, and I thought Mr. Philbin did a very effective job of explaining—painstakingly, now, and multiple times, I know—the issue of those subpoenas. And I thought the perfect analysis was when one of the managers said: Well, when people file freedom of information requests, they get answers. And Mr. Philbin said: That is because they followed the law; they followed the rules. That is not what happened here.

Thank you, Mr. Chief Justice.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Delaware.

Mr. CARPER. Mr. Chief Justice, on behalf of our colleagues Senators BOOKER, CARDIN, KAINE, MARKEY, MENENDEZ, MERKLEY, MURPHY, and SHAHEEN, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator CARPER and the other Senators addressed to the House managers:

The President's aides and defenders have claimed that it is “normal” or “usual” to use U.S. foreign assistance as the President did to achieve a desired outcome. How was the President's act in withholding U.S. security assistance to Ukraine different from how the U.S. uses foreign assistance to achieve foreign policy goals and national security objectives, and how should we evaluate the defense argument that this is what is “done all the time”?

Mr. Manager CROW. Mr. Chief Justice, Senators, thank you for the question.

So to understand the answer to this, you don't have to look inside the President's mind. You just have to look at recent history and then what was done last year.

As I talked about earlier, and even yesterday, other Presidents have held holds in aid for legitimate reasons, even this President. We concede that. But there are a variety of legitimate policy reasons for holding aid, whether it be corruption or burden-sharing.

See, even in the President's other holds—like Afghanistan, because of concerns about terrorism, or Central America, because of immigration concerns—even though some might disagree with that, that is a legitimate policy debate.

The difference here is that every witness testified—these 17 witnesses that you hear about testified—that there was no reason provided for the implementation of this hold. Right?

I talked about earlier how there is a process for doing this. Right? There is a well-prescribed process for allocating the funds, like we all did here in this Chamber and 87 of you agreed on it, and then an interagency process to review it to make sure that it meets the standards and criteria outlined by this body, anticorruption reforms. And that was done in this case. That interagency process was followed. That certification was made. The notification to Congress was conducted. The train had left the station, just like the train had left the station in 2018, in 2017, in 2016. And every element of the agencies and the bureaucracy involved in that process in prior years had been engaged and had signed off.

Except this year, in 2019, rather, that all changed. A hold was implemented for no known reason. There was no notification given to Congress, which violated the Impoundment Control Act. DOD, Department of State, Secretary Esper, Secretary Pompeo, even Vice President PENCE, and the entire National Security Council implored the President to release the aid because it not only had met all of the certifications but it was in the U.S. national interest and consistent with U.S. policy.

And yet, nobody knew why it happened, and, to this day, the individual who could shed light on this, Mr. Bolton, is being prohibited from coming forward to explain why the President told him it happened.

So, yes, it is still a good time to subpoena Ambassador Bolton and get that information.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from North Carolina.

Mr. BURR. Mr. Chief Justice, I have a question for both sets of counsel, sponsored by myself, Senator CRUZ, Senator SCOTT of South Carolina, HAWLEY, SASSE, and RUBIO.

The CHIEF JUSTICE. Thank you.

The question from Senator BURR and the other Senators is for both parties. The House will answer first:

Hillary Clinton's campaign and the Democratic National Committee hired a retired foreign spy to work with Russian contacts to build a dossier of opposition research against her political opponent, Donald Trump. Under the House Manager's standard, would the Steele dossier be considered as foreign interference in a US election, a violation of the law, and/or an impeachable offense?

Mr. Manager JEFFRIES. Thank you, Mr. Chief Justice and distinguished Senators. I thank you for the question.

The analogy is not applicable to the present situation because, first, to the extent that opposition research was obtained, it was opposition research that was purchased.

But this speaks to the underlying issue of the avoidance of facts—the avoidance of the reality of what President Trump did in this particular circumstance.

Now, I have tremendous respect for the President's counsel, but one of the arguments that we consistently hear on the floor of this Senate, this great institution in America's democracy, is conspiracy theory after conspiracy theory after conspiracy theory.

We have heard about the deep-state conspiracy theory. We have heard about the "ADAM SCHIFF is the root of all evil" conspiracy theory. We have heard about the Burisma conspiracy theory. We have heard about the CrowdStrike conspiracy theory. We have heard about the whistleblower conspiracy theory. It is hard to keep count.

This is the Senate. This is America's most exclusive political club. This is the world's greatest deliberative body, and all you offer us is conspiracy theories because you can't address the facts in this case, that the President corruptly abused his power to target an American citizen for political and personal gain. He tried to cheat in the election by soliciting foreign interference. That is an impeachable offense. That is a crime against the Constitution. That is the reason that we are here. That is what is before this great body of distinguished Senators.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, so, I guess you can buy—that is what it sounds like; you can buy a foreign interference. If you purchase it, if you purchase their opposition research, I guess that is OK.

So let me try to debunk the conspiracy, Manager JEFFRIES; and that is, it is not conspiracy that Christopher Steele was engaged to obtain and prepare a dossier on the Presidential candidate for the Republican Party, Donald Trump. It is not a conspiracy that Christopher Steele utilized his network of assets—including assets, apparently, in Russia—to draft the dossier. It is not a conspiracy that the dossier was shared with the Department of Justice through Bruce Ohr, who was the No. 4 ranking member of the Department of Justice at that time, because his wife, Nellie Ohr, happened to be working for the organization, Fusion GPS, that was putting the dossier together. This is also not a conspiracy. It sounds like one, except it is real. And it is also not a conspiracy that that dossier—purchased dossier—was taken by the FBI, submitted to the Foreign Intelligence Surveillance Court to obtain a foreign intelligence surveillance order on an American citizen. It is also not a conspiracy that that court issued an order—two of them now—condemning the FBI's practice and acknowledging that many of those orders were not properly issued. None of that is a conspiracy theory. That is just the facts.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Wisconsin.

Ms. BALDWIN. Mr. Chief Justice, I send a question to the desk for both President's counsel and House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator BALDWIN is for both parties, and counsel for the President will answer first:

Can you assure us that the Jennifer Williams document submitted to the House was not classified SECRET for any reasons prohibited by Executive Order 13526, such as preventing embarrassment to a person? If yes, please describe or identify the serious damage to national security that would be caused by declassifying this document, pursuant to the same Executive Order.

Mr. Counsel PHILBIN. Mr. Chief Justice and Senator, in response to your question, the Trump administration's policy is always to abide by the requirements for classification of material, and the classification—my understanding is that that document is derivatively classified because it refers to another document, a transcript that was originally classified. I can't represent to you a specific reason that the classification officer classified that document, but I can tell you that it was originally classified according to proper procedures. It is a properly classified document, and that is the policy of the administration, to follow the classification procedures.

The memorandum that she submitted is derivatively classified because of that transcript. Now, that transcript relates to a conversation with a foreign head of state. Almost all conversations with foreign heads of state are classified. They are classified because the confidentiality related to those communications is important for ensuring that there can be candid conversations with foreign heads of state.

The President took an extraordinary action in declassifying two of his conversations with foreign heads of state—unprecedented—because he carefully weighed the balance of what was at stake in this case and the need for transparency to the American public in those two conversations. But that was an exception to the usual rule that such conversations are properly classified.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Senators, I would encourage you, if you haven't already had the opportunity, to read that document for yourself and ask whether you think there is any legitimate basis to classify that supplemental testimony.

Now, the Vice President has said that he had no knowledge of this scheme. He has denied any knowledge, involvement in any way, shape, or form.

We heard the testimony of Ambassador Sondland that Ambassador Sondland raised to the Vice President that the aid was being held up and was tied to these investigations, and the Vice President didn't say: What are you talking about? That could never be. The President would never allow such a thing.

There was nothing but a silent nod of acknowledgment of what he was being told. But, nonetheless, the Vice President says that he knew nothing, and the Vice President points to the open testimony of Jennifer Williams to support that contention. But the classified submission goes to that phone call between the Vice President and President Zelensky. You should read that and ask yourself whether that submission is being classified because it would ei-

ther embarrass or undermine what the President and the Vice President are saying or there is some legitimate reason.

Now, the Vice President at one point said that he wanted to release the record of his call. He certainly talked all about this issue, as has the President. If it was so classified, then why are they all talking about it? But we are to be assured that this classification decision was made absolutely above board. I am sure that John Bolton's manuscript will be treated with the same rigid, objective scrutiny.

You read that. Don't take my word for it. You read that, and you ask yourselves, is there anything that—other than avoiding evidence that the administration doesn't want you to see—that the public shouldn't see in Jennifer Williams' supplemental testimony? I don't think you can conclude that it is, except that it would be inconsistent with what you are being told and what the American people are being told. Well, they deserve the whole truth, and that is part of the truth. So let the public see it.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Tennessee.

Mr. ALEXANDER. Thank you, Mr. Chief Justice. I send a question to the desk on behalf of myself, Senator DAINES, and Senator CRUZ.

The CHIEF JUSTICE. Thank you.

The question from Senators ALEXANDER, DAINES, and CRUZ is for the House managers:

Compare the bipartisanship in the Nixon, Clinton, and Trump impeachment proceedings. Specifically, how bipartisan was the vote in the House of Representatives to authorize and direct the House committees to begin formal impeachment inquiries for each of the three Presidents?

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, in the Nixon impeachment, you look back and think about the vote in the House Judiciary Committee, it ended up bipartisan, but it didn't start that way. The parties were dug in, as parties are today. The Republicans and Democrats saw it differently. But as the evidence emerged, a bipartisan consensus emerged on the committee, and a number of Republicans—Tom Railsback, who just passed away, and Caldwell Butler, who loved Richard Nixon—he was a huge fan of Richard Nixon. But they couldn't turn away from the evidence that their President had committed abuse of power, cheated the election, and they had to vote to impeach him.

When it came to the Clinton impeachment, that was—again, it started out along very partisan lines, and it ended along partisan lines. I believe the reason why, as I said a short while earlier, was that we never had a high crime and misdemeanor. That was the problem.

With Nixon, we had clear abuse of Presidential authority to upend the Constitutional scheme to cheat in an election, and Members of both parties voted to impeach. With Clinton, we had private misconduct. Yes, I would call it a crime because he lied about that under oath, but it wasn't misuse of Presidential authority. As I said, any husband caught in an affair could have lied about it. And it didn't involve the use of Presidential authority. So we never got beyond our partisan divisions on that. And many of us—and I will

include myself—believed that it was being done for a partisan purpose, because it didn't reach a high crime and misdemeanor.

In the Trump case—and I will say I have been disappointed, because I serve with a number of Republicans in the House whom I like, whom I respect, whom I work with on legislation, and I honestly believed that when this evidence came out, as with the Nixon administration, we would have a coming together. But it didn't happen, much to my disappointment.

I think you have a new opportunity here in the Senate. For one thing, this is a smaller body. You are, as has been mentioned, the greatest deliberative body on the planet. You have an opportunity to do something that we didn't have a chance to do, which is to call firsthand witnesses and hear from them.

A lot of things have happened since the impeachment articles were adopted. One of them was emails that have been released that we didn't know about.

It has been said by counsel that the Freedom of Information Act information shows that if you follow the process, you get information. No, they had to sue, and they are still in a lockdown fight over the Freedom of Information Act and redactions that were not proper. So that is a big fight that is still going on, but we got information.

But most tellingly, Mr. Bolton has now stepped forward and said he is willing to testify. He is willing to come here and testify under oath. And I think we would all learn something. As Mr. SCHIFF has mentioned, I think we would structure this in such a way that it would respect the Senate's need to do other business, which we also feel in the House.

Let's get that done, and let's see if that kind of information can help the Senators come together, as happened in the House Judiciary Committee so many years ago when we dealt with the serious problem of Presidential misconduct—abuse of power to cheat an election—when Richard Nixon shocked the Nation and ultimately had to resign.

The CHIEF JUSTICE. Thank you, Ms. Manager.

Mr. SCHUMER. Mr. Chief Justice.

The CHIEF JUSTICE. The Democratic leader is recognized.

Mr. SCHUMER. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator SCHUMER for the House managers:

Many of our colleagues are worried that if we were able to bring witnesses and documents in the trial it would take too long. Mr. SCHIFF mentioned we could do depositions in one week. Please elaborate. What can you say that will reassure us that having witnesses and documents can be done in a short time, minimally impeding the business of the Senate?

Mr. Manager SCHIFF. I thank the Senator for the question.

First of all, with respect to the documents that we subpoenaed and sought to get in the House, those documents have been collected. So that work has been done. We have been informed, for example, that the State Department documents have been collected. Those can readily be provided to the Senate for its consideration.

With respect to witnesses, if we agree to a 1-week period to do depositions while you continue to conduct the business of the Sen-

ate, it doesn't mean that we would have unlimited witnesses during that week. We would have to decide on witnesses who are relative and probative of the issues. Neither side would have an unlimited capacity to call endless witnesses. We would have a limited period of time, just as we had a limited period of time for our opening presentations and for this question and answer period.

If there is any dispute over whether a witness is truly material or probative, that decision can be made by the Chief Justice in very short order. If there is a dispute as to whether a passage in a document is covered by an applicable privilege and if, for the first time, the White House would actually invoke a privilege, the Chief Justice can decide, is that properly made or is that merely an attempt to conceal crime or fraud?

So this can be done very quickly. This can be done, I think, effectively. We have never sought to depose every witness under the face of the Sun. We have specified four in particular who we think are particularly appropriate and relevant here. But we should be able to reach an agreement on concluding that process within a week. So that is how we would contemplate it being done.

We would make that proposal to our opposing counsel. It would be respectful of your time. It would, I think, be a reasonable accommodation. And counsel says that the Constitution mandates a reasonable accommodation. Well, let's have a reasonable accommodation here, and the reasonable accommodation could be to take 1 week to continue with the business of the Senate. We will do the depositions, and then we will come back, and we will present to you what the witnesses had to say in those depositions. That is how we contemplate the process would work.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The majority leader is recognized.

Mr. McCONNELL. Mr. Chief Justice, I am about to send a question to the desk, but I am going to suggest that following the response to my question and one more Democratic question, we take a 45-minute break for dinner.

So I send a question to the desk.

The CHIEF JUSTICE. I am sure there is no objection.

The question from the majority leader is for the counsel to the President:

Would you please respond to the question on bipartisanship by Senator ALEXANDER and any assertions the House managers made in response to any previous questions?

Mr. Counsel PHILBIN. Mr. Chief Justice, majority leader, thank you for that question.

In response to Senator ALEXANDER, your question, in the Nixon case, the authorizing resolution—this is in the House to authorize the inquiry—was passed by a vote of 410 to 4. Four hundred and ten voted in favor of the inquiry; only four voted against. Two hundred and thirty-two Democrats, 177 Republicans, and 1 Independent voted in favor.

In the Clinton authorizing resolution—this was H. Res. 581—they authorized just the beginning of the inquiry. It passed by a vote of 258 to 176. Now, 31 Democrats joined 227 Republicans voting in favor of authorizing that inquiry. That was substantial bipartisan support to authorize the inquiry.

In this case, H. Res. 660, which was passed on October 31, had bipartisan opposition. The votes in favor of the resolution were 231 Democrats and 1 Independent. The opposition was all Republicans, 194, plus 2 Democrats voting against.

In terms of other assertions that have been made, there are just a couple of points I wanted to touch on. There has been a lot said about—House managers have suggested that counsel for the President have argued that the President could do anything he wants now—solicit any foreign interference in any election. If he thinks it will help him get elected, that is OK, and that is the theory of the case. That is absolutely false. That is a gross distortion of what has been presented, and let me make a couple of points about that.

There have been questions about the campaign finance laws, and one narrow point that we have made in response to specific questions about the campaign finance laws is simply that information—limited information—being presented to a party is not a contribution, a thing of value under the campaign finance laws. And that is not just my conclusion; that is what the Mueller report said. When the Mueller report looked into this, it said: “No judicial decision has treated the voluntary provision of uncompensated opposition research or similar information as a thing of value that could amount to a contribution under campaign-finance law.” That is volume I, page 187. So that is a limited point.

The bigger point: The suggestion has been made, because of Professor Dershowitz’s comments, that the theory that the President’s counsel is advancing is the President can do anything he wants. If he thinks it will advance his reelection, any quid pro quo, anything he wants, anything goes. That is not true. Professor Dershowitz today issued a statement to show that that was an exaggeration of what he was saying.

But let me make an even more narrow point. Aside from what Professor Dershowitz was saying the other night and explaining in abstract and hypothetical terms and academic terms, we have a specific case here. And the specific case here is the one that has been framed by the House managers. And the defects in that case and their theory of the case are, there is abuse of power that involves no allegation of a crime whatsoever and no allegation of a violation of established law. Instead, the theory that you can take action that, on its face, is objectively permissible under the powers of the President and determine that it is going to be treated as impeachable and impermissible solely on an inquiry into subjective motives—that is what the House Judiciary Committee report says. That is a theory that is infinitely malleable. It provides no standard—no real standard at all. And that was one core point Professor Dershowitz was making, that it is tantamount to impeachment for maladministration.

The other point I will make is they set the standard for themselves with respect to investigations. They have to establish, in order to establish their bad motive, that there is not a scintilla of evidence—there is nothing that you can look at that would suggest any possible legitimate national interest in inquiring into 2016 election interference or the Biden and Burisma affair. They can’t possibly meet that standard. It is overdetermined that there is a

legitimate policy interest in at least raising a question about those things.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. COONS. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Delaware.

Mr. COONS. On behalf of myself and Senator KLOBUCHAR, I send a question to the desk, addressed to the President's counsel and the House managers.

The CHIEF JUSTICE. Thank you. The House will go first in answering the question from Senators COONS and KLOBUCHAR:

Mr. Sekulow said earlier that the President's Counsel would expect to call their own witnesses in this trial if Mr. Bolton or others are called by the House managers. Can you tell the Senate if any of those witnesses would have first-hand knowledge of the charges against the President and his actions?

Mr. Manager SCHIFF. Mr. Justice and Senators, there certainly are witnesses that the President could call with firsthand information. I don't know that they are—the witnesses that they have described so far, their position is, apparently, if you are the chairman of a committee doing an investigation, that makes you a relevant witness. It doesn't—or you all become witnesses in your own investigations.

They want to call Joe Biden as a witness. Joe Biden can't tell us why military aid was withheld from Ukraine while it was fighting a war. Joe Biden can't tell us why President Zelensky couldn't get in the door of the White House while the Russian Foreign Minister could. He is not in a position to answer those questions. He can't tell us whether this rises to an impeachable abuse of power, although he probably has opinions on the subject.

But are there witnesses they could call? Absolutely. They have said Mick Mulvaney issued a statement saying: The President never said what I had said he had said earlier. Well, if that is the case, then why don't they call Mick Mulvaney? He should be on their witness list. If Secretary Pompeo has evidence that there was a policy basis to withhold the aid and it was discussed, well, then, why don't they call him? That is a relevant fact witness.

They don't want to allow the Chief Justice to decide issues of materiality because they know what they are trying to do involves witnesses that don't shed light on the charges against the President. They do satisfy the appetite of their client, but they don't have probative value to the issues here.

So, yes, there are witnesses. Now, the reason they are not on the President's witness list is because if they were truthful under oath, they would incriminate the President. Otherwise, they would be begging to have Mick Mulvaney come testify; otherwise, they would be begging to have the head of OMB, who helped administer the freeze on behalf of the President: Let's bring him in. He will tell you it was completely innocent. It was all about burden-sharing.

So why don't they want the head of OMB in? Why don't they want their own people in? Because their own people will incriminate the President.

But there is no shortage of relative, probative witnesses. They just don't want you to hear what they have to say.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel SEKULOW. Mr. Chief Justice, so besides the fact that Mr. SCHUMER said—and it is on page 675 of the transcript—that we can call any witnesses we want, Mr. SCHIFF just said we don't really get—we can call their witnesses. That is what he said. We can call their witnesses because, under their theory, if we wanted to talk to the whistleblower, even in a secure setting to find out if he, in fact, may have worked for the Vice President or may have worked on Ukraine or may have been in communication with the staff, that is irrelevant.

We can't talk to Joe Biden or Hunter Biden because that is irrelevant—except the conversation that is the subject matter of this inquiry, the phone call transcript that you selectively utilized, has a reference to Hunter Biden. The conversation with Burisma, they raised it for about a half a day, saying there was nothing there. Well, let me find out through cross-examination.

But I just think of the irony of this—before we go to dinner—that we could call anyone we want, except for witnesses we want, but we can call their witnesses that they want.

Remember we said “the fruit of the poisonous tree”? It is still the fruit of the poisonous tree. It doesn't get better with age, as I said.

This idea that this is going to be a fair process—call the witnesses they want; don't call the witnesses you want because they are irrelevant. They may be irrelevant to them. They are not irrelevant to the President, and they are not irrelevant to our case. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

RECESS

The CHIEF JUSTICE. Mr. Majority Leader, I understand we have 45 minutes?

Mr. McCONNELL. Mr. Chief Justice, we do indeed.

There being no objection, at 6:39 p.m., the Senate, sitting as a Court of Impeachment, recessed until 7:37 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. Senators, please be seated.

The Senate will come to order.

Mr. GRASSLEY. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Iowa.

Mr. GRASSLEY. I send a question to the desk on behalf of myself, Senators McCONNELL, HOEVEN, and WICKER.

The CHIEF JUSTICE. Thank you.

The question from Senator GRASSLEY and the other Senators is addressed to counsel for the President:

During President Clinton's impeachment trial, he argued that “no civil officer—no President, no judge, no cabinet member—has ever been impeached by so narrow a margin . . . [and] that the closeness and partisan division of the vote reflected the constitutionally dubious nature of the charges” against him. President Trump has raised similar concerns during these proceedings and argues that the lack of bipartisan consensus highlights the partisan nature of the charges. Are the President's concerns well-founded?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

I think the concerns are very well-founded. I think that they are concerns that echo back to our founding, when Alexander Hamilton

warned in Federalist No. 65 precisely against partisan impeachments. A partisan impeachment is one of the greatest dangers that the Framers saw in the impeachment power. And in Federalist No. 65, Hamilton specifically said that impeachments could become “persecution by an intemperate or designing majority in the House of Representatives,” and that is what we have in this case.

In fact, there was bipartisan opposition to the Articles of Impeachment here in the House. So this is one of the—it is the most divisive sort of impeachment that could be brought here, and it reflects very poorly on the process that was run in the House, which had not had bipartisan support, and the charges that were ultimately adopted in the House, because it is a purely partisan impeachment.

And I think that that is important to bear in mind also, that the House managers themselves and some of the Members of this Chamber, at the time of the Clinton impeachment, warned very eloquently against partisan impeachments. They recognized that a partisan impeachment would not be valid, that it would do grave damage to our political community, to our polity, to the country. It would create deep divisions that would last for years. And in the Clinton impeachment, they made those warnings when it was not even arising in the context of an election year.

Now we have a partisan impeachment—as we have pointed out—when there is an election only 9 months away, and it will be perceived, and is perceived by many in the country, as simply an attempt to interfere with the election and to prevent the voters from having their choice of who they want to be President for the next 4 years.

And the House managers have said: We can’t allow the voters to decide because we can’t be sure it will be a fair election. That can’t be the way we approach democracy in the United States. We have to respect the ability of the voters to take in information, because all the information is out now. They have had plenty of opportunity, with the process that they ran in the House, to make all the information public that they want and to be able to make their accusations against the President. We think they have been disapproved, and the voters should be able to decide.

And the most important thing, the greatest danger from this partisan impeachment, I believe, is the one that Minority Leader SCHUMER warned about back in 1998, which is that, once we start down the road of purely partisan impeachments, once we start to normalize that process and make it all right to have a purely partisan impeachment, especially in an election year, then we have just turned impeachment into a partisan political tool, and it will be used again and again and again and more frequently and more frequently. And that is not a process—that is not a future—for the country that this Chamber should accept.

Instead, this Chamber should put an end to the growing pattern towards partisan impeachments in this country, put an end to that practice and definitively make clear that a purely partisan impeachment not based on adequate charges, not based on charges that meet the constitutional standard, will not get any consideration in this Chamber and will be rejected.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. VAN HOLLEN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Maryland.

Mr. VAN HOLLEN. Mr. Chief Justice, on behalf of myself and Senator KLOBUCHAR, I send a question to the desk directed to both parties.

The CHIEF JUSTICE. Thank you.

The question from Senator VAN HOLLEN is to both parties. The President's counsel will go first:

In his response to an earlier question this evening, Mr. Sekulow cited individuals like the Bidens as being "not irrelevant to our case." Are you opposed to having the Chief Justice make the initial determinations regarding the relevance of documents and witnesses, particularly as the Senate could disagree with the Chief Justice's ruling by a majority vote?

The President's counsel is first.

Mr. Counsel SEKULOW. Mr. Chief Justice, again, to make our position clear, we think, constitutionally, that would not be the appropriate way to go.

Again, no disrespect to the Chief Justice at all, who is presiding here as the Presiding Officer, but our view is that, if there are issues that have to be resolved on constitutional matters, that it should be done in the appropriate way.

You have Senate rules that govern that, as to what you would do, and then there is—you know, if litigation were to be necessary for a particular issue, that would have to be looked at. But this idea that we can short circuit the system, which is what they have been doing for 3 months, is not something we are willing to go with.

I have said that. I said it all day yesterday. And, again, no disrespect to the Senator's question, but we are just—that is not a position that we will accept as far as moving these proceedings forward.

Thank you.

Mr. Manager SCHIFF. Senators, counsel for the President says that would not be constitutionally appropriate. Why not? Where is it prohibited in the Constitution that in an impeachment trial, upon the agreement of the parties, the Chief Justice cannot resolve issues of materiality of the witnesses? Of course that is permitted by the Constitution.

Now, counsel earlier said that the House managers want to decide on which witnesses the President should be able to call; we want them to call our witnesses. Well, you would think that Mick Mulvaney, the White House Chief of Staff, would be their witness. If indeed he supports what the President is claiming, if indeed he is willing to say under oath what he is willing to say in a press statement, you would think he would be their witness.

But I am not saying that we get to decide. That is not the proposal here. The proposal is we take a week; the Senate goes about its business; we do depositions. The witnesses are not witnesses on the President's behalf that we get a decision on as House managers; but, rather, that we entrust the Chief Justice of the United States to make a fair and impartial decision as to whether a witness is material or not, whether a witness has relevant facts or not, or whether a witness is simply being brought before this body for

the purposes of retribution—in the case of the whistleblower—or to smear the Bidens without material purpose relevant to these proceedings.

We are not asking that you accept our judgment on that. We are proposing that the Chief Justice make that decision. And I think the reason, of course, that they don't want the Chief Justice to make that decision, as I indicated the other night, is not because they don't trust the Chief Justice to be fair. It is because they fear the Chief Justice will be fair. And I think that tells you everything you need to know about the lack of good faith when it comes to the arguments they make about why they went to court, why they refused to comply with any subpoenas, why they refused to provide any documents, why they are here before you saying that the House managers must sue to get witnesses and they are in court on the same day saying you can't sue to get witnesses.

This is why they don't want the Chief Justice to make that decision, because they know the witnesses they are requesting are for purposes of retribution or distraction.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from North Carolina.

Mr. TILLIS. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senator CRUZ.

The CHIEF JUSTICE. Thank you. The question from Senators TILLIS and CRUZ is for the House managers:

You have based your case on the proposition that it was utterly "baseless" and a "sham" to ask for an investigation into possible corruption of Burisma and the Bidens.

Chris Heinz, the step-son of then-Secretary of State John Kerry, emailed Kerry's Chief of Staff that "Apparently, Devon and Hunter both joined the board of Burisma and a press release went out today. I can't speak to why they decided to, but there was no investment by our firm in their company." Heinz subsequently terminated his business relationship with Devon Archer and Hunter Biden because "working with Burisma is unacceptable," and showed a "lack of judgment."

Do you agree with Chris Heinz that working with Burisma was "unacceptable"? Did John Kerry or Joe Biden agree with Chris Heinz? If not, why not?

Mr. Manager SCHIFF. The reason why Joe Biden is not material to these proceedings, the reason why this is a baseless smear is that the issue is not whether Hunter Biden should have sat on that board or not sat on that board. The issue is not whether Hunter Biden was properly compensated or improperly compensated or whether he speaks Ukrainian or he doesn't speak Ukrainian.

What the President asked for was an investigation of Joe Biden, and the smear against Joe Biden is that he sought to fire a prosecutor because he was trying to protect his son. I guess that is the nature of the allegation. And that is a baseless smear.

As we demonstrated—as the unequivocal testimony in the House demonstrated, when the Vice President sought the dismissal of a corrupt and incompetent prosecutor, it had nothing to do with Hunter Biden's position on the board. It had everything to do with the fact that the State Department, our allies, the International Monetary Fund were in unanimous agreement that this prosecutor was corrupt. And the uncontradicted testimony was also that, in getting rid of that prosecutor, it would increase the chances of real corruption prosecutions going forward, not that it would decrease them.

So the sham is this: The sham is that Joe Biden did something wrong when he followed United States policy, when he did what he was asked to do by our European allies, when he did what he was asked to do by international financial institutions.

And the other sham is the Russian propaganda sham that this CrowdStrike—kooky conspiracy theory that the Ukrainians, not the Russians, hacked the DNC and that someone whisked the server away to Ukraine to hide it. That is Russian intelligence propaganda, and yes, it is a sham. And it is worse than a sham. It is a Russian propaganda coup is what it is. Thank God, Putin says, that they are not talking about Russian interference anymore; they are talking about the Ukrainian interference.

Now, counsel says: Well, isn't it possible that two countries interfered?

But you heard what our own Director of the FBI, Christopher Wray, said: There is no evidence of Ukrainian interference in our election. There is no evidence. So, yes, I think we can cite the FBI Director for the proposition that that is a sham. And that is why—that is why—we refer to it as such.

But at the end of the day, what this is all about is the President using the power of his office, abusing the power of that office to engage in soliciting investigations—and actually just the announcement of them. If the President thought there was so much merit there, then why was it that he just needed their announcement?

And what is more, as counsel just conceded before the break, Rudy Giuliani was not pursuing the policy of the United States. OK. If it wasn't the policy of the United States, then what was it? If it wasn't the policy to pursue an investigation of the Bidens, then what was it?

It was a "domestic political errand" is what it was.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Oregon.

Mr. WYDEN. Mr. Chief Justice, on behalf of Senator MENENDEZ, Senator BROWN, and myself, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you. Senators WYDEN, MENENDEZ, and BROWN ask the House managers:

The President's counsel has argued that the President's actions are based on his desire to root out corruption. However, new reporting indicates that Attorney General Barr and former National Security Advisor Bolton shared concerns that the President was granting personal favors to autocratic foreign leaders like President Erdogan of Turkey. The President has also acknowledged his private business interests in the country like Trump Towers Istanbul. The Treasury Department has not denied that the President directed Treasury and the Department of Justice to intervene in the criminal investigation of Halkbank, the Turkish state-owned bank, which has been accused of a scheme to evade Iranian sanctions. Has the President engaged in a pattern of conduct in which he places his personal and political interests above the national security interests of the United States?

Mr. Manager JEFFRIES. Thank you, Mr. Chief Justice. I also want to thank the Senators, again, for your hospitality and for listening to both sides as we have endeavored to answer your questions. Thank you for that question.

I think, first and foremost, there has been a troubling pattern of possible conflicts of interest that we have seen from the beginning of this administration through this moment, but the allegation here

related to the abuse of power charge is that, in this specific instance, the President tried to cheat by soliciting foreign interference in an American election by trying to gin up phony investigations against a political opponent.

Now, what counsel for the President has said is that what the President was really interested in is corruption, that he is an anti-corruption crusader. For you to believe the President's narrative, you have to conclude that he is an anti-corruption crusader. Perhaps his domestic record is part of what Senators can reasonably consider, but let's look at the facts of the central charge here.

The President had two calls with President Zelensky, on April 21 and on July 25. In both instances, he did not mention the word "corruption" once. Released the transcripts. The word "corruption" was not mentioned by Donald Trump once.

We also know that in May of last year President Trump's own Department of Defense indicated that the new Ukrainian Government had met all necessary preconditions for the receipt of the military aid, including the implementation of anti-corruption reforms. That is President Trump's Department of Defense saying there is no corruption concern as it relates to the release of the aid.

Now, I think we can all acknowledge, as the President's counsel indicated, that there was a general corruption challenge with Ukraine. I think the exact quote from Mr. Purpura was: "Since the fall of the Soviet Union, Ukraine has suffered from one of the worst environments for corruption in the world."

Certainly I believe that that is the case, but here is the key question: Why did President Trump wait until 2019 to pretend as if he wanted to do something about corruption? Let's explore.

Did Ukraine have a corruption problem in 2017, generally? The answer is yes. Did President Trump dislike foreign aid in 2017? The answer is yes. What did President Trump do about these alleged concerns in 2017? The answer is nothing.

Under the same exact conditions that the President now claims motivated him to seek a phony political investigation against the Bidens and place a hold on the money, the President did nothing. He did not seek an investigation into the Bidens in 2017. He did not put a hold on the aid in 2017. But the Trump administration oversaw \$560 million in military and security aid to Ukraine in 2017.

In 2018, the same conditions existed. If President Trump is truly an anti-corruption crusader—but what happened in 2018? He didn't seek an investigation into the Bidens. He didn't put a hold on the aid. Rather, the Trump administration oversaw \$620 million in military and security aid to Ukraine, which brings us to this moment.

Why the sudden interest in Burisma, in the Bidens, in alleged corruption concerns about Ukraine? What changed in 2019? What changed is that Joe Biden announced his candidacy. The President was concerned with that candidacy. Polls had him losing to the former Vice President, and he was determined to stop Joe Biden by trying to cheat in the election, smear him, solicit foreign interference in 2020.

That is an abuse of power. That is corrupt. That is wrong.
The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Maine.

Ms. COLLINS. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senator RUBIO, and Senator RISCH.

The CHIEF JUSTICE. Thank you. The question from Senators COLLINS, RUBIO, and RISCH is addressed to the House managers:

The House of Representatives withdrew its subpoena to compel Charles Kupperman's testimony. Why did the House withdraw the Kupperman subpoena? Why didn't the House pursue its legal remedies to enforce its subpoenas?

Mr. Manager SCHIFF. Senators, I thank you for the question.

When we—our practice in the House was to invite witnesses to come voluntarily; if they refused, to give them a subpoena. In the case of Dr. Kupperman, he refused to come in voluntarily, and we subpoenaed him.

Almost instantly upon receipt of the subpoena, a lengthy complaint was filed in court where he sought to challenge that subpoena. Interestingly, and contrary to, I think, what you are hearing from the President's counsel here today, the House took the position that a witness cannot challenge—does not have standing to challenge a congressional subpoena.

We were joined, by the way, in that position by the Justice Department, which also said that Dr. Kupperman didn't have jurisdiction to challenge or get a declaratory judgment as to the validity of the subpoena.

So, in that litigation, we were often on the same page as the Justice Department. But more meaningful to us, we were simply not going to engage in a yearslong process of delay to get the answers that we needed.

We proposed to Dr. Kupperman's counsel that if, as you claim, this is really about just wanting to get a court blessing, there is a willingness to come forward, but we just want to make sure that it is appropriate that we do so, if you are sincere about that, there is already a case that has been filed, the McGahn case, that is about to be decided. Let's agree to be bound by what conclusion Judge Jackson reaches in that case. And their answer was no.

And, indeed, that opinion would come out shortly thereafter. That opinion said, this claim of absolute immunity is absolute nonsense, and there is no precedent for it in the 250 years of jurisprudence on this subject.

So we went back to Dr. Kupperman, and, of course, Dr. Kupperman said: No, we would like to get our own judicial opinion.

Now, had we gone to fruition, even though we don't believe—and it would have created a bad precedent that they have standing to challenge subpoenas that way. Had they lost, they would have gone to the court of appeals and the Supreme Court. They would have come back to the district court. And now no longer arguing absolute immunity because that would have been, we believe, defeated, they would make claims of executive privilege, and they would litigate those up through the court of appeals and the Supreme Court.

We knew that course because we are in it with Don McGahn. Nine months after he was subpoenaed, we are still litigating it. And they are in Court saying Congress shouldn't do what they are saying that we should do before this body.

So that is why we withdrew the subpoena. We were not going to go through that exercise.

You have to ask the question, I think, why did Fiona Hill feel that she could come and testify? She worked for Dr. Kupperman. Why was she willing to show the courage to come and testify when her boss wasn't?

There is not a good answer to that question, but I am awfully glad that she did because, without her, we would be that much less knowledgeable about this President's scheme.

So that was the history of the Kupperman subpoena. Likewise, John Bolton, who has the same counsel, told us if we subpoenaed him, he would sue.

Now, why is it that he is willing to testify now and he wasn't willing to testify before the House? You should ask him that question. But that was the predicament we faced. And in our view, a President should not be able to defeat an investigation into his wrongdoing by endlessly litigating the matter in court, particularly when they are in court saying you can't use the court to enforce your subpoenas.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Ms. HIRONO. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Hawaii.

Ms. HIRONO. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator HIRONO is for the House managers:

Can you talk about what has happened to whistleblowers when they have been outed against their will? What are the consequences of revealing their identity, particularly when we have a President who has tried to bully and threaten impeachment witnesses?

Mr. Manager SCHIFF. Senator, I don't know that we can give you examples of whistleblowers who were the subject of retaliation, although I have no doubt that there are many. We can seek by the latter part of this evening to get a list of some of the whistleblowers that have confronted retaliation.

But I—this does give me an opportunity to speak a little more—in a more fulsome way about a point I made earlier about the unique importance of whistleblowers in the Intelligence Community.

Our area of intelligence is unique in this respect. If you are a whistleblower who wants to blow the whistle on a fraudulent contract in a transportation project, you can go public. If you are blowing the whistle on misconduct in the area of housing, you can go public. You can have a press conference, and you can declare the wrongdoing that you have seen.

If you are a whistleblower in the Intelligence Community, however, you cannot go public. You have no recourse to bring to the public's attention wrongdoing, except one of really two vehicles. You can go to an Intelligence Committee or you can go to the inspector general.

And in this area, where our hearings are in closed session, where you don't have outside stakeholders that can point out the flaws in what an agency is representing, if you are on the Transportation Committee and someone comes in and they say: This high-speed rail project is on time and under budget, you have outside validators and stakeholders that can say that is just not true.

In the intel world where our hearings are in closed session, there are not outside stakeholders that are listening, that can hold those agencies to account. And so we are uniquely dependent when there is wrongdoing on two things: self-reporting by the agencies and the willingness of people of good faith to come forward and blow the whistle.

And we do injury to that when we expose those whistleblowers to retaliation. I don't think any of us would have imagined a circumstance in which a President of the United States before now would have called a whistleblower a traitor or a spy or suggested that people that blow the whistle on his wrongdoing are traitors and spies, and we should treat them as we used to treat traitors and spies.

I don't think we could have imagined a circumstance where a President of the United States would have told a foreign leader that the U.S. Ambassador—our anti-corruption champion in Ukraine—was “going to go through some things.” I don't think we could have imagined that happening before this Presidency. And sometimes you just have to step back and realize just how striking and abhorrent this is and what a risk it is to civility, to decency, to our institutions.

We have become inured to it through endless repetition of attacks on anyone who will stand up to this President. And, of course, the risk is—the very reason we have a whistleblower protection, the very reason why whistleblowers should enjoy a right of anonymity, is that in the absence of that, misconduct and wrongdoing will proliferate. If there is not a mechanism for people lawfully to expose wrongdoing, you can bet that wrongdoing is going to increase. And that is why there have been great champions, like Senator GRASSLEY, of whistleblower protections, Senator BURR and Senator WARNER, and many others, because we all understand—at least we did heretofore—the vital importance and contributions that are made by American citizens who bring wrongdoing to our attention.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. BLUNT. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Missouri.

Mr. BLUNT. Mr. Chief Justice, I send a question to the desk on behalf of myself, Senators HAWLEY, WICKER, and CAPITO.

The CHIEF JUSTICE. Thank you.

The question from Senators BLUNT, HAWLEY, WICKER, and CAPITO is addressed to counsel for the President:

What responsibility does the president have to safeguard the use of taxpayer dollars for foreign aid and work to root out corruption?

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice and Members of the Senate.

The President has an important responsibility to safeguard taxpayer dollars that are used in foreign aid or used anywhere, frankly, and to root out corruption. Now, it is no secret that President Trump, from the beginning, from the time he came down the escalator, has been committed to ensuring that American taxpayer dollars are used appropriately—are used appropriately. And if they are going to foreign countries, he wants to make sure that they are used wisely. And there is ample evidence of that—ample evidence

of that. I don't think that is even disputed or disputable. And he is fulfilling that obligation.

The other point that he makes repeatedly is that if we are helping countries around the world, other countries should help us help them. We use the word "burden-sharing." What does that mean? "Burden-sharing" means that if American taxpayers are going to help with a problem in a country around the world—and we do, and we do a lot. We do it to the tune of billions and billions of dollars and, when here in our country, we need to fix our roads; we need to fix our bridges. So if we are going to take money away from those important projects here in America that come from the hard-earned dollars of taxpayers, why can't other countries help us? That is called burden-sharing. It is also called fairness. So he has that obligation, and every day he fulfills that obligation.

Let me make another point in response to Senator WARREN's question. The most important thing, in terms of the fairness of this proceeding—and that is why I have quoted repeatedly. I haven't played the videos over and over again, but you remember them—the wise words, the true words of the Democrats in the Clinton impeachment years. And the only point the American people understand—they understand it, and I think everyone in this body understands it; that there can't be one standard for one political party and another for the other political party. That is important. Those words should be applied here. We can't have a standard that changes depending on what somebody thinks about political issues.

In order to be fair, the same standard has to be applied, regardless of your party. So that is the critical issue here. And that is the bedrock principle, not a double standard for justice in the Senate but one standard—the true standard, the standard that has been articulated eloquently by Democrats over and over again in the Clinton proceedings. That is the standard that is right. That is the standard that we ask for, regardless of political party.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. KING. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Maine.

Mr. KING. I am sending a question to the desk.

The CHIEF JUSTICE. Senator KING asks the President's counsel:

Would it be permissible for a President to inform the Prime Minister of Israel that he was holding congressional appropriated military aid unless the Prime Minister promised to come to the United States and publicly charge his opponent with anti-semitism in the midst of an election campaign?

Mr. Counsel PHILBIN. Mr. Chief Justice and Senator, thank you for the question, but the question really has nothing to do with this case. I mean, it seems to be trying to get at the most extreme hypothetical related to a misinterpretation of what Professor Dershowitz was saying the other night. It is totally irrelevant here.

The charges that have been brought here, articulated in the Articles of Impeachment, are based on a theory of abuse of power; that the House Democrats, the House managers have made clear depends for them to make their case to establish that when the President raised two issues on the call with President Zelensky of Ukraine, he raised the 2016 election interference, and he men-

tioned the Biden and Burisma incident; that there was not any legitimate public policy or foreign policy interest in mentioning those things to the President of Ukraine. That is the standard they have set for themselves. It is on page 5 of the House Judiciary Committee report, and it is on page 4. They say they have to show it is a sham investigation, and I think it is on page 6 they say it is a bogus investigation. That is their standard because they know they have to establish that there is no legitimate public policy interest at all in mentioning those in order to come anywhere close to being able to assert something that could be a wrongful conduct by the President, because if there is a legitimate interest, if there is something there that is worth asking, they don't have a case. And that is why they have tried to tell you again and again there is not a scintilla of evidence.

This is really pretty preposterous, for the House managers to come and say, particularly with respect to the Biden-Burisma incident, there can't be any legitimate interest in raising that question because it has all been debunked. And the question has been asked: Where was it was debunked? By whom was it debunked? Who conducted that investigation? Where is the report from that investigation? Who established that there is nothing there? There is no such report. They have been asked; they haven't been able to cite it. There has been no such investigation.

But what do we know? We do know that every witness who was asked about it said, at a minimum, there was an appearance of a conflict of interest. We do know that these two members of the Obama administration—Amos Hochstein and Deputy Assistant Secretary of State Kent—raised the issue of the conflict of interest with Vice President Biden's Office. We know that Chris Heinz, the stepson of Secretary of State Kerry, who had been a business partner with Hunter Biden, broke off his business ties with him because Hunter Biden took a seat on the board of Burisma.

So to say that there is nothing that could possibly merit asking a question about that is utterly disingenuous. It can't be said with a straight face. Every witness that was asked about it said that there was something, at least, that gave the appearance of a conflict of interest. There hasn't been any investigation to debunk this theory. There hasn't been any inquiry to find out if there is "there" there or not.

It doesn't have to do, as Manager SCHIFF was suggesting, just with, well, why was Hunter Biden on the board, or were they paying him? It is the whole situation—the whole situation of, all of a sudden, he is put on the board at the time when his father was put in charge of Ukraine policy. And there are people—there were witnesses who testified in the House proceedings that it appeared like Burisma was trying to whitewash their reputation by putting people with connections on their board. And then there is the prosecutor being fired.

It is just not reasonable to say that no one could possibly say: That looks fishy. There is something maybe that somebody should look into there.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Alaska.

Ms. MURKOWSKI. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you. Senator MURKOWSKI asks counsel for the President:

You explain that Ambassador Sondland and Senator JOHNSON both said the President explicitly denied that he was looking for a quid pro quo with Ukraine. The reporting on Ambassador Bolton's book suggests the President told Bolton directly that the aid would not be released until Ukraine announced the investigations the President desired. This dispute about material facts weighs in favor of calling additional witnesses with direct knowledge. Why should this body not call Ambassador Bolton?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I think the primary consideration here is to understand that the House could have pursued Ambassador Bolton. The House considered whether or not they would try to have him come testify. They chose not to subpoena him.

This all goes back to the most important consideration, I think, that this Chamber has before it in some ways, especially on this threshold issue of whether there should be witnesses or not. It has to do with the precedent that is established here for what kind of impeachment proceeding this body will accept from now going forward, because whatever is accepted in this case becomes the new normal for every impeachment proceeding in the future.

And it will do grave damage to this body as an institution to say that the proceedings in the House don't have to really be complete. You don't have to subpoena the witnesses that you think are necessary to prove your case. You don't really have to put it all together before you bring the package here. When you are impeaching the President of the United States—the gravest impeachment that they could possibly consider—you don't have to do all of that work before you get to this institution.

Instead, when you come to this Chamber, it can be kind of half-baked, not finished—we need other witnesses, and we want this Chamber to do the investigation that wasn't done in the House of Representatives. And then this Chamber will have to be issuing the subpoenas and dealing with that. And that is not the way this Chamber should allow impeachments to be presented to it.

We have heard—there was some exchange the other day about, well, there were a lot of witnesses in the Judge Porteous impeachment, and this Chamber was able to handle that. It is very different in the impeachment of a judge, which is being handled by a committee. My understanding is that, under rule XI of the Senate procedures, there was a committee receiving that evidence. But in a Presidential impeachment, there is not going to be just a committee; it is the entire Chamber that is going to have to be sitting as a Court of Impeachment, and that will affect the business of the Chamber.

So I think the idea that something comes out and somebody makes an assertion in a book, allegedly—it is only an alleged; it is simply alleged now that the manuscript says that; Ambassador Bolton hasn't come out to verify that, to my knowledge—that then we should start having this Chamber calling new witnesses and establish the new normal for impeachment proceedings as being that

there doesn't have to be a complete investigation in the House, I think that is very damaging for the future of this institution.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Hawaii.

Mr. SCHATZ. Mr. Chief Justice, I have a question on behalf of myself and Senators WHITEHOUSE and HEINRICH, and this is for the counsel for the President and the House managers.

The CHIEF JUSTICE. Thank you.

Question from Senators SCHATZ, WHITEHOUSE, and HEINRICH for both parties:

Can the White House really not admit that Senator KING's hypothetical would be wrong?

We begin with the House managers.

Mr. Manager SCHIFF. Senator, we have no trouble recognizing just how wrong that would be, but more than that, it is the natural extension of Professor Dershowitz' argument that if the President believed that kind of quid pro quo would help his reelection, then it is perfectly fine and nonimpeachable. There was a reason, of course, why they didn't want to address that hypothetical.

Let me go back also to the question that was asked about the other written reports that Ambassador Bolton and Attorney General Barr were concerned that the President was intervening in cases in which he had business investments, like Turkey. Under the theory of the President's lawyers, that is perfectly OK, too. If the President thinks somehow that that is in the United States' interest because it is in his interest, that is perfectly fine. It is unimpeachable.

Now, is it a crime to give preference to autocrats, to give special consideration to autocrats where your business investments are? That may not be criminal, but it is impeachable. It certainly should be impeachable if we are going to sacrifice the national security of the country, if we are going to withhold military aid, if we are going to bestow favors in U.S. resources to countries where the President has investments. Is that what we want driving U.S. policy? But that is the implication of what they have to say.

I agree with counsel about one thing they said: If we have a trial with no witnesses, that will be a new precedent. We should be very concerned about the precedent we set here because it will mean heretofore that, when a President is impeached, that one party can deny the other witnesses, and that will be the new normal, that we have trials without witnesses, and I don't think that is the precedent we should be setting here.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for the question.

Let me just begin by noting I think it is a little bit rich for Manager SCHIFF to say that one party—i.e., the President—is going to deny them witnesses. It was the President who was denied any witnesses throughout this process up until now.

But to get back to the question on Senator KING's hypothetical, if the President insisted that a foreign leader come here and lie about someone else and he was holding up military aid or a package of congressional aid and saying "You have to go out and lie

about this,” that would be wrong. But that is not this case, and it has nothing to do with this case.

But I would like to address something that Manager SCHIFF said because he immediately pivoted now to the next thing. What is in the newspapers? What else can we bring in from the newspapers? There is an allegation that the manuscript says something about conversations that Ambassador Bolton had with Attorney General Barr. Well, Attorney General Barr has issued a statement saying that allegation, that assertion, is not accurate, that that is false. And there are other allegations that are made about what might be in this manuscript. Mick Mulvaney has issued a statement saying that is not true.

So to sort of play the game of, there is going to be another leak; somebody might write a book; there is something else—and that is, again, turning this body into the one doing the investigation because the House didn’t pursue the investigation. That is not prudentially a wise move for this Chamber to take on that task.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Louisiana.

Mr. KENNEDY. Your Honor, I send a question to the desk for counsel for the President.

The CHIEF JUSTICE. Thank you.

The question from Senator KENNEDY is for counsel for the President:

Has the House of Representatives, in its impeachment proceedings or otherwise, investigated the veracity of the statement by former Ukrainian Prosecutor General Victor Shokin that Mr. Shokin “believes his ouster was because of his interest in [Burisma Holdings], and his claim that had he remained in his post, Shokin said he would have questioned Hunter Biden,” as reported on July 22, 2019 in an article in *The Washington Post* entitled “As Vice President, Biden said Ukraine Should Increase Gas Production. Then His Son got a job with a Ukrainian Gas Company,” by Michael Kranish and David L. Stern.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for that question.

The answer, to the best of my knowledge, is no, the House of Representatives did not investigate the veracity of the truth of that reporting about Prosecutor General Shokin. In fact, that was part of the point.

As Manager SCHIFF was saying here, again, the House Democrats’ position is that everything related to the entire incident of the Bidens and Burisma and what was going on with the prosecutor—it is all debunked. There is nothing to see there. Move along. Don’t ask about it. But they didn’t investigate it, and they can’t point to anyone who has investigated it. They can’t point to anyone who has really looked at it.

As I said a minute ago—and I will not belabor the point—every witness who was asked said that they thought, yes, there was at least the appearance of a conflict of interest there. At least one witness—and there is a public reporting of another person, whose name is Hochstein, in the Obama administration—raised the issue with Vice President Biden’s Office, but nothing was done about it.

There have been questions about whether Vice President Biden sought or received an ethics opinion. We don’t know—not that I

have heard of, not that I have seen anywhere. It is just something that no one has actually inquired into.

There have been questions raised about “Why now?” “Why was it raised now?” The implication the House managers have tried to make is it is just because Joe Biden decided in April he was going to run for the Presidency.

As I explained the other day, Rudy Giuliani, as the President’s private counsel, was exploring matters in Ukraine starting in the fall of 2018. He had tips because he was interested in finding out—remember, the Mueller investigation was still ongoing at that point. It wasn’t clear what the outcome of the Mueller investigation was going to be. He was trying to find out what were the origins of Russian interference, of the Steele dossier, of allegations of collusion by the Trump campaign. That led, in part, to Ukraine, and he got information that led him to various strands to pursue. One of them became the issue of the Biden and Burisma incident.

He prepared a little package on that based on interview notes on January 23 and January 25 of 2019. Months before Joe Biden announced that he was going to run for the Presidency, Rudy Giuliani was interviewing Shokin and Lutsenko and wrote down in the interview notes stuff about the Biden and Burisma incident and the firing of Shokin. He put it all in a package, and he delivered it to the State Department in March—still before Joe Biden said he was going to be running for President. That didn’t happen until April 25. It was all done—all put in a package, all delivered.

That is public now because that little package that he sent to the State Department was released, I think it was, under the FOIA litigation, but it has been released publicly, and the notes that he took, his interview notes, were released publicly.

So the timing dates back to when Rudy Giuliani was pursuing that, starting back in the fall of 2018 with his taking time to pursue leads. He was trying to get Shokin to come to this country to interview him. He couldn’t get him a visa and had to interview him by phone. Lutsenko was in New York, and he prepared this package. That is why there is that timing.

Then there were public articles published about the Biden-Burisma affair. One of them was just mentioned in the question—a Washington Post article, July 22, 2019, specifically about it—about the firing of Shokin 3 days before the July 25 telephone call. It was in the news. It was topical.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Michigan.

Mr. PETERS. Chief Justice, on behalf of myself and Senator CORNYN, I send a question to the desk for both House managers and the President’s counsel.

The CHIEF JUSTICE. Thank you.

The question from Senators PETERS and CORNYN for both parties reads:

How would the verdict in this trial alter the balance of power between the executive and legislative branches in the future?

The President’s counsel goes first.

Mr. Counsel CIPOLLONE. A verdict—a final judgment—of acquittal would be the best thing for our country and would send a

great message that will actually help in our separation of powers. Here is why.

As I have said repeatedly—and according to the standard articulated so well during the Clinton impeachment—what are we dealing with here? We are dealing with a purely partisan impeachment with bipartisan opposition, no crime, and no violation of law in an election year. It has never happened before—no investigation, no due process, nothing.

What they are telling you—I mean, we can talk all we want, and we will, but what are we talking about at the end of the day? We are talking about removing the President of the United States from the ballot in an election that is occurring in months. Who thinks that is a good idea, particularly when you are dealing with a purely partisan impeachment that was warned about from the Framers?

The only appropriate result that will not damage our country horribly—maybe forever but certainly for generations—is a verdict of acquittal.

Here is the other point. In getting back to the question of witnesses, Mr. SCHIFF is up here: Let's make a deal. How about we have the Chief Justice—and we have the greatest respect for the Chief Justice. Here is the problem. We are talking about critical constitutional rights that have been protected by the Supreme Court over our history. So what is he really saying? Think about these questions.

The Senate can decide about executive privilege by a vote—by a majority vote. With the greatest respect—with the greatest respect—if the Senate can just decide there is no executive privilege, guess what? You are destroying executive privilege. Can the Senate decide the House's speech or debate protection? I mean, when we ask for documents from Mr. SCHIFF and his staff and he says "speech or debate," are you going to decide that? Is that how we are going to do this? Are we going to flip a coin? Is that going to be your next suggestion?

We are talking about an election of the President. There are critical constitutional issues that will alter our balance of power for generations if we go down that road.

Down this road is the path provided by the Democrats so wisely during the Clinton administration and an election.

The CHIEF JUSTICE. Thank you, counsel.

Mr. Manager SCHIFF. Mr. Chief Justice, it may be different in the court than it is in this Chamber and in the House, but when anybody begins a sentence with the phrase "I have the greatest respect for," you have to look out for what follows.

We trust the Justice will make the right decision. The Justice has, I think, conducted these proceedings in an eminently fair way.

There is nothing in the Constitution that would preclude us from taking a week to hear from witnesses and allowing the Chief Justice to make those calls.

I would say also, with respect to an argument counsel made about the Porteous impeachment trial, where, yes, the Senate designated 12 Senators to hear the witness testimony, the implication is, you can't do that in an impeachment of the President. That is only half correct. The other half is, you can do depositions in which only a couple of Members of the body need participate. So it is a

false argument to say or to suggest that the whole body would need to conduct the whole of the depositions. So much as we would like live testimony, we have offered a compromise.

With respect to the question about what this will do to the balance of power, I would say this: As I mentioned earlier, our relationship with Ukraine will survive this debacle. But if we hold that a President can defy all subpoenas, can tie up the Congress endlessly with bad-faith claims of privilege—claiming here one thing and claiming in court something else—it will eviscerate our oversight power. If the President is allowed to decide which subpoenas they will deign to consider valid and which they will deign to consider invalid, your oversight power and our oversight power is gone. That is an irrevocable change to the balance of power.

What is more, if we adopt their theory of the case that a President can abuse his power and do so by holding another country hostage by withholding congressionally appropriated funds and can violate the law in doing so as long as they think it is in their interest, imagine what that will do to the balance of power. Article II will really mean what the President says it means, which is he can do whatever he wants.

So, yes, the stakes are big here. Article II goes to whether our oversight power—particularly in a case of investigating the President's own wrongdoing—continues to have any weight or whether the impeachment power itself is now a nullity.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Florida.

Mr. RUBIO. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators CAPITO and SCOTT of South Carolina—with all due respect.

The CHIEF JUSTICE. The question from Senators RUBIO, CAPITO, and SCOTT of South Carolina is directed to both parties, and we will begin with counsel for the House managers.

The question reads:

If I understand the Managers' Case: The President abused his power because he acted contrary to the advice of his advisors, but he is guilty of obstruction of Congress because he acted in accordance to the advice of his advisors.

Mr. Manager SCHIFF. That is not our argument at all. The President is impeached on article I not because he acted contrary to the advice of his advisers. That is a red herring offered by the President's legal team. We are not saying that the President is not free to disregard the advice of his counsel. He is. He is entitled to disregard even really good advice. What he is not free to do is to engage in corruption. What he is not free to do is to withhold military aid—not for a valid policy disagreement. They have conceded Rudy Giuliani was not doing policy. What is not permitted is for a President to withhold congressionally appropriated money for a corrupt purpose—to secure help, to illicit foreign help, and cheat in an election. That is no policy disagreement.

Now, are we arguing in article II that he should be impeached for following his lawyers' advice? No. They were following his advice. His advice was to fight all subpoenas. They were giving the legal window dressing to that. They were going to court and arguing one thing and coming before you and arguing another. He was not following their advice; they were following his. You can say a

lot about Donald Trump, but he is not led around by the nose by his legal counsel. Ask Don McGahn about that. Don McGahn stood up to the President.

Bob Mueller—if we are going to talk about the Mueller report—found several instances—and this goes to the pattern of the President's misconduct—in which he sought to obstruct that investigation, including telling the President's lawyer that he should fire the special counsel and then that he should lie about that instruction.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Members of the Senate.

You are right. That is yet another way in which the House managers' theories of impeachment are incoherent and dangerous.

With respect to article II—and again, I won't respond to the ad hominem attacks that keep coming. I will say, just for the record, you are right—I haven't been elected to anything, but when I say "with the greatest respect," I mean it.

Article II: The President has been impeached for exercising long-standing constitutional rights. He is looking out for constitutional rights in the face of a House process that violated all of them against all precedent, and he is looking out for future Presidents and for the executive branch. How? If he had said, "OK. Fine. No rights. No counsel. No witnesses. No right to cross-examine. Here is everything you asked for," what sort of precedent would that set? That would irreparably damage the separation of powers.

Again, all you need to look at are the Articles of Impeachment. The Articles of Impeachment do not allege a crime. They do not even allege a violation of law. They are purely partisan. They were opposed by Democrats in the House.

It is an election year, and they are here, saying: Instead of an election, let's confront very consequential, constitutional issues that have never really been confronted, and let's do it in a week. Let's destroy executive privilege. Maybe let's destroy speech and debate privilege.

Let me point out one other thing. It is not right to accuse somebody falsely of something and then say: Unless you waive your constitutional rights, you are guilty. That is not right. We shouldn't accept that in this country. These are the longstanding privileges. They have been respected for hundreds of years, and we should continue to respect them.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from West Virginia.

Mr. MANCHIN. Mr. Chief Justice, I send a question to the desk on behalf of myself for the President's counsel and House managers.

The CHIEF JUSTICE. Thank you.

The question is from Senator MANCHIN for both parties. We will begin with the President's counsel.

Over the past two weeks, the White House counsel had detailed all the problems associated with the House's decision to move quickly through their impeachment proceedings. Why shouldn't this body heed their advice and slow down and at least allow the judge to rule in the McGahn case to give the members of this body an official opinion from the Judiciary on Article II?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senator, thank you for the question.

I think the key point here is the McGahn case is not going to directly resolve something related to the obstruction charges here. It is going to address a legal issue with respect to an assertion of absolute immunity for Don McGahn.

There should be a decision from the DC Circuit sometime soon, but that will almost certainly go to the Supreme Court. I mean, that immunity is being challenged, and it has been relied upon by the executive for over 40 years. That is an issue destined for the Supreme Court.

So the idea—it is not going to be just to slow down here a little bit. This trial can't be held open pending a final resolution of that litigation, and that is an important point, because this is something that Alexander Hamilton pointed out in Federalist No. 65, when he was discussing who should be the body to try impeachments. One consideration was potentially drawing in judges from various States to create a new body to try impeachments, and the rationale that Hamilton gave that that would be a bad idea is that there has to be swift progression from an impeachment to the trial, to a verdict, to having it finished, precisely because this is where he talked about "the persecution of an intemperate or designing majority in the House of Representatives."

He recognized there could be partisan impeachments, and that accusation, that impeachment, shouldn't been hanging out there. There should be a swift trial to determine things finally, and that is why all of the preparation ought to be done in the House of Representatives to ensure that there is an investigation, there is a case put together. And, if they are ready to impeach the President of the United States, they had better be finished, have everything buttoned down, and have their case ready because they can't have a trial of the President—Hamilton warned against that specifically—hanging over the country for months on end.

And so to push off this trial to say: Well, we will wait for litigation and at that point—that is a very dangerous idea, and that is not the way that the trial here should operate. It ought to be finished on the basis of the case that the House managers came ready to present. If they weren't ready to present a case that can win, there should be an acquittal.

Thank you, Counsel.

Mr. SCOTT of South Carolina. Mr. Chief Justice.

The CHIEF JUSTICE. We have another half of the presentation.

Mr. Manager SCHIFF. If we could—Senator, if we could pull up slide 37, this is what the district court had to say in the McGahn litigation, now on appeal: [Slide 578]

Executive branch officials are not absolutely immune from compulsory congressional process no matter how many times the executive branch has asserted as much over the years.

That is consistent with the decision in the Miers case, where the court said:

Clear precedent and persuasive policy reasons confirm that the Executive cannot be the judge of its own privilege and hence Ms. Miers is not entitled to absolute immunity.

Let's look at what the court said on slide 38, where Judge Jackson said: [Slide 579]

Stated simply, the primary takeaway from the past 250 years of recorded American history is that Presidents are not kings . . . compulsory appearance by dint of a subpoena is a legal constrict not a political one, and per the Constitution no one is above the law.

This is the district court saying: Thou shalt appear and this claim of absolute immunity is absolute nonsense.

In the court, now, this is what the Justice Department is arguing in that case, if we can see slide 39. [Slide 580]

The committee lacks article III standing to sue to enforce a congressional subpoena demanding testimony from an individual on matters related to his duties as an executive branch official.

And so here we are. We are now in a court of appeals, the Justice Department is saying that you cannot force congressional subpoenas, and they are saying: Well, let's continue to litigate the matter. Let this play out further.

To what end? To what end? Yes, I suppose we could wait for a court of appeals decision, but, of course, they would say they are not satisfied with that court throwing out this idea either.

Well, look, we have got a perfectly good Justice right here that can make these decisions. Let's let him make the call. Let's let him make the call. Let's trust that he would be fair and impartial.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from South Carolina.

Mr. SCOTT of South Carolina. Thank you, sir.

I send a question to the desk on behalf of myself, Senators HAWLEY, SASSE, and BARRASSO.

The CHIEF JUSTICE. Thank you.

The question from Senators SCOTT of South Carolina, HAWLEY, SASSE, and BARRASSO is to the counsel for the President:

During their presentation, the House Managers referenced Chairman Gowdy and the House Benghazi Investigation. The final report on Benghazi flatly says "The administration did not cooperate with the investigation." That committee fought for two years to access information, and often had information requests ignored or denied. Yet this House investigation, after just 3 months, already supposedly justifies impeachment. Does President Trump owe more compliance than other Presidents did?

Mr. Counsel SEKULOW. Thank you, Mr. Chief Justice.

Part of what we are seeing, I believe, is kind of a twofold attack or approach. We just saw a citation to two district court opinions, as if the final arbiter of an issue of this magnitude is going to be the district court—or, for that matter, the court of appeals.

You are right. It is going to be the Supreme Court of the United States, if it goes in that direction.

Now, with regard to the question about the statement in the Benghazi report that the administration did not cooperate, the same was also true with Fast and Furious and the investigation there. And in that particular investigation, it reached such a significant point that Members of the House determined that the then-Attorney General of the United States should be held in contempt.

Now, President Obama exercised executive privilege over documents and testimony related to Fast and Furious. The constitutional process was followed.

Now, I am not the one that makes the decision whether that was privileged or not privileged. If there was going to be a challenge, it would have been adjudicated. But the fact of the matter is, at least 10 times tonight Manager SCHIFF has said: We have complete confidence in the Chief Justice, ignoring the fact that it is not his call. And I mean that with all sincerity, since you are making fun of people who are saying "with due respect." It is not—that is not the way it is set up.

Now, you could agree to anything. Sure, you can negotiate. You can negotiate that all the witnesses that will be called will be the witnesses they requested, or you could negotiate that since they had 17 and we had none, we get 17 and they get 4. All kinds of things can be negotiated under their view.

But this is brought to you by the managers who have an overwhelming case that they proved over and over again. That is what they say. They have proved it. It is overwhelming. It is incredible. We were able to put it together in a record amount of time. And now we want you, the U.S. Senate, to start calling witnesses for our overwhelmingly proved case.

I would just lay this down: If we are negotiating, why don't we just go to closing arguments and see what this body decides?

But I respect the process. The process is we have 2 days of questioning. Tomorrow there will be an argument on the motion. There will be a decision on the motion, and we have to—that is the system that is in place. That is the system we should follow.

But this idea that two district court judges have decided an issue of this magnitude and that is now the determination—they wouldn't accept it if they were in our position. They would say: Well, the district court decided; so that is going to be it.

So I think we need to look at what is really at stake. These are really significant issues. These are serious. I mean, the idea that executive privilege should just be waived or doesn't exist, that, in your view, absolute immunity can't possibly exist—it has only been utilized for administrations for 50 years or more.

Professor Dershowitz gave you the list of Presidents that have put forward executive privilege, and in a lot of his writings, he talks about it.

But to say tonight that we are just going to—you know, we will just cut a deal. We will do it in a week. We will get some depositions, and that will make everyone happy.

It doesn't make the Constitution happy.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Ohio.

Mr. BROWN. Mr. Chief Justice, I send a question to the desk on behalf of Senators CASEY, KLOBUCHAR, WARREN, and WYDEN for the House managers.

The CHIEF JUSTICE. Thank you.

The question for the House managers from Senator BROWN and the other Senators is as follows:

Yesterday, you referenced how President Trump's perpetuating and propagating Russian conspiracy theories undercut our national security objectives. If acquitted in the Senate, what would prevent the President from continuing to side with Putin and other adversaries, instead of our intelligence community and career diplomats, and what are the implications on our national security agenda if such behavior continues, unchecked?

Mr. Manager CROW. Mr. Chief Justice, Senators, thank you for the question.

You know, I have talked a lot tonight and throughout the last week about what is at stake here, because, you know, it is getting late into the night, and we have been having this debate for several days now. There is a lot of discussion in the legal aspects of this. So I don't want to get into, again, you know, the issues of our troops in Europe, the hot war that continues to happen right now as we are speaking in Ukraine, but I will reiterate the precedent that we set with regard to Russia and foreign adversaries—you know, this idea that it is OK to continue to peddle in Russian propaganda and debunked conspiracy theories—because counsel for the President would have you believe that, you know, this is a policy discussion, that, you know, we have not resolved this, that there is a lot of debate about this issue. And if that is indeed the case, if we concede that, then, there are some witnesses that we can call on, including Ambassador Bolton, that could shed additional light on it.

But the fact pattern that we are sitting at right now—what we are talking about right now—is 17 witnesses that were called in the House, none of whom had any indicia or had any data to provide that any of these theories were accurate.

We have the entire intelligence and law enforcement community of the United States unanimously saying that there is no indication that Ukraine was involved in the 2016 election, that it was Russia.

And don't buy the red herring, by the way, that counsel for the President has brought forth—this idea that, oh, it can only be Russia. You know, they said earlier that we are claiming that it can only be Russia. That is not what we are saying. Nobody on this team has ever said it can only be Russia, because, indeed, we know, as many of these people in the Chamber know well, that there are a lot of mal actors out there, that there are a lot of countries out there that have the capability and the will and that regularly try to attack us in a variety of ways.

What we are saying is, with respect to this issue that is before the body right now, that, unanimously, the law enforcement agencies of the United States and the intelligence communities of the United States have said that it was Russia that interfered in the 2016 elections and that there is no data to suggest Ukraine was involved. That is the issue.

So the precedent—bringing it all around to the beginning of the question, the precedent is that all of our adversaries, including Vladimir Putin, will understand that they can play to the whims of one person, whether that be President Trump or some future President, Democrat or Republican. They can play to the whims and the interests and the personal political ambitions of one person and get that individual to propagate their propaganda, get them to undermine our own intelligence and law enforcement communities.

That is a precedent that I don't think anybody here is willing and interested in setting, and that is truly what is at stake.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from North Dakota.

Mr. HOEVEN. Mr. Chief Justice, I am sending a question to the desk for myself, Senator BOOZMAN, Senator WICKER, and Senator CAPITO.

The CHIEF JUSTICE. The question for counsel for the President from Senators HOEVEN, BOOZMAN, WICKER, and CAPITO:

House managers contend that they have an overwhelming case and that they have made their case in clear and convincing fashion. Doesn't that assertion directly contradict their request for more witnesses?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I think it does directly contradict their claim now that they need more witnesses. They said for weeks that it was an overwhelming case. They came here and they have said 63 times that it is overwhelming or proved beyond a reasonable doubt. Manager NADLER said twice today that based on what they have already shown you, it has been proved beyond any doubt.

All right, if that is their position, why do they need more witnesses or evidence? It is completely self-contradictory.

I would like to address a couple of other points while I am here and I have the time, and we have gone back and forth on this, and I don't know why I have to say it again, but the House managers keep coming up here and saying and acting as if, if you mention Ukraine in connection with election interference, if you even mention it, you are a pawn of Vladimir Putin because only the Russians interfered in the election and there is not any evidence in the record—they say—the Ukrainians did anything.

I read it before; I will read it again. One of their star witnesses, Fiona Hill, said that some Ukrainian officials "bet on Hillary Clinton winning the election," so it was "quite evident" that "they were trying to curry favor with the Clinton campaign," including by "trying to collect information . . . on Mr. Manafort and on other people as well." That was Fiona Hill.

There was also evidence in the record from a POLITICO article in 2017 that listed a whole bunch of Ukrainian officials who had done things to try to help the Clinton campaign and the DNC and to harm the Trump campaign.

In addition, two news organizations, both POLITICO and the Financial Times did their own investigative reporting, and the Financial Times concluded that the opposition to President Trump led "Kyiv's wider political leadership to do something they would never have attempted before: [to] intervene, however indirectly, in a US election"—the Financial Times.

So the idea that there is no evidence whatsoever of Ukrainians doing anything to interfere in any way is just not true. They come up here and say it again and again, and it is just not true.

The other thing I would like to point out: Manager SCHIFF keeps suggesting that somehow we are coming here and saying one thing and the Department of Justice is saying something else in court about litigation. That is also not true.

We have been very clear every time. The position of the Trump administration, like the Obama administration, is that when Congress sues in an article III court to try to enforce a subpoena against an executive branch official, that is not a justiciable controversy, and there is not jurisdiction over it. The House managers in the House, though, take the position that they have that avenue open to them.

So our position is, when we go to court, we will resist jurisdiction in the court, but if the House managers want to proceed to impeachment, where they claim that they have an alternative mechanism available to them, our position is the Constitution requires incrementalism in conflicts between the branches, and that means that first there should be an accommodation process, and then Congress can consider other mechanisms at its disposal, such as contempt or such as squeezing the President's policies by withholding appropriations or other mechanisms to deal with that interbranch conflict or, if they claim they can sue in court, to sue in court. But an impeachment is a measure of last resort.

Now, earlier, Manager SCHIFF suggested that today, in court, the Department of Justice went in and said: There is no jurisdiction. And when the judge said: Well, if there is no jurisdiction to sue, then what can Congress do? And the DOJ, as he represented it, simply said: Well, if they can't sue, then they can impeach—as if that was the direct answer to just go from if you can't sue, the next step is impeachment.

Now that didn't seem right to me, because I didn't think that was what DOJ would be saying, and DOJ put out a statement. I don't have a transcript of the hearing. They don't have the transcript ready yet, as far as I know, but DOJ said, and this is a quote from the statement:

The point we made in court is simply that Congress has numerous political tools it can use in battles with the executive branch—appropriations, legislation, nominations, and potentially in some circumstances even impeachment. For example, it can hold up funding for the President's preferred programs, pass legislation he opposes, or refuse to confirm his nominees.

This is continuing their statement:

But it is absurd for Chairman SCHIFF to portray our mere description of the Constitution as somehow endorsing his rush to an impeachment trial.

Thank you.

The CHIEF JUSTICE. The Senator from Connecticut.

Mr. BLUMENTHAL. Thank you, Mr. Chief Justice. I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator BLUMENTHAL to the House managers:

On April 24, 2019—one day after the media reported that former Vice President Biden would formally enter the 2020 U.S. Presidential race—the State Department executed President Trump's order to recall Ambassador Marie Yovanovitch, a well-regarded career diplomat and anti-corruption crusader. Why did President Trump want, in his words, to “take her out”?

Mr. Manager SCHIFF. Mr. Giuliani has provided the answer to that question. He stated publicly that the reason they needed to get Ambassador Yovanovitch out of the way was that she was going to get in the way of these investigations that they wanted. This is the

President's own lawyer's explanation for why they had to push out—why they had to smear—Ambassador Yovanovitch.

So the President's own lawyer gives us the answer, and that ought to tell us something in a couple of respects: one, that the President's own agents have said that she was an impediment to getting these investigations. She was this anti-corruption champion, this anti-corruption champion who is at an awards ceremony or recognition ceremony for a Ukrainian anti-corruption fighter, a woman who had acid thrown in her face and died a painful death after months. She is at the very ceremony acknowledging this other champion fighting corruption when she gets the word: You need to come back on the next plane.

One of the reasons the Ukrainians knew they had to deal with Rudy Giuliani is that Rudy Giuliani was trying to get this Ambassador replaced. And, you know, he succeeded. He succeeded, and that sent a message to the Ukrainians that if Rudy Giuliani had the juice with the President of the United States, the power with the President of the United States to recall an Ambassador from her post, this is not only somebody who had the ear of the President but could make things happen.

So the short answer is that Rudy Giuliani tells us why she had to go.

Now why they had to smear her, why the President couldn't simply recall her—that is harder to explain. But the reason they wanted her out of the way is they wanted to make these investigations go forward, and they knew someone there fighting corruption was getting in the way of that.

Now I wanted to say, with respect to some of the arguments against having the testimony of John Bolton, these are some of the former National Security Advisors who have been called to hearings and depositions: Zbigniew Brzezinski, National Security Advisor for President Carter, provided 8 hours of public hearing testimony and additional deposition testimony before the Senate Judiciary Committee Subcommittee to Investigate Individuals Regarding the Interests of Foreign Governments; Admiral Poindexter testified, providing 25 hours of public hearing testimony and 20 hours of deposition testimony before the House Select Committee to Investigate Covert Arms Transactions with Iran; Robert McFarland, former National Security Advisor for President Ronald Reagan, provided over 20 hours of public hearing testimony and 3 additional hours of deposition testimony; Samuel Berger, National Security Advisor to President Clinton, provided 2 hours of public hearing testimony before the Senate Committee on Governmental Affairs, its inquiry into campaign finance practices; Condoleezza Rice, National Security Advisor to President George W. Bush, 3 hours of public testimony, additional closed session testimony; Susan Rice provided closed session testimony to the House Select Committee on how the Obama administration handled identification of U.S. citizens in U.S. intelligence reports.

There is ample precedent where it is necessary to have testimony of National Security Advisors.

Now you saw, I think, President's counsel dancing on the head of a pin to try and explain why they are before you arguing "We

can't have these people come here; the House should sue in court" and why they are in court saying "The court can't hear it."

I have to say I have a great understanding of the difficulty of that position. I wouldn't want to be in a position of having to advocate that argument. But it goes to the demonstration of bad faith here. How can you be before this body saying "You have got to go to court; the House was derelict because it didn't go to court," and go to the same court and say "The House shouldn't be here"? How do you do that?

Now, they say: Well, the House is in court, so the House must think it is OK, even though we don't think so, and we will argue that and take it all the way up to the Supreme Court if we have to.

We don't think that is an adequate remedy. That is the whole problem. When you have bad faith indication of privilege, when you have, in fact, nonassertion of privilege, when you have a President who wants to continue to cover up his wrongdoing indefinitely—a President who is trying to get foreign help on the very next election—that process of going endlessly up and down the courts with a duplicitous counsel to the President arguing "In one place you can do it and the other place you can't" shows the flaw with a precedent that Congress must exhaust all remedies before it can insist on answers with the ultimate remedy of impeachment.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, I suggest we take a 5-minute break.

The CHIEF JUSTICE. Without objection, it is so ordered.

There being no objection, the Senate, at 9:13 p.m., sitting as a Court of Impeachment, recessed until 9:25 p.m., whereupon, the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senate will come to order.

Ms. ERNST. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Iowa.

Ms. ERNST. Mr. Chief Justice, I send a question to the desk for myself and Senator LANKFORD.

The CHIEF JUSTICE. Thank you. The question from Senators ERNST and LANKFORD is for the counsel for the President:

Members of the House Permanent Select Committee on Intelligence, of which Manager SCHIFF sits as Chairman, conducted a number of depositions related to this impeachment inquiry. One of the individuals deposed was the Intelligence Community Inspector General Michael Atkinson. Has the White House been provided a copy of this deposition transcript? Do believe this transcript would be helpful? If so, why?

Mr. Counsel PHILBIN. Mr. Chief Justice and Senator, thank you for that question.

We have not been provided that transcript. My understanding is that the inspector general for the intelligence community, Mr. Atkinson, testified in executive session, and HPSCI has retained that transcript in executive session and it was not transmitted to the House Judiciary Committee, and, therefore, under the terms of H.

Res. 660, was not turned over to the White House counsel, so we have not seen it.

I just want to clarify: We don't think there is any need to start getting into more evidence or witnesses, but if one were to start going down that road, I think that that transcript could be relevant because it is my understanding, from public reports, that there were questions asked of the inspector general about his interactions with the whistleblower, and there is some question in public reports about whether the whistleblower was entirely truthful with the inspector general on the forms that were filled out and whether or not, you know, there were certain representations made about whether or not there had been any contact with Congress, and that then ties into the contact that the whistleblower apparently had with the staff of the committee, which we also don't know about.

So if we were to go down the road, we don't think it necessary. We think that this—these Articles of Impeachment should be rejected. But if one were to go down the road with any more evidence or witnesses, it would certainly be relevant to find out what the inspector general of the intelligence community had to say about the whistleblower, along with the other issues that we mentioned about the whistleblower's bias, motivation: What were his connections with the whole situation of the Bidens? And, apparently, if he worked with Vice President Biden, did he work—he worked on Ukraine issues, according to public reports—how does that all tie in? All of those things would become relevant in that event. Thank you.

The CHIEF JUSTICE. Thank you, counsel.

Mr. JONES. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Alabama.

Mr. JONES. Thank you, Mr. Chief Justice. I send a question to the desk on behalf of myself, Senator MANCHIN, and Senator SINEMA.

The CHIEF JUSTICE. Thank you. The question from Senators JONES, MANCHIN, and SINEMA is directed to the House managers:

So much of the questions and answers, as well as the presentations, have focused on the completeness of the House record. Should the House have initiated the formal accommodations process with the Administration to negotiate for documents and witnesses after the passage of H. Res. 660? And regardless of whether the House record is sufficient or insufficient to find the President guilty or not guilty, what duty, if any, does the Senate owe to the American public to ensure that all relevant facts are made known in this trial and not at some point in the future?

Mr. Manager SCHIFF. Senators, thank you for the question.

It was apparent from the very beginning, when the President announced that they would fight all subpoenas, when the White House Counsel issued its October 8 diatribe saying they would not participate in the inquiry, that they were not interested in any accommodation.

We tried to get Don McGahn to testify. We tried that route. We have been trying that route for 9 months now. We tried for quite some time before we took that matter to court, with absolutely no success.

And I think what we have seen is, there was no desire on the part of the President to reach any accommodation. Quite the con-

trary, the President was adamant that they were going to fight in every single way.

Now, if they had an interest in accommodation, we wouldn't be before you without a single document. There would have been hundreds and hundreds of documents provided. We would have entered an accommodation process over claims of—narrow claims of privilege as to this sentence or that sentence. They would have had to make a particularized claim that we could have negotiated over. But, of course, they did none of that.

They said: Your subpoenas are invalid. You have to depart from the bipartisan rules of how you conduct your depositions. Essentially, our idea of accommodation is you have to do it our way or the highway. And the President's instructions, the President's marching orders were: Go pound sand.

Now, what is the Senate's responsibility in the context of a House impeachment for which there was such blanket obstruction? And bear in mind, if you compare this to the Nixon impeachment, Richard Nixon told his people to cooperate, provided documents to the Congress. Yes, there were some that were withheld, and that led to litigation, and the President lost that litigation. But the circumstances here are very different.

Frankly, the President could have made this difficult case but didn't because of the wholesale nature of the obstruction.

Now, in terms of the Senate's responsibility, the Constitution says:

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation.

And so you have the sole power.

That expression is used, I believe, only twice in the Constitution: One, when it tells the House that we have the sole power to conduct an impeachment proceeding; and, again, the process we used—and they can repeat this as often as they would like—it is the same process used in the Clinton and Nixon impeachments. And I am sure Clinton and Nixon thought that was unfair, but, nonetheless, we used the same process.

But, here, you have the sole power to try the case. And if you decide that 1 week is not too long, in the interest of a fair trial, to have depositions of key witnesses, that is for you to decide. You get to decide how to try the case.

And so if you decide that you have confidence in the Chief Justice of the Supreme Court to make decisions about materiality and relevance and privilege and make those line-by-line redactions, if they are warranted, if you decide you trust the Chief Justice to decide whether privilege is being applied properly or improperly to conceal crime or fraud or for legitimate national security purpose, you have the sole power to make that happen. That is within—every bit within your right, and we would urge you to do so.

Now, counsel for the President says the Constitution doesn't require that. The Constitution doesn't prohibit that. It gives you the sole power to try this case. And under your sole power, you can say: We have made a decision. We are going to give the parties 1 week. We are going to let the Chief Justice make a fair determination of who is pertinent and who is not. We are not going to let the House decide who the President's witnesses are; we are not

going to let the President decide who the House witnesses are. We are going to let them both submit their top priorities, and we are going to let the Chief Justice decide who is material and who is not. That is fully within your power.

And so, in sum and substance, there is no evidence of an intention or willingness in any way, shape, or form to accommodate in the House. If there was, we wouldn't be here. Instead, there was: We will fight all subpoenas, and under article II, I can do whatever I want. And now we are here.

And they make the astounding claim: If their case is so good, let them try it without witnesses. That wouldn't fly before any judge in America, and it shouldn't fly here either.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mrs. BLACKBURN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Tennessee.

Mrs. BLACKBURN. I send to the desk a question on behalf of myself and Senators LEE and JOHNSON.

The CHIEF JUSTICE. Thank you.

The question from Senator BLACKBURN and Senators LEE and JOHNSON is for counsel for the President:

What was the date of first contact between any member of the House Intelligence committee staff and the whistleblower regarding the information that resulted in the complaint? How many times have House Intelligence committee members or staff communicated in any form with the whistleblower since that first date of contact?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for that question.

The answer is, we don't know. Nobody knows. We don't know when the first contact was. We don't know how many contacts there were. We don't know what the substance of the contact was. That all remains shrouded in some secrecy.

And as I said a moment ago, we think that the way this case has been presented, this body should simply acquit. There is no need to get more evidence to probe into that.

But if we were to go down the road of any evidence or witnesses, then those are certainly relevant questions and relevant things to know about, to understand what those contacts were, what the whistleblower's motivation was, what is the connection between the whistleblower and any staffers, and how that played any role in the formulation of the complaint. That would all be relevant to understand how this whole process began.

Now, I do want to mention something else, while I have the moment, in response to some things that Manager SCHIFF said.

Again, the House managers come up—it seems like they keep saying the same thing, and we keep pointing to actual evidence and letters that disprove what they are saying. They come up and say that the President said: It is my way or the highway—blanket defiance—there is nothing you can do. And they say that, well, they would have accommodated if we were willing to participate in the accommodation process.

The October 8 letter that Counsel for the President, who Mr. SCHIFF says acts in bad faith and called duplicitous here on the floor of the Senate, sent a letter on October 8 to Mr. SCHIFF and others explaining: "If the Committees wish to return to the regular

order of oversight requests, we stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections and a respect for the separation of powers enshrined in our Constitution.”

That was followed up in an October 18 letter that I mentioned before, a letter that specified the defects in the subpoenas that had been issued—not blanket defiance, not simply “we don’t cooperate”—specifying the legal errors in the subpoenas.

And it concluded: “As I stated in my letter of October 8th, if the Committees wish to return to the regular order of oversight requests, we stand ready to engage in that process as we have in the past, in a manner consistent with well-established constitutional protections and a respect for the separation of powers enshrined in our Constitution.”

The President stood ready to engage in the accommodations process. If anyone said: “My way or the highway” here, it was the House because the House was determined that they wanted just to get their impeachment process done on the fastest track they could. They didn’t want to do any accommodation. They didn’t want to do any litigation. They didn’t want anything to slow them down. They wanted to get it done as fast as they could so it was finished by Christmas.

It was a partisan charade from the beginning. It resulted in a partisan impeachment, with bipartisan opposition, and it is not something this Chamber should condone.

The CHIEF JUSTICE. Thank you, counsel.

Ms. ROSEN. Mr. Chief Justice.

The CHIEF JUSTICE. The Senator from Nevada.

Ms. ROSEN. I have a question I send to the desk for the House managers.

The CHIEF JUSTICE. Thank you.

The question from Senator ROSEN is for the House managers:

During the President’s phone call with Ambassador Sondland he insisted there was no “quid pro quo” involving the exchange of aid and a White House meeting for an investigation, but he also said, according to Sondland, that the stalemate over aid will continue until President Zelensky announces the investigations. Isn’t that the definition of the exact quid pro quo that the President claimed didn’t exist?

Mr. Manager SCHIFF. The short answer is yes; that is exactly what a quid pro quo is.

When someone says: “I am not going to ask you to do this,” but then says: “I am going to ask you to do this,” that is exactly what happened here.

Sondland calls the President, and the first words out of his mouth are “no quid pro quo.” Now, that is suspicious enough when someone blurts out there—what we would find out is a false exculpatory, but then the President goes on, nonetheless, to say: “No quid pro quo.”

At the same time, Zelensky has got to go to the mic to announce these investigations—that is the implication—and he should want to do it. So no quid pro quo over the money, but Zelensky has got to go to the mic.

And if you have any question about the accuracy of that, you should demand to see Ambassador Taylor’s notes, Tim Morrison’s

notes. And, of course, Sondland goes and tells Ukraine about this coupling of the money in order to get the investigations.

Let me just, if I can, go through a little of the history of that. You have Rudy Giuliani and others trying to make sure the Ukrainians make these statements in the runup to that July phone call. This is the quid pro quo over the meeting. So they are trying to get the statement that they want. They are trying to get the announcement of the investigations. And around this time, prior to the call, the President puts a freeze on the military aid. And then you have that call, and the minute that Zelensky brings up the defense support and the desire to buy more Javelins, that is when the President immediately goes to the favor he wants.

So the Ukrainians, at this point, know that the White House meeting is conditioned on getting these investigations announced, but in that call, the minute military aid is brought up, the President pivots to the favor he wants of these investigations they already know about.

Now, after that call, the Ukrainians quickly find out about the freeze in aid. According to the former Deputy Foreign Minister, they found out within days. July 25 is the call. By the end of July, Ukraine finds out the aid is frozen. The Deputy Foreign Minister is told by Andriy Yermak: Keep this secret. We don't want this getting out. She had planned to come to Washington. They canceled her trip to Washington because they don't want this made public.

And so, in August, there is this effort to get the investigations announced. That is the only priority for the President and his men. So the Ukrainians know the aid is withheld. They know they can't get the meeting. They know what the President wants, these investigations. And the Ukrainians, like the Americans, can add up two plus two equals four. But if they had any question about that, Sondland removes all doubt on September 1 in Warsaw, when Sondland goes over—after the Pence-Zelensky meeting, he goes over to Yermak, and he says that “until you announce these investigations, you are not getting this aid.”

He makes explicit what they already knew—that not just the meeting but the aid itself was tied. And on September 7, Sondland tells Zelensky directly: The aid is tied to your doing investigations. And it is at that point, on September 7, when Zelensky is told by Sondland directly of the quid pro quo, that Zelensky finally capitulates and says: All right; I will make the announcement on CNN.

And then the President is caught. The scheme is exposed. The President is forced to release the aid. And what does Zelensky do? He cancels the CNN interview because the money was forced to be released when the President got caught.

But that is the chronology here. Let's make no mistake. The Ukrainians are sophisticated actors. As one of the witnesses said, they found out very shortly after the hold. The Ukrainians have good tradecraft. They understood very quickly about this hold.

And what would you expect when you are fighting a war and your ally is withholding military aid without explanation and the only thing they tell you that they want from you is the announcement of these investigations? And if it wasn't clear enough, they hammered them over the head with it and told Yermak on September 1: You are not getting the money without announcing these

investigations. They tell Zelensky himself on September 7: You are not getting the money without these investigations. And finally the resistance of this anti-corruption reformer, Zelensky, is broken down. He desperately needs the aid. Finally, the resistance is broken down: All right; I will do it. He is going to go on CNN.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Kansas.

Mr. MORAN. Mr. Chief Justice, I have a message to be sent to the desk, a question. It is on my behalf and on behalf of Senator RUBIO, Senator CRAPO, and Senator RISCH.

The CHIEF JUSTICE. Thank you.

The question from Senators MORAN, CRAPO, RUBIO, and RISCH for the counsel for the President reads as follows:

Impeachment and removal are dramatic and consequential responses to Presidential conduct, especially in an election year with a highly divided citizenry. Yet checks and balances is an important constitutional principle. Does the Congress have other means—such as appropriations, confirmations, and oversight hearings—less damaging to our nation?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question. And yes, Congress has a lot of incremental steps, a lot of means short of impeachment to address friction or conflicts with the executive branch. That was the point that I was making a moment ago with respect to what the Department of Justice has said in litigation today where the absolute immunity for senior advisers—actually, I think it was a different issue in that case. I beg your pardon.

But anyway, there is a dispute in that case about information requests, and the point the DOJ was making there is the Constitution requires incremental steps where there is friction between the branches.

As I mentioned the other day, friction between the branches—between Congress and the executive—on information requests in particular is part of the constitutional design. It has been with us since the first administration. George Washington denied requests from Congress for information about the negotiation of the Jay Treaty. So from the very beginning, there has been this friction leading to jockeying for position and accommodations and confrontation and leading to ways of working things out when Congress demands information from the executive and the executive asserts to protect the institutional authorities of the executive branch, the sphere where the executive can be able to keep information confidential.

But the first step in response to that should be the accommodations process. And the courts have described that as constitutionally mandated, something that actually furthers the constitutional scheme, to have the branches negotiate and try to come to an arrangement that addresses the legitimate needs of both branches of the government.

Part of that accommodations process is—or as it gets—as the confrontation continues can involve Congress exercising the levers of authority that it has under article I to try to put pressure on the executive. So, for example, appropriations, not funding the policy priorities of a particular administration or cutting funding on some policy priorities; or legislation, not passing legislation that

the President favors or passing other legislation that the President doesn't favor. Or the Senate has the power not to approve nominees. As I am sure many of you well know, holding up nominees in committee can be effective in some points, putting pressure on an administration to get particular policies picked loose, things accomplished in a particular department or agency.

All of these elements of the interplay of the branches of government—that is part of the constitutional design. But impeachment is the very last resort for the very most serious conflict where there is no other way to resolve it.

So there are all of these multiple intermediate steps, and they all should be used. They all should be exercised in an incremental fashion. That is exactly what didn't happen in this case. There was no attempt at the accommodations. There was no attempt even to respond to the legal issues, the legal defects that counsel for the President and the departments and agencies pointed out in each of the subpoenas that were issued by the House committees.

And even the issue of agency counsel—there was no attempt to try to negotiate on that. And that is really something that, in the past—even last April, with the House Committee on Oversight and Government Reform with Chairman Cummings, there was a dispute about that. We wouldn't allow a witness to go without agency counsel, and then we had a meeting with Chairman Cummings, and it got worked out. And it was turned into a transcribed interview, I think, and the—but agency counsel was permitted to be there. But the committee got the interview. They got to talk to the person. They got the information they wanted. But the executive branch got to have agency counsel there to protect executive branch interests. That is the way it is supposed to work, but there was no attempt at anything like that from the House in this case.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Massachusetts.

Mr. MARKEY. Mr. Chief Justice, I send a question to the desk for the House managers.

The CHIEF JUSTICE. Thank you. Senator MARKEY's question for the House managers reads as follows:

It has recently been reported that the Russians have hacked the Ukrainian natural gas company Burisma, presumably looking for information on Hunter Biden. Our intelligence community has warned us that the Russians will be interfering in the 2020 election. If Donald Trump is acquitted of these pending charges but is later found to have invited Russian or other foreign interference in our 2020 election, what recourse will there be for Congress under the Dershowitz standard for impeachment, which requires a president to have committed a statutory crime?

Mr. Manager SCHIFF. Senator, absolutely no recourse. No recourse whatsoever. If, in fact, it were later to be shown that not only did the Russians hack Burisma to try to get dirt on the Bidens and drip, drip, drip it out as they did in the 2016 election—let's say it were found that they did so at the request of the President of the United States; that in one of these meetings that the President had with Vladimir Putin, whose contents is unknown, that the President of the United States asked the President of Russia to hack Burisma because he couldn't get the Ukrainians to do what he wanted, so now he was turning to the Russians to do it. Under

the Dershowitz theory of the case, under the President's theory of the case, that is perfectly fine.

But that is not—that is not how bad it is because it goes further than that. If the President went further and said to Putin in that secret meeting: I want you to hack Burisma. I couldn't get the Ukrainians to do it, and I will tell you what, if you hack Burisma and you get me some good stuff, then I am going to stop sending money to Ukraine. And I will go a step further. I am going to stop sending money to Ukraine so that they can't fight you in Donbass. And what is more, those sanctions that we imposed on you for your intervention on my behalf in the last election, I am going to make those go away. I am going to simply refuse to enforce them. I am going to call it a policy difference.

That is perfectly fine under their standard. That is not an abuse of power. You can't say that is criminal. Yet it is akin to crime—or maybe it is not, but that is what an acquittal here means. It means that the President is free to engage in all the rest of that conduct, and it is perfectly fine.

And what is the remedy that my colleagues representing the President say that you have to that abuse? Well, you can hold up a nominee. That seems wholly out of scale with the magnitude of the problem. That process of the appropriations or nominations is not sufficient for a Chief Executive Officer of the United States who will betray the national security for his own personal interests.

He got on the phone with Zelensky asking for this favor the day after Bob Mueller testifies. What do you think he will be capable of doing the day after he is acquitted here, the day after he feels: I have dodged another bullet. I really am beyond the reach of the law. My Attorney General says I can't be indicted; I can't even be investigated. He closed the investigation into this matter before he even opened it. And I can't be impeached either. I have got the best of both worlds. I have got Bill Barr saying I can't be investigated. I can't be prosecuted. I can be impeached, however. That is what Bill Barr says. But I have got other lawyers who say I can't be impeached.

That is a recipe for a President who is above the law. Not only is it not required by the Constitution—quite the contrary. The Founders knew, coming from a monarchy, that if they were going to give extraordinary powers to their new Executive, they needed an extraordinary constraint. They needed a constraint commensurate with the evil which they sought to contain. That remedy is not holding up a nomination. The remedy they gave for an Executive that would abuse their power and endanger the country, that would endanger the integrity of our elections, was the power of impeachment.

As one of the experts said in the House, if this conduct isn't an impeachable offense, then nothing is.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from South Carolina.

Mr. GRAHAM. Mr. Chief Justice, I send a question to the desk on behalf of myself and Senators ALEXANDER, CRUZ, PORTMAN, TOOMEY, SULLIVAN, and MURKOWSKI to the counsel for the President.

The CHIEF JUSTICE. Thank you.

The question from Senator GRAHAM and the other Senators is for the counsel for the President:

Assuming for argument's sake that Bolton were to testify in the light most favorable to the allegations contained in the Articles of Impeachment, isn't it true that the allegations still would not rise to the level of an impeachable offense and that, therefore, for this and other reasons, his testimony would add nothing to this case?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

Let me start by just making very clear that there was no quid pro quo. There was no—and there is no evidence to show that. There was not that sort of linkage that the House managers have suggested.

But let me answer the question directly, which I understand to be assuming for the sake of argument that Ambassador Bolton would come and testify the way the New York Times article alleges, the way his book describes the conversation. Then it is correct that, even if that happened, even if he gave that testimony, the Articles of Impeachment still wouldn't rise to an impeachable offense. That is for at least two reasons. Let me explain that.

The first is, on their face, the Articles of Impeachment, as they have been laid out by the House managers, even if you take everything that is alleged in them, they don't, as a matter of law, rise to the level of an impeachable offense because even the House managers haven't characterized them as involving a crime. So that is one level of the answer, that an impeachable offense would require a crime.

Even going beyond that, a second level, the theory of abuse of power that they have alleged—put aside whether or not it is a crime, the theory of abuse of power that they have asserted is not something that conforms with the constitutional standard of high crimes and misdemeanors. It depends entirely on subjective intent, and it is subjective intent alone.

As Professor Dershowitz explained, and as I have explained—and I don't mean in the more radical portion of his explanation of his theory, I mean just in terms of what is high crimes and misdemeanors. He explained that something that is based entirely on subjective intent is equivalent to maladministration. It is equivalent to exactly the standard that the Framers rejected because it is completely malleable. It doesn't define any real standard for an offense. It allows you to take any conduct that on its face is perfectly permissible, and on the basis of your projection of a disagreement with that conduct, a disagreement with the reasons for it to attribute a bad motive, to try to say there is a bad subjective motive for doing that and will make it impeachable, that doesn't conform to the constitutional standard.

At the common law, they would call the reaction to a charge like this a demurrer. You demur and simply say, even if everything you say is true, that is not an impeachable offense under the law. And that is an appropriate response here. Even if everything you allege is true, even if John Bolton would say it is true, that is not an impeachable offense under the constitutional standard because the way you have tried to define the constitutional standard, this the-

ory of abuse of power is far too malleable. It goes purely to subjective intent. It can't be relied upon.

The third level of my answer is this. We have demonstrated that there is a legitimate public policy interest in both of the matters that were raised on that telephone call: the 2016 election interference and the Biden Burisma affair. Because there is a legitimate public policy interest in both of those issues, even if it were true that there was some connection, even if it were true that the President had suggested or thought that, well, maybe I should hold up this aid until they do something, that is perfectly permissible where there is that legitimate public policy interest.

It is just the same as if there is an investigation going on. The President wants a foreign country to provide some assistance. It is a legitimate foreign policy interest to get that assistance. It is legitimate to use the levers of foreign policy to secure that assistance. So because there is a legitimate public policy interest in both of those issues—and I think we have demonstrated that clearly—it would be permissible for there to be that linkage.

But again, I will close where I began, which is there was no such linkage here. I just want to make that clear. But taking for the sake of argument the question as phrased, even if Ambassador Bolton would testify to that, even if you assumed it were true, there is no impeachable offense stated in the Articles of Impeachment.

Thank you.

The CHIEF JUSTICE. Thank you.

The Senator from Illinois.

Mr. DURBIN. Mr. Chief Justice, I send a question to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator DURBIN for the House managers:

Would you please respond to the answer that was just given by the President's counsel?

Mr. Manager SCHIFF. Senators, it has been a long couple of days, so let me be blunt about where I think we are. I think we all know what happened here. I think we all understand what the President did here. I don't think there is really much question at this point about why the military aid was withheld or why President Zelensky couldn't get in the door of the Oval Office. I don't think there is any confusion about why he wanted Joe Biden investigated or why he was pushing the CrowdStrike conspiracy theory. I don't think there is really much question about that. I don't think there is any question about what we could expect if and when John Bolton testifies, although the details of which we certainly don't know. I don't think there is really much question about that. But what is extraordinary is, although they can claim that this was a radical mistake or notion of Professor Dershowitz that they seem to be distancing themselves from right now, I guess they think they are accusing Dershowitz now of some maladministration in his argument of the defense—they are still embracing that idea.

What they just told you admittedly in outline of A, B, and C, what they just told you is: accept everything the House said, accept the President withheld the military aid to coerce Ukraine into helping him cheat in the election, accept that these investigations are a sham, accept that he obstructed all subpoenas and witnesses, ac-

cept all of that. Too bad. There is nothing you can do. That is not impeachable.

A President of the United States—this is now where we have come to in this moment of our history, the President of the United States can withhold hundreds of millions of dollars in aid that we appropriated, can do so in violation of the law, can do so to coerce an ally, in order to help him cheat in an election, and you can't do anything about it, except hold up a nomination. That is not impeachable.

They can abuse their power all they want—the President, this President, the next President can abuse their power all they want in the furtherance of their reelection as long as—here is the limiting principle—as long as they think their reelection is in the national interest. Well, that is quite a constraint. That is where we have come now after 2½ centuries of our history.

I think our Founders would be aghast that anyone would make that argument on the floor of the Senate. I think they would be aghast, having come out of a monarchy, having literally risked their lives, having taken this great gamble that people could be entrusted to run their own government and choose their own leaders, recognizing that we are not angels, setting up a system that would have ambition, counterambition, that we would so willingly abdicate that responsibility and say that a Chief Executive now has the full power to coerce our ally—a foreign power—to intervene in our election because they think it is in the national interest that they get reelected.

Is that really what we think the Founders would have condoned, or do we think that this is precisely the kind of character of conduct that they provided a remedy for? I think we know the answer to that.

They wrote a beautiful Constitution. They understood a lot about human nature. They understood, as we do, that absolute power corrupts absolutely. And they provided a constraint, but it will only be as good and as strong as the men and women of this institution's willingness to uphold it, to not look away from the truth.

The truth is staring us in the eyes. We know why they don't want John Bolton to testify. It is not because we don't really know what happened here. They just don't want the American people to hear it in all of its ugly, graphic detail. They don't want the President's National Security Advisor on live TV or even in a nonlive deposition to say: I talked with the President, and he told me in no uncertain terms: John—

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Manager SCHIFF. To be continued.

The CHIEF JUSTICE. The Senator from Georgia.

Mrs. LOEFFLER. I send a question to the desk on behalf of myself and Senators HAWLEY, CRUZ, PERDUE, GARDNER, LANKFORD, HOEVEN, TOOMEY, SCOTT of Florida, PORTMAN, and FISCHER.

The CHIEF JUSTICE. Thank you.

The question from Senator LOEFFLER and the other Senators is for the counsel of the President:

As reported by POLITICO, "in January 1999, then-Sen Joe Biden argued strongly against deposing additional witnesses or seeking new evidence in a memo sent to

fellow Democrats ahead of Bill Clinton's impeachment trial." POLITICO reports that Sen SCHUMER agreed with Biden. Why should the Biden rule not apply here?

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, in a memorandum dated January 5, 1999, that is captioned "Arguments in Support of Summary Impeachment Trial," Senator Biden discussed some history first regarding two Senate impeachment proceedings that were put forward in the Senate that were summarily decided. This is what he said:

These two cases demonstrate that the Senate may dismiss articles of impeachment without holding a full trial or taking any evidence. Put another way, the Constitution does not impose on the Senate the duty to hold a trial. In fact, the Senate need not hold a trial even though the House wishes to present evidence and hold a full trial (Blount) and the elements of jurisdiction are present (English).

He went on to say:

In a number of previous impeachment trials, the Senate has reached the judgment in its constitutional role as sole trier of impeachments does not require it to take new evidence or hear live witness testimony.

This follows from the Senate's consideration of motions for summary disposition in at least three trials [and it listed the three trials of Judges Ritter, Claiborne, and Nixon]. In each, the Senate considered a motion for summary disposition on the merits and in no case did the Senate decline to consider a motion for summary disposition as beyond the Senate's authority or as forbidden by the Constitution.

The Framers did not mean that this political process was to be a partisan process. Instead, they meant it to be political in the higher sense. The process was to be conducted in the way that would best secure the public interest or, in their phrase, the "general welfare." That was the Biden doctrine of impeachment proceedings.

Now, some Members in this Chamber agreed with that. Some Members that serve on the—as managers also agreed with that. But now the rules are different. The rules are different because Manager SCHIFF just moments ago did what he is now famous for and created a conversation, purportedly from the President of the United States, regarding Russia hacking of Burisma. And it is the same thing he did when he started his hearings.

So this is a common practice. But if we want to look at common practice and common procedures, the Biden rule is one. I would like to address something else because we have heard it time and time again about two judges have decided this issue of executive privilege. I want to address two things very quickly.

My very first case at the Supreme Court of the United States—and it was a long time ago, over 30—over 30 years ago, 33 years ago. My client lost in the district court. They said: Well, we will appeal to the Ninth Circuit Court of Appeals. We went to the Ninth Circuit Court of Appeals, was not so successful and did not win there either. My client said: Well, what do we do?

I said: We have one option. We can file a petition for certiorari to the Supreme Court of the United States. Chances are they are not going to take the case. But at this point, it is an important issue to you, so why don't we proceed. My client agreed to proceed.

A petition for certiorari was granted, and the Court reversed 9 to 0. And that is why you continue to utilize courts when appropriate. That is why you do it. And you don't rely on what a district court judge says.

The last thing I want to say, they are asking you, as a Senate body, to waive executive privilege on the President of the United States. Think about that for a moment. They are asking you to vote to determine or have the Chief Justice in his individual capacity as Presiding Judge vote to waive executive privilege as it relates to the President of the United States. And that is what they think is the appropriate role for this proceeding to continue. I think you should adopt the Biden rule.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Colorado.

Mr. BENNET. Mr. Chief Justice, thank you. I would like to send a question to the desk on behalf of myself and Senator WARNER.

The CHIEF JUSTICE. Thank you.

The question from Senators BENNET and WARNER is to the House managers:

Mr. Sekulow said that if the Senate votes for witnesses, he will call a long chain of witnesses that will greatly lengthen the trial. Isn't it true that the Senate will establish by majority vote which, and how many witnesses there will be? Isn't it also true that prior impeachment trials in the Senate commonly have heard witnesses who did not testify in the House?

Mr. Manager JEFFRIES. I thank you, Mr. Chief Justice. I thank the distinguished Senators for their questions.

It certainly is the case that all we are asking the Senate to do is to hold a full and fair trial consistent with the Senate's responsibility—article I, section 3 of this Constitution: "The Senate shall have the sole Power" with respect to an impeachment trial. And this great institution has interpreted that, during the 15 different impeachment trials that have taken place during our Nation's history, that a full and fair trial means witnesses, because this institution, every time it has held a trial, has heard witnesses all 15 times, including in several instances where there were witnesses who did not testify in the House who testified in the Senate.

Now, the point was raised earlier about Benghazi. And Trey Gowdy—he is a good man. I served with him. He is a very talented lawyer. I am sure he is pleased—the distinguished gentleman from the Palmetto State—that his name has been brought into this proceeding. But Trey Gowdy, according to one of the questions, said that the administration didn't cooperate. The White House, in that instance, and the State Department turned over tens of thousands of documents pursuant to a House subpoena. That is cooperation. Several witnesses appeared voluntarily in Benghazi, including GEN David Petraeus, former CIA Director; Susan Rice, who at the time was the National Security Advisor; Ben Rhodes, the Deputy National Security Advisor; ADM Mike Mullen, former Chairman of the Joint Chiefs of Staff; GEN Carter Ham, former commander of AFRICOM; Defense Secretary Leon Panetta, he also showed up; GEN Michael Flynn, former DIA Director. Who else showed up? The former Secretary of State, Hillary Clinton. She testified publicly under oath for 11 hours. That is cooperation.

What happened in this particular instance in the House? No documents, no witnesses, no information, no cooperation, no negotiation, no reasonable accommodation—blanket defiance. That is what resulted in the obstruction of Congress article.

So all we are asking for is the Senate to hold a fair trial consistent with past practice. At every single trial this Senate has held, the average number of witnesses was 33. We cannot normalize lawlessness. We cannot normalize corruption. We cannot normalize abuse of power—a fair trial.

Lastly, of the witnesses that did testify, voluntarily showed up, what did they have to say? These were Trump administration witnesses.

Ambassador Sondland, how did he characterize the shakedown scheme, the geopolitical shakedown at the heart of these allegations? Ambassador Sondland, “quid pro quo”; Ambassador Taylor, “crazy”; Dr. Fiona Hill, “a domestic political errand”; LTC Vindman, “improper”; John Bolton, “drug deal.”

What would the Framers have said? The highest of high crimes against the Constitution.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Utah.

Mr. ROMNEY. I have a question to send to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator ROMNEY is for both parties, and I believe the House manager will go first:

Do you have any evidence that anyone was directed by President Trump to tell the Ukrainians that security assistance was being held upon the condition of an investigation into the Bidens?

Mr. Manager SCHIFF. Senator, the evidence that is currently in the record—there are two people who had direct conversations with the President about the conditioning of aid on the performance of the investigations. The first was Gordon Sondland, who on September 7 had a conversation with the President that thereafter he relayed to Tim Morrison as well as Ambassador Taylor. And in the conversation that Ambassador Sondland described at the time, he said the President on the one hand said no quid pro quo but then went on to say that Zelensky has to announce these investigations and he should want to.

So the President made the direct link to Ambassador Sondland. Ambassador Sondland then made the direct link—or had already made the direct link to Andriy Yermak, but after the conversation with the President, had a conversation with Zelensky himself and conveyed what he had been informed by the President, that Zelensky was going to have to conduct these investigations. And that is when Zelensky made the commitment to go on CNN.

So Ambassador Sondland has acknowledged the tie between the two. So did Mick Mulvaney. And I think that video is now etched in our minds for all of history. Trying to walk that back as he may, he was quite adamant when he was asked about that, and the reporter even followed up when he said that part of the reason why they held up the aid was the desire for this investigation into 2016. And the reporter said: Well, what you are saying is a quid pro quo. You don't get the money unless you do the investigation of the Democrats. And the Chief of Staff's answer was: “We do that all the time; get over it.”

So you have it from the President's own Chief of Staff. You have it from one of the three amigos, the President's point people. And bear in mind, Ambassador Sondland—of course, not a Never

Trumper; a million-dollar donor to the Trump inaugural; someone the President deputized to have a significant part of the Ukraine portfolio; someone who, given he is an EU Ambassador, if this was about burden-sharing, would have said this was about burden-sharing, but he didn't, of course. He said it was about the investigations.

The third direct witness would be John Bolton if we are allowed to bring him before you.

But there already are witnesses and evidence in the record of people who spoke directly to the President about this and to which the conditionality was made clear.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. Counsel PURPURA. Mr. Chief Justice, Senator, thank you for your question.

I believe the question was, is there any evidence that anyone told—that President Trump had anyone tell the Ukrainians directly that the aid was linked? I believe that was the question, and the answer in the House record is no. I described this on Saturday when I walked through at length, and so I refer back to that presentation.

Ambassador Sondland and Senator JOHNSON. Ambassador Sondland indicated in approximately the September 9 timeframe—as we all heard his statement, he asked the President. The President said: “I want nothing. I want nothing. I want no quid pro quo.”

And you heard a lot from the House managers about, go out to the microphones or make this—do the right thing. But I believe the statement was, he needs to do the right thing. He needs to do what he campaigned on.

Even earlier, Senator JOHNSON—again, because Ambassador Sondland told Senator JOHNSON that there was a linkage. So Senator JOHNSON asked the President directly, and we know the answer to that. The President said: Was there any connection—when Senator JOHNSON asked if there was any connection between security assistance and investigations, the President answered: “No way. I would never do that. Who told you that?” And the answer was Sondland. And Ambassador Sondland had come to that presumption prior to speaking to the President. And we saw the montage from Ambassador Sondland about presumptions and assumptions and guessing and speculating and belief. So we also remember the montage in which Ambassador Sondland was asked: Did anyone on the planet tell you that the aid was linked to the investigations? And his answer was no.

So in the House record before us, there is no evidence that the President told anyone to tell the Ukrainians that the aid was linked. And, in fact, the article from the Daily Beast yesterday—

The CHIEF JUSTICE. Thank you, Mr. Counsel.

Mr. Counsel PURPURA. Thank you, Chief Justice.

The CHIEF JUSTICE. The Senator from Oregon.

Mr. MERKLEY. Mr. Chief Justice, I send a question to the desk for Senator SCHATZ, for Senator CARPER, and for myself.

The CHIEF JUSTICE. Thank you.

The question is for the House managers from Senators MERKLEY, SCHATZ, and CARPER:

Yesterday, Alan Dershowitz stated that a President cannot be impeached for soliciting foreign interference in his re-election campaign if he thinks it's in the public interest. The President's Counsel stated the President cannot be prosecuted for committing a crime. And the President himself has said "I have the right to do whatever I want as President." Aren't these views exactly what our Framers warned about: an imperial President escaping accountability? If these arguments prevail, won't future Presidents have the unchecked ability to use their office to manipulate future elections like corrupt foreign leaders in Russia and Venezuela?

Mr. Manager SCHIFF. Thank you for the question, Senators. Before I address it, I just want to complete my answer to the last question.

On September 7, the President has a conversation with Gordon Sondland, and the President says: No quid pro quo, but Zelensky has got to go to the mic, and he should want to do so.

This is in the context of whether the aid is being withheld in order to secure the investigations. After that call on the same day, Sondland calls Zelensky, the President of Ukraine, and says: You are not going to get the money unless you do the investigations.

So you have got the communication between the President and Sondland and Sondland conveying the message to the Ukrainians in short succession. And so I think you see that the message the President gave to Sondland was, in fact, communicated immediately to the Ukrainians.

Of course, Sondland went on to explain to Ambassador Taylor and to Tim Morrison that the President wanted Zelensky in a public box. What was meant by that is he wanted him to have to go out and announce publicly these investigations if he were going to get the money. Remember, Sondland explained that the President is a businessman, and before he gives away something, he wants to—before he signs the check, he wants to get the deliverable. Ambassador Taylor says: That doesn't make any sense. Ukraine doesn't owe him anything.

So it was clear to everyone, including the Ukrainians, that they were not going to get the money unless they did the investigations that the President wanted. That is the connection on September 7 that makes it crystal clear.

In terms of the Dershowitz argument, when coupled with a President who believes that, under article II, he can do whatever he wants, yes. I mean, this is the prescription of a President, not just of an imperial President but of an absolute President with absolute power because, if a President can take this action and extort one country, he can extort any country. If he can make a deal with the President of Venezuela or take an action that is antagonistic to what Congress has legislated with respect to that country and can violate the law in doing it to get help in his reelection—and I think that example that Senator KING asked about is directly on point—then there is no limiting principle here, as long as the President thinks it is in the interest of his reelection.

So, yes, he can ask the Israeli Prime Minister to come to the United States and call his opponent an anti-Semite if he wants to get U.S. military aid. That principle can be applied anywhere to anything, to the grave danger of the country.

That is the logical extension not just to what Professor Dershowitz said yesterday but to what the President's counsel said today. You can accept every fact of the articles, and we still think

it is fine and beyond the reach of the Constitution. The President can extort an ally by withholding military aid and withholding meetings. He can ask them to do sham investigations, even if you acknowledge the fact that they are a sham. In fact, they don't even have to be done; they just have to be announced, and there is nothing Congress can do about it. That is a prescription for a President with no constraint.

The CHIEF JUSTICE. Thank you, Mr. Manager.

The Senator from Indiana.

Mr. BRAUN. Mr. Chief Justice, I, along with Senator LEE, send to the desk a question for the President's counsel.

The CHIEF JUSTICE. Thank you.

The question from Senators BRAUN and LEE is for the counsel for the President:

Under Professor Dershowitz's theory, is what Joe Biden is alleged to have done potentially impeachable, in contrast to what has been alleged against President Trump?

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, thank you for the question.

I believe that, under Professor Dershowitz' theory, remember, he tried to categorize things into three buckets. One was of purely good motives. One was, well, you might have some motive for your personal political gain, as well as public interest motives for doing something or intent. Then there was the third bucket of purely private pecuniary gain. He said that is the one, if you are doing it for purely private pecuniary gain, that is the problem.

I think that would be the distinguishing factor in what is potentially a presence in the facts known about the Biden and Burisma incident because the conflict of interest that would be apparent on the face of the facts that are known is that there would be a personal, family financial interest in that situation.

Vice President Biden is in charge of Ukraine policy. His son is sitting on the board of a company that is known for corruption. The public reports are that, apparently, the prosecutor general was investigating that company and its owner, the oligarch, at the time. Then Vice President Biden quite openly said that he leveraged \$1 billion in U.S. loan guarantees to ensure that that particular prosecutor was fired at that time.

One could put together fairly easily from those known facts the suggestion that there was a family financial benefit coming from the end of that investigation because it protected the position of the younger Biden on the board, and that would be a purely private pecuniary—financial—gain. That is the third bucket that Professor Dershowitz was describing and the one that is necessarily problematic when he said that that is where there is going to be a problem, that that is where you would have a crime and a potentially impeachable offense.

So I think that would be the distinction there. That is one that, if all of those facts lined up under Professor Dershowitz' categorization of things, would be the problematic category.

Thank you.

The CHIEF JUSTICE. Thank you, counsel.

The Senator from Minnesota.

Ms. KLOBUCHAR. Mr. Chief Justice, on behalf of myself, Senator CARDIN, and Senator VAN HOLLEN, I have a question for the House managers that I will submit to the desk.

The CHIEF JUSTICE. Thank you.

The question from Senator KLOBUCHAR and Senators CARDIN and VAN HOLLEN is directed to the House managers:

Could you please respond to the answer just given by the President's counsel, and provide any other comments the Senate would benefit from hearing before we adjourn for the evening?

Mr. Manager NADLER. Mr. Chief Justice, Members of the Senate, what we have just heard from the President's counsel is the usual nonsense. As we draw to a close tonight, there are only three things to remember.

One, this is a trial. It is a trial, and as any 10-year-old knows, we should have witnesses. We are told we can't have witnesses because, after all, the House says we proved our case, as we have. So why should we need witnesses? Well, that is like saying that, in a bank robbery, the DA announces that he has proved his case. He has had all the witnesses. Then an eyewitness shows up, and he shouldn't be allowed to testify because, after all, the DA was sure he proved his case first. That is absurd, and any 10-year-old knows it is absurd.

That is the President's case against witnesses, that we have had enough. There is always more. There aren't too many more here. The fact is, when there are witnesses to be asked, they should be asked.

Second, there is only one real question in this trial. Everything else is a distraction—a three-card Monte game being played by the President's counsel—distractions. Don't look at the real question. Look at everything else. Everything else is irrelevant. Look at the whistleblower—irrelevant. Look at the House procedures—irrelevant. Look at Hunter Biden—irrelevant. Look at whether President Obama's policy was as good as or better than President Trump's policy with respect to Ukraine—irrelevant. Look at the Steele dossier—irrelevant.

There is only one relevant question: Did the President abuse his power by violating the law to withhold military aid from a foreign country to extort that country into helping him—into helping his reelection campaign—by slandering his opponent? That is the only relevant question for this trial.

The House managers have proved that question beyond any doubt.

The one thing the House managers think the President's counsel got right is quoting me as saying "beyond any doubt." It is, indeed, beyond any doubt.

That is why all of these distractions. That is why the President's people are telling you to avoid witnesses—because they are afraid of witnesses. They know the witnesses—they know Mr. Bolton and others will only strengthen the case.

And, yes, we hear: Well, if the House managers say their case is so strong, why do you need more witnesses? Because the truth can be bolstered.

I yield back.

The CHIEF JUSTICE. Thank you, counsel.

NOTICE OF INTENT TO SUSPEND THE RULES

In accordance with rule V of the Standing Rules of the Senate, Mr. Blumenthal (for himself, Mr. Brown, and Mr. Durbin) hereby gives notice in writing of his intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials during consideration of the question of whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents in connection with the impeachment trial of Donald John Trump:

- (1) The phrase "without debate" in Rule VII.
- (2) The following portion of Rule XX: " , unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record".
- (3) In Rule XXIV, the phrases "without debate", "except when the doors shall be closed for deliberation, and in that case", and " , to be had without debate".

NOTICE OF INTENT TO SUSPEND THE RULES

In accordance with Rule V of the Standing Rules of the Senate, I (for myself, Mr. Blumenthal, and Mr. Durbin) hereby give notice in writing that it is my intention to move to suspend the following portions of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials during the impeachment trial in the Senate of President Donald John Trump:

- (1) The phrase "without debate" in Rule VII.
- (2) The following portion of Rule XX: " , unless the Senate shall direct the doors to be closed while deliberating upon its decisions. A motion to close the doors may be acted upon without objection, or, if objection is heard, the motion shall be voted on without debate by the yeas and nays, which shall be entered on the record".
- (3) In Rule XXIV, the phrases "without debate", "except when the doors shall be closed for deliberation, and in that case", and " , to be had without debate".

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT UNTIL 1 P.M. TOMORROW

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m. Friday, January 31.

There being no objection, at 10:40 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Friday, January 31, 2020, at 1 p.m.

[From the CONGRESSIONAL RECORD, January 31, 2020]

The Senate met at 1:15 p.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will offer a prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

Eternal Lord God, you have summarized ethical behavior in a single sentence: Do for others what you would like them to do for you. Remind our Senators that they alone are accountable to You

for their conduct. Lord, help them to remember that they can't ignore You and get away with it for we always reap what we sow.

Have Your way, Mighty God. You are the potter. Our Senators and we are the clay. Mold and make us after Your will. Stand up, omnipotent God. Stretch Yourself and let this Nation and world know that You alone are sovereign.

I pray in the Name of Jesus. Amen.

The CHIEF JUSTICE. Please join me in reciting the Pledge of Allegiance to the flag.

PLEDGE OF ALLEGIANCE

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

The CHIEF JUSTICE. Senators, please be seated.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Jennifer Hemingway, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. For the information of all colleagues, we will take a break about 2 hours in.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 483, the Senate has provided up to 4 hours of argument by the parties, equally divided, on the question of whether or not it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents.

QUESTION OF MOTIONS TO SUBPOENA

Mr. Manager SCHIFF, are you a proponent or opponent?

Mr. Manager SCHIFF. Proponent.

The CHIEF JUSTICE. Mr. Cipollone, are you a proponent or opponent?

Mr. CIPOLLONE. Opponent.

The CHIEF JUSTICE. Mr. SCHIFF, you may proceed.

Mr. Manager SCHIFF. Before I begin, Mr. Chief Justice, the House managers will be reserving the balance of our time to respond to the argument of counsel for the President.

Mr. Chief Justice, Senators, fellow House managers, and counsel for the President, I know I speak for my fellow managers, as well as counsel for the President, in thanking you for your careful attention to the arguments that we have made over the course of many long days.

Today, we were greeted to yet another development in the case when the New York Times reported with a headline that says:

Trump Told Bolton to Help His Ukraine Pressure Campaign, Book Says

The President asked his national security adviser last spring in front of other senior advisers to pave the way for a meeting between Rudolph Giuliani and Ukraine's new leader.

According to the New York Times:

More than two months before he asked Ukraine's president to investigate his political opponents, President Trump directed John R. Bolton, then his national security adviser, to help with his pressure campaign to extract damaging information on Democrats from Ukrainian officials, according to an unpublished manuscript by Mr. Bolton.

Mr. Trump gave the instruction, Mr. Bolton wrote, during an Oval Office conversation in early May that included the acting White House chief of staff, Mick Mulvaney, the president's personal lawyer Rudolph W. Giuliani and the White House counsel, Pat A. Cipollone, who is now leading the President's impeachment defense.

You will see in a few moments [Slide 581]—and you will recall Mr. Cipollone suggesting that the House managers were concealing facts from this body. He said all the facts should come out. Well, there is a new fact which indicates that Mr. Cipollone was one of those who were in the loop—yet another reason why we ought to hear from witnesses. Just as we predicted—and it didn't require any great act of clairvoyance—the facts will come out. They will continue to come out. And the question before you today is whether they will come out in time for you to make a complete and informed judgment as to the guilt or innocence of the President.

Now, that Times article goes on to say:

Mr. Trump told Mr. Bolton to call Volodymyr Zelensky, who had recently won election as president of Ukraine, to ensure Mr. Zelensky would meet with Mr. Giuliani, who was planning a trip to Ukraine to discuss the investigations that the President sought, in Mr. Bolton's account. Mr. Bolton never made the call, he wrote.

"Never made the call." Mr. Bolton understood that this was wrong. He understood that this was not policy. He understood that this was a domestic political errand and refused to make the call.

The account in Mr. Bolton's manuscript portrays the most senior White House advisers as early witnesses in the effort that they have sought to distance the President from.

Including the White House Counsel.

Over several pages—

According to the Times—

Mr. Bolton laid out Mr. Trump's fixation on Ukraine and the president's belief, based on a mix of scattershot events, assertions and outright conspiracy theories, that Ukraine tried to undermine his chances of winning the presidency in 2016.

As he began to realize the extent and aims of the pressure campaign, Mr. Bolton began to object, he wrote in the book, affirming the testimony of a former National Security Council aide, Fiona Hill, who had said that Mr. Bolton warned that Mr. Giuliani was "a hand grenade who's going to blow everybody up."

Now, as you might imagine, the President denies this. The President said today: "I never instructed John Bolton to set up a meeting for Rudy Giuliani, one of the greatest corruption fighters in America."

So here you have the President saying John Bolton is not telling the truth. Let's find out. Let's put John Bolton under oath. Let's find out who is telling the truth. A trial is supposed to be a quest

for the truth. Let's not fear what we will learn. As Mr. Cipollone said, let's make sure that all facts come out.

Mrs. Manager DEMINGS. Mr. Chief Justice, Senators, counsel for the President, last Tuesday, at the onset of this trial, we moved for Leader MCCONNELL's resolution to be amended to subpoena documents and witnesses from the outset. This body decided to hold the question over. You have now heard opening arguments from both sides. You have seen the evidence that the House was able to collect. You have heard about the documents and witnesses President Trump blocked from the House's impeachment inquiry. We have vigorously questioned both sides.

The President's counsel has urged you to decide this case and render your verdict upon the record assembled by the House. The evidence in the record is sufficient. It is sufficient to convict the President on both Articles of Impeachment—more than sufficient.

But that is simply not how trials work. As any prosecutor or defense lawyer would tell you, when a case goes to trial, both sides call witnesses and subpoena documents to bring before the jury. That happens every day in courtrooms all across America. There is no reason why this impeachment trial should be any different. The commonsense practice is borne out of precedence. There has never been—never before been—a full Senate impeachment trial without a single witness. [Slide 582] In fact, you can see in the slide that in every one of the 15 prior impeachment trials the Senate has called multiple witnesses. Today we ask you to follow this body's uniform precedence and your common sense. We urge you to vote in favor of subpoenaing witnesses and documents.

Now, I would like to address one question at the outset. There has been much back and forth about whether if the House believes it has sufficient evidence to convict, which we do, why do we need more witnesses and documents? So I would like to be clear. The evidence presented over the past week and a half strongly supports a vote to convict the President. The evidence is overwhelming. We have a mountain of evidence. It is direct, it is corroborated by multiple sources, and it proves that the President committed grave impeachable offenses to cheat in the next election.

The evidence confirms that if left in office, President Trump will continue to harm America's national security. He will continue to seek to corrupt the upcoming election. And he will undermine—he will undermine—our democracy all to further his own personal gain.

But this is a fundamental question that must be addressed: Is this a fair trial? Is this a fair trial? Is this a fair trial? Without the ability to call witnesses and produce documents, the answer is clearly and unequivocally no. It was the President's decision to contest the facts, and that is his right, but because he has chosen to contest the facts, he shall not be heard to complain that the House wishes to further prove his guilt to answer the questions he would raise. He complains that few witnesses spoke directly to the President about his misconduct beyond his damning conversations with Sondland and Mulvaney. OK, let's hear from others, then—the witnesses the House wishes to call directly to the President's own words, his own admissions of guilt, his own confessions of responsi-

bility. If they did not, all the President's men would be on their witness list, not ours.

These witnesses and the documents their agencies produced tell the full story. And I believe that we are interested in hearing the full story. You should want to hear it. More than that, the American people—we know they want to hear it.

The House Republicans' own expert witness in the House, Professor Turley, said, if you could prove the President used our military aid to pressure Ukraine to investigate a political rival and interfere in our elections, it would be an impeachable abuse of power. Senator GRAHAM, too, recognized that, if such evidence existed, it could potentially change his mind on impeachment.

Well, we now have another witness—a fact witness—who would reportedly say exactly that. Ambassador Bolton's new manuscript, which we will discuss in more detail in a moment, reportedly confirms that the President told him in no uncertain terms—we are talking about the former National Security Advisor saying that the President told him in no uncertain terms—no aid until investigations, including the Bidens.

For a week and a half, the President has said no such evidence exists. [Slide 583] They are wrong. If you have any doubt about the evidence, the evidence is at your fingertips. The question is: Will you let all of us, including the American people, hear—simply hear—the evidence and make up their own minds? And you can make up your own minds, but will we let the American people hear all of the evidence?

You will recall that Ambassador Bolton, the President's former National Security Advisor, is one of the witnesses we asked for last Tuesday. We did not know, at the time, what he would say. We didn't know what kind of witness he would be, but Ambassador Bolton made clear that he was willing to testify and that he had relevant, firsthand knowledge that had not yet been heard. We urged—we argued—that we all deserved to hear that evidence, but the President opposed him. Now we know why—because John Bolton could corroborate the rest of our evidence and confirm the President's guilt.

So, today, Senators, we come before you, and we urge again—we argue—that you let this witness and the other key witnesses we have identified come forward so you will have all of the information available to you when you make this consequential decision.

If witnesses are not called here, these proceedings will be a trial in name only, and the American people clearly know a fair trial when they see one. Large majorities of the American people want to hear from witnesses in this trial, and they have a right to hear from witnesses in this trial. Let's hear from them. Let's look them in the eye, gauge their credibility, and hear what they have to say about the President's actions.

For the same reasons, this body should grant our request to subpoena documents, the documents that the President also blocked the House from obtaining—documents from the White House, the State Department, DOD, and OMB—that will complete the story and provide the whole truth, whatever that may be. We ask that you subpoena these documents so that you can decide for your-

selves. If you have any doubt as to what occurred, let's look at this additional evidence.

To be clear, we are not asking you to track down every single document or to call every possible witness. We have carefully identified only four key witnesses with direct knowledge, who can speak to the specific issues that the President has disputed, and we have targeted key documents which we understand have already been collected. For example, at the State Department, they have already been collected.

This will not cause a substantial delay. As I made clear last night, these matters can be addressed in a single week. As we made clear last night, these matters can be addressed in a single week. We know that from President Clinton's case. There, the Senate voted to approve a motion for witnesses on January 27. The next day, it established procedures for those depositions and adjourned as a Court of Impeachment until February 4. In that brief period, the parties took three depositions. The Senate then resumed its proceedings by voting to accept the deposition testimony into the record.

In this trial, too, let's do the same. We should take a brief, 1-week break for witness testimony and document collection, during which time the Senate can return to its normal business. The trial should not be allowed to be different from every other impeachment trial or any other kind of trial simply because the President doesn't want us to know the truth. The American people—the American people we all represent, the American people we all love and care about—deserve to know the truth, and a fair trial requires it.

This is too important of a decision to be made without all of the relevant evidence. Before turning to the specific need for these witnesses and documents, I want to make clear that we are not asking you, again, to break new ground. We are asking quite the opposite. We are asking you to simply follow the Senate's unbroken precedent and to do so in a manner that allows you to continue the Senate's ordinary business.

The Senate, in sitting as a Court of Impeachment, has heard witness testimony in every other—as we have said earlier—15 impeachment trials in the history of the Republic. [Slide 584] In fact, these trials had an average of 33 witnesses, and the Senate has repeatedly subpoenaed and received new documents while adjudicating cases of impeachment. That makes sense. Under our Constitution, the Senate does not just vote on impeachments, and it does not just debate them. Instead, the Senate is commanded by the Constitution to try all cases of impeachment. Well, a trial requires witnesses. A trial requires documents. This is the American way, and this is the American story.

If the Senate denies our motions, it would be the only time in history it has written a judgment on Articles of Impeachment without hearing from a single witness or receiving a single relevant document from the President, whose conduct is on trial. And why? How can we justify this break from precedent? How would we justify it? For what reason would we break precedent in these proceedings?

There are many compelling reasons beyond precedent that demand subpoenas for witnesses and cases and documents in this case.

At this time, I yield to Manager GARCIA.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, President's counsel, Senators, last week, I shared with you that I was reflecting on my first days at a school for baby judges. You all may recall that. I mentioned to you that one of the first things they told us was that we had to be good listeners and be patient, and you, as judges in this trial, have certainly passed the test. Thank you for being good listeners and for being patient with us. It has been quite a long journey.

We are here today to talk about the other thing they told us in baby judge school, and that was that we had to give all of the parties in front of us a fair hearing—an opportunity to be heard, an opportunity to cross-examine witnesses, an opportunity to bring evidence. That is what I want to talk to you about today because, in terms of fundamental fairness, subpoenas by the Senate in this trial would mitigate the damage caused by the President's wholesale obstruction of the House's inquiry.

The President claims that there is no direct evidence of his wrongdoing despite direct evidence to the contrary and Ambassador Bolton's offer to testify to even more evidence in a trial. Let's not forget that the President is arguing that there is no direct evidence while blocking all of us from getting that direct evidence.

It is a remarkable position that they have taken. Quite frankly, never, as a lawyer or as a former judge, have I ever seen anything like this. For the first time in our history, President Trump ordered his entire administration—his entire administration—to defy every single impeachment subpoena. [Slide 585] The Trump administration has not produced a single document in response to the congressional subpoenas—not a single page, nada. That has never happened before. There is no legal privilege to justify the blanket blocking of all of these documents. We know that there are more relevant documents. There is no dispute about that; it is uncontested. Witnesses have testified in exceptional detail about these documents that exist that the President is simply hiding.

President Trump's blanket order of prohibiting the entire executive branch from participating in the impeachment investigation also extended to witnesses. There are 12 in all who followed that order and refused to testify. [Slide 586] Much of the critical evidence we have is the result of career officials who bravely came forward despite the President's obstruction, but those closest to the President—some may say, like in the musical "Hamilton," those "in the room when it happened"—followed his instruction.

The President does not dispute that these witnesses have information that is relevant to this trial, that these individuals have personal and direct knowledge of the President's actions and motivations and can provide the very evidence he says now that we don't have.

The President's counsel alleged the House managers hid evidence from you.

(Text of Videotape presentation:)

Mr. Counsel CIPOLLONE. [B]ecause as house managers, really their goal should be to give you all of the facts because they're asking you to do something very, very consequential.

And ask yourself, ask yourself, given the facts you heard today that they didn't tell you, who doesn't want to talk about the facts? Who doesn't want to talk about the facts?

Impeachment shouldn't be a shell game. They should give you the facts.

Ms. Manager GARCIA of Texas. This is nice rhetoric, but it is simply incorrect.

The President's counsel cherry-picked misleading bits of evidence, cited deposition transcripts of witnesses who subsequently corrected their testimony in public hearings and said the opposite and, in some cases, simply left out the second half of witness statements.

The House managers accurately presented the relevant evidence to you. We spent about 20 hours presenting the facts and the evidence. The President's counsel spent 4 hours focusing on the facts and the evidence, and that evidence shows that the President is guilty. But to the extent certain facts were shown to you, let's be very clear: We are not the ones hiding the facts. The House managers did not hide that evidence. President Trump hid the evidence. That is why we are the ones standing up here, asking you to not let the President silence these witnesses and hide these documents.

We don't know precisely what the witnesses will say or what the documents would show, but we all deserve to hear the truth. And, more importantly, the American people deserve to hear the truth.

Never before has a President been put—put himself above the law and hid the facts of his offenses from the American people like this one. We cannot let this President be different. Quite simply, the stakes are too high.

Second, as this builds on what we have been arguing, the Senate requires and should want a complete evidentiary record before you vote on the most sacred task that the Constitution entrusts in every single one of you.

I can respect that some of you have deep beliefs that the removal of this President would be divisive. Others, you may believe that allowing this President to remain in the Oval Office would be catastrophic to our Republic and our democracy.

But regardless of where you are, regardless of where you land on the spectrum, you should want a full and complete record before you make a final decision and to understand the full story. It should not be about party affiliation; it should be about seeing all the evidence and voting your conscience based on all the relevant facts. It should be about doing impartial justice.

Consider the harm done to our institutions, our constitutional order, and the public faith in our democracy if the Senate chooses to close its eyes to learning the full truth about the President's misconduct.

How can the American people have confidence in the result of a trial without witnesses?

Third, the President should want a fair trial. He has repeatedly said that publicly; that he wants a trial on the merits. He specifically said it. You saw a clip that he wanted a fair trial in the Senate, and that would have to be with witnesses that testify, includ-

ing John Bolton and Mick Mulvaney. He said that he wants a complete and total exoneration.

Well, whatever you say about this trial, there cannot be a total—an exoneration without hearing from those witnesses because an acquittal on an incomplete record after a trial lacking witnesses and evidence will be no exoneration. It will be no vindication—not for the President, not for this Chamber, and not for the American people.

And if the President is telling the truth and he did nothing wrong and the evidence would prove that, then we all know that he would be an enthusiastic supporter of subpoenas. He would be here probably himself, if he could, urging you to do subpoenas if he had information that would prove he was totally not in the wrong. If he is innocent, he should have nothing to hide. His counsel should be the ones here asking today to subpoena Bolton and Mulvaney and others for testimony.

The President would be eager to have the people closest to him to testify about his innocence. He would be eager to present the documents that show he was concerned about corruption and burden-sharing. But the fact that he has so strenuously opposed the testimony of his closest advisers and all the documents speaks volumes.

You should issue subpoenas to the President so that the President can get the fair trial that he wanted—but more importantly, so the American people can get the fair trial that they deserve. The American people deserve a fair trial.

I said at the onset of this trial that one of the most important decisions you would make at this moment in history will not be whether you convict or acquit but whether the President and the American people will get a fair trial.

The process is more than just the ultimate decision because the faith in our institution depends on the perception of a fair process. A vote against witnesses and documents undermines that faith.

Senators, the American people want a fair trial. The overwhelming majority of Americans, three in four voters—three in four—as of this past Tuesday believe that this trial should have witnesses. [Slide 587] Now, there is not much that the American people agree on these days, but they do agree on that, and they know what a fair trial is; that it involves witnesses and it involves evidence.

The American people deserve to know the facts about their President's conduct and those around him, and they deserve to have confidence in this process, confidence that you made the right decision. In order to have that confidence, the Senate must call relevant witnesses and obtain relevant documents withheld thus far by this President. The American people deserve a fair trial.

I now yield to my colleague Manager CROW.

Mr. Manager CROW. Mr. Chief Justice, Members of the Senate, counsel for the President, last week the House managers argued for the testimony of four witnesses: [Slide 588] Ambassador John Bolton, Mick Mulvaney, Robert Blair, and Michael Duffey. And during the presentations from both parties, it has become abundantly clear why the direct testimony from those witnesses is so critical, and new evidence continues to underscore that importance.

So let's start with John Bolton. The President's counsel has repeatedly stated that the President didn't personally tell any of our witnesses that he linked the military aid to the investigations.

(Text of Videotape presentation:)

Mr. Counsel PURPURA: There is simply no evidence anywhere that President Trump ever linked security assistance to any investigations[.] [M]ost of the democrats['] witnesses have never spoken to the President at all let alone about Ukraine security assistance.

Not a single witness testified that the President himself said that there was any connection between any investigations and security assistance, a presidential meeting, or anything else.

Mr. Manager CROW. Now, that is simply not true, as the testimony of Ambassador Sondland and the admission of Mick Mulvaney make very clear.

The evidence before you proves that the President not only linked the aid to the investigations, he also conditioned both the White House meeting and the aid on Ukraine's announcement of the investigations.

But if you want more, a witness to acknowledge that the President told them directly that the aid was linked, a witness in front of you, then you have the power to ask for it.

I mentioned this portion—there is a slide. [Slide 583] I mentioned this portion of the Ambassador's manuscript in the beginning, and Manager SCHIFF referenced it as well, but he said directly that the President told him this.

Now, the President has publicly lashed out in recent days at Ambassador Bolton. [Slide 589] He says that Ambassador Bolton is—what Ambassador Bolton is saying is “nasty” and “untrue.” But denials in 280 characters is not the same as testimony under oath. We know that.

Let's put Ambassador Bolton under oath and ask him point blank: Did the President use \$391 million of taxpayer money—military aid intended for an ally at war—to pressure Ukraine to investigate his 2020 opponent? The stakes are too high not to.

I would like to briefly walk you through why Ambassador Bolton's testimony is essential to ensuring a fair trial, also addressing some of the questions that you have asked in the past 2 days.

First, turning back to Ambassador Bolton's manuscript, [Slide 590] the President's counsel has said: No scheme existed. And the President's counsel has cited repeated denials, public denials of President Trump's inner circle about Bolton's allegations—none of them, of course, under oath. And as we know from the testimony of Ambassador Bolton, how important being sworn in really is. [Slide 591]

But Ambassador Bolton, as the top national security aide, has direct insight into the President's inner circle, and he is willing to testify under oath whether “everyone was in the loop,” as he testified before.

Ambassador Bolton reportedly knows “new details about senior cabinet officials who have publicly tried to sidestep involvement,” including Secretary Pompeo and Mr. Mulvaney's knowledge of the scheme.

Second, Ambassador Bolton has direct knowledge of key events outside of the July 25 call that confirm the President's scheme.

[Slide 592] Remember, this is exactly the type of direct evidence the President's counsel say doesn't exist. That is partly because they would like you to believe that the July 25 call makes up all of the evidence of our case. The call, of course, is just a part of the large body of evidence that you have heard about the past week, but it is a key part. But Ambassador Bolton has critical insight into the President's misconduct outside of this call, and you should hear it.

Take, for example, the July 10 meeting with U.S. and Ukrainian officials at the White House. Dr. Hill testified during the meeting that Ambassador Sondland said that he had a deal with Mr. Mulvaney to schedule a White House meeting if Ukrainians did the investigations. According to Dr. Hill, when Ambassador Bolton learned this, he told her to go back to the NSC's Legal Advisor, John Eisenberg, and tell him, "I am not a part of whatever drug deal Sondland and Mulvaney are cooking up on this." [Slide 592] We already have corroboration of Dr. Hill's testimony from other witnesses like Lieutenant Colonel Vindman.

And we have new corroboration from Ukraine too. Oleksandr Danylyuk, President Zelensky's former national security advisor, recently confirmed in an interview that the "roadmap [for U.S.-Ukraine relations] should have been the substance but . . . [the investigations] were raised." [Slide 593]

Danylyuk also explained why this was so problematic. [Slide 594] He raised concerns that being "dragged into this internal process . . . would be really bad for the country. And also, if there's something that violates U.S. law, that's up to the U.S. to handle."

Danylyuk elaborated that there were serious things to discuss at the meeting, but if instead Ukraine was dragged into "internal politics, using our president who was fresh on the job, inexperienced, that could just destroy everything."

Another key defense raised by the President has been that Ukraine felt no pressure, that these investigations are entirely proper. [Slide 595] Well, here is Ukraine saying the opposite of that. You know what else Danylyuk said in the interview? "It was definitely John who I trusted," talking about Ambassador Bolton.

So if you want to know whether Ukrainians felt pressure, call John Bolton as a witness. He was trusted by Ukraine, and he was there for these key meetings, and he was so concerned that he characterized the scheme as a "drug deal" and urged Dr. Hill and others to report their concerns to NSC legal counsel, who reports to White House Counsel Cipollone.

So let's ask Ambassador Bolton these questions directly under oath: The President says Ukraine felt no pressure, that soliciting these investigations wasn't improper. Is that true? If it is true, why is Ukraine publicly saying that the talk of investigations could destroy everything? And if the President's administration thought this was OK, why did you use the words "drug deal?" We should ask him that. Why did you urge your staff to report concerns to lawyers? These are all questions that we can get the answers to.

Third, the President has suggested the House managers have not presented any direct evidence about Mr. Giuliani's role in the scheme.

(Text of Videotape presentation:)

Ms. Counsel RASKIN. In fact, it appears the House committee wasn't particularly interested in presenting you with any direct evidence of what Mayor Giuliani did or why he did it. Instead, they ask you to rely on hearsay, speculation, and assumption, evidence that would be inadmissible in any court.

Mr. Manager CROW. Well, once again, that is simply not true. But if you want more evidence, we know that Ambassador Bolton has direct evidence of Mr. Giuliani's role regarding Ukraine and expressed concerns about it.

The President has suggested that Mr. Giuliani wasn't doing anything improper, and he was not involved in conducting policy. By their own admission, they said he wasn't doing policy. So let's ask John Bolton what Giuliani was doing and whether the investigations were politically motivated or part of our foreign policy. [Slide 596]

He would know. Dr. Hill testified that Ambassador Bolton said Mr. Giuliani was "a hand grenade," which he explained referred to "all of the statements that Mr. Giuliani was making publicly, that the investigations that he was promoting, that the story line he was promoting, the narrative he was promoting was going to backfire." The narrative Mr. Giuliani was promoting, of course, was asking Ukraine to dig up dirt on Biden.

Dr. Hill also testified that Ambassador Bolton was so concerned, he told Dr. Hill and other members of the NSC staff that "nobody should be meeting with Giuliani," and that he was "closely monitoring what Mr. Giuliani was doing and the messaging he was sending out." [Slide 596]

So let's ask Ambassador Bolton: If Mr. Giuliani wasn't doing anything wrong, why were you so concerned about his behavior that you directed your staff to have no part in this? If Mr. Giuliani wasn't trying to dig up dirt on Biden, why did you seem to think that he could "blow everything up"?

Fourth, the President has said that there was nothing wrong with the July 25 call. [Slide 597] But once again the evidence suggests that Ambassador Bolton would testify that the opposite is true. According to witness testimony, Ambassador Bolton expressed concerns even before the call that it would be "a disaster" because he thought there could be "talk of investigations or worse." Now, if the President would have you believe that the call was perfect, as he has repeatedly stated, why don't we find out? Because all of the evidence before you suggests otherwise.

And Ukraine knows this is not the case. The call was not perfect. Danylyuk is clear on this point. He said: [Slide 598]

One thing I can tell you that was clear from this [July 25] call is that the issue of the investigations is an issue of concern for Trump. It was clear.

But if there is still any uncertainty, we must ask Ambassador Bolton: If there was no scheme, how did you know President Trump would raise investigations on the call? What made you so concerned the call would be a "disaster"?

Fifth, the President's main defense, once again, is that he withheld the military aid for legitimate reasons. [Slide 599] But the evidence doesn't support that. You have heard a lot. The evidence doesn't support that. Witness testimony, emails, and other documents confirm that Ambassador Bolton and his subordinates on many occasions, including through in-person meetings with the

President himself, urged the President that there was no legitimate reason to withhold the aid.

But if you are not sure, if you think this could in any way have been about a legitimate policy reason, let's ask the National Security Advisor, who was in charge of that. If this was simply a policy dispute, as the President argues, let's ask John Bolton whether that is true.

The President also argues that you cannot evaluate the President's subjective intent—that the President can use his power any way he feels is appropriate. That is, of course, not the case. Whether his intent was corrupt is a central part of this case, as it is in nearly every criminal case in the country. As a backup argument, however, the President's counsel claims that we want you to read the President's mind.

(Text of Videotape presentation:)

Mr. Counsel SEKULOW. This entire impeachment process is about the House managers' insistence that they are able to read everybody's thoughts. They can read everybody's intention . . .

Mr. Counsel SEKULOW. They think you can read minds.

Mr. Counsel PHILBIN. They want to tell you what President Trump thought.

Mr. Manager CROW. Now, juries, of course, are routinely asked to determine the defendant's state of mind. That is central to almost every criminal case in the country. And it is disingenuous for the President's counsel to argue that the defendant's state of mind is unknowable, that it requires a mind reader, or is anything but the most common element of proof of any crime, constitutional or otherwise. But if you want more information, let's ask the President whether John Bolton can help fill in any gaps about his state of mind.

(Text of Videotape presentation:)

President TRUMP. If you think about it, he knows some of my thoughts. He knows what I think about leaders.

Mr. Manager CROW. This case is about the President's conduct in Ukraine. John Bolton knows a lot about that. Let's hear from him. A fair trial demands it. It is more than just ensuring a fair trial, it is about remembering that in America, truth matters. As Mr. Bolton said on January 30, [Slide 600] "the idea that somehow testifying to what you think is true is destructive to the system of government we have, I think is very nearly the reverse, the exact reverse of the truth."

As Manager SCHIFF started this out, the truth continues to come out. Again, in an article today, more information. The truth will come out, and it is continuing to. The question here before this body is, What do you want your place in history to be? Do you want your place in history to be let's hear the truth or that we don't want to hear it?

Mr. Manager JEFFRIES. Given our time constraints, we will now summarize the reasons why Mr. Mulvaney, Mr. Duffey, and Mr. Blair are also important.

Let's turn first to Mr. Mulvaney. To begin with, Mr. Mulvaney participated in meetings and discussions with President Trump at every single stage of this scheme. [Slide 601] We just talked about motives and intent. Well, if you want further insight into the President's motives or intent, further direct evidence of why he withheld

the military aid and the White House meeting, you should call his Acting Chief of Staff, who had more access than anyone.

Mr. Mulvaney is important because the President's counsel continues to argue—incorrectly—that our evidence is just hearsay and speculation. [Slide 602] Faced with Ambassador Sondland and Mr. Holmes saying this was all as clear as two plus two equals four, the President says, “[T]hey are just guessing.” That is simply not true. The evidence is direct, the evidence is compelling and confirmed by many witnesses, corroborated by text messages, emails, and phone records. But if you want more evidence, if you want another firsthand account of why the aid was withheld for the undisputed quid pro quo for that White House meeting, let’s just hear from Mick Mulvaney.

Over and over again, Ambassador Sondland described to multiple witnesses how Mr. Mulvaney was directly involved in the President’s scheme. Here is some of that testimony.

(Text of Videotape presentation:)

Dr. HILL. So when I came in, Gordon Sondland was basically saying, Look, we have a deal here. There will be a meeting. I have a deal here with Chief of Staff Mulvaney, there will be a meeting if the Ukrainians open up or announce these investigations into 2016 and Burisma. And I cut it off immediately there.

Ambassador Bolton told me that: I am not part of this whatever drug deal that Mulvaney and Sondland are cooking up.

Mr. GOLDMAN. What did you understand him to mean by the drug deal that Mulvaney and Sondland were cooking up?

Dr. HILL. I took it to mean investigations for a meeting.

Mr. GOLDMAN. Did you go to see the lawyers?

Dr. HILL. I certainly did.

Mr. CHAIRMAN. What I want to ask you about is, he makes reference in that drug deal to a drug deal cooked up by you and Mulvaney. It’s the reference to Mulvaney that I want to ask you about. You’ve testified that Mulvaney was aware of this quid pro quo, of this condition that the Ukrainians had to meet, that is, announcing these public investigations to get the White House meeting. Is that right?

Ambassador SONDLAND. Yeah. A lot of people were aware of it . . .

Mr. CHAIRMAN. Including Mr. Mulvaney.

Ambassador SONDLAND. Correct.

Mr. Manager JEFFRIES. Remarkably, the President is still denying the facts, even as they argue that if it is true, it is still not impeachable. But if the President did nothing wrong, if he held up the aid because of so-called corruption or burden-sharing reasons, he should want his chief of staff to come testify under oath before this distinguished body and say just that.

Why doesn’t he want Mulvaney to appear before the United States Senate? Well, we know the answer—because Mr. Mulvaney will confirm the corrupt shakedown scheme because Mr. Mulvaney was in the loop.

Everyone was in the loop.

As Ambassador Sondland summarized in his testimony on July 19, he emailed several top administration officials, including Mr. Mulvaney, that President Zelensky was prepared to receive POTUS’s call and would “assure” President Trump that “he intends to run a fully transparent investigation and will ‘turn over every stone.’” [Slide 603]

Mr. Mulvaney replied: “I asked NSC to set it up for tomorrow.”

The above email seems clear. Ambassador Sondland testified that it was clear; that he was confirming to Mr. Mulvaney that he had told President Zelensky he had to tell President Trump on that

July 25 call that he would announce the investigation, which he explained was a reference to one of the two phony political investigations that President Trump wanted. And Mr. Mulvaney replies that he will set up the meeting—consistent with the agreement that Sondland explained he reached with Mr. Mulvaney to condition a meeting on the investigations.

But if there is any uncertainty, if there is any lingering questions about what this means, let's just question Mick Mulvaney under oath.

Mr. Mulvaney also matters because we have heard several questions from this distinguished body of Senators wanting to understand when or why or how the President ordered the hold on the security aid. [Slide 604] As the head of the Office of Management and Budget, Mr. Mulvaney has unique insights into all of these questions—your questions.

Remember that email exchange between Mr. Mulvaney and his Deputy, Rob Blair, on June 27, when Mulvaney asked Blair about whether they could implement the hold and Blair responded that it could be done but that Congress would become “unhinged”?

It wasn't just Congress. It was the independent Government Accountability Office that determined that the President's hold violated the law. But, if the President's counsel is going to argue—without evidence—that he withheld the aid as part of U.S. foreign policy, it seems to make sense that the Senate should hear directly from Mr. Mulvaney, who has firsthand knowledge of exactly these facts. He said so himself.

(Text of Videotape presentation:)

Mr. MULVANEY: Again, I was involved with the process by which the money was held up temporarily, okay?

Mr. Manager JEFFRIES. Why doesn't President Trump want Mick Mulvaney to testify? Why?

Perhaps here is why:

(Text of Videotape presentation:)

Mr. MULVANEY. Did he also mention to me in the past that the corruption related to the DNC server, absolutely. No question about that. But that's it. And that's why we held up the money.

REPORTER. So the demand for an investigation into the Democrats was part of the reason that he wanted to withhold funding to Ukraine.

Mr. MULVANEY. The look back to what happened in 2016—

REPORTER. The investigation into Democrats—

Mr. MULVANEY. —certainly was part of the thing that he was worried about in corruption with that nation. That is absolutely appropriate.

REPORTER. But to be clear, what you just described is a quid pro quo. It is: Funding will not flow unless the investigation into the Democratic server happens as well.

Mr. MULVANEY. We do that all the time with foreign policy. We were holding the money at the same time for—what was it? The Northern Triangle countries. We were holding up aid to the Northern Triangle countries so that they would change their policies on immigration. By the way, and this speaks to an important—I'm sorry? This speaks to an important point, because I heard this yesterday and I can never remember the gentleman whose testimony—Was it McKinney, the guy—was that his name? I don't know him. He testified yesterday. And if you go—and if you believe those reports—okay? Because we've not seen any transcripts of this. The only transcript I've seen was Sondland's testimony this morning. If you read the news reports and you believe them—what did McKinney say yesterday? Well, McKinney said yesterday that he was really upset with the political influence in foreign policy. That was one of the reasons he was so upset about this. And I have

news for everybody: Get over it. There's going to be political influence in foreign policy.

Mr. Manager JEFFRIES. Is that what the Constitution requires—"Get over it"? Is that good enough for this body, the world's greatest deliberative body—"Get over it"?

The President's counsel can try to emphasize Mr. Mulvaney and his attorneys' efforts to walk back this statement, but, as you have seen with your own eyes, the statement was unequivocal. And even when given the chance in real time on that day, on October 17, to deny a quid pro quo, he doubled down. "Get over it," he said.

But if you have any questions about what the real answer is and where the truth lies, there is only one way to find out: Let's all just question Mr. Mulvaney under oath during a Senate trial. After all, counsel said that cross-examination was the greatest vehicle in the history of American jurisprudence ever invented to ascertain the truth—your standard.

Finally, I would like to touch briefly on the importance of Mr. Blair and Mr. Duffey to this case.

The President's lawyers have argued that withholding foreign aid is entirely within his right as Commander in Chief; that this was a normal, ordinary decision; and that this is all just one big policy disagreement.

We have proven exactly the opposite. This can't be a policy disagreement because the President's hold actually went against U.S. policy. The hold was undertaken outside of the normal channels by a President who, they admit, was not conducting policy. The hold was concealed not only from Congress but from the President's own officials responsible for Ukraine policy, and, most importantly, the hold violated the law.

The President has the right to make policy, but he does not have the right to break the law and coerce an ally into helping him cheat in our free and fair elections, and he doesn't have a right to use hundreds of millions of dollars in taxpayer funds as leverage to get political dirt on an American citizen who happens to be his political opponent.

But if you remain unsure about all of this, who better to ask than Mr. Blair or Mr. Duffey? They oversaw and executed the process of withholding the aid. They can tell us exactly how unrelated to business as usual this whole shakedown scheme was when it was underway. They can testify about why the aid was withheld and whether there was any legitimate explanation for withholding it. Some of you have asked that very question.

Multiple officials—including Ambassador Sondland, Ambassador Taylor, David Holmes, Lieutenant Colonel Vindman, Jennifer Williams, and Mark Sandy—all testified that they were never given a credible explanation for the hold. So let's ask Mr. Blair and let's ask Mr. Duffey if this happens all the time, as Mick Mulvaney suggests. Why, at this time, in connection with this scheme, were all of those witnesses left in the dark?

Despite the President's refusal to produce a single document, to produce a shred of information in this impeachment inquiry undertaken in the House, his administration did produce 192 pages of Ukraine-related email records in Freedom of Information Act lawsuits, albeit in heavily redacted form. These documents confirm Mr.

Duffey's central role in executing the hold. He is on nearly every single email released—nearly every single email.

Here is an important email from that production.

Just 90 minutes after the July 25 call, Mr. Duffey emailed officials at the Department of Defense that they should “hold off on any additional DOD obligations of these funds.” Mr. Duffey added that the request was “sensitive” and that they should keep this information “closely held.” The timing is important because if the aid wasn't linked to the July 25 call and if it wasn't related, why the sensitive, closely held request made within 2 hours of that call? Let's just ask Mr. Duffey.

Mr. Duffey and Mr. Blair can testify about the concerns raised by DOD to the Office of Management and Budget about the illegality of the hold and why it remained in place even after DOD warned the administration that it would violate the Impoundment Control Act.

Now, the President, of course, has disputed this fact, but we have demonstrated that OMB was warned repeatedly by DOD officials of two things: first, continuing to withhold the aid would prevent the Department of Defense from spending the money before the end of the fiscal year, and second, the hold was potentially illegal, as turned out to be the case.

By August 9, DOD told Mr. Duffey directly that DOD—the Department of Defense—could no longer support the Office of Management and Budget's claims that the hold would “not preclude timely execution” of the aid for Ukraine, our vulnerable ally at war with Russian-backed separatists. Yet, as Mr. Duffey reportedly told Ms. McCusker at the Department of Defense on August 30, there was a “clear direction from POTUS to continue to hold”—clear direction from the President of the United States to continue the hold. So how did Mr. Duffey understand the “clear direction” to continue the hold? Why is the President claiming that this wasn't unlawful when DOD—the Department of Defense—repeatedly warned his administration that it was? Wouldn't we all like to ask Mr. Duffey these questions?

Finally, here is another reason why we know this was not business as usual. On July 29, Mr. Duffey—a political appointee with zero relevant experience—abruptly seized responsibility for withholding the aid from Mark Sandy, a career Office of Management and Budget official—seized the responsibility from a career official. Mr. Duffey provided no credible explanation for that decision.

Mr. Sandy testified that nothing like that had ever happened in his entire governmental career. Let's think about that. If this is as routine as the President claims, why is a career official saying he has never seen anything like this happen before? Mr. Duffey knows why. Shouldn't we just take the time to ask him?

The American people deserve a fair trial. The Constitution deserves a fair trial. The President deserves a fair trial. A fair trial means witnesses. A fair trial means documents. A fair trial means evidence. No one is above the law.

I yield to my distinguished colleague, Manager LOFGREN.

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, it is not just about hearing from witnesses; you need documents. The documents don't lie. There are specific documents relevant to this

impeachment trial in the custody of the White House, OMB, DOD, and State Department, and the President has hidden them from us.

I am not going to go through each category again in detail, but here are some observations.

This is, of course, an impeachment case against the President of the United States. Nothing could be more important. And the most important documents—documents that go directly to who knew what when—are being held by the executive branch.

Many of these records are at the White House. The White House has records about the phone calls with President Zelensky, about scheduling an Oval Office meeting with President Zelensky, about the President's decision to hold security assistance, about communications among his top aides, and about concerns raised by public officials with legal counsel. We have heard about Ambassador Bolton's handwritten notes and book manuscript and Lieutenant Colonel Vindman's Presidential policy memorandum. We know of reports about a number of emails in early August trying to create after-the-fact justifications for the hold, but we haven't seen any of them. They are at the White House being hidden by the President. I think it is a coverup.

Documents are also at the State Department, records about the recall of Mr. Ambassador Yovanovitch, about Mr. Giuliani's efforts for the President, about concerns raised about the hold, about the Ukrainian reaction to the hold and when exactly they learned about it, and about negotiations with the Ukrainians for an Oval Office meeting. We know about Ambassador Taylor's first-person cable and notes and Mr. Kent's memos to file. We know about Mr. Sondland's emails with Pompeo and Brechbuhl and Mulvaney and Perry, but we haven't seen them. They are sitting in the State Department.

DOD and OMB also have records—records about President Trump's hold on military aid to Ukraine, about the justification for the hold, about hiding the hold from Congress and trying to justify the hold after the fact, and about why the hold was lifted, but we haven't seen them. They are at DOD and OMB. Why haven't we seen them? Because the President directed all his agencies not to produce them.

This trial should not reward the President's really unprecedented obstruction by allowing him to control what evidence you see and what will remain hidden. You should ask for these documents on behalf of the American people, and you should ask for these documents to get the truth yourself.

Now, let's come back to the issue of delay, since the President's lawyers have suggested that having witnesses and documents would make this trial take too long. [Slide 605] There will be lengthy court battles, they say. The President might even invoke executive privilege for the very first time in this entire impeachment process. It would be better, we are told, to skip straight to the final verdict, to break from centuries of precedent and end this trial without hearing from a single witness and without reviewing a single document that the President ordered hidden. Respectfully, that shouldn't happen.

House managers aren't interested in delaying these proceedings. We are interested in the full truth; in a trial that is fair to the parties and to the American people; in the facts that the President's counsel agrees are so critical to this trial. It is why we said we won't go to court; we will follow all the rulings of the Chief Justice. We can get the witness depositions done in a week. In fact, I know we can because if you, the Senators, order it, that is the law. You have the sole power to try impeachments.

If questions or objections come up, including objections based on executive privilege, the Senate itself and the Chief Justice, in the first instance, can resolve them. We aren't suggesting that the President waive executive privilege. We simply suggest that the Chief Justice can resolve issues related to any assertion of executive privilege.

As the Supreme Court recognized in the case of Judge Walter Nixon, judges will stay out of disputes over how the Senate exercises its sole power to try impeachments. That ensures there will be no unnecessary delay, and it is why we propose we suspend the trial for 1 week, and that during that time, you go back to business as usual. While the trial is suspended, we will take witness depositions and review the documents that are provided at your direction.

The four witnesses you should hear from are readily available. Ambassador Bolton has already said he will appear. We can and would move quickly to depose these witnesses within a week of the issuance of subpoenas. The documents, too, are ready to be produced. We are ready to review them quickly and to present additional evidence. Meanwhile, the Senate can continue going about its important legislative work, as it did during the depositions in the Clinton impeachment trial.

The President's opposition to this suggestion says a lot. The President is the architect of the very delay he warns against. He could easily avoid it. He could move things along. He could stop trying to silence witnesses and hide evidence. I think he is afraid the truth will come out. He hopes his threats of continued delay, however unjustified, will cause you to throw up your hands and give up on a fair trial. Please don't give up. This is too important for our democracy.

A decision to forgo witnesses and documents at this trial would be a big departure from Senate precedent. When the Senate investigated Watergate, it heard from the highest White House officials. That happened because a bipartisan majority of the Senate insisted. We got to the truth then because the Senate came together and put a fair proceeding above party loyalty.

We should all want the truth, and so we ask you to do it again—that you put aside any politics, party loyalty. Believe in your President, which we understand and sympathize with, but subpoena the documents and the witnesses necessary to make this a fair trial, to hear and see the evidence you need to impartially administer justice.

Now, there has been a lot of discussion of executive privilege during this trial. [Slide 606] Even if the President asserts executive privilege—something he has not yet done—it wouldn't harm the President's legal rights or cause undue delay.

Here is why. Let's focus on John Bolton, since this week's revelations confirm the importance of his testimony.

First, as a private citizen, John Bolton is fully protected by the First Amendment if he wants to testify. There is no basis for imposing prior restraint for censoring him just because some of his testimony could include conversations with the President. That is commonplace. As long as his testimony isn't classified, it is shielded by the free speech clause of the First Amendment.

Ambassador Bolton has written a book. It is inconceivable that he is forbidden from telling the U.S. Senate, sitting as a High Court of Impeachment, information that shortly will be in print.

If the President did attempt to invoke executive privilege, he would fail. It is true for separate reasons. First, claims of executive privilege always involve a balancing of interests. The Supreme Court confirmed in *U.S. v. Nixon*—the Nixon tapes case—that executive privilege can be overcome by a need for evidence in a criminal trial. That is even more true here in an impeachment trial of the President of the United States, which is probably the most important interest under the Constitution. It would certainly outweigh any claim of privilege.

Precedent confirms the point. [Slide 607] To name just a few, National Security Advisors for President Carter, Zbigniew Brzezinski; President Clinton, Samuel Berger; President George W. Bush, Condoleezza Rice; and President Obama, Susan Rice, testified in congressional investigations. These advisors discussed their communications with top government officials, including the Presidents they served. There is no reason why all of these officials could testify in the normal course of events and hearings, but Ambassador Bolton, a former official, couldn't testify in the most important trial there could possibly be.

The second reason is the President waived any claim of executive privilege about Ambassador Bolton's testimony. All 17 witnesses testified in the House about these matters without any assertion of privilege by the President.

President Trump, as well as his lawyers and senior officials, have publicly discussed and tweeted about these issues at some length. The President has also directly denied reports about what Ambassador Bolton will say in his forthcoming book. Under these circumstances, the President cannot be allowed to tell his version of his story to the public while using executive privilege to silence a key witness who would contradict him. You shouldn't let the President escape responsibility only to later see clearly what happened in Ambassador Bolton's book.

There are no national security risks here. The President has declassified the two phone calls with President Zelensky. All 17 witnesses testified about the President's conduct regarding Ukraine. We aren't interested in asking about anything other than Ukraine. That is simply a bogus argument.

The Constitution uses the words "sole power" only twice: first, when it gives the House sole power to impeach; and, second, article 1, section 3, where it gives the Senate sole power to try impeachments.

Here is what it says:

The Senate shall have the sole Power to try all Impeachments. . . . When the President of the United States is tried, the Chief Justice shall preside.

Now, I think that provision in the Constitution means something. It is up to the Senate to decide how to try this impeachment with fairness, with witnesses, and documents.

Privileges asserted can be decided using the process that you devise. That is not unconstitutional. It is what the Constitution provides.

You have the power. You decide. Please decide for a fair trial that would yield the truth and serve our Constitution and the American people.

I yield now to Manager SCHIFF.

Mr. Manager SCHIFF. Senators, before we yield to counsel for the President, I would like to take a moment by talking about what I think is at stake here. A “no” vote on the question before you will have long-lasting and harmful consequences long after this impeachment trial is over.

We agree with the President’s counsel on this much: This will set a new precedent. [Slide 608] This will be cited in impeachment trials from this point to the end of history. You can bet in every impeachment that follows, whether it is a Presidential impeachment or the impeachment of a judge, if that judge or President believes that it is to his or her advantage that there shall be a trial with no witnesses, they will cite the case of Donald J. Trump. They will make the argument that you can adjudicate the guilt or innocence of the party who is accused without hearing from a single witness, without reviewing a single document. And I would submit that will be a very dangerous and long-lasting precedent that we will all have to live with.

President Trump’s wholesale obstruction of Congress strikes at the heart of our Constitution and democratic system of separation of powers. Make no mistake. The President’s actions in this impeachment inquiry constitute an attack on congressional oversight on the coequal nature of this branch of government, not just on the House but on the Senate’s ability, as well, to conduct its oversight, to serve as a check and balance on this President and every President that follows.

If the Senate allows President Trump’s obstruction to stand, it effectively nullifies the impeachment power. It will allow future Presidents to decide whether they want their misconduct to be investigated or not, whether they would like to participate in an impeachment investigation or not. That is a power of the Congress. That is not a power of the President. By permitting a categorical obstruction, it turns the impeachment power against itself.

How we respond to this unprecedented obstruction will shape future debates between our branches of government and the executive forever. And it is not just impeachment. The ability of Congress to conduct meaningful and probing oversight—oversight that, by its nature, is intended to be a check and balance on the awesome powers of the executive branch—hinges on our willingness to call witnesses and compel documents that President Trump is hiding with no valid justification, no precedential support.

If we tell the President, effectively, “You can act corruptly, you can abuse the powers of your office to coerce a foreign government

to helping you cheat in an election by withholding military aid, and when you are caught, you can further abuse your powers by concealing the evidence of your wrongdoing," the President becomes unaccountable to anyone. Our government is no longer a government with three coequal branches. The President effectively, for all intents and purposes, becomes above the law.

This is, of course, the opposite of what the Framers intended. They purposely entrusted the power of impeachment to the legislative branch so that it may protect the American people from a President who believes that he can do whatever he wants.

So we must consider how our actions will reverberate for decades to come and the impact they will have on the functioning of our democracy. And as we consider this critical decision, it is important to remember that no matter what you decide to do here, whether you decide to hear witnesses and relevant testimony, the facts will come out in the end. Even over the course of this trial, we have seen so many additional facts come to light. The facts will come out. In all of their horror, they will come out, and there are more court documents and deadlines under the Freedom of Information Act. Witnesses will tell their stories in future congressional hearings, in books, and in the media. This week has made that abundantly clear.

The documents the President is hiding will come out. The witnesses the President is concealing will tell their stories. And we will be asked why we didn't want to hear that information when we had the chance, when we could consider its relevance and importance in making this most serious decision. What answer shall we give if we do not pursue the truth now, if we allow it to remain hidden until it is too late to consider on the profound issue of the President's innocence or guilt?

What we are asking you to do on behalf of the American people is simple: Use your sole power to try this impeachment by holding a fair trial. Get the documents they refuse to provide to the House. Hear the witnesses they refuse to make available to the House, just as this body has done in every single impeachment trial until now.

Let the American people know that you understand they deserve the truth. Let them know you still care about the truth, that the truth still matters.

Though much divides us, on this we should agree: A trial, stripped of all its trappings, should be a search for the truth, and that requires witnesses and testimony.

Now, you may have seen just this afternoon, the President's former Chief of Staff, General Kelly, said "a Senate trial without witnesses is a job only half done." A trial without witnesses is only half a trial. Well, I have to say I can't agree. A trial without witnesses is no trial at all. You either have a trial or you don't. And if you are going to have a real trial, you need to hear from the people who have firsthand information. Now, we have presented some of them to you, but you know as well as we there are others that you should hear from.

Let me close this portion with words, I think, more powerful than General Kelly's. They come from John Adams, who in 1776 wrote: Together with the right to vote, those who wrote our Constitution considered the right to trial by jury "the heart and lungs, the main-

spring and the center wheel” of our liberties, without which “the body must die, the watch must run down, the government must become arbitrary.”

Now, what does that mean? Without a fair trial, the government must become arbitrary. Now, of course, he is talking about the right of an average citizen to a trial by jury.

Well, if in courtrooms all across America, when someone is tried but they are a person of influence and power, they can declare at the beginning of the trial “If the government’s case is so good, let them prove it without witnesses”; if people of power and influence can insist to the judge that the House, that the prosecutors, that the government, that the people must prove their case without witnesses or documents, a right reserved only for the powerful—because, you know, only Donald Trump—only Donald Trump, of any defendant in America can insist on a trial with no witnesses—if that should be true in courts throughout the land, then, as Adams wrote, the government becomes arbitrary because whether you have a fair trial or no trial at all depends on whether you are a person of power and influence like Donald J. Trump.

The body will die. The clock will run down. And our government becomes arbitrary. The importance of a fair trial here is not less than in every courtroom in America; it is greater than in any courtroom in America because we set the example for America.

I said at the outset, and I will repeat again: Your decision on guilt or innocence is important, but it is not the most important decision. If we have a fair trial, however that trial turns out, whatever your verdict may be, at least we can agree we had a fair trial. At least we can agree that the House had a fair opportunity to present its case. At least we can agree that the President had a fair opportunity to present their case—if we have a fair trial. And we can disagree about the verdict, but we can all agree the system worked as it was intended. We had a fair trial, and we reached a decision.

Rob this country of a fair trial, and there can be no representation that the verdict has any meaning. How could it, if the result is baked in by the process? Assure the American people, whatever the result may be, that at least they got a fair shake.

There is a reason why the American people want to hear from witnesses, and it is not just about curiosity. It is because they recognize that in every courtroom in America that is just what happens. And if it doesn’t happen here, the government has become arbitrary; there is one person who is entitled to a different standard, and that is the President of the United States. And that is the last thing the Founders intended.

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

The CHIEF JUSTICE. Thank you, Mr. Manager.

The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, I request that the Senate take a 15-minute recess.

The CHIEF JUSTICE. Without objection, so ordered.

There being no objection, at 2:49 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:40 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. Please be seated.

We are ready to hear the presentation from counsel for the President.

Mr. Counsel PHILBIN. Mr. Chief Justice, Members of the Senate, the House managers have said throughout their presentation and throughout all of the proceedings here again and again that you can't have a trial without witnesses and documents, as if it is just that simple. If you are going to have a trial, there have to be new witnesses and documents. But it is not that simple. It is really a trope that is being used to disguise the real issues, the real decisions that you would be making on this decision about witnesses, because there is a lot more at stake. Let me unpack that and explain what is really at stake there.

The first is this idea that, if you come to trial, you have to always go to witnesses, have new witnesses come in, but that is not true. In every legal system and in our legal systems on both the civil and criminal sides, there is a way to decide right up front, in some quick way, whether there is really a triable issue, whether you really need to go to all the trouble of calling in new witnesses and having more evidence in something like that. There is not here. There is no need for that because these Articles of Impeachment, on their face, are defective, and we have explained that. Let me start with the second article, the obstruction charge.

We have explained that that charge is really trying to say that it is an impeachable offense for the President to defend the separation of powers. That can't be right. It is also the case that no witnesses are going to say anything that makes any difference to the second Article of Impeachment. That all has to do with the validity of the grounds the President asserted, the fact that he asserted longstanding constitutional prerogatives of the executive branch in specific ways to resist specific deficiencies in the subpoenas that were issued. No fact witness is going to come in and say anything that relates in any way to that. It is not going to make any difference.

On the first Article of Impeachment, that, too, is defective on its face. We have explained. We heard it again today here. They have this subjective theory of impeachment that will show abuse of power by focusing just on the President's subjective motives, and they said again today, here, that the way they can show the President did something wrong is that he defied the foreign policy of the United States. I talked about that before, this theory that he defied the agencies within the executive branch. He wasn't following the policy of the executive branch. That is not a constitutionally coherent statement.

The theory of abuse of power that they have framed in the first Article of Impeachment will do grave damage to the separation of powers under our Constitution because it would become so malleable that they could pour into it anything they want to find illicit motives for some perfectly permissible action. It becomes so malleable that it is no different than maladministration—the exact

ground that the Framers rejected during the Constitutional Convention.

The Constitution defines specific offenses. It limits and constrains the impeachment power.

Now, there is also the fact that we actually heard from a lot of witnesses. We have heard from a lot of witnesses in the proceedings so far. You have heard 192 video clips, by our count, from 13 different witnesses. There were 17 witnesses deposed in closed hearings in the House, and 12 of them testified again in open hearings. You have got all of those transcripts, so you can see the witnesses' testimony there. The key portions have been played for you on the screens. And you have got over 28,000 pages of documents and transcripts. You have got a lot of evidence already.

But there is another principle that they overlook when they say "Well, if you are going to have a trial, there just has to be witnesses," as if the most ordinary thing is you get to trial and then start subpoenaing new witnesses and documents. That is not true either, and we pointed this out.

In the regular courts, the way things work is you have got to do a lot of work preparing a trial—called discovery—to find out about witnesses and depose them and find out about documents before you get to trial. You can't show up the day of trial and say: Oh, Your Honor, actually, we are not ready. We didn't subpoena John Bolton or witness X or witness Y, and now we want to subpoena that witness. Now we want to do discovery.

And why does that matter here? Because here, to show up not having done the work and to expect that work to be done in the Senate, by this body, has grave consequences for the institutional interests of this body, and it sets a precedent—really sets an important precedent for two bodies—for the Senate and for the House—because what the Senate accepts as an impeachment coming from the House determines not just precedent for the Senate but, really, precedent for the House in the future as well.

If the procedures used in the House to bring this proceeding here to this stage are accepted, if the Senate says "Yes, we will start calling new witnesses because you didn't get the job done in whatever process you used to get it here," then that becomes the new normal. And that is important in a couple of ways.

One is, as we have pointed out, the totally unprecedented process that was used in the House that violated all notions of due process. There are precedents going back 150 years in the House, ensuring that someone accused in an impeachment hearing in the House has due process rights to be represented by counsel, to cross-examine witnesses, to be able to present evidence. They didn't allow the President to do that, and if this body says that is OK, then that becomes the new normal.

And they stand up here, the House managers, and say this body will be unfair if this body doesn't call the witnesses. They talk about fairness. Where was the fairness in that proceeding in the House?

And Manager SCHIFF says that things would be arbitrary if you don't do what they said and call the witnesses they want. Well, wasn't it arbitrary in the House when they wouldn't allow the President to be represented by counsel, wouldn't allow the Presi-

dent to call witnesses? There was no precedent in a Presidential impeachment inquiry to have open hearings where the President and his counsel were excluded.

It also would set a precedent to allow a package, a proceeding, from the House to come here that the House managers say “Well, now we need new witnesses; we haven’t done all the work,” and it is witnesses they didn’t even try to get. They didn’t subpoena John Bolton, and they didn’t go through the process. When other witnesses were subpoenaed—when Dr. Kupperman—Charlie Kupperman—went to court, they withdrew the subpoena. And now to say that “Well, fairness demands that this body has to do all that work”—that sets a new precedent, as well, and it changes—it would change for all of the future the relationship between the House and the Senate in impeachment inquiries. It would mean that the Senate has to become the investigatory body.

And the principles that they assert—they did a process that wasn’t fair. They did a process that was arbitrary, that arbitrarily denied the President rights. They did a process that wouldn’t allow witnesses, and then they came here on the first night—remember when we were all here until 2 o’clock—and in very belligerent terms said to the Members of this body: You are on trial. It will be treachery if you don’t do what the House managers say.

That is not right. When it was their errors, when they were arbitrary and they didn’t provide fairness, they can’t project that onto this body to try to say that you have to make up for their errors, and if you don’t, the fault lies here.

Now, they also suggest that it is not going to take a long time, that they only want a few witnesses. But, of course, if things are opened up to witnesses and it is going to be fair, it is not just one side; it is not just the witnesses that they would want. The President would have to be permitted to have witnesses.

And with all respect, Mr. Chief Justice, the idea that if a subpoena is sent to a senior adviser to the President and the President determines that he will stand by the principle of immunity that has been asserted by virtually every President since Nixon, that that will just be resolved by the Senate right here, whether or not that privilege exists, by the Chief Justice sitting as the Presiding Officer—that doesn’t make sense. That is not the way it works.

The Senate, even when the Chief Justice is the Presiding Officer here, can’t unilaterally decide the privileges of the executive branch. That dispute would have to be resolved in another way, and it could involve litigation, and it could take a lot of time.

So the idea that this will all be done quickly if everyone just does what the House managers say is not realistic. It is not the way that the process would actually have to play out in accord with the Constitution, and that has another significant consequence, again affecting this institution as a precedent going forward because what it suggests—the new normal that would be created then—is kind of an express path for precisely the sort of impeachments that the Framers most feared.

The Framers recognized that impeachments could be done for illegitimate reasons. They recognized that there could be partisan impeachments. And if this is the new normal, this is the very epitome of a partisan impeachment. There was bipartisan opposition to

it in the House, and it was rushed through with unfair procedures—78 days total of inquiry. Think about that. In Nixon there had been investigating committees, and there was a special prosecutor long before the House Judiciary Committee started its investigation.

In Clinton there was a special counsel—an independent counsel for the better part of a year before the House Judiciary Committee even started hearings.

Everything from start to finish in this case, from September 24 until the Articles of Impeachment were considered in the Judiciary Committee, was done in 78 days—in 78 days—and for 71 of them, the President was entirely locked out.

So the new normal would be slapdash: Get it done quickly, unfair procedures in the House to impeach a President; then bring it to the Senate, and then all the real work of investigation and discovery is going to have to take place with that impeachment hanging over the President's head, and that is a particular thing the Framers also were concerned about. I mentioned this the other day.

In Federalist No. 65 Hamilton warned specifically about what he called—I am quoting—“the injury to the innocent, from the procrastinated determination of the charges which might be brought against them” because he understood that if an impeachment charge from the House wasn't resolved quickly, if it was hanging over the President's head, that in itself would be a problem. And that is why they structured the impeachment process so that the Senate could be able to swiftly determine impeachments that were brought. That also suggests that is why there is a system for having thorough investigations, a thorough process done in the House.

And Hamilton explained that delay after the impeachment would afford an opportunity for “intrigue and corruption,” and it would also be, as he put it, “the detriment to the State, from the prolonged inaction of men whose firm and faithful execution of their duty might have exposed them to the persecution of an intemperate or designing majority in the House of Representatives.” And that is what has happened here.

And if you create a system now that makes the new normal a half-baked, slapdash process in the House—just get the impeachment done and get it over to the Senate—and then once the President is impeached and you have the head of the executive branch, the leader of the free world, having something like that hanging over his head, then we will slow everything down, and then we will start doing the investigation and just drag it out. That is all part of what makes this even more political, especially in an election year.

It is not the process that the Framers had in mind, and it is not something the Senate should condone in this case. The Senate is not here to do the investigatory work that the House didn't do.

Where there has been a process that denied all due process, that produced a record that can't be relied upon, the reaction from this body should be to reject the Articles of Impeachment, not to condone and put its imprimatur on the way the proceedings were handled in the House and not to prolong matters further by trying to redo work that the House failed to do by not seeking evidence and

not doing a fair and legitimate process to bring the Articles of Impeachment here.

Thank you.

The CHIEF JUSTICE. Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, over a 7-day period you did hear evidence. You heard evidence from 13 different witnesses, 192 video clips, and as my colleague the Deputy White House Counsel said, over 28,000 pages of documents.

You heard testimony from Gordon Sondland. He is the United States Ambassador to the European Union. You heard that testimony. He testified in the House proceedings. I did not have an opportunity to cross-examine him. If we get witnesses, I have to have that opportunity.

William Taylor, former Acting United States Ambassador to Ukraine, testified. You heard his testimony. We didn't get the opportunity to cross-examine him. He would be called.

Tim Morrison, the former senior director for Europe and Russia of the National Security Council. You saw his testimony. They put it up. We didn't get an opportunity—we did not have an opportunity to cross-examine him.

Jennifer Williams, special adviser on Europe and Russia for Vice President MIKE PENCE. You saw her testimony. They put it up. I did not have the opportunity to cross-examine her. If we call witnesses, we would have to have that opportunity.

David Holmes, political counsel to the United States Embassy in Ukraine. You saw testimony from him. We were not able to cross-examine him. If he is called or if we get witnesses, we will call the Ambassador, and we will cross-examine.

Lieutenant Colonel Alexander Vindman. You saw his testimony. He appeared before the House. We didn't have the opportunity to cross-examine him. If we call witnesses, we will, of course, have that right to cross-examine him.

Fiona Hill. She is the former senior director for Europe and Russia on the National Security Council. She testified for the House. If we have witnesses, we have the opportunity to call her then and cross-examine Fiona Hill.

Kurt Volker, former United States Representative for Ukraine Negotiations. They called him; we did not have the opportunity to cross-examine. If we are calling witnesses—these are witnesses you have heard from—we would have the right to call witnesses and to cross-examine Mr. Volker. George Kent, the Deputy Assistant Secretary of State for the Bureau of European and Eurasian Affairs, you saw his testimony. They called him. If we have witnesses, we have the right to call that witness and to cross-examine Deputy Assistant Secretary Kent.

The former United States Ambassador to Ukraine, Ambassador Yovanovitch, they called her. You saw that testimony. We did not have the opportunity to cross-examine her. If we have witnesses, we would have to call her.

Laura Cooper, Deputy Assistant Secretary of Defense for Russia, Ukraine, and Eurasia, they called her. You saw her witness testimony right here. We did not have the opportunity to cross-examine her. We would have to be given that opportunity.

These are the witnesses against the President. Laura Cooper, Deputy Secretary of Defense for Russia and Eurasia—again, the same thing.

David Hale, the Under Secretary of State for Political Affairs. He was called by the House. You saw his testimony. We never had the opportunity to cross-examine him. If we have witnesses, we have to have the opportunity to do that.

There were other witnesses that were called where you saw their testimony or heard their testimony or it was referred to. Catherine Croft, Special Adviser for Ukraine negotiation, Department of State; Mark Sandy, the Deputy Associate Director for National Security Programs; and Christopher Anderson, Special Adviser for Ukraine Negotiations, Department of State—you heard their testimony referred to. We did not have the opportunity to cross-examine them.

So this isn't going to happen, if witnesses are called in a week. Now, that is just the witnesses that have been produced that you have seen by the House managers.

You are being called upon to make consequential constitutional decisions—consequential decisions for our Constitution. We talked about the burden of proof. I said this before, and I will say it again. Thirty-one times the managers said they proved their case. Twenty-nine times they said the evidence was overwhelming. Manager NADLER—he didn't only say it was overwhelming in his view, on page 739 of the CONGRESSIONAL RECORD, he is very clear. He says not only is it strong, there is no doubt. That is what he said. "The one thing the House managers think the President counsel got right is quoting me"—talking about Mr. NADLER, Manager NADLER—"as saying 'beyond any doubt.' It is, indeed, beyond any doubt."

Now, of course, we think that they have not proven their case by any stretch of any proper constitutional analysis.

In the Clinton investigation, they talk about witnesses being called, but the three witnesses that were called had either testified before the grand jury or before the House committee. There weren't new witnesses. What Mr. Philbin said is correct; that under our constitutional design, they are supposed to investigate; you are to deliberate. But what they are asking you to do is now become the investigative agency, the investigative body.

If they needed all this additional evidence, which they said they don't need—and, by the way, not only did they say it in the record, this is House Manager NADLER when he was on CNN back on the 15th of this month: "We brought the articles of impeachment. Because, despite the fact that we didn't hear from many witnesses we [could] have heard from, we heard from enough witnesses to prove the case beyond any doubt at all."

The same can be said from Representative LOFGREN:

You know, we have evidence proving the case through, for example, at the meeting when Bolton said it was a drug deal, well, we have fact witnesses. Hill was there, Vindman was there, Sondland was there.

So this idea that they haven't had witnesses, that is the smoke screen. You have heard from a lot of witnesses. The problem with the case, the problem with their position is, even with all of those

witnesses, it doesn't prove up an impeachable offense. The articles fail.

I think it is very dangerous if the House runs up—which they did—Articles of Impeachment quickly, so quickly that they are clamoring for evidence, despite the fact that they put all of this evidence forward. They got their wish of an impeachment by Christmas. That was the goal. But now they want you to do the work they failed to do.

But, as I said, time and time again we heard: You didn't hear from witnesses. You didn't hear from many witnesses. Mr. SCHIFF modified that a little bit today, a little bit. You heard from a lot of witnesses. But if we go down the road of witnesses, this is not a 1-week process. Remember, I talked about the waving the wand and Ukrainian corruption was gone? You are not going to have a witness stand here, where, OK, you got a week to do this and get it done. There is no way that would be proper under due process. But, you know, due process is supposed to be for the person accused, and they are turning it on its head. They brought the articles before you. They are the ones that rushed the case up and then held it before you could actually start proceeding, but they are the ones who passed the articles before Christmas.

You know, we talked a lot about the court system and the fact that they were seeking witnesses, and when it got close to actually having a court proceeding, they decided that they didn't want to have that witness go through that proceeding, and they actually withdrew the subpoena to move the case out.

How many constitutional challenges will we have in this body because they placed the burden on you that they would not take themselves in putting their case forward? If we look at our constitutional framework and our constitutional structure, that is not the way it is supposed to work.

Now, our opposition to this motion is rather straightforward, as I have said. We came here ready to try the case on the record that they presented, the record that the managers told us was overwhelming and complete.

Mr. SCHIFF went through every sentence of the Articles of Impeachment just a few days ago and said: Proved, proved, proved. But the problem is that what is proved, proved, proved is not an impeachable offense. You could have witnesses that prove a lot of things, but if there is not a violation of the law, if it doesn't meet the constitutional required process, the constitutional required substantive issues of do these articles—these allegations rise to the level sufficient for a removal of office for a duly elected President of the United States? It doesn't and especially so—especially so—when we are in an election year.

I am not going to take the time—your time, which is precious, to go over each and every allegation about witnesses that I can. I could do it. I could stand here for a long time. I am not going to do that. I am just going to say this: They created the record. Do not allow them to penalize the country and the Constitution because they failed to do their job.

With that Mr. Chief Justice, we yield our time.

The CHIEF JUSTICE. Thank you, counsel.

The House managers have 30 minutes remaining.

Mr. Manager SCHIFF. Thank you, Mr. Chief Justice, Senators: I want to walk through some of the arguments that you just heard from the President's counsel.

The first argument was made by Mr. Philbin. Mr. Philbin began by saying the House managers assert that you can't have a trial without witnesses, and he said: "It's not that simple." Actually, it is. It is pretty simple. It is pretty simple. In every courthouse, in every State, in every county in the country, where they have trials, they have witnesses. And I think you heard Mr. Philbin tie himself into knots as to why this should be the first trial in which witnesses are not necessary. But, you know, some things are just as simple as they appear. A trial without witnesses is simply not a trial. You could call it something else, but it is not a trial.

Now, Mr. Sekulow said something very interesting. He said: The House investigates, and the Senate deliberates. Well, he would rewrite our Constitution with that argument because the last time I checked the Constitution, it said that the House shall have the sole power of impeachment, and the Senate shall try the impeachment, not merely deliberate about it, not merely think about it, not merely wonder about it. I know you are the greatest deliberative body in the world, but not even you can deliberate in a trial without witnesses. But Mr. Sekulow would rewrite the Constitution: Your job is not to try the case, he says; your job is merely to deliberate. That is not what the Founders had in mind—not by a long shot.

Now, Mr. Philbin says none of these witnesses would have relevance on article II—I guess conceding that they would have relevant evidence under article I. But that is not true either. Imagine what you will see when you hear from the witnesses who ran the Office of Management and Budget or imagine what you will see when you read the documents from the Office of Management and Budget. What you will see is what they have covered up. What you will see is the motive for their complete obstruction of Congress. When you see not the redacted emails, not the fully blacked-out emails that they deigned to give in the litigation and Freedom of Information Act, but when you see what is under those redactions, you will have proof of motive. When you see those documents, you will see just how fallacious these nonassertions of executive privilege are. You will see, in essence, what they have covered up. It could not be more relevant to whether their panoply of legal argumentation to justify "we shall fight all subpoenas" is merely a coverup in a legal window dressing. So these witnesses and documents are critical on both articles.

Now, you also heard Mr. Philbin argue—and, again, this is where we expected we would be at the end of the proceeding, which is, essentially, they proved their case. They proved their case. We pretty much all know what has gone on here. We all understand just what this President did. No one really disputes that anymore. So what? So what? It is a version of the Dershowitz defense. So what? The President can do no wrong. The President is the State. If the President believes that corrupt conduct would help him get reelected, if he believes shaking down an ally and withholding military aid, if he believes soliciting foreign interference in our election, whether it be from the Ukrainians or the Russians or the Israeli Prime Minister or anyone else in any form it may take, so what?

He has a God-given right to abuse his power, and there is nothing you can do about it. It is the Dershowitz principle of constitutional lawlessness. That is the end-all argument for them. You don't need to hear witnesses who will prove the President's misconduct because he has a right to be as corrupt as he chooses under our Constitution, and there is nothing you can do about it. God help us if that argument succeeds.

Now, they say that these witnesses already testified, and so you don't need to hear from anybody. There are witnesses who already testified, so the House doesn't get to call witnesses in the Senate. That would be like a criminal trial in any courthouse in America where the defendant, if he's rich and powerful enough, can say to the judge: Hey, Judge, the prosecution got to have witnesses in the grand jury. They don't get to call anyone here. They had their chance in the grand jury. They called witnesses in the grand jury. They don't get to call witnesses here.

That is not how it works in any courtroom in America, and it is not how it should work in this courtroom.

Of course, you heard the argument again repeated time and time again: The House is saying they are not ready for trial. Of course, we never said we weren't ready for trial. We came here very prepared for trial. I would submit to you, the President's team came here unprepared for trial, unprepared for the fact that there would be, as we all anticipated, a daily drip of new disclosures that would send them back on their heels. We came here to try a case—prepared to try a case—and, yes, we had, I hope, the not unreasonable expectation that in trying that case, like in every courtroom in America, we could call witnesses. That is not a lack of preparation. That is the presence of common sense.

They didn't try to get Bolton, they argue. Someone said: They didn't even try to get Bolton.

Now, of course, we did try to get Bolton, and what he said when he refused to show up voluntarily is: If you subpoena me, I will sue you. I will sue you.

He said basically what Don McGahn told us 9 months ago: I will sue you; good luck with that.

Now, the public argument that was made by his counsel was that he and Dr. Kupperman, out of, you know, just due diligence, they just want a court to opine that it is OK for them to come forward and testify. As soon as the court blesses their testimony, they are more than willing to come in. They just are going to court to get a court opinion saying they can do it.

And so, of course, we said to them: If that is your real motivation, there is a court about to rule on this very issue of absolute immunity.

And very shortly thereafter, that court did. That was the court—Judge Jackson in the McGahn case—and the judge said that his argument about absolute immunity—which, yes, Presidents have always dreamed about and asserted but which has never succeeded in any court in the land—it was ridiculed in the case of Harriet Miers. It was made short shrift in the case of Don McGahn, where the judge said: No, we don't have Kings here. In the 250 years of jurisprudence, there is not a single case to support the proposition

that the President can simply say that my advisers are absolutely immune from process.

And, of course, in every other nonimpeachment context where the courts have looked at the issue of a Congress's power to enforce subpoenas against witnesses or documents, the courts have said the power to compel compliance with a subpoena is coequal and co-extensive with the power to legislate because you can't do one without the other. If we can't find out whether the President is breaking the law, violating the Impoundment Control Act or any other—whether he is withholding aid that we appropriated for an ally—how can we legislate a fix to make sure that this never happens again? We can't. If we can't get answers, we can't legislate.

That is a proposition indicated by every court in the land. And, of course, in the context of impeachment, the courts have said that is never more important—never more important.

Now, I don't know why, after saying he would sue us—and we had to expect that, like Don McGahn, where we are still in court 9 months later. I don't know why he changed his mind, but I suspect it is for the reason that if this trial goes forward and he keeps this to himself, it will be very difficult to explain to the country why he saved it for the book. When he knew information of direct relevance and consequence to a decision that you have to make about whether the President of the United States should be removed from office, it would be very difficult to explain why that was saved for a book.

Well, I would submit to you, it would be equally difficult for you to explain as it would be for him. But you can ask him that question: Why are you willing to testify before the Senate but not the House? And you should ask him that question.

Now, it was said, and it has the character of "you should have fought harder to overcome our obstruction." The House should have fought harder to overcome our stonewalling. Shame on the House for not fighting harder to overcome our stonewalling. If only they had fought harder to overcome our stonewalling, maybe they could have gotten these witnesses earlier.

That is a really hard argument to make while they are stonewalling: You should have tried harder. You should have taken the years that would be necessary to overcome our stonewalling.

And the reason why that argument is in such bad faith? As I pointed out to you yesterday, while they are in this body arguing the House was derelict, slapdash, they should have fought harder and longer and endlessly to overcome our stonewalling—while they are making that argument to you that the House should have fought up and down the courts from the district to the court of appeals to the Supreme Court and back again—they are in the courthouse arguing the opposite. They are in the courthouse saying: Judge, they are trying to enforce a subpoena on Don McGahn. You need to throw it out. They don't have the jurisdiction. This is non-justiciable. You can't hear this case.

That is a really hard argument to make. I credit them for making it with a straight face, but that is the character of it: You should have fought harder to overcome our stonewalling and obstruction.

Now, they also say the Chief Justice cannot decide issues of privilege. No, the Chief Justice can't make those decisions. You need to let us litigate this up and down the court system.

That is a pretty remarkable argument because the Senate rules allow the presiding officer to make judgments and to rule on issues of evidence, materiality, and privilege. That is permitted under your own rules. We don't need to go up and down the courts. We have got a perfectly good judge right here.

Now, you heard our proposal yesterday that we take a week—just a week—to depose the witnesses that we feel are relevant, that they feel are relevant, and that the Justice rules are relevant—just one week. Now, they can say that the Constitution requires them to go to court, but, of course, it doesn't. There is absolutely no constitutional impediment from these fine lawyers saying: You know, that is eminently reasonable. We will allow a neutral party, the Chief Justice of the United States of America, to rule on whether a witness is material or immaterial, whether they have been called for purposes of probative evidence or harassment, and whether you are making a proper claim of privilege or merely trying to hide crime or fraud.

The concern they have is not that the Chief Justice will be unfair, but rather that he will be fair. But do not make any mistake about it. Do not let them suggest that there is something constitutionally impermissible or it would violate the President's rights to allow the Chief Justice of the United States to make those decisions in this court, because he is empowered to do so by your rules and by the Constitution, which gives you the sole power to try impeachments. In the sole exercise of your power to try impeachments, you can say: We will allow the Chief Justice to make those decisions.

Now, Mr. Sekulow said that you have heard the testimony of 13 witnesses. And I think the impression is meant to be given, if not to you—we know otherwise—maybe the people watching at home, that they must have been in between errands while watching the Senate trial and missed where those 13 witnesses came before the Senate and testified.

But of course, you heard no live testimony in this body. There wasn't any live testimony before this body, and I don't recall any of you in that supersecret basement bunker they have been talking about. Now, I will admit, there were 100 Members eligible to be there. So maybe I missed one of you, but I don't think you were there for the live testimony in the House.

Now, Mr. Sekulow says the President was deprived of his right of calling these witnesses himself and cross-examining these witnesses in the House, but that is not true either because the President was eligible to call witnesses in his defense in the Judiciary Committee and chose not to do so. If the President's counsel felt that, you know, Bill Taylor says that he spoke with Sondland right after this phone call with the President, and Sondland talked about how the military aid was conditioned on these investigations, the President wanted Zelensky in a public box, and I would really like to cross-examine that West Point grad and Vietnam vet because I don't believe him, you know, they could have called Bill Taylor in the Judiciary Committee and cross-examined him, or they could

have called Mick Mulvaney and put him under oath and let him contradict what we know John Bolton would say. But of course, they didn't do that. No, they said merely: Just get it over with in the House. For all there, it was too quick, too slapdash. Get it over with in the House, because, as the President said, when it comes to the Senate, we will have a real trial where he gets to call witnesses. But they have changed their tune because now they know what they have really known all along; which is, that those witnesses would deeply incriminate this President.

So, instead, they have fallen back on the argument that if we are going to go down the road to having a real trial, if we are going to go down the road in having a real trial, we, the President's lawyers, are going to make you pay. And the form of this argument is: We are going to call every witness under the Sun. We are going to call every witness that testified before the House. We are going to call every witness that we can think of that would help smear the Bidens. We are going to keep you here until kingdom come. That is essentially the argument that they are making when Mr. Sekulow says: We are going to bring in Fiona Hill, and we are going to bring in Tim Morrison, and we are going to bring in this witness and bring in that witness.

You have the sole power to try this case. You do not have to allow the President's lawyers to abuse your time or this process. You have the power to decide: No, we gave each side 24 hours to make their arguments. We are going to give each side a shared week to call their witnesses. You have that power. If you didn't, you couldn't have constricted the amount of time for our argument. You can likewise determine how much time should be taken with witness testimony.

Now, Mr. Sekulow ended his argument against witnesses with where Mr. Philbin essentially began. It all comes back to the Dershowitz principle. What is the point of witnesses if the President can do whatever he wants under article II? What is the point of calling witnesses? What is the point of having a trial if the President can do whatever he wants under article II?

The only constraining principle—and I think that one of the Senators asked yesterday: What is the limiting principle in the Dershowitz argument? If a President can corruptly seek foreign interference in his election because he believes that his election is in the national interest, then, you cannot impeach him for it, no matter how damaging it may be to our national security. What is the limiting principle?

And I suppose the limiting principle is only this: It only requires the President to believe that his reelection is in the national interest. Well, it would require an extraordinary level of self-reflection and insight for a President of the United States to conclude that his own reelection was not in the national interest—not unprecedented, mind you. I think that was the decision that LBJ ultimately arrived at, but I would not want to consider that a meaningful limitation on Presidential power, and neither should you.

Finally, counsel expressed some indignance—indignance—that we should suggest that it is not just the Senate—it is not just the President, rather, who is on trial here but it is also the Senate;

how dare the House managers suggest that your decision should reflect on this body. That is just such a calumny.

Well, let me read you a statement made by one of your colleagues. This is what former U.S. Senator John Warner, a Republican of Virginia, had to say:

As conscientious citizens from all walks of life are trying their best to understand the complex impeachment issues now being deliberated in the U.S. Senate, the rules of evidence are central to the matter. Should the Senate allow additional sworn testimony from fact witnesses with firsthand knowledge and include relevant documents?

As a lifelong Republican and a retired member of the U.S. Senate, who once served as a juror in a Presidential impeachment trial, I am mindful of the difficult responsibilities those currently serving now shoulder. I believe, as I am sure you do, that not only is the President on trial, but in many ways, so is the Senate itself. As such, I am strongly supportive of the efforts of my former Republican Senate colleagues who are considering that the Senate accept the introduction of additional evidence that they deem relevant.

Not long ago Senators of both major parties always worked to accommodate fellow colleagues with differing points of view to arrive at outcomes that would best serve the nation's interests. If witnesses are suppressed in this trial and a majority of Americans are left believing the trial was a sham, I can only imagine the lasting damage done to the Senate, and to our fragile national consensus. The Senate embraces its legacy and delivers for the American people by avoiding the risk.

Throughout the long life of our nation, federal and state judicial systems have largely supported the judicial norms of evidence, witnesses and relevant documents. I respectfully urge the Senate to be guided by the rules of evidence and follow our nation's judicial norms, precedents and institutions to uphold the Constitution and the rule of law by welcoming relevant witnesses and documents as part of this impeachment trial.

That is your colleague, former Senator John Warner.

Senators, there is a storm blowing through this Capitol. Its winds are strong, and they move us in uncertain and dangerous directions.

Jefferson once said: "I consider trial by jury as the only anchor . . . yet imagined by man, by which a government can be held to the principles of its constitution"—the only anchor yet imagined by man by which a government can be held to the principles of its constitution. I would submit to you, remove that anchor, and we are adrift, but if we hold true, if we have faith that the ship of state can survive the truth, this storm shall pass.

I yield back.

The CHIEF JUSTICE. Thank you, Mr. Manager.

Mr. McCONNELL. Mr. Chief Justice.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. I suggest the absence of a quorum.

The CHIEF JUSTICE. The clerk will call the roll.

The senior assistant legislative clerk proceeded to call the roll.

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the order for the quorum call be rescinded.

The CHIEF JUSTICE. Without objection, it is so ordered.

Mr. McCONNELL. Mr. Chief Justice, the Democratic leader and I have had an opportunity to have a discussion, and it leads to the following: We will now cast a vote on the witness question.

Once that vote is complete, I would ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

The CHIEF JUSTICE. Without objection, it is so ordered.

The question is, Shall it be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents?

The yeas and nays are required under S. Res. 483.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The result was announced—yeas 49, nays 51, as follows:

[Rollcall Vote No. 27]

YEAS—49

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Collins	Markey	Udall
Coons	Menendez	Van Hollen
Cortez Masto	Merkley	Warner
Duckworth	Murphy	Warren
Durbin	Murray	Whitehouse
Feinstein	Peters	Wyden
Gillibrand	Reed	
Harris	Romney	

NAYS—51

Alexander	Fischer	Paul
Barrasso	Gardner	Perdue
Blackburn	Graham	Portman
Blunt	Grassley	Risch
Boozman	Hawley	Roberts
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Johnson	Scott (FL)
Cornyn	Kennedy	Scott (SC)
Cotton	Lankford	Shelby
Cramer	Lee	Sullivan
Crapo	Loeffler	Thune
Cruz	McConnell	Tillis
Daines	McSally	Toomey
Enzi	Moran	Wicker
Ernst	Murkowski	Young

The motion was rejected.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The CHIEF JUSTICE. Under the previous order, the Senate stands in recess subject to the call of the Chair.

Thereupon, at 5:42 p.m., the Senate, sitting as a Court of Impeachment, recessed until 7:13 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

Mr. CHIEF JUSTICE. The Senate will come to order. The majority leader is recognized.

PROVIDING FOR RELATED PROCEDURES CONCERNING THE ARTICLES OF
IMPEACHMENT AGAINST DONALD JOHN TRUMP, PRESIDENT OF THE
UNITED STATES

Mr. McCONNELL. Mr. Chief Justice, I send a resolution to the desk, and I ask the clerk to report.

Mr. CHIEF JUSTICE. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 488) to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

Resolved, That the record in this case shall be closed, and no motion with respect to reopening the record shall be in order for the duration of these proceedings.

The Senate shall proceed to final arguments as provided in the impeachment rules, waiving the two person rule contained in Rule XXII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. Such arguments shall begin at 11:00 am on Monday, February 3, 2020, and not exceed four hours, and be equally divided between the House and the President to be used as under the Rules of Impeachment.

At the conclusion of the final arguments by the House and the President, the court of impeachment shall stand adjourned until 4:00 pm on Wednesday, February 5, 2020, at which time the Senate, without intervening action or debate shall vote on the Articles of Impeachment.

Thereupon, the Senate, sitting as a Court of Impeachment, proceeded to consider the resolution.

The CHIEF JUSTICE. The majority leader.

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the Democratic leader or designee be allowed to offer up four amendments to the resolution; further, that I be recognized to make a motion to table the amendment after it has been reported with no intervening action or debate.

The CHIEF JUSTICE. Without objection, it is so ordered.

The Democratic leader is recognized.

Mr. SCHUMER. Mr. Chief Justice, I have a parliamentary inquiry.

The CHIEF JUSTICE. The Democratic leader will state the inquiry.

Mr. SCHUMER. Is the Chief Justice aware that in the impeachment trial of President Johnson, Chief Justice Chase, as Presiding Officer, cast tie-breaking votes on both March 31 and April 2, 1868?

The CHIEF JUSTICE. I am, Mr. Leader. The one concerned a motion to adjourn. The other concerned a motion to close deliberations. I do not regard those isolated episodes 150 years ago as sufficient to support a general authority to break ties.

If the Members of this body, elected by the people and accountable to them, divide equally on a motion, the normal rule is that the motion fails.

I think it would be inappropriate for me, an unelected official from a different branch of government, to assert the power to change that result so that the motion would succeed.

AMENDMENT NO. 1295

(Purpose: To subpoena certain relevant witnesses and documents)

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena Mulvaney, Bolton, Duffey, Blair, and the White House, OMB, DOD, and State Department documents, and I ask that it be read.

The CHIEF JUSTICE. The clerk will report.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1295.

Mr. SCHUMER. Mr. Chief Justice, I ask unanimous consent that the amendment be considered as read.

The CHIEF JUSTICE. Without objection, it is so ordered.

(The amendment is printed in today's RECORD under "Text of Amendments.")

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. McCONNELL. Mr. Chief Justice, I move to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The CHIEF JUSTICE. Are there any other Senators in the Chamber wishing to vote or change their vote?

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 28]

YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Johnson	Scott (FL)
Collins	Kennedy	Scott (SC)
Cornyn	Lankford	Shelby
Cotton	Lee	Sullivan
Cramer	Loeffler	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

NAYS—47

Baldwin	Duckworth	Klobuchar
Bennet	Durbin	Leahy
Blumenthal	Feinstein	Manchin
Booker	Gillibrand	Markey
Brown	Harris	Menendez
Cantwell	Hassan	Merkley
Cardin	Heinrich	Murphy
Carper	Hirono	Murray
Casey	Jones	Peters
Coons	Kaine	Reed
Cortez Masto	King	Rosen

Sanders
Schatz
Schumer
Shaheen
Sinema

Smith
Stabenow
Tester
Udall
Van Hollen

Warner
Warren
Whitehouse
Wyden

The motion to table is agreed to; the amendment is tabled.
The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1296

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena John R. Bolton, and I ask that it be read.

The CHIEF JUSTICE. The clerk will read the amendment.
The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1296.

The amendment is as follows:

(Purpose: To subpoena John Robert Bolton)

At the appropriate place in the resolving clause, insert the following:

SEC. _____. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Robert Bolton, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

MOTION TO TABLE

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. Mr. Chief Justice, I move to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The CHIEF JUSTICE. Are there any other Senators in the Chamber desiring to vote or change his or her vote?

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 29]

YEAS—51

Alexander
Barrasso
Blackburn
Blunt
Boozman
Braun
Burr
Capito
Cassidy
Cornyn
Cotton
Cramer
Crapo
Cruz
Daines
Enzi
Ernst

Fischer
Gardner
Graham
Grassley
Hawley
Hoeven
Hyde-Smith
Inhofe
Johnson
Kennedy
Lankford
Lee
Loeffler
McConnell
McSally
Moran
Murkowski

Paul
Perdue
Portman
Risch
Roberts
Rounds
Rubio
Sasse
Scott (FL)
Scott (SC)
Shelby
Sullivan
Thune
Tillis
Toomey
Wicker
Young

NAYS—49

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Collins	Markey	Udall
Coons	Menendez	Van Hollen
Cortez Masto	Merkley	Warner
Duckworth	Murphy	Warren
Durbin	Murray	Whitehouse
Feinstein	Peters	Wyden
Gillibrand	Reed	
Harris	Romney	

The motion to table is agreed to; the amendment is tabled.
The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1297

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena John R. Bolton; providing further that there be 1 day for a deposition, presided over by the Chief Justice, and 1 day for live testimony before the Senate, both of which must occur within 5 days of the adoption of the underlying resolution, and I ask that it be read.

The CHIEF JUSTICE. The clerk will report.

The senior assistant legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1297.

Mr. SCHUMER. Mr. Chief Justice, I ask unanimous consent that the amendment be considered as read.

The CHIEF JUSTICE. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To subpoena John Robert Bolton)

At the appropriate place in the matter following the resolving clause, insert the following:

Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony on oral deposition and subsequent testimony before the Senate of John Robert Bolton, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this paragraph.

The deposition authorized by this resolution shall be taken before, and presided over by, the Chief Justice of the United States, who shall administer to the witness the oath prescribed by rule XXV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. The Chief Justice shall have authority to rule, as an initial matter, upon any question arising out of the deposition. All objections to a question shall be noted by the Chief Justice upon the record of the deposition but the examination shall proceed, and the witness shall answer such question. The witness may refuse to answer a question only when necessary to preserve a legally recognized privilege, or constitutional right, and must identify such privilege cited if refusing to answer a question.

Examination of the witness at a deposition shall be conducted by the Managers on the part of the House of Representatives or their counsel, and by counsel for the President. The witness shall be examined by not more than 2 persons each on behalf

of the Managers and counsel for the President. The witness may be accompanied by counsel. The scope of the examination by the Managers and counsel for both parties shall be limited to subject matters reflected in the Senate record. The party taking a deposition shall present to the other party, not less than 18 hours in advance of the deposition, copies of all exhibits which the deposing party intends to enter into the deposition. No exhibits outside of the Senate record shall be employed, except for articles and materials in the press, including electronic media. Any party may interrogate the witness as if the witness were declared adverse.

The deposition shall be videotaped and a transcript of the proceeding shall be made. The deposition shall be conducted in private. No person shall be admitted to the deposition except for the following: The witness, counsel for the witness, the Managers on the part of the House of Representatives, counsel for the Managers, counsel for the President, and the Chief Justice; further, such persons whose presence is required to make and preserve a record of the proceeding in videotaped and transcript forms, and staff members to the Chief Justice whose presence is required to assist the Chief Justice in presiding over the deposition, or for other purposes, as determined by the Chief Justice. All persons present must maintain the confidentiality of the proceeding.

The Chief Justice at the deposition shall file the videotaped and transcribed records of the deposition with the Secretary of the Senate, who shall maintain them as confidential proceedings of the Senate. The Sergeant at Arms is authorized to make available for review at secure locations, any of the videotapes or transcribed deposition records to Members of the Senate, one designated staff member per Senator, and the Chief Justice. The Senate may direct the Secretary of the Senate to distribute such materials, and to use whichever means of dissemination, including printing as Senate documents, printing in the Congressional Record, photo- and video- duplication, and electronic dissemination, he determines to be appropriate to accomplish any distribution of the videotaped or transcribed deposition records that he is directed to make pursuant to this paragraph.

The deposition authorized by this resolution shall be deemed to be proceedings before the Senate for purposes of rule XXIX of the Standing Rules of the Senate, sections 101, 102, and 104 of the Revised Statutes (2 U.S.C. 191, 192, and 194), sections 703, 705, and 707 of the Ethics in Government Act of 1978 (2 U.S.C. 288b, 288d, and 288f), sections 6002 and 6005 of title 18, United States Code, and section 1365 of title 28, United States Code. The Secretary of the Senate shall arrange for stenographic assistance, including videotaping, to record the depositions as provided in section 205. Such expenses as may be necessary shall be paid from the "Appropriation Account—Miscellaneous Items" in the contingent fund of the Senate upon vouchers approved by the Secretary.

The deposition authorized by this resolution may be conducted for a period of time not to exceed 1 day. The period of time for the subsequent testimony before the Senate authorized by this resolution shall not exceed 1 day. The deposition and the subsequent testimony before the Senate shall both be completed not later than 5 days after the date on which this resolution is adopted.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. McCONNELL. Mr. Chief Justice, I move to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The CHIEF JUSTICE. Is there any Member in the Chamber who wishes to vote or change his or her vote?

The result was announced—yeas 51, nays 49, as follows:

[Rollcall Vote No. 30]

YEAS—51

Alexander
Barrasso
Blackburn

Blunt
Boozman
Braun

Burr
Capito
Cassidy

Cornyn	Hyde-Smith	Risch
Cotton	Inhofe	Roberts
Cramer	Johnson	Rounds
Crapo	Kennedy	Rubio
Cruz	Lankford	Sasse
Daines	Lee	Scott (FL)
Enzi	Loeffler	Scott (SC)
Ernst	McConnell	Shelby
Fischer	McSally	Sullivan
Gardner	Moran	Thune
Graham	Murkowski	Tillis
Grassley	Paul	Toomey
Hawley	Perdue	Wicker
Hoeven	Portman	Young

NAYS—49

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Collins	Markey	Udall
Coons	Menendez	Van Hollen
Cortez Masto	Merkley	Warner
Duckworth	Murphy	Warren
Durbin	Murray	Whitehouse
Feinstein	Peters	Wyden
Gillibrand	Reed	
Harris	Romney	

The motion to table is agreed to; the amendment is tabled.
The CHIEF JUSTICE. The Senator from Maryland.

AMENDMENT NO. 1298

Mr. VAN HOLLEN. Mr. Chief Justice, I send an amendment to the desk to have the Chief Justice rule on motions to subpoena witnesses and documents and to rule on any assertion of privilege, and I ask that it be read.

The CHIEF JUSTICE. The clerk will report.

The senior assistant legislative clerk read as follows:

The Senator from Maryland [Mr. VAN HOLLEN] proposes an amendment numbered 1298.

At the appropriate place in the matter following the resolving clause, insert the following:

Notwithstanding any other provision of this resolution, the Presiding Officer shall issue a subpoena for any witness or any document that a Senator or a party moves to subpoena if the Presiding Officer determines that the witness or document is likely to have probative evidence relevant to either article of impeachment before the Senate, and, consistent with the authority of the Presiding Officer to rule on all questions of evidence, shall rule on any assertion of privilege.

The CHIEF JUSTICE. The majority leader is recognized.

MOTION TO TABLE

Mr. McCONNELL. Mr. Chief Justice, I move to table the amendment, and I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The CHIEF JUSTICE. Is there any Member in the Chamber who wishes to vote or change his or her vote?

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 31]

YEAS—53

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Romney
Braun	Hoeven	Rounds
Burr	Hyde-Smith	Rubio
Capito	Inhofe	Sasse
Cassidy	Johnson	Scott (FL)
Collins	Kennedy	Scott (SC)
Cornyn	Lankford	Shelby
Cotton	Lee	Sullivan
Cramer	Loeffler	Thune
Crapo	McConnell	Tillis
Cruz	McSally	Toomey
Daines	Moran	Wicker
Enzi	Murkowski	Young
Ernst	Paul	

NAYS—47

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Coons	Markey	Udall
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden
Harris	Reed	

The motion to table is agreed to; the amendment is tabled.

The CHIEF JUSTICE. The question occurs on the adoption of S. Res. 488.

Mr. McCONNELL. Mr. Chief Justice, I ask for the yeas and nays.

The CHIEF JUSTICE. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

The CHIEF JUSTICE. Are there any other Senators in the Chamber desiring to vote or change his or her vote?

The result was announced—yeas 53, nays 47, as follows:

[Rollcall Vote No. 32]

YEAS—53

Alexander	Blackburn	Boozman
Barrasso	Blunt	Braun

Burr	Hawley	Risch
Capito	Hoeben	Roberts
Cassidy	Hyde-Smith	Romney
Collins	Inhofe	Rounds
Cornyn	Johnson	Rubio
Cotton	Kennedy	Sasse
Cramer	Lankford	Scott (FL)
Crapo	Lee	Scott (SC)
Cruz	Loeffler	Shelby
Daines	McConnell	Sullivan
Enzi	McSally	Thune
Ernst	Moran	Tillis
Fischer	Murkowski	Toomey
Gardner	Paul	Wicker
Graham	Perdue	Young
Grassley	Portman	

NAYS—47

Baldwin	Hassan	Rosen
Bennet	Heinrich	Sanders
Blumenthal	Hirono	Schatz
Booker	Jones	Schumer
Brown	Kaine	Shaheen
Cantwell	King	Sinema
Cardin	Klobuchar	Smith
Carper	Leahy	Stabenow
Casey	Manchin	Tester
Coons	Markey	Udall
Cortez Masto	Menendez	Van Hollen
Duckworth	Merkley	Warner
Durbin	Murphy	Warren
Feinstein	Murray	Whitehouse
Gillibrand	Peters	Wyden
Harris	Reed	

The resolution (S. Res. 488) was agreed to.

(The resolution is printed in today's RECORD under "Submitted Resolutions.")

UNANIMOUS CONSENT AGREEMENT—PRINTING OF STATEMENTS IN THE RECORD AND PRINTING OF SENATE DOCUMENT OF IMPEACHMENT PROCEEDINGS

The CHIEF JUSTICE. The majority leader is recognized.

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the Secretary be authorized to include statements of Senators explaining their votes, either given or submitted during the legislative sessions of the Senate on Monday, February 3; Tuesday, February 4; and Wednesday, February 5; along with the full record of the Senate's proceedings and the filings by the parties in a Senate document printed under the supervision of the Secretary of the Senate that will complete the documentation of the Senate's handling of these impeachment proceedings.

The CHIEF JUSTICE. Without objection, it is so ordered.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

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

By Mr. McCONNELL:

S. Res. 488. A resolution to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; considered and agreed to.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 488—TO PROVIDE FOR RELATED PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES

Mr. McCONNELL submitted the following resolution; which was considered and agreed to:

S. RES. 488

Resolved, That the record in this case shall be closed, and no motion with respect to reopening the record shall be in order for the duration of these proceedings.

The Senate shall proceed to final arguments as provided in the impeachment rules, waiving the two person rule contained in Rule XXII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. Such arguments shall begin at 11:00 am on Monday, February 3, 2020, and not exceed four hours, and be equally divided between the House and the President to be used as under the Rules of Impeachment.

At the conclusion of the final arguments by the House and the President, the court of impeachment shall stand adjourned until 4:00 pm on Wednesday, February 5, 2020, at which time the Senate, without intervening action or debate shall vote on the Articles of Impeachment.

AMENDMENTS SUBMITTED AND PROPOSED

SA 1295. Mr. SCHUMER proposed an amendment to the resolution S. Res. 488, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

SA 1296. Mr. SCHUMER proposed an amendment to the resolution S. Res. 488, *supra*.

SA 1297. Mr. SCHUMER proposed an amendment to the resolution S. Res. 488, *supra*.

SA 1298. Mr. VAN HOLLEN proposed an amendment to the resolution S. Res. 488, *supra*.

TEXT OF AMENDMENTS

SA 1295. Mr. SCHUMER proposed an amendment to the resolution S. Res. 488, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

At the appropriate place in the matter following the resolving clause, insert the following:

SEC. _____. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials—

(1) the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena—

(A) for the taking of testimony of—

(i) John Robert Bolton;

- (ii) John Michael “Mick” Mulvaney;
- (iii) Michael P. Duffey; and
- (iv) Robert B. Blair;

(B) to the Acting Chief of Staff of the White House commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the possession, custody, or control of the White House, including the National Security Council, referring or relating to—

(i) all meetings and calls between President Trump and the President of Ukraine, including documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President’s April 21 and July 25, 2019 telephone calls, as well as the President’s September 25, 2019 meeting with the President of Ukraine in New York;

(ii) all investigations, inquiries, or other probes related to Ukraine, including any that relate in any way to—

- (I) former Vice President Joseph Biden;
- (II) Hunter Biden and any of his associates;
- (III) Burisma Holdings Limited (also known as “Burisma”);
- (IV) interference or involvement by Ukraine in the 2016 United States election;
- (V) the Democratic National Committee; or
- (VI) CrowdStrike;

(iii) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF);

(iv) all documents, communications, notes, and other records created or received by Acting Chief of Staff Mick Mulvaney, then-National Security Advisor John R. Bolton, Senior Advisor to the Chief of Staff Robert B. Blair, and other White House officials relating to efforts to—

- (I) solicit, request, demand, induce, persuade, or coerce Ukraine to conduct or announce investigations;
- (II) offer, schedule, cancel, or withhold a White House meeting for Ukraine’s president; or
- (III) hold and then release military and other security assistance to Ukraine;

(v) meetings at or involving the White House that relate to Ukraine, including but not limited to—

(I) President Zelensky’s inauguration on May 20, 2019, in Kiev, Ukraine, including but not limited to President Trump’s decision not to attend, to ask Vice President Pence to lead the delegation, directing Vice President Pence not to attend, and the subsequent decision about the composition of the delegation of the United States;

(II) a meeting at the White House on or around May 23, 2019, involving, among others, President Trump, then-Special Representative for Ukraine Negotiations Ambassador Kurt Volker, then-Energy Secretary Rick Perry, and United States Ambassador to the European Union Gordon Sondland, as well as any private meetings or conversations with those individuals before or after the larger meeting;

(III) meetings at the White House on or about July 10, 2019, involving Ukrainian officials Andriy Yermak and Oleksander Danylyuk and United States Government officials, including, but not limited to, then-National Security Advisor John Bolton, Secretary Perry, Ambassador Volker, and Ambassador Sondland, to include at least a meeting in Ambassador Bolton’s office and a subsequent meeting in the Ward Room;

(IV) a meeting at the White House on or around August 30, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(V) a planned meeting, later cancelled, in Warsaw, Poland, on or around September 1, 2019 between President Trump and President Zelensky, and subsequently attended by Vice President Pence; and

(VI) a meeting at the White House on or around September 11, 2019, involving President Trump, Vice President Pence, and Mr.

Mulvaney concerning the lifting of the hold on security assistance for Ukraine;

(vi) meetings, telephone calls or conversations related to any occasions in which National Security Council officials reported concerns to National Security Council lawyers, including but not limited to National Security Council Legal Advisor, John Eisenberg, regarding matters related to Ukraine, including but not limited to—

(I) the decision to delay military assistance to Ukraine;

(II) the July 10, 2019 meeting at the White House with Ukrainian officials;

(III) the President's July 25, 2019 call with the President of Ukraine;

(IV) a September 1, 2019 meeting between Ambassador Sondland and a Ukrainian official; and

(V) the President's September 7, 2019 call with Ambassador Sondland;

(vii) any internal review or assessment within the White House regarding Ukraine matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents collected that pertain to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(viii) the complaint submitted by a whistleblower within the Intelligence Community on or around August 12, 2019, to the Inspector General of the Intelligence Community;

(ix) all meetings or calls, including requests for or records of meetings or telephone calls, scheduling items, calendar entries, White House visitor records, and email or text messages using personal or work-related devices between or among—

(I) current or former White House officials or employees, including but not limited to President Trump; and

(II) Rudolph W. Giuliani, Ambassador Sondland, Victoria Toensing, or Joseph diGenova; and

(x) former United States Ambassador to Ukraine Marie "Masha" Yovanovitch, including but not limited to the decision to end her tour or recall her from the United States Embassy in Kiev;

(C) to the Acting Director of the Office of Management and Budget commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the possession, custody, or control of the Office of Management and Budget, referring or relating to—

(i) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (referred to in this section as "USAI") and Foreign Military Financing (referred to in this section as "FMF"), including but not limited to—

(I) communications among, between, or referring to Director Michael John "Mick" Mulvaney, Assistant to the President Robert Blair, Acting Director Russell Vought, Associate Director Michael Duffey, or any other Office of Management and Budget employee;

(II) communications related to requests by President Trump for information about Ukraine security or military assistance and responses to those requests;

(III) communications related to concerns raised by any Office of Management and Budget employee related to the legality of any hold on foreign assistance, military assistance, or security assistance to Ukraine;

(IV) communications sent to the Department of State regarding a hold or block on congressional notifications regarding the release of FMF funds to Ukraine;

(V) communications between—

(aa) officials at the Department of Defense, including but not limited to Undersecretary of Defense Elaine McCusker; and

(bb) Associate Director Michael Duffey, Deputy Associate Director Mark Sandy, or any other Office of Management and Budget employee;

(VI) all draft and final versions of the August 7, 2019, memorandum prepared by the National Security Division, International Affairs Division, and Office of General Counsel of the Office of Management and Budget about the release of foreign assistance, security assistance, or security assistance to Ukraine; and

(VII) the Ukrainian government's knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine, including all meetings, calls, or other engagements with Ukrainian officials regarding potential or actual suspensions, holds, or delays in United States assistance to Ukraine;

(ii) communications, opinions, advice, counsel, approvals, or concurrences provided by any employee in the Office of Management and Budget regarding the actual or potential suspension, withholding, delaying, freezing, or releasing of security assistance to Ukraine including legality under the Impoundment Control Act;

(iii) Associate Director Michael Duffey taking over duties related to apportionments of USAI or FMF from Deputy Associate Director Mark Sandy or any other Office of Management and Budget employee;

(iv) all meetings related to the security assistance to Ukraine including but not limited to interagency meetings on July 18, 2019, July 23, 2019, July 26, 2019, and July 31, 2019, including any directions provided to staff participating in those meetings and any readouts from those meetings;

(v) the decision announced on or about September 11, 2019, to release appropriated foreign assistance, military assistance, or security assistance to Ukraine, including but not limited to any notes, memoranda, documentation or correspondence related to the decision;

(vi) all draft and final versions of talking points related to the withholding or release of foreign assistance, military assistance, or security assistance to Ukraine, including communications with the Department of Defense related to concerns about the accuracy of the talking points; and

(vii) all meetings and calls between President Trump and the President of Ukraine, including documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President's April 21 and July 25, 2019, telephone calls, as well as the President's September 25, 2019, meeting with the President of Ukraine in New York;

(D) to the Secretary of State commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the possession, custody, or control of the Department of State, referring or relating to—

(i) all meetings and calls between President Trump and the President of Ukraine, including documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President's April 21 and July 25, 2019 telephone calls, as well as the President's September 25, 2019 meeting with the President of Ukraine in New York;

(ii) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF), including but not limited to all communications with the White House, Department of Defense, and the Office of Management and Budget, as well as the Ukrainian government's knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance to Ukraine, including all meetings, calls, or other engagements with Ukrainian officials regarding potential or actual suspensions, holds, or delays in United States assistance to Ukraine;

(iii) all documents, communications, notes, and other records created or received by, Secretary Michael R. Pompeo, Counselor T. Ulrich Brechbuhl, former Special Representative for Ukraine Negotiations

Ambassador Kurt Volker, Deputy Assistant Secretary George Kent, then-United States Embassy in Ukraine Charge d’Affaires William B. Taylor, and Ambassador to the European Union Gordon Sondland, and other State Department officials, relating to efforts to—

- (I) solicit, request, demand, induce, persuade, or coerce Ukraine to conduct or announce investigations;
- (II) offer, schedule, cancel, or withhold a White House meeting for Ukraine’s president; or
- (III) hold and then release military and other security assistance to Ukraine;
- (iv) any meetings or proposed meetings at or involving the White House that relate to Ukraine, including but not limited to—
 - (I) President Zelensky’s inauguration on May 20, 2019, in Kiev, Ukraine, including but not limited to President Trump’s decision not to attend, to ask Vice President Pence to lead the delegation, directing Vice President Pence not to attend, and the subsequent decision about the composition of the delegation of the United States;
 - (II) a meeting at the White House on or around May 23, 2019, involving, among others, President Trump, then-Special Representative for Ukraine Negotiations Ambassador Kurt Volker, then-Energy Secretary Rick Perry, and United States Ambassador to the European Union Gordon Sondland, as well as any private meetings or conversations with those individuals before or after the larger meeting;
 - (III) meetings at the White House on or about July 10, 2019, involving Ukrainian officials Andriy Yermak and Oleksander Danylyuk and United States Government officials, including, but not limited to, then-National Security Advisor John Bolton, Secretary Perry, Ambassador Volker, and Ambassador Sondland, to include at least a meeting in Ambassador Bolton’s office and a subsequent meeting in the Ward Room;
 - (IV) a meeting at the White House on or around August 30, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;
 - (V) a planned meeting, later cancelled, in Warsaw, Poland, on or around September 1, 2019 between President Trump and President Zelensky, and subsequently attended by Vice President Pence; and
 - (VI) a meeting at the White House on or around September 11, 2019, involving President Trump, Vice President Pence, and Mr. Mulvaney concerning the lifting of the hold on security assistance for Ukraine;
- (v) all communications, including but not limited to WhatsApp or text messages on private devices, between current or former State Department officials or employees, including but not limited to Secretary Michael R. Pompeo, Ambassador Volker, Ambassador Sondland, Ambassador Taylor, and Deputy Assistant Secretary Kent, and the following: President Zelensky, Andriy Yermak, or individuals or entities associated with or acting in any capacity as a representative, agent, or proxy for President Zelensky before and after his election;
- (vi) all records specifically identified by witnesses in the House of Representatives’ impeachment inquiry that memorialize key events or concerns, and any records reflecting an official response thereto, including but not limited to—
 - (I) an August 29, 2019 cable sent by Ambassador Taylor to Secretary Pompeo;
 - (II) an August 16, 2019 memorandum to file written by Deputy Assistant Secretary Kent; and
 - (III) a September 15, 2019 memorandum to file written by Deputy Assistant Secretary Kent;
- (vii) all meetings or calls, including but not limited to all requests for or records of meetings or telephone calls, scheduling items, calendar entries, State Department visitor records, and email or text messages using personal or work-related devices, between or among—
 - (I) current or former State Department officials or employees, including but not limited to Secretary Michael R. Pompeo, Ambassador Volker, and Ambassador Sondland; and

- (II) Rudolph W. Giuliani, Victoria Toensing, or Joseph diGenova; and
- (viii) the curtailment or recall of former United States Ambassador to Ukraine Marie “Masha” Yovanovitch from the United States Embassy in Kiev, including credible threat reports against her and any protective security measures taken in response; and
- (E) to the Secretary of Defense commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the possession, custody, or control of the Department of Defense, referring or relating to—
 - (i) the actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF), including but not limited to—
 - (I) communications among or between officials at the Department of Defense, White House, Office of Management and Budget, Department of State, or Office of the Vice President;
 - (II) documents, communications, notes, or other records created, sent, or received by Secretary Mark Esper, Deputy Secretary David Norquist, Undersecretary of Defense Elaine McCusker, and Deputy Assistant Secretary of Defense Laura Cooper, or Mr. Eric Chewning;
 - (III) draft or final letters from Deputy Secretary David Norquist to the Office of Management and Budget; and
 - (IV) unredacted copies of all documents released in response to the September 25, 2019, Freedom of Information Act request by the Center for Public Integrity (tracking number 19-F-1934);
 - (ii) the Ukrainian government’s knowledge prior to August 28, 2019, of any actual or potential suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, or security assistance to Ukraine, including but not limited to all meetings, calls, or other engagements with Ukrainian officials regarding potential or actual suspensions, holds, or delays in United States assistance to Ukraine, including but not limited to—
 - (I) communications received from the Department of State concerning the Ukrainian Embassy’s inquiries about United States foreign assistance, military assistance, and security assistance to Ukraine; and
 - (II) communications received directly from the Ukrainian Embassy about United States foreign assistance, military assistance, and security assistance to Ukraine;
 - (iii) communications, opinions, advice, counsel, approvals, or concurrences provided by the Department of Defense, Office of Management and Budget, or the White House, on the legality of any suspension, withholding, delaying, freezing, or releasing of United States foreign assistance, military assistance, and security assistance to Ukraine;
 - (iv) planned or actual meetings with President Trump related to United States foreign assistance, military assistance, or security assistance to Ukraine, including but not limited to any talking points and notes for Secretary Mark Esper’s planned or actual meetings with President Trump on August 16, August 19, or August 30, 2019;
 - (v) the decision announced on or about September 11, 2019, to release appropriated foreign assistance, military assistance, and security assistance to Ukraine, including but not limited to any notes, memoranda, documentation or correspondence related to the decision; and
 - (vi) all meetings and calls between President Trump and the President of Ukraine, including but not limited to documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President’s April 21 and July 25, 2019 telephone calls, as well as the President’s September 25, 2019 meeting with the President of Ukraine in New York; and
- (2) the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

SA 1296. Mr. SCHUMER proposed an amendment to the resolution S. Res. 488, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

At the appropriate place in the resolving clause, insert the following:

SEC. _____. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony of John Robert Bolton, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this section.

SA 1297. Mr. SCHUMER proposed an amendment to the resolution S. Res. 488, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

At the appropriate place in the matter following the resolving clause, insert the following:

Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena for the taking of testimony on oral deposition and subsequent testimony before the Senate of John Robert Bolton, and the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the Senate in serving the subpoena authorized to be issued by this paragraph.

The deposition authorized by this resolution shall be taken before, and presided over by, the Chief Justice of the United States, who shall administer to the witness the oath prescribed by rule XXV of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials. The Chief Justice shall have authority to rule, as an initial matter, upon any question arising out of the deposition. All objections to a question shall be noted by the Chief Justice upon the record of the deposition but the examination shall proceed, and the witness shall answer such question. The witness may refuse to answer a question only when necessary to preserve a legally recognized privilege, or constitutional right, and must identify such privilege cited if refusing to answer a question.

Examination of the witness at a deposition shall be conducted by the Managers on the part of the House of Representatives or their counsel, and by counsel for the President. The witness shall be examined by not more than 2 persons each on behalf of the Managers and counsel for the President. The witness may be accompanied by counsel. The scope of the examination by the Managers and counsel for both parties shall be limited to subject matters reflected in the Senate record. The party taking a deposition shall present to the other party, not less than 18 hours in advance of the deposition, copies of all exhibits which the deposing party intends to enter into the deposition. No exhibits outside of the Senate record shall be employed, except for articles and materials in the press, including electronic media. Any party may interrogate the witness as if the witness were declared adverse.

The deposition shall be videotaped and a transcript of the proceeding shall be made. The deposition shall be conducted in private. No person shall be admitted to the deposition except for the following: The witness, counsel for the witness, the Managers on the part of the House of Representatives, counsel for the Managers, counsel for the President, and the Chief Justice; further, such persons whose presence is required to make and preserve a record of the proceeding in videotaped and transcript forms, and staff members to the Chief Justice whose presence is required to assist the Chief Justice in presiding over the deposition, or for other purposes, as determined by the Chief Justice. All persons present must maintain the confidentiality of the proceeding.

The Chief Justice at the deposition shall file the videotaped and transcribed records of the deposition with the Secretary of the Senate, who shall maintain them as confidential proceedings of the Senate. The Sergeant at Arms is authorized to make available for review at secure locations, any of the videotapes or transcribed deposition records to Members of the Senate, one designated staff member per Sen-

ator, and the Chief Justice. The Senate may direct the Secretary of the Senate to distribute such materials, and to use whichever means of dissemination, including printing as Senate documents, printing in the Congressional Record, photo- and video- duplication, and electronic dissemination, he determines to be appropriate to accomplish any distribution of the videotaped or transcribed deposition records that he is directed to make pursuant to this paragraph.

The deposition authorized by this resolution shall be deemed to be proceedings before the Senate for purposes of rule XXIX of the Standing Rules of the Senate, sections 101, 102, and 104 of the Revised Statutes (2 U.S.C. 191, 192, and 194), sections 703, 705, and 707 of the Ethics in Government Act of 1978 (2 U.S.C. 288b, 288d, and 288f), sections 6002 and 6005 of title 18, United States Code, and section 1365 of title 28, United States Code. The Secretary of the Senate shall arrange for stenographic assistance, including videotaping, to record the depositions as provided in section 205. Such expenses as may be necessary shall be paid from the "Appropriation Account—Miscellaneous Items" in the contingent fund of the Senate upon vouchers approved by the Secretary.

The deposition authorized by this resolution may be conducted for a period of time not to exceed 1 day. The period of time for the subsequent testimony before the Senate authorized by this resolution shall not exceed 1 day. The deposition and the subsequent testimony before the Senate shall both be completed not later than 5 days after the date on which this resolution is adopted.

SA 1298. Mr. VAN HOLLEN proposed an amendment to the resolution S. Res. 488, to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States; as follows:

At the appropriate place in the matter following the resolving clause, insert the following:

Notwithstanding any other provision of this resolution, the Presiding Officer shall issue a subpoena for any witness or any document that a Senator or a party moves to subpoena if the Presiding Officer determines that the witness or document is likely to have probative evidence relevant to either article of impeachment before the Senate, and, consistent with the authority of the Presiding Officer to rule on all questions of evidence, shall rule on any assertion of privilege.

ORDERS FOR MONDAY, FEBRUARY 3, 2020; TUESDAY, FEBRUARY 4, 2020;
AND WEDNESDAY, FEBRUARY 5, 2020

Mr. McCONNELL. Mr. Chief Justice, I further ask unanimous consent that when the Senate resumes legislative session on Monday, February 3; Tuesday, February 4; and Wednesday, February 5; the Senate be in a period of morning business with Senators permitted to speak for up to 10 minutes each for debate only.

The CHIEF JUSTICE. Without objection, it is so ordered.

ADJOURNMENT UNTIL MONDAY, FEBRUARY 3, 2020, AT 11
A.M.

Mr. McCONNELL. Mr. Chief Justice, finally, I ask unanimous consent that the trial adjourn until 11 a.m., February 3, and that this order also constitute the adjournment of the Senate.

There being no objection, at 7:58 p.m., the Senate, sitting as a Court of Impeachment, adjourned until Monday, February 3, 2020, at 11 a.m.

116TH CONGRESS
2D SESSION

S. RES. 488

To provide for related procedures concerning the articles of impeachment
against Donald John Trump, President of the United States.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2020

Mr. McCONNELL submitted the following resolution; which was considered
and agreed to

RESOLUTION

To provide for related procedures concerning the articles
of impeachment against Donald John Trump, President
of the United States.

1 *Resolved*, That the record in this case shall be closed,
2 and no motion with respect to reopening the record shall
3 be in order for the duration of these proceedings.

4 The Senate shall proceed to final arguments as pro-
5 vided in the impeachment rules, waiving the two person
6 rule contained in Rule XXII of the Rules of Procedure
7 and Practice in the Senate When Sitting on Impeachment
8 Trials. Such arguments shall begin at 11:00am on Mon-
9 day, February 3, 2020, and not exceed four hours, and

2

1 be equally divided between the House and the President
2 to be used as under the Rules of Impeachment.

3 At the conclusion of the final arguments by the
4 House and the President, the court of impeachment shall
5 stand adjourned until 4:00pm on Wednesday, February 5,
6 2020, at which time the Senate, without intervening action
7 or debate shall vote on the Articles of Impeachment.

○

[From the CONGRESSIONAL RECORD, February 3, 2020]

The Senate met at 11:05 a.m. and was called to order by the Chief Justice of the United States.

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

The Chaplain will lead us in prayer.

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:
Let us pray.

Arise, O Lord, as we enter the final arguments phase of this impeachment trial. Mighty God, we continue to keep our eyes on You, on whom our faith depends from start to finish. May our Senators embrace Your promise to do for them immeasurably, abundantly, above all that they can ask or imagine.

Lord, help our lawmakers to store Your promises in their hearts and permit You to keep them from stumbling. Grant that they will leave a legacy of honor as they seek Your will in all they do.

We pray in Your amazing Name. Amen.

PLEDGE OF ALLEGIANCE

The Chief Justice led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial are approved to date.

The Deputy Sergeant at Arms will make the proclamation.

The Deputy Sergeant at Arms, Jennifer Hemingway, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, colleagues.

Today the Senate will hear up to 4 hours of closing statements by the two sides. We will take a 30-minute lunch break after the House has made its initial presentation. Then we will come back and finish this afternoon.

The CHIEF JUSTICE. Pursuant to the provisions of S. Res. 488, the Senate has provided up to 4 hours of closing arguments, equally divided between the managers on the part of the House of Representatives and the counsel for the President. Pursuant to rule

XXII of the rules of procedure and practice of the Senate when sitting on impeachment trials, the arguments shall be opened and closed on the part of the House of Representatives.

The Presiding Officer recognizes Mr. Manager SCHIFF to begin the presentation on the part of the House of Representatives.

CLOSING STATEMENTS

Mr. Manager CROW. Mr. Chief Justice, Members of the U.S. Senate, counsel for the President.

Almost 170 years ago, Senator Daniel Webster of Massachusetts took to the well of the Old Senate Chamber, not far from where I am standing. He delivered what would become perhaps his most famous address, the “Seventh of March” speech. Webster sought to rally his colleagues to adopt the Compromise of 1850, a package of legislation that he and others hoped would forestall a civil war brewing over the question of slavery.

He said: [Slide 609]

It is fortunate that there is a Senate of the United States; a body not yet moved from its propriety, not lost to a just sense of its own dignity, and its own high responsibilities, and a body to which the country looks with confidence, for wise, moderate, patriotic, and healing counsels. It is not to be denied that we live in the midst of strong agitations and are surrounded by very considerable dangers to our institutions and our government. The imprisoned winds are let loose . . . but I have a duty to perform, and I mean to perform it with fidelity—not without a sense of surrounding dangers, but not without hope.

Webster was wrong to believe that the Compromise of 1850 could prevent secession of the South, but I hope he was not wrong to put his faith in the Senate because the design of the Constitution and the intention of the Framers was that the Senate would be a Chamber removed from the sway of temporary political winds.

In Federalist 65, Hamilton wrote:

Where else than in the Senate could have been found a tribunal sufficiently dignified, or sufficiently independent? What other body would be likely to feel confidence enough in its own situation, to preserve, unawed and uninfluenced, the necessary impartiality between an individual accused, and the representatives of the people, his accusers?

In the same essay, Hamilton explained this about impeachment: [Slide 610]

The subjects of its jurisdiction are those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself. [Slide 611]

The prosecution of them, for this reason, will seldom fail to agitate the passions of the whole community, and to divide it into parties more or less friendly or inimical to the accused . . . in such cases there will always be the greatest danger that the decision will be regulated more by the comparative strength of parties, than by the real demonstrations of innocence or guilt.

Daniel Webster and Alexander Hamilton placed their hopes in you, the Senate, to be the court of greatest impartiality, to be a neutral representative of the people in determining—uninfluenced by party or preexisting faction—the innocence or guilt of the President of the United States.

Today you have a duty to perform, with fidelity, not without a sense of surrounding dangers, but also not without hope.

I submit to you, on behalf of the House of Representatives, that your duty demands that you convict President Trump. Now, I don't pretend that this is an easy process. It is not designed to be easy. It shouldn't be easy to impeach or convict a President. Impeachment is an extraordinary remedy, a tool only to be used in rare instances of grave misconduct, but it is in the Constitution for a reason. In America, no one is above the law, even those elected President of the United States. I would say especially those elected President of the United States.

You have heard arguments from the President's counsel that impeachment would overturn the results of the 2016 election. You have heard that, in seeking the removal and disqualification of the President, the House is seeking to interfere in the next elections. Senators, neither is true, and these arguments demonstrate a deeply misguided or, I think, intentional effort to mislead about the role that impeachment plays in our democracy.

If you believe—as we do and as we have proven—that the President's efforts to use his official powers to cheat in the 2020 election jeopardized our national security and are antithetical to our democratic tradition, then you must come to no other conclusion but that the President threatens the fairness of the next election and risks putting foreign interference between the voters and their ballots.

Professor Dershowitz and the other counselors to the President have argued that if the President thinks that something is in his interest, then it is, by definition, in the interest of the American people. We have said throughout this process that we cannot and should not leave our common sense at the door. The logical conclusion to this argument is that the President is the State; that his interests are the Nation's interests; that his will is necessarily ours. You and I and the American people know otherwise; that we do not have to be constitutional scholars to understand that this is a position deeply at odds with our Constitution and our democracy; that believing in this argument or allowing the President to get away with misconduct based on this extreme view would render him above the law.

But we know that this cannot be true. What you decide on these articles will have lasting implications for the future of the Presidency, not only for this President but for all future Presidents. Whether or not the office of the Presidency of the United States of America is above the law, that is the question.

As Alexis de Tocqueville wrote in his 1835 work, "Democracy in America," "The greatness of America lies not in being made more enlightened than any other nation, but rather in her ability to repair her faults."

In May of 1974, Barry Goldwater and other Republican congressional leaders went to the White House to tell President Nixon that it was time for him to resign and that they could no longer hold back the tide of impeachment over Watergate.

Now, contrary to popular belief, the Republican Party did not abandon Nixon as the Watergate scandal came to light. It took years of disclosures and crises and court battles. The party stood with Nixon through Watergate because he was a popular, conservative President, and his base was with him, so they were, too. But,

ultimately, as Goldwater would tell Nixon, “There are only so many lies you can take, and now there has been one too many.”

The President would have us believe that he did not withhold aid to coerce these sham investigations; that his July 25 call with the Ukrainian President was “perfect”; that his meeting with President Zelensky on the sidelines of the U.N. was no different than a head-of-state meeting in the Oval Office; that his only interest in having Ukraine announce investigations into the Bidens was an altruistic concern against corruption; that the Ukrainians interfered in our 2016 election, not Russia; that Putin knows better than our own intelligence agencies. How many falsehoods can we take? When will it be one too many?

Let us take a few minutes to remind you one last time of the facts of the President’s misconduct as you consider how you will vote on this important matter for our Nation. Those facts compel the President’s conviction on the two Articles of Impeachment.

Mrs. Manager DEMINGS. Mr. Chief Justice and Senators, over the past 2 weeks, the House has presented to you overwhelming and uncontroverted evidence that President Trump has committed grave abuses of power that harm our national security and were intended to defraud our elections.

President Trump abused the extraordinary powers he alone holds [Slide 612] as President of the United States to coerce an ally to interfere in our upcoming Presidential election for the benefit of his own reelection. He then used those unique powers to wage an unprecedented campaign to obstruct Congress and cover up his wrongdoing.

As the President’s scheme to corrupt our election progressed over several months, it became, as one witness described, more “insidious.” The President and his agents wielded the powers of the Presidency and the full weight of the U.S. Government to increase pressure on Ukraine’s new President to coerce him to announce two sham investigations that would smear his potential election opponent and raise his political standing.

By early September of last year, the President’s pressure campaign appeared on the verge of succeeding—until, that is, the President got caught, and the scheme was exposed. In response, President Trump ordered a massive coverup—unprecedented in American history. He tried to conceal the facts from Congress, using every tool and legal window dressing he could to block evidence and muzzle witnesses. He tried to prevent the public from learning how he placed himself above country.

Yet, even as President Trump has orchestrated this coverup and obstructed Congress’s impeachment inquiry, he remains unapologetic, unrestrained, and intent on continuing his sham to defraud our elections. As I stand here today delivering the House’s closing argument, President Trump’s constitutional crimes—his crimes against the American people and the Nation—remain in progress.

As you make your final determination on the President’s guilt, it is therefore worth revisiting the totality of the President’s misconduct. Doing so lays bare the ongoing threat President Trump poses to our democratic system of government, both to our upcoming election that some suggest should be the arbiter of the Presi-

dent's misconduct and to the Constitution itself that we all swore to support and defend.

Donald Trump was the central player in the corrupt scheme, assisted principally by his private attorney, Rudy Giuliani.

Early in 2019, Giuliani conspired with two corrupt former Ukrainian prosecutors to fabricate and promote phony investigations of wrongdoing by former Vice President Joe Biden as well as the Russian propaganda that it was Ukraine, not Russia, that hacked the DNC in 2016.

In the course of their presentation to you, the President's counsel have made several remarkable admissions that affirm core elements of this scheme, including specifically about Giuliani's role and representation of the President.

The President's counsel have conceded that Giuliani sought to convince Ukraine to investigate the Bidens and alleged Ukraine election interference on behalf of his client, the President, and that the President's focus on these sham investigations was significantly informed by Giuliani, whose views the President adopted.

Compounding this damning admission, the President's counsel has also conceded that Giuliani was not conducting foreign policy on behalf of the President. They have confirmed that, in pursuing these two investigations, Giuliani was working solely in the President's private, personal interest, and the President's personal interest is now clear—to cheat in the next election.

As Giuliani would later admit, for the President's scheme to succeed, he first needed to remove the American Ambassador to Ukraine, Marie Yovanovitch—an anti-corruption champion Giuliani viewed as an obstacle who “was going to make the investigations difficult for everybody.” In working with now-indicted associates Lev Parnas and Igor Fruman, Giuliani orchestrated a bogus, monthslong smear campaign against the Ambassador that culminated in her removal in April.

The President's sudden order to remove our Ambassador came just 3 days after Ukraine's Presidential elections in late April, which saw a reformer, Volodymyr Zelensky, sweep into office on an anti-corruption platform. President Trump called to congratulate Zelensky right after his victory. He invited President Zelensky to the White House, and he agreed to send Vice President PENCE to his inauguration. But 3 weeks later, after Rudy Giuliani was denied a meeting with President Zelensky, President Trump abruptly ordered Vice President PENCE to cancel his trip. Instead, a lower level delegation, led by three of President Trump's political appointees—Secretary of Energy Rick Perry, Ambassador to the European Union Gordon Sondland, and Special Representative for Ukraine Negotiations Kurt Volker—attended Zelensky's inauguration the following week.

These three returned from Ukraine impressed with President Zelensky. In a meeting shortly thereafter with President Trump in the Oval Office, they relayed their positive impression of the new Ukrainian President and encouraged President Trump to schedule the White House meeting he promised in his first call, but President Trump reacted negatively. He railed that Ukraine “tried to take me down” in 2016, and in order to schedule a White House

visit for President Zelensky, President Trump told the delegation that it would have to “talk to Rudy.”

It is worth pausing here to consider the importance of this meeting in late May. This is the moment that President Trump successfully hijacked the tools of our government to serve his corrupt personal interests—when the President’s “domestic political errand,” as one witness famously described it, began to overtake and subordinate U.S. foreign policy and national security interests.

By this point in the scheme, Rudy Giuliani was advocating very publicly for Ukraine to pursue the two sham investigations, but his request to meet with President Zelensky was rebuffed by the new Ukrainian President. According to reports about Ambassador Bolton’s account—soon to be available if not to this body then to bookstores near you—the President also unsuccessfully tried to get Bolton to call the new Ukrainian President to ensure he would meet with Giuliani.

The desire for Ukraine to announce these phony investigations was for a clear and corrupt reason—because President Trump wanted the political benefit of a foreign country’s announcing that it would investigate his rival. That is how we know without a doubt that the object of the President’s scheme was to benefit his reelection campaign—in other words, to cheat in the next election.

Ukraine resisted announcing the investigations throughout June, so the President and his agent, Rudy Giuliani, turned up the pressure—this time, by wielding the power of the U.S. Government.

In mid-June, the Department of Defense publicly announced that it would be releasing \$250 million of military assistance to Ukraine. Almost immediately after seeing this, the President quietly ordered a freeze on the assistance to Ukraine. None of the 17 witnesses in our investigation were provided with a credible reason for the hold when it was implemented, and all relevant agencies opposed the freeze.

In July, Giuliani and the President’s appointees made it clear to Ukraine that a meeting at the White House would only be scheduled if Ukraine announced the sham investigations. According to a July 19 email the White House has tried to suppress, this “drug deal,” as Ambassador Bolton called it, was well known among the President’s most senior officials, including his Chief of Staff, Mick Mulvaney, and Secretary of State Mike Pompeo, and it was relayed directly to senior Ukrainian officials by Gordon Sondland on July 10 at the White House. “Everyone was in the loop.”

Although President Zelensky explained that he did not want to be a “pawn” in Washington politics, President Trump did not care. In fact, on July 25, before President Trump spoke to President Zelensky, President Trump personally conveyed the terms of this quid pro quo to Gordon Sondland, who then relayed the message to Ukraine’s President.

Later that morning, during the now-infamous phone call, President Trump explicitly requested that Ukraine investigate the Bidens and the 2016 election. Zelensky responded as President Trump instructed: He assured President Trump that he would undertake these investigations. After hearing this commitment, President Trump reiterated his invitation to the White House at the end of the call.

No later than a few days after the call, the highest levels of the Ukrainian Government learned about the hold on military assistance. Senior Ukrainian officials decided to keep it quiet, recognizing the harm it would cause to Ukraine's defense, to the new government's standing at home, and to its negotiating posture with Russia. Officials in Ukraine and the United States hoped the hold would be reversed before it became public. As we now know, that was not to be.

As we have explained during the trial, the President's scheme did not begin with the July 25 call, and it did not end there either. As instructed, a top aide to President Zelensky met with Giuliani in early August, and they began working on a press statement for Zelensky to issue that would announce the two sham investigations and lead to a White House meeting.

Let's be very clear here. The documentary evidence alone—the text messages and the emails that we have shown you—confirms definitively the President's corrupt quid pro quo for the White House meeting. Subsequent testimony further affirms that the President withheld this official act—this highly coveted Oval Office meeting—to apply pressure on Ukraine to do his personal bidding. The evidence is unequivocal.

Despite this pressure, by mid-August President Zelensky resisted such an explicit announcement of the two politically motivated investigations desired by President Trump. As a result, the White House meeting remained unscheduled, just as it remains unscheduled to this day.

During this same timeframe in August, the President persisted in maintaining the hold on the aid, despite warnings that he was breaking the law by doing so, as an independent watchdog recently confirmed that he did.

According to the evidence presented to you, the President's entire Cabinet believed he should release the aid because it was in the national security interest of our country. During the entire month of August, there was no internal review of the aid. Congress was not notified, nor was there any credible reason provided within the executive branch.

With no explanation offered and with the explicit, clear, yet unsuccessful quid pro quo for the White House meeting in the front of his mind, Ambassador Sondland testified that the only logical conclusion was that the President was also withholding military assistance to increase the pressure on Ukraine to announce the investigations. As Sondland and another witness testified, this conclusion was as simple as two plus two equals four. If the White House meeting wasn't sufficient leverage to extract the announcement he wanted, Trump would use the frozen aid as his hammer.

Secretary Pompeo confirmed Sondland's conclusion in an August 22 email. It is also clear that Vice President PENCE was aware of the quid pro quo over the aid and was directly informed of such in Warsaw on September 1, after the freeze had become public and Ukraine became desperate. Sondland pulled aside a top aide in Warsaw and told him that everything—both the White House meeting and also the security assistance—were conditioned on the announcement of the investigations that Sondland, Giuliani, and others had been negotiating with the same aide earlier in August.

This is an important point. The President claims that Ukraine did not know of the freeze in aid, though we know this to be false. As the former Deputy Foreign Minister has admitted publicly, they found out about it within days of the July 25 call and kept it quiet. But no one can dispute that even after the hold became public on August 28, President Trump's representatives continued their efforts to secure Ukraine's announcement of the investigations. This is enough to prove extortion in court, and it is certainly enough to prove it here.

If that wasn't enough, however, on September 7, more than a week after the aid freeze became public, President Trump confirmed directly to Sondland that he wanted President Zelensky in a "public box" and that his release of the aid was conditioned on the announcement of the two sham investigations. Having received direct confirmation from President Trump, Sondland relayed the President's message to President Zelensky himself.

President Zelensky could resist no longer. America's military assistance makes up 10 percent of his country's defense budget, and President Trump's visible lack of support for Ukraine harmed his leverage in negotiations with Russia. President Zelensky affirmed to Sondland on that same telephone call that he would announce the investigations in an interview on CNN. President Trump's pressure campaign appeared to have succeeded.

Two days after President Zelensky confirmed his intention to meet President Trump's demands, the House of Representatives announced its investigation into these very issues. Shortly thereafter, the inspector general of the intelligence community notified the communities that the whistleblower complaint was being improperly handled—or was improperly withheld from Congress with the White House's knowledge.

In other words, the President got caught, and 2 days later, on September 11, the President released the aid. To this day, however, Ukraine still has not received all of the money Congress has appropriated and the White House meeting has yet to be scheduled.

The identity of the whistleblower, moreover, is irrelevant. The House did not rely on the whistleblower's complaint, even as it turned out to be remarkably accurate. It does not matter who initially sounded the alarm when they saw smoke. What matters is that the firefighters—Congress—were summoned and found the blaze, and we know that we did.

The facts about the President's misconduct are not seriously in dispute. As several Republican Senators have acknowledged publicly, we have proof that the President abused his power in precisely the manner charged in article I. President Trump withheld the White House meeting and essential, congressionally appropriated military assistance from Ukraine in order to pressure Ukraine to interfere in the upcoming Presidential election on his behalf.

The sham investigations President Trump wanted announced had no legitimate purpose and were not in the national interest, despite the President's counsel's troubling reliance on conspiracy theories to claim the President acted in the public interest.

The President was not focused on fighting corruption. In fact, he was trying to pressure Ukraine's President to act corruptly by an-

nouncing these baseless investigations. And the evidence makes clear that the President's decision to withhold Ukraine's military aid is not connected in any way to purported concerns about corruption or burden-sharing.

Rather, the evidence that was presented to you is damning, chilling, disturbing, and disgraceful. President Trump weaponized our government and the vast powers entrusted to him by the American people and the Constitution to target his political rival and corrupt our precious elections, subverting our national security and our democracy in the process. He put his personal interests over those of the country, and he violated his oath of office in the process.

But the President's grave abuse of power did not end there. In conduct unparalleled in American history, once he got caught, President Trump engaged in categorical and indiscriminate obstruction of any investigation into his wrongdoing. He ordered every government agency and every official to defy the House's impeachment inquiry, and he did so for a simple reason: to conceal evidence of his wrongdoing from Congress and the American people.

The President's obstruction was unlawful and unprecedented, but it also confirmed his guilt. Innocent people don't try to hide every document and witness, especially those that would clear them. That is what guilty people do. That is what guilty people do. Innocent people do everything they can to clear their name and provide evidence that shows that they are innocent.

But it would be a mistake to view the President's obstruction narrowly, as the President's counsel have tried to portray it. The President did not defy the House's impeachment inquiry as part of a routine interbranch dispute or because he wanted to protect the constitutional rights and privileges of his Presidency. He did it consistent with his vow to "fight all subpoenas."

The second article of impeachment goes to the heart of our Constitution and our democratic system of government. The Framers of the Constitution purposefully entrusted the power of impeachment in the legislative branch so that it may protect the American people from a corrupt President.

The President was able to undertake such comprehensive obstruction only because of the exceptional powers entrusted to him by the American people, and he wielded that power to make sure Congress would not receive a single record or a single document related to his conduct and to bar his closest aides from testifying about his scheme. Throughout the House's inquiry, just as they did during the trial, the President's counsel offered bad-faith and meritless legal arguments as transparent legal window dressing intended to legitimize and justify the President's efforts to hide evidence of his misconduct.

We have explained why all of these legal excuses hold no merit, why the House's subpoenas were valid, how the House appropriately exercised its impeachment authority, how the President's strategy was to stall and obstruct. We have explained how the President's after-the-fact reliance on unfounded and, in some cases, brand-new legal privileges are shockingly transparent cover for a President's dictate of blanket obstruction. We have underscored

how the President's defiance of Congress is unprecedented in the history of our Republic, and we all know that an innocent person would eagerly provide testimony and documents to clear his name, as the President apparently thought he was doing, mistakenly, when he released the call records of his two telephone calls with President Zelensky.

And even as the President has claimed to be protecting the Presidency, remember that the President never actually invoked executive privilege throughout this entire inquiry, a revealing fact, given the law's prohibition on invoking executive privilege to shield wrongdoing.

And yet, according to the President's counsel, the President is justified in resisting the House's impeachment inquiry. They assert that the House should have taken the President to court to defy the obstruction. The President's argument is as shameless as it is hypocritical. The President's counsel is arguing in this trial that the House should have gone to court to enforce its subpoenas, while at the same time, the President's own Department of Justice is arguing in court that the House cannot enforce the subpoenas through the courts. And you know what remedy they say in court is available to the House? Impeachment for obstruction of Congress.

This is not the first time this argument has been made. President Nixon made it too, but it was roundly rejected by the House Judiciary Committee 45 years ago, when the committee passed an article for obstruction of Congress for a far less serious obstruction than we have here. The committee concluded that it was inappropriate to enforce its subpoenas in court and, as the slide shows: [Slide 613]

The Committee concluded that it would be inappropriate to seek the aid of the courts to enforce its subpoenas against the President. This conclusion is based on the constitutional provision vesting the power of impeachment solely in the House of Representatives and the express denial by the Framers of the Constitution of any role for the courts in the impeachment process.

Again, the committee report on Nixon's Articles of Impeachment.

Mr. Manager JEFFRIES. Once we strip the President's obstruction of this legal window dressing, the consequences are as clear as they are dire for our democracy. To condone the President's obstruction would strike a deathblow to the impeachment clause in the Constitution. And if Congress cannot enforce this sole power vested in both Chambers alone, the Constitution's final line of defense against a corrupt Presidency will be eviscerated.

A President who can obstruct and thwart the impeachment power becomes unaccountable. He or she is effectively above the law. And such a President is more likely to engage in corruption with impunity. This will become the new normal with this President and for future generations.

So where does this leave us? As many of you in this Chamber have publicly acknowledged in the past few days, the facts are not seriously in dispute. We have proved that the President committed grave offenses against the Constitution. The question that remains is whether that conduct warrants conviction and removal from office.

Should the Senate simply accept or even condone such corrupt conduct by a President? Absent conviction and removal, how can we be assured that this President will not do it again? If we are to rely on the next election to judge the President's efforts to cheat in that election, how can we know that the election will be free and fair? How can we know that every vote will be free from foreign interference solicited by the President himself?

With President Trump, the past is prologue. This is neither the first time that the President solicited foreign interference in his own election, nor is it the first time that the President tried to obstruct an investigation into his misconduct. But you will determine—you will determine—you will determine whether it will be his last.

As we speak, the President continues his wrongdoing unchecked and unashamed. Donald Trump hasn't stopped trying to pressure Ukraine to smear his opponent, nor has he stopped obstructing Congress. His political agent, Rudolph Giuliani, recently returned to the scene of the crime in Ukraine to manufacture more dirt for his client, the President of the United States.

President Trump remains a clear and present danger to our national security and to our credibility around the world. He is decimating our global standing as a beacon of democracy while corrupting our free and fair elections here at home.

What is a greater protection to our country than ensuring that we, the American people, alone, not some foreign power, choose our Commander in Chief? The American people alone should decide who represents us in any office without foreign interference—particularly the highest office in the land. And what could undermine our national security more than to withhold from a foreign ally fighting a hot war against our adversary hundreds of millions of dollars of military aid to buy sniper rifles, rocket-propelled grenade launchers, radar and night vision goggles, so that they may fight the war over there, keeping us safe here?

If we allow the President's misconduct to stand, what message do we send? What message do we send to Russia, our adversary intent on fracturing democracy around the world?

What will we say to our European allies, already concerned with this President, about whether the United States will continue to support our NATO commitments that have been a pillar of our foreign policy since World War II? What message do we send to our allies in the free world?

If we allow this President's conduct to stand, what will we say to the 68,000 men and women in uniform in Europe right now who courageously and admirably wake up every day ready and willing to fight for America's security and prosperity, for democracy in Europe and around the world? What message do we send them when we say America's national security is for sale?

That cannot be the message we want to send to our Ukrainian friends or our European allies or to our children and our grandchildren who will inherit this precious Republic, and I am sure it is not the message that you wish to send to our adversaries.

The late Senator John McCain was an astounding man—a man of great principle, a great patriot. He fought admirably in Vietnam and was imprisoned as a POW for over 5 years, refusing an offer

by the North Vietnamese to be released early because his father was a prominent admiral. As you all are aware, Senator McCain was a great supporter of Ukraine, a great supporter of Europe, a great supporter of our troops. Senator McCain understood the importance of this body—this distinguished body—and serving the public, once saying: “Glory belongs to the act of being constant to something greater than yourself, to a cause, to your principles, to the people on whom you rely and who rely on you.”

The Ukrainians and the Europeans and the Americans around the world and here at home are watching what we do. They are watching to see what the Senate will do, and they are relying on this distinguished body to be constant to the principles America was founded on and which we tried to uphold for more than 240 years.

Doing the right thing and being constant to our principles requires a level of moral courage that is difficult but by no means impossible. It is that moral courage shown by public servants throughout this country and throughout the impeachment inquiry in the House.

People like Ambassador Marie Yovanovitch—her decades of non-partisan service were turned against her in a vicious smear campaign that reached all the way to the President. Despite this effort, she decided to honor a duly authorized congressional subpoena and to speak the truth to the American people. For this, she was the subject of yet more smears against her career and her character even as she testified in a public hearing before Congress. Her courage mattered.

People like Ambassador Bill Taylor, a West Point graduate who wears a Bronze Star and an Air Medal for valor and, his proudest honor, the Combat Infantryman Badge. When his country called on him, he answered again and again and again, in battle, in foreign affairs and in the face of a corrupt effort by the President to extort a foreign country into helping his reelection campaign—an effort that Ambassador Taylor rightly believed was “crazy.” His courage mattered.

People like Lieutenant Colonel Alexander Vindman, who came to this country as a young child fleeing authoritarianism in Europe—he could have done anything with his life, but he, too, chose public service, putting on a uniform and receiving a Purple Heart after being wounded in battle fighting courageously in Iraq. When he heard that fateful July 25 call, in which the President sold out our country for his own personal gain, Lieutenant Colonel Vindman reported it and later came before Congress to speak the truth about what happened. Lieutenant Colonel Vindman’s courage mattered.

To the other public servants who came forward and told the truth in the face of vicious smears, intimidation, and White House efforts to silence you, your courage mattered. You did the right thing. You did your duty. No matter what happens today or from this day forward, that courage mattered.

Whatever the outcome in this trial, we will remain vigilant in the House. I know there are dedicated public servants who know the difference between right and wrong. But make no mistake, these are perilous times if we determine that the remedy for a President

who cheats in an election is to pronounce him vindicated and attack those who expose his misconduct.

Mr. Manager SCHIFF. Senators, before we break, I want to take a moment to say something about the staff who have worked tirelessly on the impeachment inquiry and this trial for months now. There is a small army of public servants down the hall from this Chamber, in offices throughout the House, and, yes, in that windowless bunker in the Capitol, who have committed their lives to this effort because they, like the managers and the American people, believe that a President free of accountability is a danger to the beating heart of our democracy.

I am grateful to all of them, but let me mention a few: Daniel Goldman, Maher Bitar, Rheanne Wirkkala, Patrick Boland, William Evans, Patrick Fallon, Sean Misko, Nicolas Mitchell, Daniel Noble, Diana Pilipenko, Emilie Simons, Susanne Grooms, Krista Boyd, Norm Eisen, Barry Berke, Joshua Matz, Doug Letter, Sarah Istel, Ashley Etienne, Terri McCullough, Dick Meltzer, and Wyndee Parker. Some of those staff, including some singled out in this Chamber, have been made to endure the most vicious false attacks to the point where they feel their lives have been put at risk.

The attacks on them degrade our institution and all who serve in it. You have asked me why I hired certain of my staff, and I will tell you—because they are brilliant, hard-working, patriotic, and the best people for the job, and they deserve better than the attacks they have been forced to suffer.

Members of the Senate, Mr. Chief Justice, I want to close this portion of our statement by reading you the words of our dear friend and former colleague in the House, the late Elijah Cummings, who said this on the day the Speaker announced the beginning of the impeachment inquiry:

As elected Representatives, [he said], of the American people, we speak not only for those who are here with us now, but for generations yet unborn. Our voices today are messages to a future we may never see. When the history books are written about this tumultuous era, I want them to show that I was among those in the House of Representatives who stood up to lawlessness and tyranny.

We, the managers, are not here representing ourselves alone or even just the House, just as you are not here making a determination as to the President's guilt or innocence for yourselves alone. No, you and we represent the American people, the ones at home and at work who are hoping that their country will remain what they have always believed it to be: a beacon of hope, of democracy, and of inspiration to those striving around the world to create their own more perfect unions—for those who were standing up to lawlessness and to tyranny.

Donald Trump has betrayed his oath to protect and defend the Constitution, but it is not too late for us to honor ours and to wield our power to defend our democracy. As President Abraham Lincoln said at the close of his Cooper Union Address on February 27, 1860, [Slide 614] “[n]either let us be slandered from our duty by false accusations against us, nor frightened from it by menaces of destruction to the Government nor of dungeons to ourselves. Let us have faith that right makes might, and in that faith, let us, to the end, dare to do our duty as we understand it.”

Today, we urge you—in the face of overwhelming evidence of the President's guilt and knowing that, if left in office, he will continue to seek foreign interference in the next election—to vote to convict on both Articles of Impeachment and to remove from office, Donald J. Trump, the 45th President of the United States.

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

The CHIEF JUSTICE. The majority leader is recognized.

RECESS

Mr. McCONNELL. Mr. Chief Justice, colleagues, we will take a 30-minute break for lunch.

There being no objection, at 12:02 p.m., the Senate, sitting as a Court of Impeachment, recessed until 12:51 p.m.; whereupon the Senate reassembled when called to order by the CHIEF JUSTICE.

The CHIEF JUSTICE. The Senate will come to order.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice, Majority Leader McCONNELL, Democratic Leader SCHUMER, Senators. Thank you very much, on behalf of all of us, for your continued attention. Today we are going to complete our argument and finish our closing argument. We will complete that in a very efficient period of time.

You understand the arguments that we have been making, and at the end of the day, the key conclusion—we believe, the only conclusion—based on the evidence and based on the Articles of Impeachment themselves and the Constitution is that you must vote to acquit the President. At the end of the day, this is an effort to overturn the results of one election and to try to interfere in the coming election that begins today in Iowa. And we believe that the only proper result, if we are applying the golden rule of impeachment, if we are applying the rules of impeachment that were so eloquently stated by Members of the Democratic Party the last time we were here—the only appropriate result here is to acquit the President and to leave it to the voters to choose their President.

With that, I will turn it over to Judge Ken Starr, and we will move through a series of short presentations.

Thank you.

Mr. Counsel STARR. Mr. Chief Justice, Members of the Senate, Majority Leader McCONNELL, Democratic Leader SCHUMER, House impeachment managers and their very able staff, as World War I, the war to end all wars, was drawing to a close, an American soldier sat down at a piano and composed a song. It was designed to be part of a musical review for his Army camp out on Long Island, Suffolk County.

The song was "God Bless America." The composer, of course, was Irving Berlin, who came here at the age of 5, the son of immigrants who came to this country for freedom.

As composers are wont to do, Berlin worked very carefully with the lyrics. The song needed to be pure. It needed to be above politics, above partisanship. He intended it to be a song for all America, but he intended it to be more than just a song. It was to be a prayer for the country.

As your very distinguished Chaplain, RADM Barry Black, has done in his prayers on these long days that you have spent as judges in the High Court of Impeachment, we have been reminded

of what our country is all about and that it stands for one nation under God. Nation is about freedom.

And we hear the voice of Martin Luther King, Jr., and his dream-filled speech about freedom echoing the great passages inscribed on America's temple of justice, the Lincoln Memorial, which stood behind Dr. King as he spoke on that historic day. Dr. King is gone, felled by an assassin's bullet, but his words remain with us. And during his magnificent life, Dr. King spoke not only about freedom, freedom standing alone; he spoke frequently about freedom and justice. And in his speeches he summoned up regularly the words of a Unitarian abolitionist from the prior century, Theodore Parker, who referred to the moral arc of the universe—the long moral arc of the universe points toward justice—freedom and justice—freedom, whose contours have been shaped over the centuries in the English-speaking world by what Justice Benjamin Cardozo called the authentic forms of justice through which the community expresses itself in law. Authentic. Authenticity.

And at the foundation of those authentic forms of justice is fundamental fairness. It is playing by the rules. It is why we don't allow deflated footballs or stealing signs from the field. Rules are rules. They are to be followed.

And so I submit that a key question to be asked as you begin your deliberations: Were the rules here faithfully followed? If not, if that is your judgment, then, with all due respect, the prosecutors should not be rewarded, just as Federal prosecutors are not rewarded. You didn't follow the rules. You should have.

As a young lawyer, I was blessed to work with one of the great trial lawyers of his time, and I asked him: Dick, what's your secret?

He had just defended, successfully, a former United States Senator who was charged with a serious offense—perjury before a Federal grand jury. His response was simple and forthright. His words could have come from prairie lawyer Abe Lincoln: I let the judge and the jury know that they can believe and trust every word that comes out of my mouth. I will not be proven wrong.

So here is a question, as you begin your deliberations: Have the facts as presented to you as a court, as the High Court of Impeachment, proven trustworthy? Has there been full and fair disclosure in the course of these proceedings? Fundamental fairness?

I recall these words from the podium last week. A point would be made by one of the President's lawyers, and then this would follow: The House managers didn't tell you that. Why not? And again: The House managers didn't tell you that. Why not?

At the Justice Department, on the fifth floor of the Robert F. Kennedy Building, is this simple inscription: "The United States wins its point whenever justice is done its citizens in the courts." Not did we win, not did we convict; rather, the moral question: Was justice done?

Of course, as has been said frequently, the House of Representatives does, under our Constitution, enjoy the sole power of impeachment. No one has disputed that fact. They have got the power, but that doesn't mean that anything goes. It doesn't mean that the House cannot be called to account in the High Court of Impeachment for its actions in exercising that power.

A question to be asked: Are we to countenance violations of the rules and traditional procedures that have been followed scrupulously in prior impeachment proceedings? And the Judiciary Committee, the venerable Judiciary Committee of the House of Representatives—compare and contrast the thoroughness of that committee in the age of Nixon, its thoroughness in the age of Clinton with all of its divisiveness within the committee in this proceeding.

A question to be asked: Did the House Judiciary Committee rush to judgment in fashioning the Articles of Impeachment? Did it carefully gather the facts, assess the facts before it concluded? We need nothing more than the panel of very distinguished professors and the splendid presentations by both the majority counsel and the minority counsel.

We asked some questions. The Republicans asked some questions. We heard their answers. We are ready to vote. We are ready to try this case in the High Court of Impeachment.

What was being said in the sounds of silence was this: We don't have time to follow the rules. We won't even allow the House Judiciary minority members, who have been beseeching us time and again, to have their day—just one day—to call their witnesses. Oh yes, that is expressly provided for in the rules, but we will break those rules.

That is not liberty and justice for all.

The great political scientist of yesteryear, Richard Neustadt of Columbia, observed that the power of the President is ultimately the power to persuade—oh yes, the Commander in Chief, and, yes, charged with the conduct and authority to guide the Nation's foreign relations, but ultimately it is the power to persuade.

I suggest to you that so, too, the House's sole power to impeach is likewise ultimately a power to persuade over in the House.

A question to be asked: In the fast-track impeachment process in the House of Representatives, did the House majority persuade the American people—not just partisans; rather, did the House's case win over the overwhelming majority of consensus of the American people?

The question fairly to be asked: Will I cast my vote to convict and remove the President of the United States when not a single member of the President's party—the party of Lincoln—was persuaded at any time in the process?

In contrast, and when I was here last week, I noted for the record of these proceedings that in the Nixon impeachment, the House vote to authorize the impeachment inquiry was 410 to 4. In the Clinton impeachment—divisive, controversial—31 Democrats voted in favor of the impeachment inquiry. Here, of course, and in sharp contrast, the answer is, none.

It is said that we live in highly and perhaps hopelessly partisan times. It is said that no one is open to persuasion anymore. They are getting their news entirely from their favorite media platform, and that platform of choice is fatally deterministic.

Well, at least the decision of decision makers under oath, who are bound by sacred duty, by oath, or affirmation to do impartial justice, leaves the platforms out. Those modern-day intermediaries

and shapers of thought, of expression, of opinion, are outside these walls where you serve.

Finally, does what is before this court—very energetically described by the able House managers but fairly viewed—rise to the level of a high crime or misdemeanor, one so grave and so serious to bring about the profound disruption of the article II branch, the disruption of the government, and to tell the American people—and, yes, I will say this is the way it would be read—“Your vote in the last election is hereby declared null and void. And by the way, we are not going to allow you, the American people, to sit in judgment on this President and his record in November”? That is neither freedom, nor is it justice. It is certainly not consistent with the most basic freedom of “we the people,” the freedom to vote.

I thank the court.

I yield to my colleague, Mr. Purpura.

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, good afternoon. I will be relatively brief today and will not repeat the arguments that we have made throughout, but I just want to highlight a few things.

There are a number of reasons why the Articles of Impeachment are deficient and must fail. My colleagues have spent the past week describing those reasons. In my time today, I would like to review just a few core facts, which, again, remember, are all drawn from the record on which the President was impeached in the House and that the House managers brought to this body in support of the President’s removal.

First, the President did not condition security assistance or a meeting on anything during the July 25 call. In fact, both Ambassador Yovanovitch and Mr. Tim Morrison confirmed that the Javelin missiles and the security assistance were completely unrelated.

The concerns that Lieutenant Colonel Vindman expressed on the call were, by his own words and admission, based on deep policy concerns.

And remember, as we said before and everyone in this room knows, the President sets the foreign policy; the unelected staff implements the foreign policy.

Others on the call, including Lieutenant Colonel Vindman’s boss, Mr. Morrison, as well as Lieutenant General Keith Kellogg, had no such concerns and have stated that they heard nothing improper, unlawful, or otherwise troubling on the July 25 call.

Second, President Zelensky and his top advisers agreed that there was nothing wrong with the July 25 call and that they felt no pressure from President Trump. President Zelensky said that the call was “good,” “normal,” and “no [one] pushed me.”

President Zelensky’s top adviser, Andriy Yermak, was asked if he had ever felt there was a connection between the U.S. military aid and the request for investigations. He was adamant that “we never had that feeling. . . . We did not have the feeling that this aid was connected to any one specific issue.” Several other top Ukrainian officials have said the same both publicly and in readouts of the July 25 call to Ambassador Taylor, Ambassador Volker, and others.

Third, President Zelensky and the highest levels of the Ukrainian Government did not learn of the pause until August 28, 2019—

more than a month after the July 25 call between President Trump and President Zelensky.

President Zelensky himself said:

I had no idea the military aid was held up. When I did find out, I raised it with Pence at a meeting in Warsaw.

Referring to the Vice President.

The meeting in Warsaw took place 3 days after the POLITICO article was published, on September 1, 2019.

Mr. Yermak likewise said that President Zelensky and his key advisers learned of the pause only from the August 28 POLITICO article.

Just last week, while we were in this trial, Oleksandr Danylyuk, former chairman of Ukraine's National Security and Defense Council, said he first found out that the United States was withholding aid to Ukraine by reading POLITICO's article published August 28. Mr. Danylyuk also said there was panic within the Zelensky administration when they found out about the hold from the POLITICO article, indicating that the highest levels of the administration were unaware of the pause until the article was published.

If that is not enough, Ambassador Volker, Ambassador Taylor, Deputy Assistant Secretary of State George Kent, and Mr. Morrison all also testified that the Ukrainians did not know about the security hold until the POLITICO article on August 28. We showed you the text message from Mr. Yermak to Ambassador Volker just hours after the POLITICO article was published. You also remember all of the high-level, bilateral meetings at which the Ukrainians did not bring up the pause in the security assistance because they did not know about it. When they did find out on August 28, they raised the issue at the very next meeting in Warsaw on September 1.

This is a really important point. As Ambassador Volker testified, if the Ukrainians didn't know about the pause, then there was no leverage implied. That is why the House managers have kept claiming and continued to claim throughout the trial that the high-level Ukrainians somehow knew about the pause before late August. That is inaccurate.

We pointed out that Laura Cooper, on whom they rely, testified she didn't really know what the emails she saw relating to security assistance were about.

We told you that Catherine Croft, who worked for Ambassador Volker, couldn't remember the specifics of when she believed the Ukrainian Embassy learned of the pause and that she didn't remember when news of the pause became public.

The House managers also mentioned Lieutenant Colonel Vindman, who claimed to have vague recollections of fielding unspecified queries about aid from Ukrainians in the mid-August timeframe. But Lieutenant Colonel Vindman ultimately agreed that the Ukrainians first learned about the hold on security assistance probably around when the first stories emerged in the open source.

Former Deputy Foreign Minister Olena Zerkal's claim that she knew about the pause in July is inconsistent with statements by her boss, the then-Foreign Minister of Ukraine, who said that he learned of the pause from a news article, of which the August 28

POLITICO article was the first, as well as those of all of the other top-level Ukrainian officials I have mentioned, the testimony of the top U.S. diplomats responsible for Ukraine, and the many intervening meetings at which the pause was not mentioned.

Fourth, none of the House witnesses testified that President Trump ever said there was any linkage between security assistance and investigations. When Ambassador Sondland asked the President on approximately September 9, the President told him:

I want nothing. I want nothing. I want no quid pro quo.

Before he asked the President, Ambassador Sondland presumed and told Ambassador Taylor and Mr. Morrison that there was a connection between the security assistance and the investigations. That was before he asked the President directly.

Even earlier, on August 31, Senator RON JOHNSON asked the President if there was any connection between security assistance and investigations. The President answered:

No way. I would never do that. Who told you that?

Under Secretary of State David Hale, Mr. Kent, and Ambassador Volker all testified that they were not aware of any connection whatsoever between security assistance and investigations.

The House managers repeatedly point to a statement by Acting Chief of Staff Mick Mulvaney during an October press conference. When it became clear that the media was misinterpreting his comments or that he had simply misspoken, Mr. Mulvaney promptly, on the very day of the press conference, issued a written statement making clear that there was no quid pro quo. Here is his statement:

Let me be clear, there was absolutely no quid pro quo between Ukrainian military aid and any investigation into the 2016 election. The president never told me to withhold any money until the Ukrainians did anything related to the server.

The only reasons we were holding the money was because of concern about lack of support from other nations and concerns over corruption.

Accordingly, Mr. Mulvaney in no way confirmed the link between the paused security assistance and investigations. A garbled or misinterpreted statement or a mistaken statement that is promptly clarified on the same day as the original statement is not the kind of reliable evidence that would lead to the removal of the President of the United States from office. In any event, Mr. Mulvaney also stated during the press conference itself that the money held up had absolutely nothing to do with Biden.

Now, why does this all matter? I think Senator ROMNEY really got to the heart of this issue on Thursday evening when he asked both parties whether there is any evidence that President Trump directed anyone to tell the Ukrainians that security assistance was being held up on the condition of an investigation into the Bidens. That was the question. There is no such evidence.

Fifth, the security assistance was released when the President's concerns with burden-sharing and corruption were addressed by a number of people, including some in this Chamber today, without Ukraine ever announcing or undertaking any investigations. You have heard repeatedly that no one in the administration knew why the security assistance was paused. That is not true. Two of the House managers' own witnesses testified regarding the reason for

the pause. As Mr. Morrison testified at a July meeting attended by officials throughout the executive branch agencies, the reason provided for the pause by a representative from the Office of Management and Budget was that the President was concerned about corruption in Ukraine and he wanted to make sure Ukraine was doing enough to manage that corruption. Further, according to Mark Sandy, Deputy Associate Director for National Security, Office for Management and Budget, we had received requests for additional information on what other countries were contributing to Ukraine.

We told you about the work that was being done to monitor and collect information about anti-corruption reforms in Ukraine and burden-sharing during the summer pause. We told you about how, when President Zelensky asked Vice President PENCE in Poland about the pause, Vice President PENCE asked, according to Jennifer Williams, what the status of his reform efforts were that he could then convey back to the President and also wanting to hear if there was more that European countries could do to support Ukraine. Mr. Morrison, who was actually at the Warsaw meeting, testified similarly that Vice President PENCE delivered a message about anti-corruption and burden-sharing.

We told you about the September 11 call with President Trump, Senator PORTMAN, and Vice President PENCE. Mr. Morrison testified that the entire process culminating in the September 11 call gave the President the confidence he needed to approve the release of the security sector assistance, all without any investigations being announced.

Now, I focused so far on the House managers' allegation that there was a quid pro quo for the security assistance. Let me turn very briefly to the claim that a Presidential meeting was also conditioned on investigations. Remember, by the end of the July 25 call, President Trump had personally invited President Zelensky to meet three times—twice by phone, once in a letter, without any preconditions. You heard the White House was working behind the scenes to schedule the meeting and how difficult scheduling those meetings can be. The two Presidents planned to meet in Warsaw, just as President Zelensky requested on the July 25 call. President Trump had to cancel at the last minute due to Hurricane Dorian. President Trump and President Zelensky then met 3 weeks later in New York without Ukraine announcing any investigations.

Finally, one thing that the House managers' witnesses agreed upon was that President Trump has strengthened the relationship between the U.S. and Ukraine and has been a better friend to Ukraine and a stronger opponent of Russian aggression than President Obama. Most notably, Ambassador Taylor, Ambassador Volker, and Ambassador Yovanovitch all testified that President Trump's reversal of his predecessor's refusal to send the Ukrainians lethal aid was a meaningful and significant policy development and improvement for which President Trump deserves credit.

Just last week, Ambassador Volker, who knows more about U.S.-Ukraine relationships than nearly, if not, everyone, published a piece in Foreign Policy magazine. I would like to read you an excerpt:

Beginning in mid-2017, and continuing until the impeachment investigation began in September 2019, U.S. policy toward Ukraine was strong, consistent, and

enjoyed support across the administration, bipartisan support in Congress, and support upon U.S. allies and in Ukraine itself.

The Trump administration also coordinated Ukraine policy closely with allies in Europe and Canada—maintaining a united front against Russian aggression and in favor of Ukraine’s democracy, reform, sovereignty, and territorial integrity. Ukraine policy is one of the few areas where U.S. and European policies have been in lock-step. The administration lifted the Obama-era ban on the sale of lethal arms to Ukraine, delivering, among other things, Javelin anti-tank missiles, coast guard cutters, and anti-sniper systems. Despite the recent furor over the pause in U.S. security assistance this past summer, the circumstances of which are the topic of impeachment hearings, U.S. defensive support for Ukraine has been and remains robust.

And more, according to Ambassador Volker:

It is therefore a tragedy for both the United States and Ukraine that U.S. partisan politics, which have culminated in the ongoing impeachment process, have left Ukraine and its new reform-minded president, Volodymyr Zelensky, exposed and relatively isolated. The only one who benefits from this is Russian President Vladimir Putin.

Those are the words of Ambassador Volker. He was one of the House managers’ key witnesses. He was the very first witness to testify in the House proceedings on October 3. So I think it is fitting that he may be the last witness we hear from. In his parting words, Ambassador Volker admonishes that it is U.S. partisan politics which have culminated in this impeachment process that have imperiled Ukraine.

In sum, the House managers’ case is not overwhelming, and it is not undisputed. The House managers bear the very heavy burden of proof. They did not meet it. It is not because they didn’t get the additional witnesses or documents that they failed to pursue. It is because their own witnesses have already offered substantial evidence undermining their case, and, importantly, as you have heard from Professor Dershowitz and from Mr. Philbin, the first article does not support or allege an impeachable offense regardless of any additional witnesses or documents.

Members of the Senate, it has been an incredible honor and privilege to speak to you in this Chamber. I hope that what I have shown has been helpful to your understanding of the facts, and I respectfully ask you to vote to acquit the President of the wrongful charges against him.

I yield to Mr. Philbin.

Mr. Counsel PHILBIN. Mr. Chief Justice, Members of the Senate, we have heard repeatedly throughout the past week and a half or so that the President is not above the law, and I would like to focus in my last remarks here on an equally important principle—that the House of Representatives also is not above the law in the way they conduct the impeachment proceedings and bring a matter here before the Senate, because in very significant and important respects, they didn’t follow the law.

From the outset, they began an impeachment inquiry here without a vote from the House and, therefore, without lawful authority delegated to any committees to begin an impeachment inquiry against the President of the United States. That was unprecedented in our history. The Speaker of the House does not have authority, by holding a press conference, to delegate the sole power of impeachment from the House to a committee, and the result was

23 totally unauthorized and invalid subpoenas were issued at the beginning of this impeachment inquiry.

After that, the House violated every principle of due process and fundamental fairness in the way the hearings were conducted, and we have been through that. I am not going to go through the details again, but it is significant because denying the President the ability to be present through counsel to cross-examine witnesses and present evidence fundamentally skewed the proceedings in the House of Representatives. It left the President without the ability to have a fair proceeding, and it meant it reflected the fact that those proceedings were not truly designed as a search for truth. We have procedural protections. We have the right of cross-examination as a mechanism for getting to the facts, and that was not present in the House of Representatives.

Lastly, Manager SCHIFF, as an interested witness who had been involved in—or at least his staff—discussions with the whistleblower, then guided the factual inquiry in the House.

So why does all of this matter? It matters because the lack of a vote meant that there was no democratic accountability and no lawful authorization from the beginning of the process. It meant that there were procedural defects that produced a record that this Chamber can't rely on for any conclusion other than to reject the Articles of Impeachment and to acquit the President. And it mattered because the President, in response to these violations of the President's rights—the failure to follow proper procedure, failure to follow the law—has rights of his own, rights of the executive branch to be asserted. And that is the President's response to the invalid subpoenas, was that they are invalid, and we are not going to comply with them.

And the President asserted other rights of the executive branch. When there were subpoenas for his senior advisers to come and testify, along with virtually every President since Nixon, he asserted the principle of immunity of the senior advisers, that they could not be called to testify. And the President asserted the defects in the subpoenas that called for executive branch officials to testify without the presence of agency counsel—all established principles that have been asserted before.

What do the House managers say in response? They accuse the President in their second article of impeachment of trying to assert obstruction—that this was an unprecedented response and unprecedented refusal to cooperate. It was unprecedented the 23 subpoenas were issued in a Presidential impeachment inquiry without valid authorization from the House. The President's response was to a totally unprecedented attempt by the House to do that which it had no authority to do. They have asserted today and on other occasions that the President's legal argument in response to these subpoenas—they have said that it is indiscriminate. There was just a blanket defiance. I think I have shown that wasn't true. There were three very specific legal rationales provided by the executive branch as to different defects and different subpoenas, and there were letters explaining those defects. But there was no attempt by the House to attempt an accommodations process, even though the White House offered to engage in an accommodations process. There was no attempt by the House to use other mechanisms to re-

solve the differences with the executive branch. It was just straight to impeachment.

Now, they asserted today and on other occasions that the President's counsel—that I and my colleagues—have made bad-faith legal arguments that are just window dressings.

In an ordinary court of law, one doesn't accuse opposing counsel of making bad-faith arguments lightly, and if you make that accusation, it has to be backed up with analysis, but there hasn't been analysis here. There has just been accusation.

When the President asserts the immunity of his senior advisers, that is a principle that has been asserted by virtually every President since Nixon. Let me read you what Attorney General Janet Reno, during the Clinton administration, said about this exact immunity. She said that immediate advisers to the President are immune from being compelled to testify before Congress. "The immunity such advisers enjoy from testimonial compulsion by a congressional committee is absolute and may not be overborne by competing congressional interests."

And she went onto say: "Compelling one of the President's immediate advisers to testify on a matter of executive decision-making would also raise serious constitutional problems, no matter the assertion of congressional need."

Was that bad faith? Was Attorney General Reno asserting that principle in bad faith, and President Clinton?

President Obama asserted the same principle for his senior political advisers. Was that bad faith?

Of course not.

These are principles defending the separation of powers that Presidents have asserted for decades. President Trump was defending the institutional interests of the Office of the Presidency and is asserting the same principles here. That is vital for the continued operation of the separation of powers.

The House managers have also said that, once the President asserted these defects in their subpoenas and resisted them, they had no time to do anything else. They had to go straight to impeachment. They could not accommodate. They could not go through a contempt process. They could not litigate.

The idea that there is no time for dealing with that friction with the executive branch is really antithetical to the proper functioning of the separation of powers. It goes against part of the way the separation of powers is supposed to work. That interbranch friction is meant to take time to resolve. It is meant to slow things down and to be somewhat difficult to work through and to force the branches to work together to accommodate the interests of each branch, not just to jump to the conclusion of, well, we have no time for that. We have to assert absolute authority on one side of the equation.

This is something that Justice Brandeis pointed out in a famous dissent in *Myers v. United States*, but it has since been cited many times by the Court majority.

He said: "The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency"—so he is saying not to make government move quickly—"but to preclude the exercise of arbitrary power. The purpose was not to avoid friction but, by means of the inevitable friction incident to the distribution of

the governmental powers among the departments, to save the people from autocracy.”

That is a vitally important principle. The friction between the branches, even if it means taking longer, even if it means not jumping straight to impeachment, is part of the constitutional design, and it is required to force the branches to determine incrementally where their interests lie, to resolve disputes incrementally, and not to jump straight to the ultimate nuclear weapon of the Constitution.

We have also heard from the House managers that everything the President did here in asserting the prerogatives of his office—in asserting the principles of immunity—must be wrong, must be rejected because only the guilty will assert a privilege; only the guilty will not allow evidence.

That is definitely not a principle of American jurisprudence. It is antithetical to the fundamental principles of our system of laws. As we have pointed out in our trial memorandum in *Bordenkircher v. Hayes* and in other decisions, the Supreme Court has made clear that the very idea of punishing someone for asserting rights or privileges or suggesting that asserting the right or privilege is evidence of guilt is contrary to basic principles of due process.

It takes on an even more malignant tenor to it when that principle is asserted in the context of a dispute between the branches relating to the boundaries of their relative powers, because what the House is essentially asserting in this case is that any assertion of the prerogatives of the Office of the President—any attempt to maintain the principles of separation of powers of executive confidentiality that have been asserted by past Presidents—can be treated by the House as evidence of guilt. And here, their entire second Article of Impeachment is structured on the assumption that the House can treat the assertion of principles grounded in the separation of powers as an impeachable offense.

Boiled down to its essence, it is an assertion that defending the separation of powers—if the President does it in a way that they don’t like and in a time that they don’t like—can be treated as an impeachable offense. That is an incredibly dangerous assertion because, if it were accepted, it would fundamentally alter the balance between the different branches of our government.

It would suggest—and Professor Turley explained this, and Professor Dershowitz explained it here—that, if Congress makes a demand on the executive and the executive resists based on separation of powers principles that past Presidents have asserted, Congress can nonetheless say: We have decided to proceed by impeachment.

This is the principle they assert in the House Judiciary Committee’s report: We have the sole power of impeachment. That means we are the sole judge of our own actions. There is no need for accommodation, and there is no need for the courts. We will determine that any resistance you provide is itself impeachable.

That would fundamentally transform our government by essentially giving the House the same sort of power as a parliamentary system—to use impeachment as an effective vote of “no confidence” against a Prime Minister. This is not the way the Framers set up our three-branch system of government with a powerful Executive

who would be independent from the legislature. That is why Professor Turley explained that the second Article of Impeachment here would be an abuse of power by Congress. It would make the Executive dependent on Congress in a manner antithetical to the system that the Framers had envisioned.

So why is it that there are all of these defects in the House managers' case for impeachment? Why are they asserting principles like "only the guilty would assert privileges"? That is not a part of our system of law. Why are they asserting that, if the Executive resists, the House has the sole power to determine the boundaries of its own power in relation to the Executive? That is also not something that is in our system of jurisprudence. And why the lack of due process in the proceedings below?

I think, as we have explained, it is because this was a purely partisan impeachment from the start. It was purely partisan and purely political, and that is something that the Framers foresaw.

I will point to one passage from Federalist No. 65. There are a number of different passages from that which have been cited over the course of the past week, but I don't think this one has. It is just after Hamilton points out—he warns—that an impeachment in the House could be the result of the "persecution of an intemperate or designing majority in the House of Representatives."

Then he goes on: "Though this latter supposition may seem harsh, and might not be likely often to be verified, yet it ought not to be forgotten that the demon of faction will, at certain seasons, extend his sceptre over all numerous bodies of men."

Now, that is very 18th century language. We don't talk about demons extending their scepters over men, but it is prescient nonetheless. We might not be comfortable with the terms, but it is accurate for what can happen, and that is what has happened in this impeachment.

This was a purely partisan, political process. It was opposed bipartisanly in the House. It was done by a process that was not designed to persuade anyone or to get to the truth or to provide process and abide by past precedents. It was done to get it finished by Christmas, on a political timetable, and it is not something that this Chamber should condone. That in itself provides a sufficient and substantial reason for rejecting the Articles of Impeachment.

Members of the Senate, it has been an honor to be able to address you over the past week and a half or 2 weeks, and I thank you for your attention.

I yield to Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Majority Leader MCCONNELL, Democratic Leader SCHUMER, House managers, I want to join my colleagues in thanking you for your patience over these 2 weeks.

I want to focus on one last point. We believe that we have established overwhelmingly that both Articles of Impeachment have failed to allege impeachable offenses and that, therefore, both articles—I and II—must fail.

This entire campaign of impeachment—that started from the very first day the President was inaugurated—was a partisan one, and it should never happen again. For 3 years, this push for impeachment came straight from the President's opponents, and

when it finally reached a crescendo, it put this body—the U.S. Senate—into a horrible position.

I want to start by taking a look back.

On the screen is a graphic of a Washington Post headline on January 20, 2017: [Slide 615] “The Campaign to impeach President Trump has begun.” This was posted 19 minutes after he was sworn in.

I also want to play a video in which Members, as early as January 15, 2017—before the President was sworn into office—were calling for his impeachment.

(Text of Videotape presentation:)

Mr. RASKIN. Let me say this for Donald Trump, whom I may well be voting to impeach.

Mr. ELLISON. I think that Donald Trump has already done a number of things which have legitimately raised a question of impeachment.

Ms. WATERS. And I will fight every day until he is impeached.

Mr. GREEN of Texas. I rise today, Mr. Speaker, to call for the impeachment of the President of the United States of America.

Mr. COHEN. The main reason I’m interested is not so much to win the Senate, which is a byproduct, it’s because I think he has committed impeachable offenses. He needs a scarlet “I” on his chest.

Mr. CASTRO of Texas. But if we get to that point, then, yes, I think that’s grounds to start impeachment proceedings.

Mr. COHEN. So we’re calling upon the House to begin impeachment hearings immediately.

Question. Why do you think that President Trump specifically he should be impeached?

Mr. ESPAILLAT. Well, there are five reasons why we think he should be impeached.

Question. On the impeachment of Donald Trump, would you vote yes or no?

Ms. OMAR. I would vote yes.

Ms. OCASIO-CORTEZ. I would vote to impeach.

Ms. TLAIB. Because we’re going to impeach the [bleep].

Mr. SHERMAN. I introduced the Articles of Impeachment in July of 2017. All I did yesterday was make sure that those articles did not expire.

Mr. GREEN of Texas. I am concerned that, if we don’t impeach this President, he will get reelected.

Ms. WARREN. It is time to bring impeachment charges against him.

Mr. NADLER. My personal view is that he richly deserves impeachment.

Mr. Counsel SEKULOW. One of the Members of the House of Representatives said that we are bringing these Articles of Impeachment so he doesn’t get elected again.

Here we are, 10 months before an election, doing exactly what they predicted. The whistleblower’s lawyer, Mr. Zaid, sent out a tweet on January 30, 2017.

Let me put that up on the screen: [Slide 616]

The #coup has started. First of many steps. #rebellion. #impeachment will follow ultimately.

And here we are.

What this body, what this Nation, and what this President has just endured—what the House managers have forced upon this great body—is unprecedented and unacceptable. This is exactly and precisely what the Founders feared. This was the first totally partisan Presidential impeachment in our Nation’s history, and it should be our last.

What the House Democrats have done to this Nation, to the Constitution, to the Office of the President, to the President himself, and to this body is outrageous. They have cheapened the awesome

power of impeachment, and, unfortunately, of course, the country is not better for that.

We urge this body to dispense with these partisan Articles of Impeachment for the sake of the Nation, for the sake of the Constitution.

As we have demonstrably proved, the articles are flawed on their face. They were the product of a reckless impeachment inquiry that violated all notions of due process and fundamental fairness. Then incredibly—incredibly—when these articles were finally brought to this Chamber without a single Republican vote, the managers then claimed that now—now—they need more process; that now they need more witnesses; that all of the witnesses that they compiled and all of the testimony that you heard was not enough; that your job was to do their job—the one, frankly, they failed to do.

We have already said, many times, the charges themselves do not allege a crime or a misdemeanor, let alone a high crime or a misdemeanor. There is nothing in the charges that could permit the removal of a duly elected President or warrant the negation of an election and the subversion of the American people's will. That should be whatever party you are affiliated with. You are being asked to do this when, tonight, the citizens of Iowa are going to be caucusing for the first caucus of the Presidential election season for the Democratic Party—tonight.

I think there is one thing that is clear. The President has had a concern about other countries' carrying their fair share of burdens of financial aid. No one can doubt—and I think we have clearly set forth—the issue of corruption in Ukraine.

The President's and the administration's policy on evaluating foreign aid and the conditions upon which it is given have been clear. Mr. Purpura laid that out in great detail.

The bottom line is that the President's opponents don't like the President, and they really don't like his policies. They objected to the fact that the President chose not to rely each and every time on the advice of some of his subordinates, even though he, not those unelected bureaucrats who work for him, were elected to office.

The President, under our constitutional structure, is the one who decides our Nation's foreign policy. Here is a perfect example—the House managers brought this up frequently: Lieutenant Colonel Vindman. He admitted on page 155 of his transcript testimony that he “did not know if there was a crime or anything of that nature”—that is his quote—but that he “had deep policy concerns.” So there you have it. The real issue is policy disputes.

Elections have consequences. We all know that. And if you do not like the policies of a particular administration or a particular candidate, you are free and welcome to vote for another candidate. But the answer is elections, not impeachment.

To be clear, in our country, in the United States, the President, elected by the American people, is, in the words of the Supreme Court, “the sole organ of the federal government in the field of international relations” and foreign policy for our government—no unelected bureaucrats, not unhappy Members of the House of Representatives. And however you were to define “high crimes and misdemeanors,” there is no definition that includes disagreeing

with a policy decision as an acceptable ground for removal of a President of the United States. None.

The first Article of Impeachment is, therefore, constitutionally invalid and should be immediately rejected by the Senate.

Now, as to the second Article of Impeachment, President Trump in no way obstructed Congress. The President acted with extraordinary transparency by declassifying and releasing the transcript for the July 25 call and the earlier call. It is that July 25 call which is purportedly at the heart of the Articles of Impeachment. He did so soon after the inquiry was announced.

And despite the fact that privileges apply that could have been asserted, he released them anyway in order to facilitate the House's inquiry and cut through all of it—all of the hearsay, all of the histrionics—to get the transcript out.

Now, I want to take a moment because my colleague Deputy White House Counsel Pat Philbin addressed this idea of privilege. I have heard over and over again—and you have, too—phrases like: coverup; that the assertion of a privilege is a coverup.

Here is what the Supreme Court of the United States has said about privileges in a variety of contexts:

To punish a person because he has done what the law allows him to do is a due process violation of the [basic order]—the . . . basic sort, and for an agent of the state to pursue a course of action whose objective is to penalize a person's reliance on his constitutional rights is patently unconstitutional.

And how much more so when you are talking about the President of the United States.

How about this? And this goes to the context of assertions of privilege and other constitutional privileges. The allegation has been that if you assert a privilege, you are assumed to be guilty. That has been the assertion.

Why would you do that? We have explained at great length—and I do not want to go over that again—the importance of the executive privilege and what it means to separation of powers and the functioning of our government, but I will say this: As the Supreme Court has recognized in other contexts with other privileges, the privilege serves to protect the innocent who otherwise might be ensnared by ambiguous circumstances.

In another Supreme Court case, *Quinn v. The United States*: “The privilege, this Court has stated, was generally regarded then, as now, as a privilege of great value, a protection to the innocent . . .” The opinion goes on to say that “safeguard against heedless, unfounded or tyrannical prosecutions.”

I traced for you, and I am not going to do it again, how all of this started all those years ago, 3 years ago—how all of this began. There is no point to go over that because that evidence is undisputed, and the FISA Court's most recent orders put that into fair play.

We have talked about the fact that the House violated its own fundamental rules in a series of unlawful subpoenas. I won't go over that again. Mr. Philbin laid that out in great detail.

But I think it is important to note that, when seeking the advice of the President's closest advisers, despite the well-known, bipartisan guidance from the Department of Justice regarding immunity, the House managers act as if it does not exist. They sought

testimony on matters from the executive branch's confidential, internal decision-making process on matters of foreign relations and national security, and that is when protections are at their highest level.

Let's not forget that the House barred the attendance of executive branch counsel at witness proceedings when executive branch members were being examined.

Notwithstanding these substantial abuses of process, the executive branch responded to each and every subpoena and identified the specific deficiencies found in each. You cannot just remove constitutional violations by saying you didn't comply.

You have heard that one recipient of a subpoena, and this is—in fact, we have talked about it a number of times, but I think as we wrap up, I think it is worth saying again.

One subpoena recipient did seek a declaratory judgment as to the validity of the subpoena that he had received. It was set up to go to court. A judge was going to make a decision. The House withdrew the subpoena and mooted the recipient's case before the court could rule.

Now, was that because they didn't like the judge that was selected? Was it because they didn't like the way the ruling was going to go? Was it they didn't mean to have that witness in the first place?

Whatever the reason, there is one undisputed fact: As the case was in court, they mooted it out by removing the subpoena.

The assertion of valid constitutional privileges cannot be an impeachable offense, and that is what article II is based on, the obstruction of Congress.

For the sake of the Constitution, for the sake of the Office of the President, this body must stand as a steady bulwark against this reckless and dangerous proposition. It doesn't just affect this President; it affects every man or woman who occupies that high office.

So as we said with the first Article of Impeachment, we believe the second Article of Impeachment is invalid and should also be rejected.

In passing the first Article of Impeachment, the House attempted to usurp the President's constitutional power to determine policy, especially foreign policy.

In passing the second Article of Impeachment, the House attempted to control the constitutional privileges and immunities of the executive branch—all of this while simultaneously disrespecting the Framers' system of checks and balances, which designate the judicial branch as the arbiter of interbranch disputes.

By approving both articles, the House of Representatives violated our constitutional order, illegally abused our power of impeachment in order to obstruct the President's ability to faithfully execute the duties of his office.

These articles fail on their face as they do not meet the constitutional standard for impeachable offenses. No amount of testimony could change that fact.

We have already discussed some of the specifics. I think Alexander Hamilton has been quoted a lot, and there is a reason. What has occurred over the past 2 weeks—really, the past 3 months—

is exactly what Alexander Hamilton and other Founders of our great country feared.

I believe that Hamilton was prophetic in Federalist 65 when he warned how impeachment had the ability to “agitate”—his words—“the passions of the whole community, and . . . divide it into parties more or less friendly or inimical to the accused.

He warned that impeachment would “connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence, and interest on one side or on the other.”

He continued:

The convention, it appears, thought the Senate—

This body—

[the] most fit depositary of this important trust. Those who can best discern the intrinsic difficulty of the thing, will be least hasty in condemning that opinion, and will be most inclined to allow due weight to the arguments which may be supposed to have produced it.

In the same Federalist 65, Hamilton regarded the Members of this Senate not only as the inquisitors for the Nation but as the representatives of the Nation as a whole.

He said these words:

Where else than in the Senate could have been found a tribunal sufficiently dignified or significantly independent? What other body would be likely to feel confident enough in its own situation to preserve, unawed and uninfluenced, the necessary impartiality between an individual accused, and the representatives of the people, his accusers.

You took an oath. They questioned the oath. You are sitting here as the trier of fact. They said the Senate is on trial.

Based on all of the presentations that we made in our trial brief, in the arguments that we have put forward today, again, we believe both articles should be immediately rejected.

Now, our Nation’s representatives holding office in this great body must unite today to protect our Constitution and the separation of powers. And, you know, there was a time, not that long ago, even within this administration, where bipartisan agreements could be reached to serve the interests of the American people.

Take a listen to this.

(Text of Videotape presentation:)

Mr. MARKEY. Today we had a beautiful, bipartisan moment where Democrats and Republicans, working together, to keep that fentanyl out of our country, to use these devices to accomplish that goal. It is not perfect. We need to do a lot more, but today was a very good start, and I want to praise all of the people—Democrats and Republicans and the President—for working together on this bill.

Mrs. SHAHEEN. As has been said, and we can see by the people assembled here, if we work together in a bipartisan way, we can get things done. This is a place where we can all agree that we’ve got to do more and where we can work together. So I applaud everyone’s efforts.

President TRUMP. We are proudly joined today by so many Members of Congress—Republicans, Democrats—who worked very, very hard on this bill. This was really an effort of everybody. It was a bipartisan success—something you don’t hear too much about, but I think you will be. I actually believe we may be—will be over the coming period of time. I hope so. I think so. It is so good for the country.

President TRUMP. Thank you, everybody. This was an incredible bipartisan support. We passed this in the Senate 87 to 12. That’s unheard of. And then in the House we passed it 358 to 36.

Mr. COONS. . . . be here to help celebrate your signing of this next step in the critical Women’s Global and Prosperity Development Initiative. It dovetails nicely with the bill—the bipartisan bill you signed into law with the WEEE Act, which rec-

ognizes this as a critical strategy. So I think this is a tremendous initiative. Thank you, Mr. Trump.

President TRUMP. Thank you very much. I appreciate it.

Mr. Counsel SEKULOW. This is what the American people expect.

I simply ask this body to stand firm today to protect the integrity of the U.S. Senate, stand firm today to protect the Office of the President, stand firm today to protect the Constitution, stand firm today to protect the will of the American people and their vote, stand firm today to protect our Nation.

And I ask that this partisan impeachment come to an end to restore our constitutional balance, for that is, in my view and in our view, what justice demands and the Constitution requires.

With that, Mr. Chief Justice, I yield my time to the White House Counsel, Mr. Pat Cipollone.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice. Thank you, Members of the Senate.

I will leave you with just a few brief points:

First, I want to express on behalf of our entire team our gratitude—our gratitude to you, Mr. Chief Justice, for presiding over this trial; our gratitude to you, Leader MCCONNELL; our gratitude to you, Democratic Leader SCHUMER; and all of you on both sides of the aisle for your time and attention.

I also want to express my gratitude to our team. It is large, and with the large number of people who have helped in this effort—I won't name them all—but I want to thank them for their effort and their hard work in the defense of the Constitution, in defense of the President, in defense of the American people's right to vote. I want to thank, as members of that team, the Republican Members of the House of Representatives who have also been engaged in that effort throughout this entire period of time and the Democrats in the House who voted against this partisan impeachment. I also want to thank the President of the United States for his confidence in us to send us here to represent him to all of you in this great body and for all he has done on behalf of the American people.

I would make just a couple of additional points. No. 1, as we have said repeatedly, we have never been in a situation like this in our history. We have an impeachment that is purely partisan and political. It is opposed by bipartisan Members of the House. It does not even allege a violation of law. It is passed in an election year, and we are sitting here on the day that election season begins in Iowa. It is wrong. There is only one answer to that, and the answer is to reject those Articles of Impeachment, to have confidence in the American people, to have confidence in the result of the upcoming election, to have confidence and respect for the last election and not throw it out and to leave the choice of the President to the American people and to leave to them also the accountability to the Members of the House of Representatives who did that. That is what the Constitution requires, and I think that should be done on a bipartisan basis, and that is what I ask you to do.

Point No. 2: I believe the American people are tired of the endless investigations and false investigations that have been coming out of the House from the beginning, as my colleague Mr. Sekulow

pointed out. It is a waste of tax dollars. It is a waste of the American people's time and, I would argue, more importantly—most importantly—the opportunity cost of that—the opportunity cost of that—what you could be doing, what the House could be doing. Working with the President to achieve those things on behalf of the American people is far more important than the endless investigations, the endless false attacks, the besmirching of the names of good people. This is something that we should reject together, and we should move forward in a bipartisan fashion and in a way that this President has done successfully.

He has achieved successful results in the economy and across so many other areas, working with you on both sides of the aisle, and he wants to continue to do that. That is what I believe the American people want those of you elected to come here to Washington to focus on, to spend your time on—to unify us, as opposed to the bitter division that is caused by these types of proceedings.

So at the end of the day, we put our faith in the Senate. We put our faith in the Senate because we know you will put your faith in the American people. You will leave this choice to them, where it belongs. We believe that they should choose the President. We believe that this President, day after day, has put their interests first, has achieved successful results, has fulfilled the promises he made to them, and he is eager to go before the American people in this upcoming election.

At the end of the day, that is the only result; it is a result, I believe, guided by your wise words from the past that we can, together, end the era of impeachment; that we can, together, put faith in the American people, put faith in their wisdom, put faith in their judgment. That is where our Founders put the power. That is where it belongs.

I urge you, on behalf of those Americans—of every American—on behalf of all of your constituents, to reject these Articles of Impeachment. It is the right thing for our country. The President has done nothing wrong, and these types of impeachments must end.

You will vindicate the right to vote, you will vindicate the Constitution, you will vindicate the rule of law by rejecting these articles. I ask you to do that on a bipartisan basis this week and end the era of impeachment once and for all.

I thank you from the bottom of my heart for listening to us, for your attention, and for considering our case on behalf of the President.

I come here today to ask you to reject these Articles of Impeachment. Reject these Articles of Impeachment.

I thank you for granting us the permission to appear here at the Senate on behalf of this President, and I ask you on his behalf, on behalf of the American people to reject these articles.

Thank you.

Ms. Manager LOFGREN. Mr. Chief Justice and Senators, it is a problem that here at the end of the trial the President's lawyers still dispute the meaning of high crimes and misdemeanors. Some say it requires an ordinary crime or that if the President misbehaves when he thinks it is good for the country, it is OK. Neither is correct. We need to clear this up by looking at what the Founders said.

When the Founders created the Presidency, they gave the President great power. They had just been through a war to get rid of a King with too much power, and they needed a check on the great power given to the President. It was late in the Constitutional Convention that they turned to the impeachment clause. Madison argued in favor of impeachment. He said it was indispensable.

Mason asked:

Shall any man be above Justice? Above all shall that man be above it, who can commit the most extensive injustice?

Randolph defended "the propriety of impeachments," saying: "The Executive will have great opportunities of abusing his power."

The original draft of the Constitution provided for impeachment only for treason or bribery. Mason asked:

Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences.

And he added:

Hastings is not guilty of Treason. Attempts to subvert the Constitution might not be Treason as . . . defined.

Now Hastings' impeachment in Britain at this time was well known, and it wasn't limited to a crime.

They considered adding the word "maladministration" to capture abuse of Presidential power, but Madison objected. He said: "So a vague a term would be equivalent to a tenure during pleasure of the Senate." So maladministration was withdrawn and replaced with the more certain term "high Crimes and Misdemeanors" because the Founders knew the law.

Blackstone's Commentary, which Madison said was "a book in every man's hand," described high crimes and misdemeanors as offenses against King and government.

Hamilton called high crimes and misdemeanors "those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust."

During ratification, Randolph in Virginia cited the President's receipt of presents or emoluments from a foreign power as an example. And Mason's example was a President who may "pardon crimes which were advised by himself," or before indictment or conviction to "stop inquiry and prevent detection." It is clear. They knew what they wrote.

The President's lawyers tried to create a muddle to confuse you. Don't let them. High crimes and misdemeanors mean abuse of power against the constitutional order, conduct that is corrupt, whether or not a crime.

Now some say: No impeachment when there is an election coming. But without term limits when they wrote the Constitution, there was always an election coming. If impeachment in election years was not to be, our Founders would have said so.

So here we are: Congress passed a law to fund Ukraine to fight the Russians who invaded their country. President Trump illegally held that funding up to coerce Ukraine to announce an investigation to hurt his strongest election opponent. He abused his power corruptly to benefit himself personally, and then he tried to cover it up. That is impeachable.

The facts are clear, and so is the Constitution. The only question is what you, the Senate, will do.

Our Founders created a government where the tension between the three branches would prevent authoritarianism; no one of the branches would be allowed to grab all the power. Impeachment was to make sure that the President, who has the greatest opportunity to grab power, would be held in check. It is a blunt instrument, but it is what our Founders gave us.

Some of the Founders thought the mere existence of an impeachment clause would prevent misconduct by Presidents, but, sadly, they were wrong because twice in the last half century a President corruptly used his power to try to cheat in an election. First, Nixon with Watergate, and now another President corruptly abuses his power to cheat in an election.

The Founders worried about factions—what we call political parties. They built a system where each branch of government would jealously guard their power, not one where guarding the faction was more important than guarding the government.

Opposing a President of your own party isn't easy. It wasn't easy when Republican Caldwell Butler voted to impeach Nixon in the Judiciary Committee. It wasn't easy for Senator Barry Goldwater to tell Nixon to resign. But your oath is not to do the easy thing; it is to do impartial justice. It requires conviction and removal of President Trump.

Ms. Manager GARCIA of Texas. Mr. Chief Justice, counsel for the President, Senators, since I was a little girl and started going to church, I have been inspired by the words of scripture: "[W]hatever you did for one of the least of my brothers . . . you did for me."

We are called to always look out for the most vulnerable. Sometimes fighting for the most vulnerable means holding the most powerful accountable, and that is what we are here to do today.

The American people will have to live with the decisions made in this Chamber. In fact, Senators, I believe that the decision in this case will affect the strength of democracies around the world.

Democracy is a gift that each generation gives to the next one. If we say that this President can put his own interests above all else, even when lives are at stake, then we give our Nation's children a weaker democracy than we inherited from those that came before us. The next generation deserves better. They are counting on us.

I am a Catholic, and my faith teaches me that we all need forgiveness. I have given this President the benefit of the doubt from the beginning. Despite my strong opposition to so many of his policies, I know that the success of our Nation depends on the success of our leader. But he has let us down.

Senators, we know what the President did and why he did it. This fact is seriously not in doubt. Senators on both sides of the aisle have said as much. The question for you now is, does it warrant removal from office? We say yes.

We cannot simply hope that this President will realize that he has done wrong or was inappropriate and hope that he does better. We have done that so many other times. We know that he has not

apologized. He has not offered to change. We all know that he will do it again.

What President Trump did this time pierces the heart of who we are as a country. We must stop him from further harming our democracy. We must stop him from further betraying his oath. We must stop him from tearing up our Constitution.

The Founders knew that in order for our Republic to survive, we would need to be able to remove some of our leaders from office when they put their interests above the country's interests. Senators, we have proven that. This President committed what is called the ABC's of impeachable behavior—abusing his power, betraying the Nation, and corrupting our elections. He deserves to be removed for taking the very actions that the Framers feared would undermine our country. The Framers designed impeachment for this very case.

Senators, when I was growing up poor in South Texas, picking cotton, I confess I didn't spend any time thinking about the Framers. Like me, little girls and boys across America aren't asking at home what the Framers meant by high crimes and misdemeanors, but, someday, they will ask why we didn't do anything to stop this President, who put his own interest above what was good for all of us. They will ask. They will want to understand.

Senators, we inherited a democracy. Now we must protect it and pass it on to the next generation. We simply can't give our children a democracy if a President is above the law, because in this country no one is above the law—not me, not any of you, not even this President.

(English translation of statement made in Spanish is as follows:)

Nobody is above the law—nobody.

This President must be removed. With that, I yield to my colleague Mr. CROW.

Mr. Manager CROW. Mr. Chief Justice, Members of the Senate, 2 weeks ago we started this trial promising to show you that the President withheld \$391 million of foreign military aid to force an ally at war to help him win the 2020 election. And by many of your own admissions, we succeeded in showing you that, because the facts still matter.

We also promised you that, eventually, all of the facts would come out, and that continues to be true. But we didn't just show you that the President abused his power and obstructed Congress. We painted a broader picture of President Trump—a picture of a man who thinks that the Constitution doesn't serve as a check on his power, but, rather, gives it to him in an unlimited way; a man who believes that his personal ambitions are synonymous with the good of the country; a man who, in his own words, thinks that if you are a star, they will let you do anything. In short, it is a picture of a man who will always put his own personal interests above the interests of the country that he has sworn to protect.

But what is in an oath, anyway? Are they relics of the past? Do we simply recite them out of custom? To me, an oath represents a firm commitment to a life of service, a commitment to set aside your personal interest, your comfort, and your ambition to serve the greater good, and a commitment to sacrifice.

I explained to you last week that I believe America is great not because of the ambition of any one man, not simply because we say it is true but because of our almost 250-year history. Millions of Americans have taken the oath, and they meant it. Many of them followed through on that oath by giving everything to keep it.

But there is more to it than simply keeping your word, because an oath is also a bond between people who have made a common promise. Perhaps the strongest example is the promise between the Commander in Chief and our men and women in uniform. Those men and women took their oath with the understanding that the Commander in Chief, our President, would always put the interests of the country and their interests above his own, and understanding that his orders will be in the best interest of the country, and that their sacrifice in fulfilling those orders will always serve the common good.

But what we have clearly shown in the last few weeks and what President Trump has shown us the past few years is that this promise flows only one way. As Maya Angelou said, "When someone shows you who they are, believe them the first time."

Many of us in this room are parents. We all try to teach our kids the important lessons of life. One of those lessons is that you won't always be the strongest, you won't always be the fastest, and you won't always win. There are a lot of things outside our control, but my wife and I have tried to teach our kids that what we can always control are our choices.

It is in that spirit that hanging in my son's room is a quote from Harry Potter. The quote is from Professor Dumbledore, who said: "It is our choices . . . that show what we truly are, far more than our abilities."

This trial will soon be over, but there will be many choices for all of us in the days ahead, the most pressing of which is how each of us will decide to fulfill our oath. More than our words, our choices will show the world who we really are, what type of leaders we will be, and what type of Nation we will be.

So let me finish where I began, with an explanation of why I am here standing before you. I have been carrying my kids' Constitutions these last few weeks, and this morning I wrote a note to them to explain why I am here:

Our Founders recognized the failings of all people. So they designed a system to ensure that the ideas and principles contained in this document would always be greater than any one person. It is the idea that no one is above the law. But our system only works if people stand up and fight for it, and fighting for something important always comes with a cost.

Some day you may be called upon to defend the principles and ideas embodied in our Constitution. May the memory and spirit of those who sacrificed for them in the past guide you and give you strength as you fight for them in the future.

Thank you for your time.

Mrs. Manager DEMINGS. Mr. Chief Justice, Senators, and counsel for the President, this is a defining moment in our history and a challenging time for our Nation. A thousand things have gone through my mind since this body voted to not call witnesses in this trial. The vote was unprecedented. The President's former National Security Advisor indicated that he was willing to testify under oath before the Senate. Yet this body did not want to hear what he had to say.

The President's lawyers have asked you to not believe your lying eyes and ears, to reinterpret the Constitution, and to believe that if the President thinks his reelection is in our national interest, then he can do whatever he wants—anything—to make it happen. And that is exactly what he was attempting to do—anything—when he illegally held much needed military aid while pressuring Ukraine's President to announce bogus investigations into his most feared political rival.

This trial is about abuse of power, obstruction, breaking the law, and our system of checks and balances, and since we are talking about the President of the United States, this trial is also most certainly about character.

I am reminded today, Senators, of my own father. He worked more than one job. He didn't have a famous last name. His name appeared on no buildings, but my father was rich in something no money and, apparently, no powerful position can buy. You see, my father was a man who was decent, honest, a man of integrity, and he was a man of good, moral character. The President's lawyer never spoke about the President's character during this trial, and I find that quite telling.

I joined the police department because I wanted to make a difference, and I believe I did. As a police chief, I was always concerned about the message we were sending inside the agency, especially to young recruits, especially to newly hired dedicated police officers. We had to be careful about just how we were defining what was acceptable and unacceptable behavior inside the department and out in the community. Yes, people make mistakes. Yes, individuals make mistakes. But we had to be clear about the culture inside the organization, and we had to send a strong message that the police department was not a place where corruption could reside, where corruption was normalized, and where corruption was covered up.

Today, unfortunately, I believe we are holding young police recruits to a higher standard than we are the leader of the free world. If this body fails to hold this President accountable, you must ask yourselves: What kind of Republic will we ultimately have with a President who thinks that he can really truly do whatever he wants? You will send a terrible message to the Nation that one can get away with abuse of power, obstruction, cheating, and spreading false narratives if you simply know the right people.

Well, today, Senators, I reject that because we are a nation of laws. Abraham Lincoln, the 16th President of the United States said this: "America will never be destroyed from outside. If we falter and lose our freedoms, it will be because we chose to destroy ourselves."

I urge you, Senators, to vote to convict and remove this President. Thank you so much for your time.

Mr. Manager JEFFRIES. Mr. Chief Justice, distinguished Members of the Senate, President's counsel, I mentioned on the floor last week that Alexander Hamilton has played a starring role during this impeachment trial. But Ben Franklin has only made a cameo appearance, but that cameo appearance was an important one, when he made the observation, in the aftermath of that con-

vention in 1787, that the Framers of the Constitution had created “a Republic, if you can keep it.”

Why would Dr. Franklin express ambiguity about the future of America during such a triumphant moment? Perhaps it was because the system of government that was created at that convention—checks and balances, separate and coequal branches of government, the independent judiciary, the free and fair press, the preeminence of the rule of law—all of those values, all of those ideas, all of those institutions have never before been put together in one form of government. So perhaps it was uncertain as to whether America could sustain it.

But part of the brilliance of our great country is that year after year, decade after decade, century after century, we have held this democracy thing together. But now all of those ideas, all of those values, all of those institutions are under assault, not from without but from within. We created “a Republic, if you can keep it.”

House managers have proven our case against President Trump with a mountain of evidence. President Trump tried to cheat, he got caught, and then he worked hard to cover it up.

President Trump corruptly abused his power. President Trump obstructed a congressionally and constitutionally required impeachment inquiry with blanket defiance. President Trump solicited foreign interference in an American election and shredded the very fabric of our democracy. House managers have proven our case against President Trump with a mountain of evidence.

If the Senate chooses to acquit under these circumstances, then America is in the wilderness.

If the Senate chooses to normalize lawlessness, if the Senate chooses to normalize corruption, if the Senate chooses to normalize Presidential abuse of power, then America is in the wilderness.

If the Senate chooses to acquit President Trump without issuing a single subpoena, without interviewing a single witness, without reviewing a single new document, then America is truly in the wilderness.

But all is not lost. Even at this late hour, the Senate can still do the right thing. America is watching. The world is watching. The eyes of history are watching. The Senate can still do the right thing.

Scripture says—Second Corinthians, the fifth chapter and the seventh verse, encourages us to walk by faith, not by sight. Faith is the substance of things hoped for, the evidence of things not seen. We have come this far by faith.

And so I say to all of you, my fellow Americans, walk by faith. Democrats and Republicans, progressives and conservatives, the left and the right, all points in between, walk by faith. There are patriots all throughout the Chamber, patriots who can be found all throughout the land—in urban America, rural America, suburban America, smalltown America. Walk by faith. Through the ups and the downs, the highs and the lows, the peaks and the valleys, the trials and the tribulations of this turbulent moment, walk by faith—faith in the Constitution; faith in our democracy; faith in the rule of law; faith in government of the people, by the people, and for the people; faith in almighty God. Walk by faith.

The Senate can still do the right thing. And if we come together as Americans, then together we can eradicate the cancer that threatens our democracy and continue our long, necessary, and majestic march toward a more perfect union.

Mr. Manager SCHIFF. Mr. Chief Justice, I want to begin by thanking you for the distinguished way you have presided over these proceedings.

Senators, we are not enemies but friends. We must not be enemies. If Lincoln could speak these words during the Civil War, surely we can live them now and overcome our divisions and our animosities.

It is midnight in Washington. The lights are finally going out in the Capitol after a long day in the impeachment trial of Donald J. Trump. The Senate heard arguments only hours earlier on whether to call witnesses and require the administration to release documents it has withheld. Counsel for the President still maintains the President's innocence, while opposing any additional evidence that would prove otherwise.

It is midnight in Washington, but on this night, not all the lights have been extinguished. Somewhere in the bowels of the Justice Department—Donald Trump's Justice Department—a light remains on. Someone has waited until the country is asleep to hit "Send," to inform the court in a filing due that day that the Justice Department—the Department that would represent justice—is refusing to produce documents directly bearing on the President's decision to withhold military aid from Ukraine. The Trump administration has them, it is not turning them over, and it does not want the Senate to know until it is too late. Send.

That is what happened last Friday night. When you left home for the weekend, in a replay of the duplicity we saw during the trial when the President's lawyers argued here that the House must go to court and argued in court that the House must come here, they were at it again, telling the court in a midnight filing that they would not turn over relevant documents even as they argued here that they were not covering up the President's misdeeds.

Midnight in Washington. All too tragic. A metaphor for where the country finds itself at the conclusion of only the third impeachment in history and the first impeachment trial without witnesses or documents, the first such trial—or nontrial—in impeachment history.

How did we get here? In the beginning of this proceeding, you did not know whether we could prove our case. Many Senators, like many Americans, did not have the opportunity to watch much, let alone all, of the opening hearings in the House during our investigation, and none of us could anticipate what defenses the President might offer.

Now you have seen what we promised: overwhelming evidence of the President's guilt. Donald John Trump withheld hundreds of millions of dollars from an ally at war and a coveted White House meeting with their President to coerce or extort that nation's help to cheat in our elections. And when he was found out, he engaged in the most comprehensive effort to cover up his misconduct in the history of Presidential impeachment: fighting all subpoenas for documents and witnesses and using his own obstruction as a sword

and a shield; arguing here that the House did not fight hard enough to overcome their noninvocation of privilege in court, and in court that the House must not be heard to enforce their subpoenas but that impeachment is a proper remedy.

Having failed to persuade the Senate or the public that there was no quid pro quo, having offered no evidence to contradict the record, the President's team opted, in a kind of desperation, for a different kind of defense: first, prevent the Senate and the public from hearing from witnesses with the most damning accounts of the President's misconduct, and second, fall back on a theory of Presidential power so broad and unaccountable that it would allow any occupant of 1600 Pennsylvania to be as corrupt as he chooses, while the Congress is powerless to do anything about it. That defense collapsed of its own dead weight.

Presidents may abuse their power with impunity, they argued. Abuse of power is not a constitutional crime, they claimed. Only statutory crime is a constitutional crime, even though there were no statutory crimes when the Constitution was adopted. The President had to look far and wide to find a defense lawyer to make such an argument, unsupported by history, the Founders, or common sense. The Republican expert witness in the House would not make it. Serious constitutional scholars would not make it. Even Alan Dershowitz would not make it—at least he wouldn't in 1998. But this has become the President's defense. Yet this defense proved indefensible.

If abuse of power is not impeachable—even though it is clear the Founders considered it the highest of all high crimes and misdemeanors—but if it is not impeachable, then a whole range of utterly unacceptable conduct of the President's would now be beyond reach. Trump could offer Alaska to the Russians in exchange for support in the next election or decide to move to Mar-a-Lago permanently and let Jared Kushner run the country, delegating to him the decision whether to go to war. Because those things are not necessarily criminal, this argument would allow that he could not be impeached for such abuses of power.

Of course, this would be absurd—more than absurd, it would be dangerous. So Mr. Dershowitz tried to embellish his legal creation and distinguish among those abuses of power which would be impeachable from those which wouldn't. Abuses of power that would help the President get elected were permissible and therefore unimpeachable, and only those for pecuniary gain were beyond the pale. Under this theory, as long as the President believed his reelection was in the public interest, he could do anything, and no quid pro quo was too corrupt, no damage to our national security too great. This was such an extreme view that even the President's other lawyers had to run away from it.

So what are we left with? The House has proven the President's guilt. He tried to coerce an ally into helping him cheat by smearing his opponent. He betrayed our national security in order to do it when he withheld military aid to our ally and violated the law to do so. He covered it up, and he covers it up still. His continuing obstruction is a threat to the oversight and investigatory powers of the House and Senate and, if left unaddressed, would permanently and dangerously alter the balance of power.

These undeniable facts require the President to retreat to his final defense. He is guilty as sin, but can't we just let the voters decide? He is guilty as sin, but why not let the voters clean up this mess? And here, to answer that question, we must look at the history of this Presidency and to the character of this President—or lack of character—and ask, can we be confident that he will not continue to try to cheat in that very election? Can we be confident that Americans and not foreign powers will get to decide and that the President will shun any further foreign interference in our democratic affairs? And the short, plain, sad, incontestable answer is, no, you can't. You can't trust this President to do the right thing, not for one minute, not for one election, not for the sake of our country. You just can't. He will not change, and you know it.

In 2016, he invited foreign interference in our election. Hey, Russia, if you are listening, hack Hillary's emails, he said, and they did, immediately. And when the Russians starting dumping them before the election, he made use of them in every conceivable way, touting the filthy lucre at campaign stops more than 100 times.

When he was investigated, he did everything he could to obstruct justice, going so far as to fire the FBI Director and try to fire the special counsel and ask the White House Counsel to lie on his behalf.

During the same campaign, while telling the country he had no business dealings with Russia, he was continuing to actively pursue the most lucrative deal of his life—a Trump Tower in the heart of Moscow. Six close associates of the President's would be indicted or go to jail in connection with the President's campaign, Russia, and the effort to cover it up.

On the day after that tragic chapter appeared to come to an end with Bob Mueller's testimony, Donald Trump was back on the phone, this time with another foreign power—Ukraine—and once again seeking foreign help with his election, only this time, he had the full powers of the Presidency at his disposal. This time, he could use coercion. This time, he could withhold aid from a nation whose soldiers were dying every week. This time, he believed he could do whatever he wanted under article II. And this time, when he was caught, he could make sure that the Justice Department would never investigate the matter, and they didn't.

Donald Trump had no more Jeff Sessions; he had just the man he wanted in Bill Barr, a man whose view of the imperial Presidency—a Presidency in which the Department of Justice is little more than an extension of the White House Counsel—is to do the President's bidding. So Congress had to do the investigation itself, and just as before, he obstructed that investigation in every way.

He has not changed. He will not change. He has made that clear himself without self-awareness or hesitation. A man without character or ethical compass will never find his way.

Even as the most recent and most egregious misconduct was discovered, he was unapologetic, unrepentant, and more dangerous, undeterred. He continued pressing Ukraine to smear his rivals even as the investigation was underway.

He invited new countries to get involved in the act, calling on China to do the same. His personal emissary, Rudy Giuliani, dispatched himself to Ukraine, trying to get further foreign inter-

ference in our election. The plot goes on; the scheming persists; and the danger will never recede. He has done it before. He will do it again. What are the odds, if left in office, that he will continue trying to cheat? I will tell you: 100 percent. Not 5, not 10 or even 50, but 100 percent.

If you have found him guilty and you do not remove him from office, he will continue trying to cheat in the election until he succeeds. Then what shall you say? What shall you say if Russia again interferes in our election and Donald Trump does nothing but celebrates their efforts? What shall you say if Ukraine capitulates and announces investigations into the President's rivals?

What shall you say in the future, when candidates compete for the allegiance of foreign powers in their elections, when they draft their platforms so to encourage foreign intervention in their campaign? Foreign nations, as the most super of super-PACs of them all, if not legal, somehow permissible because Donald Trump has made it so and we refused to do anything about it but wring our hands.

They will hack your opponents' emails; they will mount a social media campaign to support you; they will announce investigations of your opponent to help you—and all for the asking. Leave Donald Trump in office after you have found him guilty, and this is the future that you will invite.

Now, we have known since the day we brought these charges that the bar to conviction, requiring fully two-thirds of the Senate, may be prohibitively high. And yet, the alternative is a runaway Presidency and a nation whose elections are open to the highest bidder.

So you might ask how—given the gravity of the President's misconduct, given the abundance of evidence of his guilt, given the acknowledgement by Senators in both parties of that guilt—how have we arrived here with so little common ground? Why was the Nixon impeachment bipartisan? Why was the Clinton impeachment much less so? And why is the gulf between the parties even greater today?

It is not for the reason that the President's lawyers would have you believe. Although they have claimed many times, in many ways, that the process in the House was flawed because we did not allow the President to control it, it was, in reality, little different than the process in prior impeachments. The circumstances, of course, were different. The Watergate investigation began in the Senate and had progressed before it got moving in the House. And there, of course, much of the investigative work had been done by the special prosecutor, Leon Jaworski. In Clinton, there was likewise an independent counsel who conducted a multiyear investigation that started with a real estate deal in Arkansas and ended with a blue dress.

Nixon and Clinton, of course, played no role in those investigations before they moved to the House Judiciary Committee. But to the degree you can compare the process when it got to the Judiciary Committee in either prior and recent impeachments, it was largely the same as we have here. The President had the right to call witnesses, to ask questions, and chose not to.

The House majorities in Nixon and Clinton did not cede their subpoena power to their minorities, and neither did we here, although then, as now, we gave the minority the right to request subpoenas and to compel a vote, and they did.

So the due process the House provided here was essentially the same and, in some ways, even greater. Nevertheless, the President's counsel hopes that, through sheer repetition, they can convert nontruth into truth. Do not let them.

Every single court to hear Mr. Philbin's arguments has rejected them:

The subpoenas are invalid—rejected by the McGahn court.

They have absolute immunity—rejected by the McGahn court.

Privilege may conceal crime or fraud—rejected by the court in Nixon.

But if the process here was substantially the same, the facts of the President's misconduct were very different from one impeachment to the next. The Republican Party of Nixon's time broke into the DNC, and the President covered it up. Nixon, too, abused the power of his office to gain an unfair advantage over his opponent, but in Watergate he never sought to coerce a foreign power to aid his reelection, nor did he sacrifice our national security in such a palpable and destructive way as withholding aid from an ally at war. And he certainly did not engage in the wholesale obstruction of Congress or justice that we have seen this President commit.

The facts of President Clinton's misconduct pale in comparison to Nixon and do not hold a candle to Donald Trump. Lying about an affair is morally wrong, and when under oath it is a crime, but it had nothing to do with his duties in office.

The process being the same, the facts of President Trump's misconduct being far more destructive than either past President, what then accounts for the disparate result in bipartisan support for his removal? What has changed?

The short answer is, we have changed. The Members of Congress have changed. For reasons as varied as the stars, the Members of this body and ours in the House are now far more accepting of the most serious misconduct of a President as long as it is a President of one's own party. And that is a trend most dangerous for our country.

Fifty years ago, no lawyer representing the President would have ever made the outlandish argument that if the President believes his corruption will serve to get him reelected, whether it is by coercing an ally to help him cheat or in any other form, that he may not be impeached, that this is somehow a permissible use of his power.

But here we are. The argument has been made, and some appear ready to accept it. And that is dangerous, for there is no limiting principle to that position.

It must have come as a shock—a pleasant shock—to this President that our norms and institutions would prove to be so weak. The independence of the Justice Department and its formerly proud Office of Legal Counsel now are mere legal tools at the President's disposal to investigate enemies or churn out helpful opinions not worth the paper they are written on. The FBI painted by a President as corrupt and disloyal. The intelligence community not

to be trusted against the good counsel of Vladimir Putin. The press portrayed as enemies of the people. The daily attacks on the guard-rails of our democracy, so relentlessly assailed, have made us numb and blind to the consequences.

Does none of that matter anymore if he is the President of our party?

I hope and pray that we never have a President like Donald Trump in the Democratic Party, one who would betray the national interest and the country's security to help with his reelection. And I would hope to God that, if we did, we would impeach him, and Democrats would lead the way.

But I suppose you never know just how difficult that is until you are confronted with it. But you, my friends, are confronted with it. You are confronted with that difficulty now, and you must not shrink from it.

History will not be kind to Donald Trump—I think we all know that—not because it will be written by Never Trumpers but because whenever we have departed from the values of our Nation, we have come to regret it, and that regret is written all over the pages of our history.

If you find that the House has proved its case and still vote to acquit, your name will be tied to his with a chord of steel and for all of history; but if you find the courage to stand up to him, to speak the awful truth to his rank falsehood, your place will be among the Davids who took on Goliath. If only you will say “enough.”

We revere the wisdom of our Founders and the insights they had into self-governance. We scour their words for hidden meaning and try to place ourselves in their shoes. But we have one advantage that the Founders did not. For all their genius, they could not see but opaquely into the future. We, on the other hand, have the advantage of time, of seeing how their great experiment in self-governance has progressed.

When we look at the sweep of history, there are times when our Nation and the rest of the world have moved with a seemingly irresistible force in the direction of greater freedom: more freedom to speak and to assemble, to practice our faith and tolerate the faith of others, to love whom we would and choose love over hate—more free societies, walls tumbling down, nations reborn.

But then, like a pendulum approaching the end of its arc, the outward movement begins to arrest. The golden globe of freedom reaches its zenith and starts to retreat. The pendulum swings back past the center and recedes into a dark unknown. How much farther will it travel in its illiberal direction, how many more freedoms will be extinguished before it turns back we cannot say. But what we do here, in this moment, will affect its course and its correction.

Every single vote, even a single vote by a single Member, can change the course of history. It is said that a single man or a woman of courage makes a majority. Is there one among you who will say “enough”?

America believes in a thing called truth. She does not believe we are entitled to our own alternate facts. She recoils at those who spread pernicious falsehoods. To her, truth matters. There is noth-

ing more corrosive to a democracy than the idea that there is no truth.

America also believes there is a difference between right and wrong, and right matters here. But there is more. Truth matters. Right matters. But so does decency. Decency matters.

When the President smears a patriotic public servant like Marie Yovanovitch in pursuit of a corrupt aim, we recoil. When the President mocks the disabled, a war hero who was a prisoner of war, or a Gold Star father, we are appalled because decency matters here. And when the President tries to coerce an ally to help him cheat in our elections and then covers it up, we must say “enough.” Enough.

He has betrayed our national security, and he will do so again. He has compromised our elections, and he will do so again. You will not change him. You cannot constrain him. He is who he is. Truth matters little to him. What is right matters even less. And decency matters not at all.

I do not ask you to convict him because truth or right or decency matters nothing to him but because we have proven our case and it matters to you. Truth matters to you. Right matters to you. You are decent. He is not who you are.

In Federalist 55, James Madison wrote that there were certain qualities in human nature—qualities I believe, like honesty, right, and decency—which should justify our confidence in self-government. He believed that we possessed sufficient virtue that the chains of despotism were not necessary to restrain ourselves “from destroying and devouring one another.”

It may be midnight in Washington, but the sun will rise again. I put my faith in the optimism of the Founders. You should too. They gave us the tools to do the job, a remedy as powerful as the evil it was meant to constrain: impeachment. They meant it to be used rarely, but they put it in the Constitution for a reason—for a man who would sell out his country for a political favor, for a man who would threaten the integrity of our elections, for a man who would invite foreign interference in our affairs, for a man who would undermine our national security and that of our allies—for a man like Donald J. Trump.

They gave you a remedy, and they meant for you to use it. They gave you an oath, and they meant for you to observe it. We have proven Donald Trump guilty. Now do impartial justice and convict him.

I yield back.

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT OF THE COURT OF IMPEACHMENT

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate, sitting as a Court of Impeachment, stand adjourned under the previous order.

There being no objection, at 2:59 p.m., the Senate, sitting as a Court of Impeachment, adjourned.

[From the CONGRESSIONAL RECORD, February 5, 2020]

TRIAL OF DONALD J. TRUMP, PRESIDENT OF THE
UNITED STATES

The CHIEF JUSTICE. The Senate will convene as a Court of Impeachment.

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The Deputy Sergeant at Arms, Jennifer Hemingway, will make the proclamation.

The Deputy Sergeant at Arms, Jennifer Hemingway, made the proclamation as follows:

Hear ye! Hear ye! Hear ye! All persons are commanded to keep silent, on pain of imprisonment, while the Senate of the United States is sitting for the trial of the articles of impeachment exhibited by the House of Representatives against Donald John Trump, President of the United States.

As a reminder to everyone in the Chamber, as well as those in the Galleries, demonstrations of approval or disapproval are prohibited.

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. McCONNELL. Mr. Chief Justice, the Senate is now ready to vote on the Articles of Impeachment, and after that is done, we will adjourn the Court of Impeachment.

ARTICLE I

The CHIEF JUSTICE. The clerk will now read the first Article of Impeachment.

The senior assistant legislative clerk read as follows:

ARTICLE I: ABUSE OF POWER

The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and that the President “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”. In his conduct of the office of President of the United States—and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed—Donald J. Trump has abused the powers of the Presidency, in that:

Using the powers of his high office, President Trump solicited the interference of a foreign government, Ukraine, in the 2020 United States Presidential election. He did so through a scheme or course of conduct that included soliciting the Government of Ukraine to publicly announce investigations that would benefit his reelection, harm the election prospects of a political opponent, and influence the 2020 United States Presidential election to his advantage. President Trump also sought to pressure the Government of Ukraine to take these steps by conditioning official United States Government acts of significant value to Ukraine on its public announcement of the investigations. President Trump engaged in this scheme or course of conduct for corrupt purposes in pursuit of personal political benefit. In so doing, President Trump used the powers of the Presidency in a manner that compromised the national security of the United States and undermined the integrity of the United States democratic process. He thus ignored and injured the interests of the Nation.

President Trump engaged in this scheme or course of conduct through the following means:

(1) President Trump—acting both directly and through his agents within and outside the United States Government—corruptly solicited the Government of Ukraine to publicly announce investigations into—

(A) a political opponent, former Vice President Joseph R. Biden, Jr.; and

(B) a discredited theory promoted by Russia alleging that Ukraine—rather than Russia—interfered in the 2016 United States Presidential election.

(2) With the same corrupt motives, President Trump—acting both directly and through his agents within and outside the United States Government—conditioned two official acts on the public announcements that he had requested—

(A) the release of \$391 million of United States taxpayer funds that Congress had appropriated on a bipartisan basis for the purpose of providing vital military and security assistance to Ukraine to oppose Russian aggression and which President Trump had ordered suspended; and

(B) a head of state meeting at the White House, which the President of Ukraine sought to demonstrate continued United States support for the Government of Ukraine in the face of Russian aggression.

(3) Faced with the public revelation of his actions, President Trump ultimately released the military and security assistance to the Government of Ukraine, but has persisted in openly and corruptly urging and soliciting Ukraine to undertake investigations for his personal political benefit.

These actions were consistent with President Trump's previous invitations of foreign interference in United States elections.

In all of this, President Trump abused the powers of the Presidency by ignoring and injuring national security and other vital national interests to obtain an improper personal political benefit. He has also betrayed the Nation by abusing his high office to enlist a foreign power in corrupting democratic elections.

Wherefore President Trump, by such conduct, has demonstrated that he will remain a threat to national security and the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-governance and the rule of law. President Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

VOTE ON ARTICLE I

The CHIEF JUSTICE. Each Senator, when his or her name is called, will stand at his or her place and vote guilty or not guilty, as required by rule XXIII of the Senate Rules on Impeachment.

Article I, section 3, clause 6 of the Constitution regarding the vote required for conviction on impeachment provides that no person shall be convicted without the concurrence of two-thirds of the Members present.

The question is on the first Article of Impeachment. Senators, how say you? Is the respondent, Donald John Trump, guilty or not guilty?

A rollcall vote is required.

The clerk will call the roll.

The legislative clerk called the roll.

The result was announced—guilty 48, not guilty 52, as follows:

[Rollcall Vote No. 33]

GUILTY—48

Baldwin	Coons	Hirono
Bennet	Cortez Masto	Jones
Blumenthal	Duckworth	Kaine
Booker	Durbin	King
Brown	Feinstein	Klobuchar
Cantwell	Gillibrand	Leahy
Cardin	Harris	Manchin
Carper	Hassan	Markey
Casey	Heinrich	Menendez

Merkley	Sanders	Tester
Murphy	Schatz	Udall
Murray	Schumer	Van Hollen
Peters	Shaheen	Warner
Reed	Sinema	Warren
Romney	Smith	Whitehouse
Rosen	Stabenow	Wyden

NOT GUILTY—52

Alexander	Fischer	Perdue
Barrasso	Gardner	Portman
Blackburn	Graham	Risch
Blunt	Grassley	Roberts
Boozman	Hawley	Rounds
Braun	Hoeven	Rubio
Burr	Hyde-Smith	Sasse
Capito	Inhofe	Scott (FL)
Cassidy	Johnson	Scott (SC)
Collins	Kennedy	Shelby
Cornyn	Lankford	Sullivan
Cotton	Lee	Thune
Cramer	Loeffler	Tillis
Crapo	McConnell	Toomey
Cruz	McSally	Wicker
Daines	Moran	Young
Enzi	Murkowski	
Ernst	Paul	

The CHIEF JUSTICE. On this Article of Impeachment, 48 Senators have pronounced Donald John Trump, President of the United States, guilty as charged; 52 Senators have pronounced him not guilty as charged.

Two-thirds of the Senators present not having pronounced him guilty, the Senate adjudges that the Respondent, Donald John Trump, President of the United States, is not guilty as charged on the first Article of Impeachment.

ARTICLE II

The clerk will read the second Article of Impeachment.
The legislative clerk read as follows:

ARTICLE II: OBSTRUCTION OF CONGRESS

The Constitution provides that the House of Representatives “shall have the sole Power of Impeachment” and that the President “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors”. In his conduct of the office of President of the United States—and in violation of his constitutional oath faithfully to execute the office of President of the United States and, to the best of his ability, preserve, protect, and defend the Constitution of the United States, and in violation of his constitutional duty to take care that the laws be faithfully executed—Donald J. Trump has directed the unprecedented, categorical, and indiscriminate defiance of subpoenas issued by the House of Representatives pursuant to its “sole Power of Impeachment”. President Trump has abused the powers of the Presidency in a manner offensive to, and subversive of, the Constitution, in that:

The House of Representatives has engaged in an impeachment inquiry focused on President Trump’s corrupt solicitation of the Government of Ukraine to interfere in the 2020 United States Presidential election. As part of this impeachment inquiry, the Committees undertaking the investigation served subpoenas seeking documents and testimony deemed vital to the inquiry from various Executive Branch agencies and offices, and current and former officials.

In response, without lawful cause or excuse, President Trump directed Executive Branch agencies, offices, and officials not to comply with those subpoenas. President Trump thus interposed the powers of the Presidency against the lawful subpoenas of the House of Representatives, and assumed to himself functions and judgments

necessary to the exercise of the “sole Power of Impeachment” vested by the Constitution in the House of Representatives.

President Trump abused the powers of his high office through the following means:

(1) Directing the White House to defy a lawful subpoena by withholding the production of documents sought therein by the Committees.

(2) Directing other Executive Branch agencies and offices to defy lawful subpoenas and withhold the production of documents and records from the Committees—in response to which the Department of State, Office of Management and Budget, Department of Energy, and Department of Defense refused to produce a single document or record.

(3) Directing current and former Executive Branch officials not to cooperate with the Committees—in response to which nine Administration officials defied subpoenas for testimony, namely John Michael “Mick” Mulvaney, Robert B. Blair, John A. Eisenberg, Michael Ellis, Preston Wells Griffith, Russell T. Vought, Michael Duffey, Brian McCormack, and T. Ulrich Brechbuhl.

These actions were consistent with President Trump’s previous efforts to undermine United States Government investigations into foreign interference in United States elections.

Through these actions, President Trump sought to arrogate to himself the right to determine the propriety, scope, and nature of an impeachment inquiry into his own conduct, as well as the unilateral prerogative to deny any and all information to the House of Representatives in the exercise of its “sole Power of Impeachment”. In the history of the Republic, no President has ever ordered the complete defiance of an impeachment inquiry or sought to obstruct and impede so comprehensively the ability of the House of Representatives to investigate “high Crimes and Misdemeanors”. This abuse of office served to cover up the President’s own repeated misconduct and to seize and control the power of impeachment—and thus to nullify a vital constitutional safeguard vested solely in the House of Representatives.

In all of this, President Trump has acted in a manner contrary to his trust as President and subversive of constitutional government, to the great prejudice of the cause of law and justice, and to the manifest injury of the people of the United States.

Wherefore, President Trump, by such conduct, has demonstrated that he will remain a threat to the Constitution if allowed to remain in office, and has acted in a manner grossly incompatible with self-governance and the rule of law. President Trump thus warrants impeachment and trial, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States.

VOTE ON ARTICLE II

The CHIEF JUSTICE. The question is on the second Article of Impeachment. Senators, how say you? Is the respondent, Donald John Trump, guilty or not guilty?

The clerk will call the roll.

The senior assistant legislative clerk called the roll.

The result was announced—guilty 47, not guilty 53, as follows:

[Rollcall Vote No. 34]

GUILTY—47

Baldwin	Gillibrand	Murphy
Bennet	Harris	Murray
Blumenthal	Hassan	Peters
Booker	Heinrich	Reed
Brown	Hirono	Rosen
Cantwell	Jones	Sanders
Cardin	Kaine	Schatz
Carper	King	Schumer
Casey	Klobuchar	Shaheen
Coons	Leahy	Sinema
Cortez Masto	Manchin	Smith
Duckworth	Markey	Stabenow
Durbin	Menendez	Tester
Feinstein	Merkley	

Udall
Van Hollen

Warner
Warren

Whitehouse
Wyden

NOT GUILTY—53

Alexander
Barrasso
Blackburn
Blunt
Boozman
Braun
Burr
Capito
Cassidy
Collins
Cornyn
Cotton
Cramer
Crapo
Cruz
Daines
Enzi
Ernst

Fischer
Gardner
Graham
Grassley
Hawley
Hoeven
Hyde-Smith
Inhofe
Johnson
Kennedy
Lankford
Lee
Loeffler
McConnell
McSally
Moran
Murkowski
Paul

Perdue
Portman
Risch
Roberts
Romney
Rounds
Rubio
Sasse
Scott (FL)
Scott (SC)
Shelby
Sullivan
Thune
Tillis
Toomey
Wicker
Young

The CHIEF JUSTICE. On this Article of Impeachment, 47 Senators have pronounced Donald John Trump, President of the United States, guilty as charged; 53 Senators have pronounced him not guilty as charged; two-thirds of the Senators present not having pronounced him guilty, the Senate adjudges that respondent, Donald John Trump, President of the United States, is not guilty as charged in the second Article of Impeachment.

The Presiding Officer directs judgment to be entered in accordance with the judgment of the Senate as follows:

The Senate, having tried Donald John Trump, President of the United States, upon two articles of impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein, it is, therefore, ordered and adjudged that the said Donald John Trump be, and he is hereby, acquitted of the charges in said articles.

The Chair recognizes the majority leader.

COMMUNICATION TO THE SECRETARY OF STATE AND TO THE HOUSE OF REPRESENTATIVES

Mr. McCONNELL. Mr. Chief Justice, I send an order to the desk.

The CHIEF JUSTICE. The clerk will report the order.

The legislative clerk read as follows:

Ordered, that the Secretary be directed to communicate to the Secretary of State, as provided by Rule XXII of the Rules of Procedure and Practice in the Senate when sitting on impeachment trials, and also to the House of Representatives, the judgment of the Senate in the case of Donald John Trump, and transmit a certified copy of the judgment to each.

The CHIEF JUSTICE. Without objection, the order will be entered.

The majority leader is recognized.

EXPRESSION OF GRATITUDE TO THE CHIEF JUSTICE OF THE UNITED STATES

Mr. McCONNELL. Mr. Chief Justice, before this process fully concludes, I want to very quickly acknowledge a few of the people who helped the Senate fulfill our duty these past weeks.

First and foremost, I know my colleagues join me in thanking Chief Justice Roberts for presiding over the Senate trial with a clear head, steady hand, and the forbearance that this rare occasion demands.

(Applause.)

We know full well that his presence as our Presiding Officer came in addition to, not instead of, his day job across the street, so the Senate thanks the Chief Justice and his staff who helped him perform this unique role.

Like his predecessor, Chief Justice Rehnquist, the Senate will be awarding Chief Justice Roberts the golden gavel to commemorate his time presiding over this body. We typically award this to new Senators after about 100 hours in the chair, but I think we can agree that the Chief Justice has put in his due and then some.

The page is delivering the gavel.

The CHIEF JUSTICE. Thank you very much.

Mr. McCONNELL. Of course, there are countless Senate professionals whose efforts were essential, and I will have more thorough facts to offer next week to all of those teams, from the Secretary of the Senate's office, to the Parliamentarian, to the Sergeant at Arms team, and beyond.

But there are two more groups I would like to single out now. First, the two different classes of Senate pages who participated in this trial, their footwork and cool under pressure literally kept the floor running. Our current class came on board right in the middle of the third Presidential impeachment trial in American history and quickly found themselves hand-delivering 180 question cards from Senators' desks to the dais.

No pressure, right, guys?

So thank you all very much for your good work.

(Applause.)

Second, the fine men and women of the Capitol Police, we know that the safety of our democracy literally rests in their hands every single day, but the heightened measures surrounding the trial meant even more hours and even more work and even more vigilance.

Thank you all very much for your service to this body and to the country.

(Applause.)

The CHIEF JUSTICE. The Chair recognizes the Democratic leader.

Mr. SCHUMER. Mr. Chief Justice, I join the Republican leader in thanking the personnel who aided the Senate over the past several weeks. The Capitol Police do an outstanding job, day in and day out, to protect the Members of this Chamber, their staffs, the press, and everyone who works in and visits this Capitol.

They were asked to work extra shifts and in greater numbers provide additional security over the past 3 weeks. Thank you to every one of them.

I, too, would like to thank those wonderful pages. I so much enjoyed you with your serious faces walking down right here and giving the Chief Justice our questions. As the leader noted, the new class of pages started midway in this impeachment trial. When you

take a new job, you are usually given a few days to take stock of things and get up to speed.

This class was given no such leeway, but they stepped right in and didn't miss a beat. Carrying hundreds of questions from U.S. Senators to the Chief Justice on national television is not how most of us spend our first week at work, but they did it with aplomb.

I would also like to extend my personal thank you to David Hauck, Director of the Office of Accessibility Services; Tyler Pumphrey, supervisor; and Grace Ridgeway, wonderful Director of Capitol Facilities.

Everyone on Grace's team worked so hard to make sure we were ready for impeachment: Gary Richardson, known affectionately to us as "Tiny," the chief Chamber attendant; Jim Hoover and the cabinet shop who built new cabinets to deprive us of the use of our electronics and flip phones during the trial; Brenda Byrd and her team who did a spectacular job of keeping the Capitol clean; and Lynden Webb and his team, who moved the furniture, and then moved it again and again and again.

Grace, we appreciate all your hard work. Please convey our sincerest thanks to your staff. Thank you all, the whole staff, for your diligent work through many long days and late nights during this very trying time in our Nation's history.

STATEMENT OF THE CHIEF JUSTICE OF THE UNITED STATES ON THE
SENATE FLOOR

The CHIEF JUSTICE. At this time, the Chair also wishes to make a very brief statement.

I would like to begin by thanking the majority leader and the Democratic leader for their support as I attempted to carry out ill-defined responsibilities in an unfamiliar setting. They ensured that I had wise counsel of the Senate itself through its Secretary and her legislative staff.

I am especially grateful to the Parliamentarian and her deputy for their unfailing patience and keen insight. I am likewise grateful to the Sergeant at Arms and his staff for the assistance and many courtesies that they extended during my period of required residency. Thank you all for making my presence here as comfortable as possible.

As I depart the Chamber, I do so with an invitation to visit the Court. By long tradition and in memory of the 135 years we sat in this building, we keep the front row of the gallery in our courtroom open for Members of Congress who might want to drop by to see an argument—or to escape one.

I also depart with sincere good wishes as we carry out our common commitment to the Constitution through the distinct roles assigned to us by that charter. You have been generous hosts, and I look forward to seeing you again under happier circumstances.

The Chair recognizes the majority leader.

ADJOURNMENT SINE DIE OF THE COURT OF
IMPEACHMENT

Mr. McCONNELL. Mr. Chief Justice, I move that the Senate, sitting as a Court of Impeachment on the Articles against Donald John Trump, adjourn sine die.

The motion was agreed to, and at 4:41 p.m., the Senate, sitting as a Court of Impeachment, adjourned sine die.

FEB 5, 2020
(Date)

Roll Call Vote

IMPEACHMENT NO. **33**

SUBJECT: *Article I.
Articles of Impeachment Against
President Donald John Trump*

Guilty		Not Guilty
	Alexander	
	Baldwin	
	Barraso	
	Bennet	
	Blackburn	
	Blumenthal	
	Blunt	
	Booker	
	Boozman	
	Braun	
	Brown	
	Burr	
	Cantwell	
	Capito	
	Cardin	
	Carper	
	Casey	
	Cassidy	
	Collins	
	Coons	
	Cornyn	
	Cortez Masto	
	Cotton	
	Cramer	
	Crapo	
	Cruz	
	Daines	
	Duckworth	
	Durbin	
	Ernst	
	Feinstein	
	Fischer	
	Gardner	
	Gillibrand	
	Graham	
	Grassley	
	Harris	
	Hassan	
	Hawley	
	Heinrich	
	Hirono	
	Hoeven	
	Hyde-Smith	
	Inhofe	
	Johnson	
	Jones	
	Kaine	
	Kennedy	
	King	
	Klobuchar	
	Lankford	
	Leahy	
	Lee	
	Loeffler	
	Manchin	
	Markey	
	McConnell	
	McSally	
	Menendez	
	Merkley	
	Moran	
	Murkowski	
	Murphy	
	Murray	
	Paul	
	Perdue	
	Peters	
	Portman	
	Reed	
	Risch	
	Roberts	
	Romney	
	Rosen	
	Rounds	
	Rubio	
	Sanders	
	Sasse	
	Schatz	
	Schumer	
	Scott, of Florida	
	Scott, of South Carolina	
	Shaheen	
	Shelby	
	Sinema	
	Smith	
	Stabenow	
	Sullivan	
	Tester	
	Thune	
	Tillis	
	Toomey	
	Udall	
	Van Hollen	
	Warner	
	Warren	
	Whitehouse	
	Wicker	
	Wyden	
	Young	

GPO: 2017 38-795 (Rev.)

48 52

FEB 5, 2020
(Date)

Roll Call Vote

IMPEACHMENT NO. **34**

SUBJECT *Article II
Articles of Impeachment Against
President Donald John Trump*

Roll Call	Not Roll Call
Alexander	
Baldwin	
Barron	
Bennet	
Blackburn	
Blumenthal	
Bunt	
Booker	
Boozman	
Brown	
Brown	
Burr	
Cantwell	
Capito	
Cardin	
Carper	
Caspey	
Cassidy	
Collins	
Cooms	
Cornyn	
Cortez Masto	
Cotton	
Cramer	
Crapo	
Cruz	
Daines	
Duckworth	
Durbin	
Enzi	
Ernst	
Feinstein	
Fischer	
Gardner	
Gillibrand	
Graham	
Grassley	
Harris	
Hassan	
Hawley	
Heinrich	
Hirono	
Hooven	
Hyde-Smith	
Inhofe	
Johnson	
Jones	
Kaine	
Kennedy	
King	
Klobuchar	
Lankford	
Leahy	
Lee	
Loeffler	
Manchin	
Markey	
McConnell	
McSally	
Menendez	
Merkley	
Morano	
Murkowski	
Murphy	
Murray	
Paul	
Perdue	
Peters	
Portman	
Reed	
Roach	
Roberts	
Romney	
Rosen	
Rounds	
Rubio	
Sanders	
Sasse	
Schatz	
Schumer	
Scott, of Florida	
Scott, of South Carolina	
Shaheen	
Shelley	
Sinema	
Smith	
Stabenow	
Sullivan	
Tester	
Thune	
Tillis	
Toomey	
Udall	
Van Hollen	
Warner	
Warten	
Whitehouse	
Wicker	
Wyden	
Young	

47 53

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FEBRUARY 5, 2020

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In the Senate of the United States

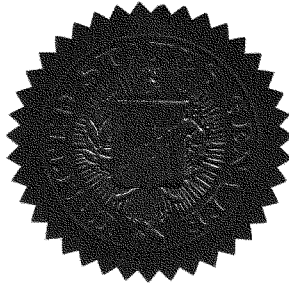
February 5, 2020

JUDGMENT

The Senate having tried Donald John Trump, President of the United States, upon two Articles of Impeachment exhibited against him by the House of Representatives, and two-thirds of the Senators present not having found him guilty of the charges contained therein: It is, therefore,

Ordered and adjudged, That the said Donald John Trump be, and he is hereby, acquitted of the charges in said articles.

Attest:



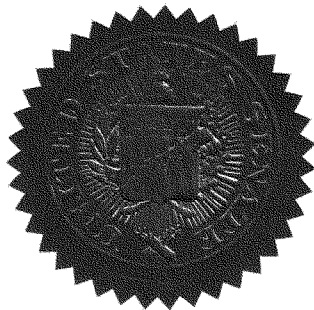
Julie E. Adams

Secretary.

*In the Senate of the United States**February 5, 2020*

Ordered, That the Secretary be directed to communicate to the Secretary of State, as provided by Rule XXIII of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, and also to the House of Representatives, the judgment of the Senate in the Case of Donald John Trump, and transmit a certified copy of the judgment to each.

Attest:



Julie E. Adams
Secretary.

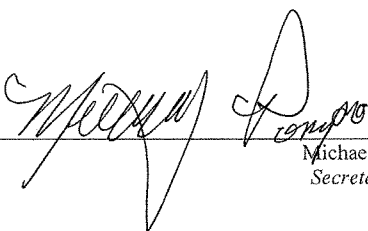
FEBRUARY 5, 2020

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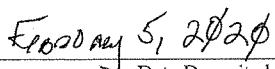
Secretary of the Senate

U.S. Senate
Washington, D.C. 20510

Acknowledgment of deposit of a certified copy of the judgment of acquittal of Donald
John Trump, President of the United States.



Michael R. Pompeo
Secretary of State



Date Deposited