

IMPEACHMENT OF PRESIDENT DONALD JOHN TRUMP

THE EVIDENTIARY RECORD PURSUANT TO H. RES. 798

VOLUME VIII

Transcript of the December 4, 2019 House Committee
on the Judiciary Hearing, “The Impeachment Inquiry
into President Donald J. Trump: Constitutional Grounds
for Presidential Impeachment”



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THE IMPEACHMENT INQUIRY INTO PRESIDENT DONALD J. TRUMP: CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT

HEARING BEFORE THE COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED SIXTEENTH CONGRESS

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THE IMPEACHMENT INQUIRY INTO PRESIDENT DONALD J. TRUMP: CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT

WEDNESDAY, DECEMBER 4, 2019

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The committee met, pursuant to call, at 10:10 a.m., in Room 1100, Longworth House Office Building, Hon. Jerrold Nadler [chairman of the committee] presiding.

Present: Representatives Nadler, Lofgren, Jackson Lee, Cohen, Johnson of Georgia, Deutch, Bass, Richmond, Jeffries, Cicilline, Swalwell, Lieu, Raskin, Jayapal, Demings, Correa, Scanlon, Garcia, Neguse, McBath, Stanton, Dean, Mucarsel-Powell, Escobar, Collins, Sensenbrenner, Chabot, Gohmert, Jordan, Buck, Ratcliffe, Roby, Gaetz, Johnson of Louisiana, Biggs, McClintock, Lesko, Reschenthaler, Cline, Armstrong, and Steube.

Staff Present: Amy Rutkin, Chief of Staff; Perry Apelbaum, Staff Director and Chief Counsel; Aaron Hiller, Deputy Chief Counsel and Chief Oversight Counsel; Barry Berke, Counsel; Norm Eisen, Counsel; Arya Hariharan, Deputy Chief Oversight Counsel; James Park, Chief Constitution Counsel; Joshua Matz, Counsel; Sarah Istel, Counsel; Matthew Morgan, Counsel; Kerry Tirrell, Counsel; Sophia Brill, Counsel; Charles Gayle, Counsel; Maggie Goodlander, Counsel; Matthew N. Robinson, Counsel; Ted Kalo, Counsel; Priyanka Mara, Professional Staff Member; William S. Emmons, Legislative Aide/Professional Staff Member; Madeline Strasser, Chief Clerk; Rachel Calanni, Legislative Aide/Professional Staff Member; Julian Gerson, Professional Staff Member; Anthony Valdez, Fellow; Thomas Kaelin, Fellow; David Greengrass, Senior Counsel; John Doty, Senior Advisor; Moh Sharma, Member Services and Outreach Advisor; John Williams, Parliamentarian; Jordan Dashow, Professional Staff Member; Shadawn Reddick-Smith, Communications Director; Daniel Schwarz, Director of Strategic Communications; Kayla Hamed, Deputy Press Secretary; Kingsley Animiey, Director of Administration; Janna Pinckney, IT Director; Fais al Siddiqui, Deputy IT Manager; Nick Ashley, Intern; Maria Villegas Bravo, Intern; Alex Espinoza, Intern; Alex Thomson, Intern; Manam Siddiqui, Intern; Catherine Larson, Intern; Kiah Lewis, Intern; Brendan Belair, Minority Staff Director; Bobby

Parmiter, Minority Deputy Staff Director/Chief Counsel; Jon Ferro, Minority Parliamentarian/General Counsel; Erica Baker, Minority Deputy Parliamentarian; Paul Taylor, Minority Chief Counsel, Constitution Subcommittee; Ashley Callen, Minority Chief Oversight Counsel; Danny Johnson, Minority Oversight Counsel; Jake Greenberg, Minority Oversight Counsel; and Ryan Breitenbach, Minority Chief Counsel, National Security.

Chairman NADLER. The House Committee on the Judiciary will come to order.

Without objection, the chair is authorized to declare recesses of the committee at any time.

Mr. SENSENBRENNER. Mr. Chairman, we are reserving the right to object.

Chairman NADLER. The objection is noted.

Mr. SENSENBRENNER. I reserve the right to object.

Chairman NADLER. The gentleman is reserved.

Mr. SENSENBRENNER. Mr. Chairman, pursuant to clause 2(j)(1) of rule XI, I am furnishing you with a demand for minority day of hearings on this subject, signed by all of the Republicans members.

Chairman NADLER. The gentleman will suspend. I could not understand what you were saying. Just repeat it more clearly.

Mr. SENSENBRENNER. Pursuant to clause 2(j)(1) of rule XI, I am furnishing you with a demand for a minority day of hearings on this subject, signed by all of the Republican members of the committee. And I would request that you set this date before the committee votes on any Articles of Impeachment.

Chairman NADLER. It's a motion?

Mr. SENSENBRENNER. I withdraw my reservation.

Chairman NADLER. We will confer and rule on this later.

A quorum is present. This is the first hearing. This is the first hearing we are conducting pursuant to House Resolution 660 and the special Judiciary Committee procedures that are described in section 4(a) of that resolution.

Here is how the committee will proceed for this hearing: I will make an opening statement, and then I will recognize the ranking member for an opening statement. Each witness will have 10 minutes to make their statements, and then we will proceed to questions.

I will now recognize myself for an opening statement.

Mr. BIGGS. Mr. Chairman, parliamentary inquiry.

Chairman NADLER. I have the time for an opening statement. The parliamentary inquiry is not in order at this time.

The facts before us are undisputed. On July 25th, President Trump called President Zelensky of Ukraine and, in President Trump's words, asked him for a favor. That call was part of a concerted effort by the President and his men to solicit a personal advantage in the next election, this time in the form of an investigation of his political adversaries by a foreign government. To obtain that private political advantage, President Trump withheld both an official White House meeting from the newly elected President of a fragile democracy and withheld vital military aid from a vulnerable ally.

When Congress found out about this scheme and began to investigate, President Trump took extraordinary and unprecedented

steps to cover up his efforts and to withhold evidence from the investigators. And when witnesses disobeyed him, when career professionals came forward and told us the truth, he attacked them viciously, calling them traitors and liars, promising that they will, quote, "go through some things," close quote.

Of course, this is not the first time that President Trump has engaged in this pattern of conduct. In 2016, the Russian Government engaged in a sweeping and systematic campaign of interference in our elections. In the words of Special Counsel Robert Mueller, quote, "The Russian Government perceived it would benefit from a Trump Presidency and worked to secure that outcome," close quote.

The President welcomed that interference. We saw this in real time when President Trump asked Russia to hack his political opponent. The very next day, a Russian military intelligence unit attempted to hack that political opponent. When his own Justice Department tried to uncover the extent to which a foreign government had broken our laws, President Trump took extraordinary and unprecedented steps to obstruct the investigation, including ignoring subpoenas, ordering the creation of false records, and publicly attacking and intimidating witnesses. Then, as now, this administration's level of obstruction is without precedent.

No other President has vowed to, quote, "fight all of the subpoenas," unquote, as President Trump promised. In the 1974 impeachment proceedings, President Nixon produced dozens of recordings. In 1998, President Clinton physically gave his blood. President Trump, by contrast, has refused to produce a single document and directed every witness not to testify. Those are the facts before us.

The impeachment inquiry has moved back to the House Judiciary Committee; and as we begin a review of these facts, the President's pattern of behavior becomes clear. President Trump welcomed foreign interference in the 2016 election. He demanded it for the 2020 election. In both cases, he got caught, and in both cases, he did everything in his power to prevent the American people from learning the truth about his conduct.

On July 24th, the special counsel testified before this committee. He implored us to see the nature of the threat to our country. Quote, "Over the course of my career, I have seen a number of challenges to our democracy. The Russian Government's efforts to interfere in our elections is among the most serious. This deserves the attention of every American," close quote.

Ignoring that warning, President Trump called the Ukrainian President the very next day to ask him to investigate the President's political opponent. As we exercise our responsibility to determine whether this pattern of behavior constitutes an impeachable offense, it is important to place President Trump's conduct into historical context. Since the founding of our country, the House of Representatives has impeached only two Presidents. A third was on his way to impeachment when he resigned. This committee has voted to impeach two Presidents for obstructing justice. We have voted to impeach one President for obstructing a congressional investigation.

To the extent that President's conduct fits these categories, there is precedent for recommending impeachment here. But never before

in the history of the Republic have we been forced to consider the conduct of a President who appears to have solicited personal political favors from a foreign government. Never before has a President engaged in a course of conduct that included all of the acts that most concerned the Framers.

The patriots who founded our country were not fearful men. They fought a war. They witnessed terrible violence. They overthrew a king. But as they meant to frame our Constitution, those patriots still feared one threat above all: foreign interference in our elections. They had just deposed a tyrant. They were deeply worried we would lose our newfound liberty, not through a war—if a foreign army were to invade, we would see that coming—but through corruption from within. And in the early years of the Republic, they asked us, each of us, to be vigilant to that threat.

Washington warned us, quote, “to be constantly awake since history and experience prove that foreign influence is one of the most baneful foes of republican government.”

Adams wrote to Jefferson, quote, “as often as elections happen, the danger of foreign influence recurs.”

Hamilton’s warning was more specific and more dire. In the *Federalist Papers* he wrote that, quote, “the most deadly adversaries of republican government,” unquote, would almost certainly attempt to, quote, “raise a creature of their own to the chief magistracy of the Union.”

In short, the Founders warned us that we should expect our foreign adversaries to target our elections and that we will find ourselves in grave danger if the President willingly opens the door to their influence.

What kind of President would do that? How will we know if the President has betrayed his country in this manner? How we will we know if he has betrayed his country in this manner for petty, personal gain? Hamilton had a response for that as well. He wrote, “When a man unprincipled in private life, desperate in his fortune, bold in his temper, possessed of considerable talents, known to have scoffed in private at the principles of liberty, when such a man is seen to mount the hobbyhorse of popularity, to join the cry of danger to liberty, to take every opportunity of embarrassing the general government and bringing it under suspicion, it may justly be suspected that his object is to throw things into confusion that he may ride the storm and direct the whirlwind.”

Ladies and gentlemen, the storm in which we find ourselves today was set in motion by President Trump. I do not wish this moment on the country. It is not a pleasant task that we undertake today, but we have each taken an oath to protect the Constitution, and the facts before us are clear. President Trump did not merely seek to benefit from foreign interference in our elections. He directly and explicitly invited foreign interference in our elections. He used the powers of his office to try to make it happen. He sent his agents to make clear that this is what he wanted and demanded. He was willing to compromise our security and his office for personal political gain.

It does not matter that President Trump got caught and ultimately released the funds that Ukraine so desperately needed. It

matters that he enlisted a foreign government to intervene in our elections in the first place.

It does not matter that President Trump felt that these investigations were unfair to him. It matters that he used his office not merely to defend himself but to obstruct investigators at every turn.

We are all aware that the next election is looming, but we cannot wait for the election to address the present crisis. The integrity of that election is one of the very things at stake. The President has shown us his pattern of conduct. If we do not act to hold him in check now, President Trump will almost certainly try again to solicit interference in the election for his personal political gain.

Today, we will begin our conversation where we should, with the text of the Constitution. We are empowered to recommend the impeachment of President Trump to the House if we find that he has committed treason, bribery, or other high crimes and misdemeanors. Our witness panel will help us to guide that conversation. In a few days, we will reconvene and hear from the committees that worked to uncover the facts before us. And when we apply the Constitution to those facts, if it is true that President Trump has committed an impeachable offense or multiple impeachable offenses, then we must move swiftly to do our duty and charge him accordingly.

I thank the witnesses for being here today.

I now recognize the Ranking Member of the Judiciary Committee—

Mr. BIGGS. Mr. Chairman—

Chairman NADLER [continuing]. The gentleman from Georgia—

Mr. BIGGS. Mr. Chairman—

Chairman NADLER [continuing]. Mr. Collins, for his opening statement.

Mr. BIGGS. Mr. Chairman, may I make a parliamentary inquire question before you—

Chairman NADLER. The gentleman is not in order for a parliamentary inquiry. I have recognized the Ranking Member for an opening statement.

Mr. COLLINS. I thank the Chairman.

And it is interesting that, again, parliamentary inquiries—and I believe some are actually some of the things I am going to discuss today because we are sort of coming here today in a different arena.

But for everybody who has not been here before, this is a new room. It is new rules. It is a new month. We have even got cute little stickers for our staff so we can come in because we want to make this important and this is impeachment, because we've done such a terrible job of it in this committee before. But what is not new is basically what has just been reiterated by the chairman. What is not new is the facts. What is not new is it is the same, sad story.

What is interesting, even before I get into my, part of my opening statement, was, is what was just said by the chairman. We went back to a redo of Mr. Mueller. We're also saying, quoting him, saying the attention of the American people should be on foreign interference. I agree with him completely, except I guess the Amer-

ican people did not include the Judiciary Committee because we didn't take it up. We didn't have hearings. We didn't do anything to delve deeply into this issue. We passed election bills but did not get into the in-depth part of what Mr. Mueller talked about, taking his own report and having hearings about that. We didn't do it. So I guess the American people doesn't include the House Judiciary Committee.

You know, the interesting—we also just heard an interesting discussion. We're going to have a lot of interesting discussion today about the Constitution and other things, but we also talked about the Founders. What's interesting is, is the chairman talked a lot about the Founders from the quotes—and, again, this is why we have the hearings—about the Founders being concerned about foreign influence. But what he also didn't quote was the Founders being really, really concerned about political impeachment because you just don't like the guy. You haven't liked him since November of 2016.

The chairman has talked about impeachment since last year when he was elected chairman, 2 years ago on November 17th, before he was even sworn in as chairman. So don't tell me this is about new evidence and new things and new stuff. We may have a new hearing room. We may have new mikes, and we may have chairs that aren't comfortable, but this is nothing new, folks. This is sad.

So what do we have here today? You know what I'm thinking? I looked at this, and what is interesting is there's two things that have become very clear. This impeachment is not really about facts. If it was, I believe the other committees would have sent over recommendations for impeachment. No, they're putting it on this committee because, if it goes badly, I guess they want to blame—Adam Schiff's committee and the HPSCI and others want to blame this committee for it going bad, but they're already drafting articles. Don't be fooled. They are already getting ready for this.

We've already went after this with the Ukraine after numerous failings of Mueller, Cohen, annulments. The list—emoluments. The list goes on. But the American people are obviously failing to see us legislate. If you want to know what's really driving this, there's two things. It's called the clock and the calendar, the clock and the calendar. Most people in life, if you want to know what they truly value, you look at their checkbook and their calendar. You know what they value. That's what this committee values: time. They want to do it before the end of the year. Why? Because the chairman said it just a second ago: Because we're scared of the elections next year. We're scared of the elections, that we'll lose again. So we've got to do this now.

The clock and the calendar are what's driving impeachment, not the facts. When we understand this, that's what the witnesses here will say today.

What do we have here today? What is really interesting over today and for the next few weeks is Americans will see why most people don't go to law school. No offense to our professors. But, please, really? We're bringing you in here today to testify on stuff that most of you have already written about, all four, for the opinions that we already know, out of the classrooms that maybe you're

getting ready for finals in, to discuss things that you probably haven't even had a chance to, unless you're really good on TV of watching the hearings for the last couple of weeks, you couldn't have possibly actually digested the Adam Schiff report from yesterday or the Republican response in any real way.

Now, we can be theoretical all we want, but the American people is really going to look at this and say, "Huh? What are we doing?" because there's no fact witnesses planned for this committee. That's an interesting thing. Frankly, there's no plan at all except next week an ambiguous hearing on the presentation from the HPSCI, the other committee that sent us the report, and the Judiciary Committee, which I'm not still sure what they want us to present on, and nothing else, no plan. I asked the chairman before we left for Thanksgiving to stay in touch, let's talk about what we have, because history will shine a bright line on us starting this morning. Crickets until I asked for a witness the other day, and let's just say that didn't go well.

There's no whistleblower. And, by the way, it was proved today that he's not or she's not afforded the protection of identity. It's not in the statute. It's just something that was discussed by Adam Schiff. We also don't have Adam Schiff, who wrote the report. He said yesterday in a press conference: I'm not going to. I'll send staff to do that.

He's not going to. But, you know, to me, if he was wanting to, he'd come begging to us.

But, you know, here's the problem. It sums it up very simply like this: Just 19 minutes after noon on inauguration day, 2017, The Washington Post ran the headline, "The Campaign to Impeach the President has Begun." Mark Zaid, who would later become the attorney for the infamous whistleblower, tweeted in January 2017: The coup has started. The impeachment will follow ultimately.

And in May of this year, Al Green says: If we don't impeach the President, he'll get reelected.

You want to know what's happening? Here we go. Why did everything that I say up to this point about no fact witnesses, nothing for the Judiciary Committee, we spent 2 and a half weeks before this hearing was even held under Clinton—2 and a half weeks. We didn't even find your names out until less than 48 hours ago. I don't know what we're playing hide the ball on. It's pretty easy what you're going say, but we can't even get that straight.

So what are we doing for the next 2 weeks? I have no idea. The chairman just said an ambiguous hearing on the report but nothing else. If we're going to simply not have fact witnesses, then we are the rubber stamp hiding out back, the very rubber stamp the chairman talked about 20 years ago. What a disgrace to this committee to have the committee of impeachment simply take from other entities and rubber-stamp it.

You see, why do the things that I say matter about fact witnesses and actually hearing and actually having us a due process? Because, by the way, just a couple of months ago, the Democrats got all sort of dressed up, if you would, and says: We're going to have due process protection for the President and good fairness throughout this.

This is the only committee in which the President would even have a possibility.

But no offense to you, the law professors. The President has nothing to ask you. You're not going to provide anything he can't read, and his attorneys have nothing to ask. Put witnesses in here that can be fact witnesses who can be actually cross-examined. That's fairness, and every attorney on this panel knows that. This is a sham.

But you know what I also see here is quotes like this: There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties or imposed by another. Such an impeachment will produce decisiveness, bitterness, and politics for years to come and will call into question the very legitimacy of our political institutions.

The American people are watching. They will not forget. You have the votes. You may have the muscle, but you do not have legitimacy of a national consensus or of a constitutional imperative. The partisan coup d'etat will go down in infamy in the history of the Nation.

How about this one? I think the key point is that the Republicans are still running a railroad job with no attempt at fair procedure. And today, when the Democrats offered amendments, offered motions in committee to say we should first discuss and adopt standards so that we know what we're dealing with, standards for impeachment that was voted down or ruled out of order; when we say the important thing is to start looking at the question before we simply have a vote with no inquiry first, that was voted down and ruled out of order. So, frankly, the whole question of what materials should be released and what is secondary, but that's all we discussed. The essential question—and here it is—which is to set up a fair process as to whether the country put this country through an impeachment proceeding. That was ruled out of order. The Republicans refused to let us discuss it.

Those were all Chairman Nadler before he was chairman. I guess 20 years makes a difference.

It's an interesting time. We're having a factless impeachment. You just heard a one-sided presentation of facts about this President. Today, we will present the other side, which gets so conveniently left out. Remember fairness does dictate that, but maybe not here because we're not scheduling anything else.

I have a Democratic majority who has poll tested what they think they ought to call what the President they think he did. Wow. That's not following the facts. We have just a deep-seated hatred of a man who came to the White House and did what he said he was going to do. The most amazing question I got in first 3 months of this gentleman's Presidency from reporters was this: Can you believe he's putting forward those ideas?

I said: Yes, he ran on them. He told the truth, and he did what he said.

The problem here today is this will also be one of the first impeachments—the chairman mentioned there was two of them, one that before he resigned before and then the one in Clinton—in which the facts even by Democrats and Republicans were not really disputed. In this one, they're not only disputed; they're

counterdictive of each other. There are no set facts here. In fact, they're not anything that presents an impeachment here, except a President carrying out his job in the way the Constitution saw that he sees fit to do it. This is where we're at today.

So the interesting thing that I come to with most everybody here is this may be a new time, a new place, and we may be all scrubbed up and looking pretty for impeachment, but this is not an impeachment. This is just a simple railroad job, and today's is a waste of time because this is where we're at.

So I close today with this. It didn't start with Mueller. It didn't start with a phone call. You know where this started? It started with tears in Brooklyn in November 2016, when an election was lost. So we are here, no plan, no fact witnesses, simply being a rubber stamp for what we have; but, hey, we got law professors here. What a start of a party.

Mr. Chairman, before I yield back, I have a motion. Under clause 2, rule XI.

Chairman NADLER. The gentleman is recognized for the purpose of an opening statement, not for the purpose of making a motion.

Mr. COLLINS. I yield back and now ask for the recognition under clause 2, rule XI.

Chairman NADLER. The gentleman is recognized.

Mr. COLLINS. Mr. Chairman, pursuant to clause 2 of rule XI, I move to require the attendance and testimony of Chairman Schiff before this committee and transmit this letter accordingly.

Chairman NADLER. For what purposes does the gentlelady seek recognition?

Ms. LOFGREN. I move to table the motion.

Chairman NADLER. The motion to table is made and not debatable.

All in favor of the motion to table, say aye.

Opposed, no.

The motion to table is agreed to.

Mr. COLLINS. Recorded vote.

Chairman NADLER. A recorded vote is requested. The clerk will call the roll.

Mr. COLLINS. Parliamentary inquiry, Mr. Chairman.

Chairman NADLER. The clerk will call the roll.

Mr. COLLINS. Parliamentary inquiry, Mr. Chairman.

Chairman NADLER. You're not recognized for parliamentary inquiry at this time. There's a vote in process.

Mr. COLLINS. Just a reminder, any "no" votes mean you don't want Chairman Schiff coming, correct?

Chairman NADLER. The clerk will call the roll.

Ms. STRASSER. Mr. Nadler?

Chairman NADLER. Aye.

Ms. STRASSER. Mr. Nadler votes aye.

Ms. Lofgren?

Ms. LOFGREN. Aye.

Ms. STRASSER. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. JACKSON LEE. Aye.

Ms. STRASSER. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. COHEN. Aye.
Ms. STRASSER. Mr. Cohen votes aye.
Mr. Johnson of Georgia?
Mr. JOHNSON of Georgia. Aye.
Ms. STRASSER. Mr. Johnson of Georgia votes aye.
Mr. Deutch?
Mr. DEUTCH. Aye.
Ms. STRASSER. Mr. Deutch votes aye.
Ms. Bass?
[No response.]
Ms. STRASSER. Mr. Richmond?
Mr. RICHMOND. Yes.
Ms. STRASSER. Mr. Richmond votes yes.
Mr. Jeffries?
Mr. JEFFRIES. Aye.
Ms. STRASSER. Mr. Jeffries votes aye.
Mr. Cicilline?
Mr. CICILLINE. Aye.
Ms. STRASSER. Mr. Cicilline votes aye.
Mr. Swalwell?
Mr. SWALWELL. Yes.
Ms. STRASSER. Mr. Swalwell votes yes.
Mr. Lieu?
Mr. LIEU. Aye.
Ms. STRASSER. Mr. Lieu votes aye.
Mr. Raskin?
Mr. RASKIN. Aye.
Ms. STRASSER. Mr. Raskin votes aye.
Ms. Jayapal?
Ms. JAYAPAL. Aye.
Ms. STRASSER. Ms. Jayapal votes aye.
Mrs. Demings?
Mrs. DEMINGS. Aye.
Ms. STRASSER. Mrs. Demings votes aye.
Mr. Correa?
Mr. CORREA. Aye.
Ms. STRASSER. Mr. Correa votes aye.
Ms. Scanlon?
Ms. SCANLON. Aye.
Ms. STRASSER. Ms. Scanlon votes aye.
Ms. Garcia?
Ms. GARCIA. Aye.
Ms. STRASSER. Ms. Garcia votes aye.
Mr. Neguse?
Mr. NEGUSE. Aye.
Ms. STRASSER. Mr. Neguse votes aye.
Mrs. McBath?
Mrs. MCBATH. Aye.
Ms. STRASSER. Mrs. McBath votes aye.
Mr. Stanton?
Mr. STANTON. Aye.
Ms. STRASSER. Mr. Stanton votes aye.
Ms. Dean?
Ms. DEAN. Aye.

Ms. STRASSER. Ms. Dean votes aye.
Ms. Mucarsel-Powell?
Ms. MUCARSEL-POWELL. Aye.
Ms. STRASSER. Ms. Mucarsel-Powell votes aye.
Ms. Escobar?
Ms. ESCOBAR. Aye.
Ms. STRASSER. Ms. Escobar votes aye.
Mr. Collins?
Mr. COLLINS. No.
Ms. STRASSER. Mr. Collins votes no.
Mr. Sensenbrenner?
Mr. SENSENBRENNER. No.
Ms. STRASSER. Mr. Sensenbrenner votes no.
Mr. Chabot?
Mr. CHABOT. No.
Ms. STRASSER. Mr. Chabot votes no.
Mr. Gohmert?
Mr. GOHMERT. No.
Ms. STRASSER. Mr. Gohmert votes no.
Mr. Jordan?
Mr. JORDAN. No.
Ms. STRASSER. Mr. Jordan votes no.
Mr. Buck?
Mr. BUCK. No.
Ms. STRASSER. Mr. Buck votes no.
Mr. Ratcliffe?
Mr. RATCLIFFE. No.
Ms. STRASSER. Mr. Ratcliffe votes no.
Mrs. Roby?
Mrs. ROBY. No.
Ms. STRASSER. Ms. Roby votes no.
Mr. Gaetz?
Mr. GAETZ. No.
Ms. STRASSER. Mr. Gaetz votes no.
Mr. Johnson of Louisiana?
Mr. JOHNSON of Louisiana. No.
Ms. STRASSER. Mr. Johnson of Louisiana votes no.
Mr. Biggs?
Mr. BIGGS. No.
Ms. STRASSER. Mr. Biggs votes no.
Mr. McClintock?
Mr. MCCLINTOCK. No.
Ms. STRASSER. Mr. McClintock votes no.
Ms. Lesko?
Ms. LESKO. No.
Ms. STRASSER. Ms. Lesko votes no.
Mr. Resenthaler?
Mr. RESCHENTHALER. No.
Ms. STRASSER. Mr. Resenthaler votes no.
Mr. Cline?
Mr. CLINE. No.
Ms. STRASSER. Mr. Cline votes no.
Mr. Armstrong?
Mr. ARMSTRONG. No.

Ms. STRASSER. Mr. Armstrong votes no.

Mr. Steube?

Mr. STEUBE. No.

Ms. STRASSER. Mr. Steube votes no.

Chairman NADLER. Everybody's voted—has everyone voted who wishes to vote? Ms. Bass?

Ms. BASS. Aye.

Ms. STRASSER. Ms. Bass votes aye.

Chairman NADLER. The clerk will report.

Ms. STRASSER. Mr. Chairman, there are 24 ayes and 17 noes.

Chairman NADLER. The motion to table is agreed to.

Mr. BIGGS. Mr. Chairman, I have a parliamentary inquiry.

Chairman NADLER. The gentleman will state his parliamentary inquiry.

Mr. BIGGS. Thank you, Mr. Chairman.

Clause (c)(2) of the Judiciary Committee's impeachment inquiry procedures states that members of the committee can raise objections relating to the admissibility of testimony and evidence, but it doesn't say what rules apply to admissibility. So I'm hoping you can explain to us what the objections may be made under this clause and if you intend to use the Federal Rules of Evidence.

Chairman NADLER. The gentleman will suspend. That is not a proper parliamentary inquiry.

Mr. COLLINS. It is a proper parliamentary inquiry.

Chairman NADLER. It is not.

Mr. BIGGS. I stated the rule.

Mr. COLLINS. He stated the rule, Mr. Chairman. You can ignore it and not answer it, but you can't just say it's not a proper parliamentary inquiry.

Mr. BIGGS. I'm not asking for the application of the rule, but for an explanation, Mr. Chairman. I don't know how that's not parliamentary.

Chairman NADLER. We will apply the rules, period.

Mr. BIGGS. You won't help us understand that? There's no clarity there.

Mr. COLLINS. Which rule are you citing? How are citing that?

Mr. BIGGS. Clause (c)(2) of the Judiciary Committee's impeachment inquiry procedures. How is that unclear?

Chairman NADLER. It's the rules of the House, and they will be applied, period. That's the——

Mr. BIGGS. I'm asking, how will they be applied here, sir?

Chairman NADLER. They will be applied according to the rules.

Mr. COLLINS. But not answering your question.

Mr. BIGGS. A circular response. Thank you.

Mr. Chairman, can you please also iterate the schedule going forward? In other words, are they applying to additional hearings, and if so, when——

Chairman NADLER. The gentleman will suspend. That is not a proper parliamentary inquiry.

Without objection, all other opening statements will be included in the record. I will now introduce today's witnesses.

Mr. RESCHENTHALER. Mr. Chairman——

Chairman NADLER. Noah Feldman——

Mr. RESCHENTHALER. Mr. Chairman, I seek recognition.

Chairman NADLER. The gentleman is—I am not going to recognize you now. I am introducing the witnesses.

Noah Feldman is the Felix Frankfurter Professor of Law at Harvard Law School. Professor Feldman has authored seven books, including a biography of James Madison and the Constitutional Law Casebook, as well as many essays and articles on constitutional subjects.

Professor Feldman received his undergraduate degree from Harvard College, a Doctor of Philosophy from Oxford University, where he was also a Rhodes Scholar, and a J.D. from Yale Law School. He also served as a law clerk to Justice David Souter of the United States Supreme Court.

Pamela Karlan serves as the Kenneth and Harle Montgomery Professor of Public Interest Law and the co-director of the Supreme Court Litigation Clinic at Stanford Law School. She's the coauthor of several leading casebooks, including a monograph entitled "Keeping Faith With the Constitution" and dozens of scholarly articles. She served as a law clerk to Justice Harry Blackmun of the United States Supreme Court and as a Deputy Assistant Attorney General in the Civil Rights Division of the United States Department of Justice, where she was responsible, among other things, for reviewing the work of the Department's voting section. Professor Karlan earned three degrees from Yale University, a B.A. in history, an M.A. in history, and a J.D. from Yale Law School.

Michael Gerhardt is the Burton Craige Distinguished Professor of Jurisprudence at the University of North Carolina School of Law and director of UNC's Center for Law and Government. Professor Gerhardt is the author of many books, including "The Federal Impeachment Process: A Constitutional and Historical Analysis," as well as more than 50 law review publications on a diverse range of topics in constitutional law, Federal jurisdiction, and the legislative process. He received his J.D. from the University of Chicago Law School, his M.S. from the London School of Economics, and his B.A. from Yale University.

Jonathan Turley is the J.B. and Maurice C. Shapiro Chair of Public Interest Law at George Washington University Law School where he teaches torts, criminal procedure, and constitutional law. After a stint at Tulane Law School, Professor Turley joined the GW law faculty in 1990 and, in 1998, became the youngest chaired professor in the school's history. He has written over three dozen academic articles for a variety of leading law schools—of leading law journals—I'm sorry—and his articles on legal and policy issues appear frequently in national publications. A Chicago native, Professor Turley earned degrees from the University of Chicago and Northwestern University School of Law.

I will now—we welcome all our distinguished witnesses. We thank them for participating in today's hearing. Now, if you would please rise, I will begin by swearing you in.

Do you swear or affirm under penalty of perjury that the testimony you're about to give is true and correct to the best of your knowledge, information, and belief so help you God?

Let the record show the witnesses answered in the affirmative. Thank you and please be seated.

Please note that each of your written statements will be entered into the record in its entirety. Accordingly, I ask that you summarize your testimony in 10 minutes. To help you stay within that time, there is a timing light on your table. When the light switches from green to yellow, you have 1 minute to conclude your testimony. When the light turns red, it signals your 10 minutes have expired.

Professor Feldman, you may begin.

Mr. FELDMAN. Mr. Chairman, Mr. Chairman and members of the committee—

Chairman NADLER. I don't think you're on the mic.

Mr. ARMSTRONG. Mr. Chairman, before we begin—

Mr. FELDMAN. Mr. Chairman and members of the committee—

Mr. ARMSTRONG. Mr. Chairman, I have a motion.

Chairman NADLER. The gentleman is not in order to offer a motion at this time.

Mr. ARMSTRONG. Mr. Chairman, I seek recognition for a privilege motion.

Mr. FELDMAN. Mr. Chairman and members of the committee, thank you very much for the opportunity to appear. My name is Noah Feldman. I serve—

Chairman NADLER. The witness will proceed.

Mr. FELDMAN. I serve as the Felix Frankfurter Professor of Law at the Harvard Law School.

Mr. ARMSTRONG. I seek recognition for a motion.

Chairman NADLER. The gentleman will suspend. The time is the witness'.

Mr. COLLINS. The privilege motion needs to be recognized. You can call it not a privilege, but you need to be recognized.

Chairman NADLER. In between the witnesses, it may be recognized, not once I recognize the witnesses.

Mr. COLLINS. So whenever you want to?

Chairman NADLER. The witness will proceed.

We'll entertain the motion after the first witness.

Mr. COLLINS. He started before he recognized.

TESTIMONY OF NOAH FELDMAN, FELIX FRANKFURTER PROFESSOR OF LAW AND DIRECTOR, JULIS-RABINOWITZ PROGRAM ON JEWISH AND ISRAELI LAW, HARVARD LAW SCHOOL; PAMELA S. KARLAN, KENNETH AND HARLE MONTGOMERY PROFESSOR OF PUBLIC INTEREST LAW AND CO-DIRECTOR, SUPREME COURT LITIGATION CLINIC, STANFORD LAW SCHOOL; MICHAEL GERHARDT, BURTON CRAIGE DISTINGUISHED PROFESSOR OF JURISPRUDENCE, THE UNIVERSITY OF NORTH CAROLINA SCHOOL OF LAW; JONATHAN TURLEY, J.B. AND MAURICE C. SHAPIRO PROFESSOR OF PUBLIC INTEREST LAW, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL.

TESTIMONY OF NOAH FELDMAN

Mr. FELDMAN. My job is to study and to teach the Constitution from its origins until the present.

I'm here today to describe three things: why the Framers of our Constitution included a provision for the impeachment of the Presi-

dent; what that provision providing for impeachment for high crimes and misdemeanors means; and, last, how it applies to the question before you and before the American people, whether President Trump has committed impeachable offenses under the Constitution.

Let me begin by stating my conclusions. 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.

High crimes and misdemeanors are abuses of power and of public trust connected to the office of the Presidency. On the basis of the testimony and the evidence before the House, President Trump has committed impeachable high crimes and misdemeanors by corruptly abusing the office of the Presidency. Specifically, President Trump has abused his office by corruptly soliciting President Volodymyr Zelensky of Ukraine to announce investigations of his political rivals in order to gain personal advantage including in the 2020 Presidential election.

Let me begin now with the question of why the Framers provided for impeachment in the first place. The Framers borrowed the concept of impeachment from England but with one enormous difference. The House of Commons and the House of Lords could use impeachment in order to limit the Ministers of the King, but they could not impeach the King, and in that sense, the King was above the law. In stark contrast, the Framers from the very outset of the Constitutional Convention in 1787 made it crystal clear that the President would be subject to impeachment in order to demonstrate that the President was subordinate to the law.

If you will, I would like you to think now about a specific date in the Constitutional Convention, July 20, 1787. It was the middle of a long, hot summer. And on that day, two members of the Constitutional Convention actually moved to take out the impeachment provision from the draft Constitution. And they had a reason for that, and the reason was they said: Well, the President will have to stand for reelection, and if the President has to stand for reelection, that is enough. We don't need a separate provision for impeachment.

When that proposal was made, significant disagreement ensued. The Governor of North Carolina, a man called William Davie, immediately said: If the President cannot be impeached, quote, he will spare no efforts or means whatever to get himself reelected.

Following Davie, George Mason of Virginia, a fierce Republican critic of executive power, said: No point is more important than that impeachment be included in the Constitution. Shall any man be above justice, he asked, thus expressing the core concern that the President must be subordinate to the law and not above the law.

James Madison, the principal draftsman of the U.S. Constitution, then spoke up. He said it was, quote, indispensable that some provision be made for impeachment. Why? Because, he explained, standing for reelection was, quote, not a sufficient security, close quote, against Presidential misconduct or corruption. A President, he said, might betray his trust to foreign powers. A President who

in a corrupt fashion abused the office of the Presidency, said James Madison, quote, might be fatal to the Republic, close quote.

And then a remarkable thing happened in the Convention. Gouverneur Morris of Pennsylvania, one of the two people who had introduced the motion to eliminate impeachment from the Constitution, got up and actually said the words "I was wrong." He told the other Framers present that he had changed his mind on the basis of the debate on July 20th and that it was now his opinion that, in order to avoid corruption of the electoral process, a President would have to be subject to impeachment, regardless of the availability of a further election.

The upshot of this debate is that the Framers kept impeachment in the Constitution specifically in order to protect against the abuse of office with the capacity to corrupt the electoral process or lead to personal gain.

Now, turning to the language of the Constitution, the Framers used the words "high crimes and misdemeanors" to describe those forms of action that they considered impeachable. These were not vague or abstract terms to the Framers. High crimes and misdemeanors was very—the words "high crimes and misdemeanors" represented very specific language that was well understood by the entire generation of the Framers. Indeed, they were borrowed from an impeachment trial in England that was taking place as the Framers were speaking, which was referred to, in fact, by George Mason. The words "high crimes and misdemeanors" referred to abuse of the office of the Presidency for personal advantage or to corrupt the electoral process or to subvert the national security of the United States.

There's no mystery about the words "high crimes and misdemeanors." The word "high" modifies both crimes and misdemeanors. So they're both high. And "high" means connected to the office of the Presidency, connected to office.

The classic form that was familiar to the Framers was the abuse of office for personal gain or advantage. And when the Framers specifically named bribery as a high crime and misdemeanor, they were naming one particular version of this abuse of office, the abuse of office for personal or individual gain. The other forms of abuse of office, abuse of office to affect elections and abuse of office to compromise national security, were further forms that were familiar to the Framers.

Now how does this language of high crimes and misdemeanors apply to President Trump's alleged conduct? Let me be clear. The Constitution gives the House of Representatives, that is, the members of this committee and the other members of the House, quote, sole power of impeachment. It's not my responsibility or my job to determine the credibility of the witnesses who appeared before the House thus far. That is your constitutional responsibility. My comments will, therefore, follow my role which is to describe and apply the meaning of impeachable offenses to the facts described by the testimony and evidence before the House.

President Trump's conduct as described in the testimony and evidence clearly constitutes impeachable high crimes and misdemeanors under the Constitution. In particular, the memorandum and other testimony relating to the July 25, 2019, phone call be-

tween the two Presidents, President Trump and President Zelensky, more than sufficiently indicates that President Trump abused his office by soliciting the President of Ukraine to investigate his political rivals in order to gain personal political advantage, including in relation to the 2020 election.

Again, the words “abuse of office” are not mystical or magical. They are very clear. The abuse of office occurs when the President uses a feature of his power, the awesome power of his office, not to serve the interests of the American public but to serve his personal, individual partisan electoral interests. That is what the evidence before the House indicates.

Finally, let me be clear that on its own soliciting the leader of a foreign government in order to announce investigations of political rivals and perform those investigations would constitute a high crime and misdemeanor. But the House also has evidence before it that the President committed two further acts that also qualify as high crimes and misdemeanors. In particular, the House heard evidence that the President placed a hold on critical U.S. aid to Ukraine and conditioned its release on announcement of the investigations of the Bidens and of the discredited CrowdStrike conspiracy theory. Furthermore, the House also heard evidence that the President conditioned a White House visit desperately sought by the Ukrainian President on announcement of the investigations.

Both of these acts constitute impeachable high crimes and misdemeanors under the Constitution. They each encapsulate the Framers’ worry that the President of the United States would take any means whatever to ensure his reelection, and that is the reason that the Framers provided for impeachment in a case like this one.

[The statement of Mr. Feldman follows:]

Noah Feldman

Prepared Statement

December 4, 2019

Mr. Chairman and Members of the Committee:

My name is Noah Feldman.

I serve as the Felix Frankfurter Professor of Law at the Harvard Law School. In that capacity, my job is to study and teach the Constitution, from its origins to the present. I've written seven books, including a book on religious liberty under the Constitution; a book on the great Supreme Court justices of the mid-20th century; and a full-length biography of James Madison, often called the father of the Constitution. I'm also co-author of a casebook, Feldman and Sullivan's *Constitutional Law*, now in its 20th edition, as well as many essays and articles on constitutional subjects.

I'm here today to describe:

- why the framers of our Constitution included a provision for impeaching the president;
- what that provision means; and
- how it applies to the question before you and the American people: whether President Donald J. Trump has committed impeachable offenses under the Constitution.

I will begin by stating my conclusions:

- The framers provided for impeachment of the president because they feared that a president might abuse the power of his office to gain personal advantage; to corrupt the electoral process and keep himself in office; or to subvert our national security.
- High crimes and misdemeanors are abuses of power and public trust connected to the office of the presidency.
- On the basis of the testimony and evidence before the House, President Trump has committed impeachable high crimes and misdemeanors by corruptly abusing the office of the presidency. Specifically, President Trump abused his office by corruptly soliciting President Volodymyr Zelensky to announce investigations of his political rivals in order to gain personal advantage, including in the 2020 presidential election.

I. Why the Framers Provided for Impeachment

When the Constitutional Convention opened in late May 1787, Edmund Randolph, governor of Virginia, introducing what came to be called the Virginia Plan, a blueprint for the new government that had been designed and written in advance by James Madison. The Virginia Plan mentioned "impeachments of ... national offices."¹

¹ I Records of the Federal Convention of 1787, 21-22 (Madison) (May 29, 1787) (Max Farrand ed., 1966) [hereafter Farrand].

On June 2, when the convention was talking about the executive, Hugh Williamson of North Carolina proposed that the executive should be “removable on impeachment and conviction of mal-practice or neglect of duty.”² The convention agreed and put the words in their working draft.

The framers were borrowing the basic idea of impeachment from the constitutional tradition of England. There, for hundreds of years, Parliament had used impeachment to oversee government officials, remove them from office for abuse of power and corruption, and even punish them.

The biggest difference between the English tradition of impeachment and the American constitutional plan was that the king of England could not be impeached. In that sense, the king was above the law, which only applied to him if he consented to follow it. In stark contrast, the president of the United States would be subject to the law like any other citizen.

The idea of impeachment was therefore absolutely central to the republican form of government ordained by the Constitution. Without impeachment, the president would have been an elected monarch. With impeachment, the president was bound to the rule of law. Congress could oversee the president’s conduct, hold him accountable, and remove him from office if he abused his power.

On July 20, 1787, the topic of impeachment came up again at the constitutional convention when Charles Pinckney of South Carolina and Gouverneur Morris, representing Pennsylvania, moved to take out the provision.³

After Pinckney said that the president shouldn’t be impeachable, William Richardson Davie of North Carolina immediately disagreed. If the president could not be impeached, Davie said, “he will spare no efforts or means whatever to get himself re-elected.” Impeachment was therefore “an essential security for the good behaviour of the Executive.” Davie was pointing out that impeachment was necessary to address the situation where a president tried to corrupt elections.⁴

Gouverneur Morris then suggested that the need to run for re-election would be a sufficient check on a president who abused his power. He was met with stiff opposition from George Mason of Virginia, the man who had drafted Virginia’s Declaration of Rights and a fierce republican critic of overweening government power. Mason told the delegates that “No point is of more importance than that the right of impeachment should be continued.” He gave a deeply republican explanation: “Shall any man be above Justice?” he asked. “Above all shall that man be above it, who can commit the most extensive injustice?”⁵

Like Davie, George Mason was especially concerned about the danger that a sitting president posed to the electoral process. He went on to say that presidential electors were in danger of “being corrupted by the Candidates.” This danger, he said, “furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?”⁶

After Benjamin Franklin also spoke in favor of impeachment, something remarkable happened: Gouverneur Morris changed his mind. Morris had been convinced by the argument that elections were not, on their own, a sufficient check on the actions of a president who tried to pervert the course of the

² I Farrand, 88 (Madison) (June 2, 1787).

³ II Farrand 64 (Madison) (July 20, 1787).

⁴ Id.

⁵ Id. at 65.

⁶ Id.

electoral process. Morris told the other delegates that he now believed that “corruption & some few other offences to be such as ought to be impeachable.”⁷

James Madison, the lead architect of the Constitution, now spoke. He insisted that it was “indispensable that some provision should be made for defending the Community against the incapacity, negligence or perfidy of the chief Magistrate.” Standing for reelection “was not a sufficient security.” The president, Madison said, “might lose his capacity after his appointment. He might pervert his administration into a scheme of speculation or oppression. He might betray his trust to foreign powers.” And if the president lost his capacity or acted corruptly, Madison concluded, that “might be fatal to the Republic.”⁸

The upshot of this conversation in the constitutional convention was that the framers believed that elections were not a sufficient check on the possibility of a president who abused his power by acting in a corrupt way. They were especially worried that a president might use the power of his office to influence the electoral process in his own favor. They concluded that the Constitution must provide for the impeachment of the president to assure that no one would be above the law.

Now that the framers had settled on the necessity of impeachment, what remained was for them to decide exactly what language to use to define impeachable offenses. On September 4, a committee replaced the words “malpractice or neglect of duty” with the words “treason or bribery.”

On September 8, George Mason objected forcefully that the proposed language was not broad enough. The word treason had been narrowly defined by the Constitution, he pointed out, and so would “not reach many great and dangerous offences.” He drew the other delegates attention to the famous impeachment trial that was taking place at the time in England – that of Warren Hastings, the former governor general of Bengal. Hastings was “not guilty of Treason,” Mason pointed out, but of other alleged misdeeds. Mason added that “Attempts to subvert the Constitution may not be Treason as above defined.” Mason proposed to add the words “or maladministration” after “treason or bribery.”⁹

Madison replied to Mason that the word “maladministration” was “vague” and amounted to “tenure during pleasure of the Senate.” In response, Mason withdrew the word “maladministration” and substituted “other high crimes & misdemeanors [sic] against the State.”¹⁰ The words “against the state” were then changed almost immediately to “against the United States.” Later, the convention’s committee on style settled on the final language, which says that

The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.¹¹

II. What the Constitution Means by High Crimes and Misdemeanors

⁷ Id. and see also id. at 68.

⁸ Id. at 65-66.

⁹ II Farrand, 550 (Madison) (September 8, 1787). The term “maladministration” likely came from the great English legal writer William Blackstone, who described a “high misdemeanor” defined as “mal-administration of such high officers, as are in public trust and employment.” Officers charged with this conduct, Blackstone had written, are “usually punished by the method of parliamentary impeachment.” IV Blackstone *121.

¹⁰ Id. at 551.

¹¹ Constitution of the United States, Art. II sec. 4.

High Crimes and Misdemeanors

The words “high crimes and misdemeanors” had a well-understood meaning from centuries of English impeachment trials. They were in common use in impeachments. Indeed, those words had just been used by the House of Commons in impeaching Warren Hastings – the impeachment to which Mason referred minutes before he proposed the words “high crimes and misdemeanors.”¹²

The phrase “high crimes and misdemeanors” was an expression with a concrete meaning. The word “high” in the phrase modified both words that followed: “high crimes” and “high misdemeanors.” The word “high” meant “connected to high political office.” As Alexander Hamilton explained in Federalist No. 65, the phrase “high crimes and misdemeanors” referred to

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.¹³

Thus, the essential definition of high crimes and misdemeanors is the abuse of office. The framers considered the office of the presidency to be a public trust. Abuse of the office of the presidency is the very essence of a high crime and misdemeanor.

To be clear, when the framers chose these words “high crimes and misdemeanors,” there was no longer any meaningful difference between “high crimes” and “high misdemeanors.” The words were used interchangeably in the Hastings impeachment. The distinction in criminal law between felonies and misdemeanors is not implicated in the framers’ phrase.

Abuse of Trust for Personal Advantage

The classic form of the high crime and misdemeanor of abuse of office is using the office of the presidency for personal advantage or gain, not for the public interest.

When the framers specifically named bribery as a high crime and misdemeanor, they were naming one particular version of this abuse of office that was familiar to them.

Two of the most prominent English impeachment trials known to the framers both involved bribery. One was the impeachment trial of Warren Hastings, to which George Mason referred by name at the convention. Hastings was impeached for, among other things, “corruption, peculation, and extortion.”¹⁴ The major allegation associated with this impeachment article was that he had solicited and received bribes or gifts from people in Bengal while serving as governor general.

The other was the 1725 impeachment of Lord Macclesfield, the Lord Treasurer of England, for taking bribes or payments to sell offices. There, too, bribery was the central issue. The articles of impeachment

¹² As for the word treason, the framers wanted to differentiate themselves from English tradition, so they defined that term specifically in the Constitution.

¹³ Federalist No. 65 (Hamilton), *The Federalist Papers*, 396 (Clinton Rossiter ed., 1961).

¹⁴ House of Commons, Article of Impeachment, Article VI, House of Lords Sessional Papers, 1794-95, 34-36 (Torrington ed. 1974).

charged Macclesfield with taking bribes to sell offices under color of office – that is, while he occupied the official role of treasurer.¹⁵

Other Abuses of Office

Beyond the case of abuse of office for personal gain, the framers understood that abuse of office could take a variety of other forms. Other forms of abuse of office include the use of the office of the presidency to corrupt the electoral process or to compromise the national interest or national security.

It is important to note that the traditional meaning of high crimes and misdemeanors was *not* restricted to acts defined as ordinary crimes by statute. The language was deliberately meant to be flexible enough to incorporate a range of abuses of power that endanger the democratic process, because the Framers understood that they could not perfectly anticipate every possible abuse of power by the president.

III. How High Crimes and Misdemeanors Applies to President Trump's Alleged Conduct

The Constitution specifies that House of Representatives shall have “the sole Power of Impeachment.” It is therefore the constitutional responsibility of the members of the House to determine whether they believe the sworn testimony that has been offered in the course of this impeachment inquiry and to decide whether to impeach President Trump. My role is not to address the determination of credibility that is properly yours. Rather, my job is to describe how the constitutional meaning of impeachable offenses applies to the facts described by the testimony and evidence before the House.

President Trump's conduct described in the testimony and evidence clearly constitutes an impeachable high crime and misdemeanor under the Constitution. According to the testimony and to the publicly released memorandum of the July 25, 2019, telephone call between the two presidents, President Trump abused his office by soliciting the president of Ukraine to investigate his political rivals in order to gain personal political advantage, including in the 2020 presidential election.

This act on its own qualifies as an impeachable high crime and misdemeanor.

The solicitation constituted an abuse of the office of the presidency because Pres. Trump was using his office to seek a personal political and electoral advantage over his political rival, former vice president Joe Biden, and over the Democratic Party. The solicitation was made in the course of the president's official duties. According to the testimony presented to the House, the solicitation sought to gain an advantage that was personal to the president. This constitutes a corrupt abuse of the power of the presidency. It embodies the framers' central worry that a sitting president would “spare no efforts or means whatever to get himself re-elected.”

¹⁵ The Tryal of Thomas Earl of Macclesfield, In the House of Peers, For High Crimes and Misdemeanors; Upon an Impeachment by the Knights Citizens and Burgesses in Parliament Assembled, In the Name of Themselves and of All the Commons of Great-Britain. Begun the 6th Day of May 1725. And from Thence Continued by Several Adjournments Until the 27th Day of the Same Month. Published by Order of the House of Peers. London: Printed by Sam. Buckley in Amen-Corner, 1725.

Soliciting a foreign government to investigate an electoral rival for personal gain on its own constitutes an impeachable high crime and misdemeanor under the Constitution.

The House heard further testimony that President Trump further abused his office by seeking to create incentives for Ukraine to investigate Vice President Biden. Specifically, the House heard testimony that President Trump

- Placed a hold on essential U.S. aid to Ukraine, and conditioned its release on announcement of the Biden and CrowdStrike investigations; and
- Conditioned a White House visit sought by President Zelensky on announcement of the investigations.

Both of these acts constitute high crimes and misdemeanors impeachable under the Constitution. By freezing aid to Ukraine and by dangling the promise of a White House visit, the president was corruptly using the powers of the presidency for personal political gain. Here, too, the president's conduct described by the testimony embodies the framers' concern that a sitting president would corruptly abuse the powers of office to distort the outcome of a presidential election in his favor.

Mr. ARMSTRONG. Mr. Chairman, I seek——

Chairman NADLER. The gentleman's time has expired.

Mr. ARMSTRONG. Mr. Chairman, I seek recognition.

Chairman NADLER. The gentleman's recognized.

Mr. ARMSTRONG. I offer a motion to postpone to a date certain.

Ms. LOFGREN. I move to table the motion.

Chairman NADLER. The motion to table is heard and is not debatable. All in favor of the motion——

Mr. SENSENBRENNER. Mr. Chairman——

Chairman NADLER. All in favor——

Mr. SENSENBRENNER. Mr. Chairman, may we have the motion read, please?

Chairman NADLER. The motion was stated as to adjourn to——

Mr. SENSENBRENNER. May we have the motion read, please?

Chairman NADLER. The motion will be read as to what date.

Mr. ARMSTRONG. The motion to be read to a date certain, Wednesday, December 11, 2019, so we can actually get a response to the six letters we've——

Chairman NADLER. The gentleman has stated his motion.

The motion to table is made.

Ms. LOFGREN. Correct.

Chairman NADLER. The motion is made and not debatable.

All in favor say aye.

Opposed, no.

The motion to table is agreed to.

Mr. ARMSTRONG. Roll call.

Chairman NADLER. A roll call is requested. The clerk will call the roll.

Ms. STRASSER. Mr. Nadler?

Chairman NADLER. Aye.

Ms. STRASSER. Mr. Nadler votes aye.

Ms. Lofgren?

Ms. LOFGREN. Aye.

Ms. STRASSER. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. JACKSON LEE. Aye.

Ms. STRASSER. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. COHEN. Aye.

Ms. STRASSER. Mr. Cohen votes aye.

Mr. Johnson of Georgia?

Mr. JOHNSON of Georgia. Aye.

Ms. STRASSER. Mr. Johnson of Georgia votes aye.

Mr. Deutch?

Mr. DEUTCH. Aye.

Ms. STRASSER. Mr. Deutch votes aye.

Ms. Bass?

Ms. BASS. Aye.

Ms. STRASSER. Ms. Bass votes aye.

Mr. Richmond?

Mr. RICHMOND. Yes.

Ms. STRASSER. Mr. Richmond votes yes.

Mr. Jeffries?

Mr. JEFFRIES. Aye.

Ms. STRASSER. Mr. Jeffries votes aye.
Mr. Cicilline?
Mr. CICILLINE. Aye.
Ms. Strasser. Mr. Cicilline votes aye.
Mr. Swalwell?
Mr. SWALWELL. Yes.
Ms. STRASSER. Mr. Swalwell votes yes.
Mr. Lieu?
Mr. LIEU. Aye.
Ms. STRASSER. Mr. Lieu votes aye.
Mr. Raskin?
Mr. RASKIN. Aye.
Ms. STRASSER. Mr. Raskin votes aye.
Ms. Jayapal?
Ms. JAYAPAL. Aye.
Ms. STRASSER. Ms. Jayapal votes aye.
Mrs. Demings?
Mrs. DEMINGS. Aye.
Ms. STRASSER. Mrs. Demings votes aye.
Mr. Correa?
Mr. CORREA. Aye.
Ms. STRASSER. Mr. Correa votes aye.
Ms. Scanlon?
Ms. SCANLON. Aye.
Ms. STRASSER. Ms. Scanlon votes aye.
Ms. Garcia?
Ms. GARCIA. Aye.
Ms. STRASSER. Ms. Garcia votes aye.
Mr. Neguse?
Mr. NEGUSE. Aye.
Ms. STRASSER. Mr. Neguse votes aye.
Mrs. McBath?
Mrs. MCBATH. Aye.
Ms. STRASSER. Mrs. McBath votes aye.
Mr. Stanton?
Mr. STANTON. Aye.
Ms. STRASSER. Mr. Stanton votes aye.
Ms. Dean?
Ms. DEAN. Aye.
Ms. STRASSER. Ms. Dean votes aye.
Ms. Mucarsel-Powell?
Ms. MUCARSEL-POWELL. Aye.
Ms. STRASSER. Ms. Mucarsel-Powell votes aye.
Ms. Escobar?
Ms. ESCOBAR. Aye.
Ms. STRASSER. Ms. Escobar votes aye.
Mr. Collins?
Mr. COLLINS. No.
Ms. STRASSER. Mr. Collins votes no.
Mr. Sensenbrenner?
Mr. SENSENBRENNER. No.
Ms. STRASSER. Mr. Sensenbrenner votes no.
Mr. Chabot?
Mr. CHABOT. No.

Ms. STRASSER. Mr. Chabot votes no.
 Mr. Gohmert?
 Mr. GOHMERT. No.
 Ms. STRASSER. Mr. Gohmert votes no.
 Mr. Jordan?
 Mr. JORDAN. No.
 Ms. STRASSER. Mr. Jordan votes no.
 Mr. Buck?
 Mr. BUCK. No.
 Ms. STRASSER. Mr. Buck votes no.
 Mr. Ratcliffe?
 Mr. RATCLIFFE. No.
 Ms. STRASSER. Mr. Ratcliffe votes no.
 Mrs. Roby?
 Mrs. ROBY. No.
 Ms. STRASSER. Mrs. Roby votes no.
 Mr. Gaetz?
 Mr. GAETZ. No.
 Ms. STRASSER. Mr. Gaetz votes no.
 Mr. Johnson of Louisiana?
 Mr. JOHNSON of Louisiana. No.
 Ms. STRASSER. Mr. Johnson of Louisiana votes no.
 Mr. Biggs?
 Mr. BIGGS. No.
 Ms. STRASSER. Mr. Biggs votes no.
 Mr. McClintock?
 Mr. MCCLINTOCK. No.
 Ms. STRASSER. Mr. McClintock votes no.
 Mrs. Lesko?
 Mrs. LESKO. No.
 Ms. STRASSER. Mrs. Lesko votes no.
 Mr. Reschenthaler?
 Mr. RESCHENTHALER. No.
 Ms. STRASSER. Mr. Reschenthaler votes no.
 Mr. Cline?
 Mr. CLINE. No.
 Ms. STRASSER. Mr. Cline votes no.
 Mr. Armstrong?
 Mr. ARMSTRONG. No.
 Ms. STRASSER. Mr. Armstrong votes no.
 Mr. Steube?
 Mr. STEUBE. No.
 Ms. STRASSER. Mr. Steube votes no.
 Chairman NADLER. Has everyone voted who wishes to vote?
 The clerk will report.
 Ms. STRASSER. Mr. Chairman, there are 24 ayes and 17 noes.
 Chairman NADLER. The motion to table is adopted.
 I now recognize Professor Karlan for her testimony.

TESTIMONY OF PAMELA S. KARLAN

Ms. KARLAN. Mr. Chairman and members of the committee, thank you so much for the opportunity to testify. Twice I have had the privilege of representing this committee and its leadership in voting rights cases before the Supreme Court, once when it was

under the leadership of Chairman Sensenbrenner—it's good to see you again, sir—and with Mr. Chabot as one of my other clients, and once under leadership of Chairman Conyers. It was a great honor for me to represent this committee because of this committee's key role over the past 50 years in ensuring that American citizens have the right to vote in free and fair elections.

Today, you're being asked to consider whether protecting those elections requires impeaching a President. That is an awesome responsibility, that everything I know about our Constitution and its values and my review of the evidentiary record—and here, Mr. Collins, I would like to say to you, sir, that I read transcripts of every one of the witnesses who appeared in the live hearing because I would not speak about these things without reviewing the facts. So I'm insulted by the suggestion that, as a law professor, I don't care about those facts. But everything I read on those occasions tells me that when President Trump invited—indeed, demanded—foreign involvement in our upcoming election, he struck at the very heart of what makes this a republic to which we pledge allegiance. That demand as, Professor Feldman just explained, constituted an abuse of power.

Indeed, as I want to explain in my testimony, drawing 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.

So it is hardly surprising that the Constitution is marbled with provisions governing elections and guaranteeing governmental accountability. Indeed, a majority of the amendments to our Constitution since the Civil War have dealt with voting or with terms of office. And among the most important provisions of our original Constitution is the guarantee of periodic elections for the Presidency, one every 4 years.

America has kept that promise for more than two centuries, and it has done so even during wartime. For example, we invented the idea of absentee voting so that Union troops who supported President Lincoln could stay in the field during the election of 1864. And, since then, countless other Americans have fought and died to protect our right to vote.

But the Framers of our Constitution realized that elections alone could not guarantee that the United States would remain a republic.

One of the key reasons for including the impeachment power was a risk that unscrupulous officials might try to rig the election process. Now you've already heard two people give William Davie his props. You know, Hamilton got a whole musical, and William Davie is just going to get this committee hearing, but he warned that, unless the Constitution contained an impeachment provision, a President might spare no efforts or means whatsoever to get himself re-elected. And George Mason insisted that a President who procured

his appointment in the first instance through improper and corrupt acts should not escape punishment by repeating his guilt.

And Mason was the person responsible for adding high crimes and misdemeanors to the list of impeachable offenses. So we know from that that the list was designed to reach a President who acts to subvert an election, whether that election is the one that brought him into office or it's an upcoming election where he seeks an additional term.

Moreover, the Founding generation, like every generation of Americans since, was especially concerned to protect our government and our democratic process from outside interference. For example, John Adams during the ratification expressed concern with the very idea of having an elected President, writing to Thomas Jefferson that: "You are apprehensive of foreign interference, intrigue, influence. So am I. But as often as elections happen, the danger of foreign influence recurs."

And in his farewell address, President Washington warned that "history and experience prove that foreign influence is one of the most baneful foes of republican government." And he explained that this was in part because foreign governments would try and foment disagreement among the American people and influence what we thought.

The very idea that a President might seek the aid of a foreign government in his reelection campaign would have horrified them. But based on the evidentiary record, that is what President Trump has done. The list of impeachable offenses that the Framers included in the Constitution shows that the essence of an impeachable offense is a President's decision to sacrifice the national interest for his own private ends.

Treason, the first thing listed, lay in an individual's giving aid to a foreign enemy, that is, putting a foreign enemy adversary's interests above the interests of the United States. Bribery occurred when an official solicited, received, or offered a personal favor or benefit to influence official action, risking that he would put his private welfare above the national interest. And high crimes and misdemeanors captured the other ways in which a high official might, as Justice Joseph Story explained, disregard public interests in the discharge in the duties of political office.

Based on the evidentiary record before you, what has happened in the case today is something that I do not think we have ever seen before, a President who has doubled down on violating his oath to faithfully execute the laws and to protect and defend the Constitution. The evidence reveals a President who used the powers of his office to demand that a foreign government participate in undermining a competing candidate for the Presidency.

As President John Kennedy declared, "the right to vote in a free American election is the most powerful and precious right in the world," but our elections become less free when they are distorted by foreign interference. What happened in 2016 was bad enough. There is widespread agreement that Russian operatives intervened to manipulate our political process, but that distortion is magnified if a sitting President abuses the powers of his office actually to invite foreign intervention.

To see why, imagine living in a part of Louisiana or Texas that's prone to devastating hurricanes and flooding. What would you think if you lived there and your Governor asked for a meeting with the President to discuss getting disaster aid that Congress has provided for, what would you think if that President said, "I would like to do you—I would like you to do us a favor; I'll meet with you and I'll send the disaster relief once you brand my opponent a criminal"? Wouldn't you know in your gut that such a President had abused his office, that he betrayed the national interests, and that he was trying to corrupt the electoral process?

I believe that the evidentiary record shows wrongful acts on that scale here. It shows a President who delayed meeting a foreign leader and providing assistance that Congress and his own advisers agreed serves our national interests in promoting democracy and in limiting Russian aggression, saying, "Russia, if you're listening"—you know, a President who cared about the Constitution would say: Russia, if you're listening, butt out of our elections.

And it shows a President who did this to strong arm a foreign leader into smearing one of the President's opponents in our ongoing election season.

That's not politics as usual, at least not in the United States or not in any mature democracy. It is instead a cardinal reason why the Constitution contains an impeachment power. Put simply, a President should resist foreign interference in our elections, not demand it and not welcome it. If we are to keep faith with our Constitution and with our republic, President Trump must be held to account.

Thank you.

[The statement of Ms. Karlan follows:]

Opening Statement of Professor Pamela S. Karlan

Mr. Chairman and members of the Committee:

Thank you for the opportunity to testify. I am the Kenneth and Harle Montgomery Professor of Public Interest Law and the Co-Director of the Supreme Court Litigation Clinic at Stanford Law School. Much of my professional life has been devoted to the law of democracy. Before becoming a law professor, I litigated voting rights cases as assistant counsel for the NAACP Legal Defense and Educational Fund. I am the co-author of several leading casebooks, among them *Constitutional Law*, now in its eighth edition, and *The Law of Democracy: Legal Structure of the Political Process*, now in its fifth edition. I have served as a Commissioner on the California Fair Political Practices Commission and as a Deputy Assistant Attorney General at the U.S. Department of Justice, where I was responsible, among other things, for reviewing the work of the Voting Section.

Twice, I have had the privilege of representing the bipartisan leadership of this Committee in voting rights cases before the Supreme Court—once when it was under the leadership of Chairman Sensenbrenner and once when it was under the leadership of Chairman Conyers. It was a great honor for me because of this Committee’s key role over the past fifty years in ensuring American citizens have the ability to vote in free and fair elections. Today, you are being asked to consider whether protecting those elections requires impeaching a President. This is an awesome responsibility. But everything I know about our Constitution and its values, and my review of the evidentiary record, tells me that when President Trump invited—indeed, demanded—foreign involvement in our upcoming election, he struck at the very heart of what makes this country the “republic” to

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which we pledge allegiance. That demand constituted an abuse of power. Indeed, as I want to explain in my testimony, drawing a foreign government into our election process 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.”¹ And the way it derives this power is through elections. Elections matter—both to the legitimacy of our government and to all our individual freedoms because, as the Supreme Court explained more than a century ago, voting is “preservative of all rights.”²

So it is hardly surprising that the Constitution is marbled with provisions governing elections and guaranteeing governmental accountability. Indeed, a majority of the constitutional amendments we have ratified since the end of the Civil War deal with voting and terms for elective office.

Among the most important constitutional provisions is a guarantee of periodic elections for President—one every four years.³ America has kept that promise for more than two centuries. It has done so even during wartime. For example, we invented the idea of absentee ballots so that Union troops who supported President Lincoln could stay in the field during the election of 1864. And since then, countless other Americans have fought and died to protect our right to vote.

¹ Federalist No. 39.

² *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886).

³ U.S. Const. art. II, § 1, cl. 1.

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But the Framers of our Constitution realized that elections alone could not guarantee that the United States would remain a republic. One of the key reasons for including an impeachment power was the risk that unscrupulous officials might try to rig the election process. At the Constitutional Convention, William Davie warned that unless the Constitution contained an impeachment provision, a president might “spare no efforts or means whatever to get himself re-elected.”⁴ And George Mason insisted that a president who “procured his appointment in the first instance” through improper and corrupt acts should not “escape punishment, by repeating his guilt.”⁵ Mason was responsible for adding “high Crimes and Misdemeanors” to the list of impeachable offenses.⁶ So we know that that list was designed to reach a president who acts to subvert an election—whether it is the election that brought him into office or an upcoming election where he seeks a second term.

Moreover, the Founding Generation, like every generation of Americans since, was especially concerned to protect our government and our democratic process from outside interference. For example, John Adams expressed concern with the very idea of an elected President, writing to Thomas Jefferson that “You are apprehensive of foreign Interference, Intrigue, Influence.—So am I—But, as often as elections happen, the danger of foreign Influence recurs.”⁷ And in his Farewell Address, President Washington warned that

⁴ 2 Records of the Federal Convention of 1787, p. 64 (Max Farrand ed. 1911).

⁵ *Id.* at 65.

⁶ *Id.* at 550.

⁷ Letter from John Adams to Thomas Jefferson (Dec. 6, 1787), available at <https://tinyurl.com/founders-archive-gov>.

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“history and experience prove that foreign influence is one of the most baneful foes of republican government.”⁸ The very idea that a President might seek the aid of a foreign government in his reelection campaign would have horrified them. But based on the evidentiary record, that is what President Trump has done.

The list of impeachable offenses the Framers included in the Constitution shows that the essence of an impeachable offense is a president’s decision to sacrifice the national interest for his own private ends.⁹ “Treason” lay in an individual’s giving aid to foreign enemies—that is, putting a foreign adversary’s interests above the United States’. “Bribery” occurred when an official solicited, received, or offered a personal favor or benefit to influence official action—that is, putting his private welfare above the national interest. And “high Crimes and Misdemeanors” captured the other ways in which a high official might, as Justice Joseph Story explained, “disregard . . . public interests, in the discharge of the duties of political office.”¹⁰

⁸ Washington’s Farewell Address (1796), available at https://avalon.law.yale.edu/18th_century/washing.asp. More recently, then-Judge Brett Kavanaugh pointed to this “straightforward principle: It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in, and thus may be excluded from, activities of democratic self-government. It follows, therefore, that the United States has a compelling interest . . . in limiting the participation of foreign citizens in activities of American democratic self-government, and in thereby preventing foreign influence over the U.S. political process.” *Bluman v. Fed. Election Comm’n*, 800 F. Supp. 2d 281, 287–88 (D.D.C. 2011), *summarily aff’d*, 565 U.S. 1104 (2012).

⁹ See U.S. Const. art. II, § 4 (“The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”).

¹⁰ 3 Joseph Story, *Commentaries on the Constitution of the United States* § 762 (1833), available at https://www.constitution.org/js/js_005.htm. Justice Story added that “political offenses” for which impeachment will be “so various in their character, and so undefinable in their actual involutions, that it is almost impossible to provide systematically for them by positive law. They must be examined upon very broad and comprehensive principles of public policy and duty.” *Id.*

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Based on the evidentiary record, what has happened in the case before you is something that I do not think we have ever seen before: a president who has doubled down on violating his oath to “faithfully execute” the laws and to “protect and defend the Constitution.”¹¹ The evidence reveals a President who used the powers of his office to demand that a foreign government participate in undermining a competing candidate for the presidency.

As President Kennedy declared, “[t]he right to vote in a free American election is the most powerful and precious right in the world.”¹² But our elections become less free when they are distorted by foreign interference. What happened in 2016 was bad enough: there is widespread agreement that Russian operatives intervened to manipulate our political process. But that distortion is magnified if a sitting President abuses the powers of his office actually to invite foreign intervention. To see why, imagine living in a part of Louisiana or Texas that’s prone to devastating hurricanes and flooding. What would you think if, when your governor asked the federal government for the disaster assistance that Congress has provided, the President responded, “I would like you to do us a favor.’ I’ll meet with you and send the disaster relief once you brand my opponent a criminal.”? Wouldn’t you know in your gut that such a president had abused his office, betrayed the national interest, and tried to corrupt the electoral process? I believe the evidentiary record shows wrongful acts on that scale here. It shows a president who delayed meeting a foreign leader and providing assistance that Congress and his own advisors agreed served

¹¹ See *id.* art. I, § 2, cl. 8.

¹² Special Message to Congress on Civil Rights (Feb. 28, 1963), available at <https://www.jfklibrary.org/asset-viewer/archives/JFKPOF/043/JFKPOF-043-002>.

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our national interest in promoting democracy and limiting Russian aggression. And it shows a president who did this to strong arm a foreign leader into smearing one of the president's opponents in our ongoing election season. That is not politics as usual—at least not in the United States or any other mature democracy. It is, instead, a cardinal reason why the Constitution contains an impeachment power. Put simply, a candidate for president should resist foreign interference in our elections, not demand it.

If we are to keep faith with the Constitution and our Republic, President Trump must be held to account.

Chairman NADLER. Thank you.
Professor Gerhardt.

TESTIMONY OF MICHAEL GERHARDT

Mr. GERHARDT. Thank you, Mr. Chairman, Ranking Member, other distinguish members of the committee.

It's an honor and a privilege to join the other distinguished witnesses to discuss a matter of grave concern to our country and to our Constitution. Because this House, the people's House, has the sole power of impeachment, there is no better forum to discuss the constitutional standard for impeachment and whether that standard has been met in the case of the current President of the United States.

As I explain in the remainder and balance of my opening statement, the record compiled thus far shows the President has committed several impeachable offenses, including bribery, abuse of power, and soliciting of personal favor from a foreign leader to benefit himself personally, obstructing justice, and obstructing Congress.

Our hearing today should serve as a reminder of one of the fundamental principles that drove the Founders of our Constitution to break from England and to draft their own Constitution, the principle that, in this country, no one is King. We have followed that principle since before the founding of the Constitution. And it is recognized around the world as a fixed, inspiring American ideal.

In his third message to Congress in 1903, President Theodore Roosevelt delivered one of the finest articulations of this principle. He said: No one is above the law, and no man is below, nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right, not asked for as a favor.

Three features of our Constitution protect the fundamental principle that no one, not even the President, is above the law. First, in the British system, the public had no choice over the monarch who ruled them. In our Constitution, the Framers allowed elections to serve as a crucial means for ensuring Presidential accountability.

Second, in the British system, the King could do no wrong. And no other parts of the government could check his misconduct. In our Constitution, the Framers developed the concept of separation of powers, which consists of checks and balances designed to prevent any branch, including the Presidency, from becoming tyrannical.

Third, in the British system, everyone but the King was impeachable. Our Framers' generation pledged their lives and fortunes to rebel against a monarch whom they saw as corrupt, tyrannical, and entitled to do no wrong.

In our Declaration of Independence, the Framers set forth a series of impeachable offenses that the King had committed against the American colonists. When the Framers later convened in Philadelphia to draft our Constitution, they were united around a simple indisputable principle that was a major safeguard for the public. We, the people, against tyranny of any kind, a people who had overthrown a King were not going to turn around just after securing their independence from corrupt monarchical tyranny and create

an office that, like the King, was above the law and could do no wrong. The Framers created a chief executive to bring energy to the administration of Federal laws but to be accountable to Congress for treason, bribery, or other high crimes and misdemeanors.

The Framers' concern about the need to protect against a corrupt President was evident throughout the Convention. And here I must thank my prior two friends who have spoken and referred to a North Carolinian, William Davie. I will refer to another North Carolinian in the Constitutional Convention, James Iredell, whom President Washington later appointed to the Supreme Court, assured his fellow delegates the President, quote, is of a very different nature from a monarch. He is to be personally responsible for any abuse of the great trust placed in him, unquote.

This brings us, of course, to the crucial question we're here to talk about today: the standard for impeachment. The Constitution defines treason, and the term "bribery" basically means using an office for personal gain, or I should say misusing office for personal gain.

As Professor Feldman pointed out, these terms derive from the British who understood the class of cases that would be impeachable to refer to political crimes, which included great offenses against the United States, attempts to subvert the Constitution, when the President deviates from his duty, or dares to abuse the power invested in him by the people, breaches the public trust, and serious injuries to the Republic.

In his influential essay in *The Federalist Papers*, Alexander Hamilton declared that impeachable offenses are those offenses which proceed from the misconduct of public men or, in other words, the abuse or violation of some public trust and relate chiefly to injuries done immediately to the society itself.

Several themes emerge from the Framers' discussion of the scope of the impeachable offenses and impeachable practice. We know that not all impeachment offenses are criminal, and we know that not all felonies are impeachable offenses. We know further that what matters in determining whether particular misconduct constitutes a high crime and misdemeanor is ultimately the context and the gravity of the misconduct in question.

After reviewing the evidence that's been made public, I cannot help but conclude that this President has attacked each of the Constitution's safeguards against establishing a monarchy in this country. Both the context and gravity of the President's misconduct are clear. The favor he requested from Ukraine's President was to receive, in exchange for his use of Presidential power, Ukraine's announcement of a criminal investigation of a political rival. The investigation was not the important action for the President. The announcement was, because it could then be used in this country to manipulate the public into casting aside the President's political rival because of concerns about his corruption.

Mr. GERHARDT. The gravity of the President's misconduct is apparent when we compare it to the misconduct of the one President who resigned from office to avoid impeachment, conviction, and removal.

The House Judiciary Committee in 1974 approved three articles of impeachment against Richard Nixon who resigned a few days later. The first article charged him with obstruction of justice.

If you read the Mueller report, it identifies a number of facts—I won't lay them out here right now—that suggest the President himself has obstructed justice. If you look at the second article of impeachment approved against Richard Nixon, it charged him with abuse of power for ordering the heads of the FBI, IRS, and CIA to harass his political enemies.

In the present circumstance, the President is engaged in a pattern of abusing the trust placed in him by the American people by soliciting foreign countries, including China, Russia, and Ukraine to investigate his political opponents and interfere on his behalf in elections in which he is a candidate.

The third article approved against President Nixon charged that he had failed to comply with four legislative subpoenas. In the present circumstance, the President has refused to comply with and directed at least ten others in his administration not to comply with lawful congressional subpoenas, including Secretary of State Mike Pompeo, Energy Secretary Rick Perry, and acting chief of staff and head of the Office of Management and Budget Mick Mulvaney.

As Senator Lindsey Graham, now chair of the Senate Judiciary Committee, said, when he was a Member of the House on the verge of impeaching President Clinton, "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." That is a perfectly good articulation of why obstruction of Congress is impeachable.

The President's defiance of Congress is all the more troubling due to the rationale he claims for his obstruction. His arguments and those of his subordinates, including his White House counsel, in his October 8th letter to the Speaker and three committee chairs, boils down to the assertion that he is above the law.

I won't reread that letter here, but I do want to disagree with the characterization in the letter of these proceedings, since the Constitution expressly says, and the Supreme Court has unanimously affirmed, that the House has the sole power of impeachment that like the Senate the House has the power to determine the rules for its proceedings.

The President and his subordinates have argued further that the President is entitled to absolute immunity from criminal procedure, even investigation for any criminal wrongdoing, including shooting someone on 5th Avenue. The President has claimed further he's entitled to absolute executive privilege not to share any information he doesn't want to share with another branch.

He's also claimed the entitlement to be able to order the executive branch—as he's done—not to cooperate with this body when it conducts an investigation of the President. If left unchecked, the President will likely continue his pattern of soliciting foreign interference on behalf of the next election and, of course, his obstruction of Congress.

The fact that we can easily transpose the articles of impeachment against President Nixon onto the actions of this President speaks volumes, and that does not even include the most serious national security concerns and election interference concerns at the heart of this President's misconduct.

No misconduct is more antithetical to our democracy, and nothing injures the American people more than a President who uses his power to weaken their authority under the Constitution as well as the authority of the Constitution itself.

May I read one more sentence or—I'm sorry.

Chairman NADLER. The witness may have another sentence or two.

Mr. GERHARDT. Thank you. If Congress fails to impeach here then the impeachment process has lost all meaning, and along with that our Constitution's carefully crafted safeguards against the establishment of a king on American soil. And, therefore, I stand with the Constitution, and I stand with the Framers who were committed to ensure that no one is above the law.

[The statement of Mr. Gerhardt follows:]

Written Statement of

Michael Gerhardt, Burton Craige Distinguished Professor of Jurisprudence,

University of North Carolina at Chapel Hill

Before the House Judiciary Committee,

“The Impeachment Inquiry into President Donald J. Trump:

The Constitutional Foundations for President Impeachment,”

December 4, 2019

It is an honor and a privilege to join the other distinguished witnesses to discuss a matter of grave concern to our Constitution and our country. Because this House, the people's House, has "the sole power of Impeachment," there is no better forum to discuss the constitutional standard for impeachment and whether that standard has been met in the case of the current president of the United States. As I explain in the balance of this written statement, the record compiled thus far shows that the president has committed several impeachable offenses, including bribery, abuse of power in soliciting a personal favor from a foreign leader to benefit his political campaign, obstructing Congress, and obstructing justice.

Our hearing today should serve as a reminder of one of the fundamental principles that drove the founders of our Constitution to break from England and to draft their own Constitution, the principle that in this country no one is king. We have followed that principle since before the founding of the Constitution, and it is recognized around the world as a fixed, inspiring American ideal. In his third Annual Message to Congress in 1903, President Theodore Roosevelt aptly described this principle when he declared, "No man is above the law and no man is below, nor do we ask any man's permission when we require him to obey it. Obedience to the law is demanded as a right; not asked for as a favor."

Three features of our Constitution secure the fundamental principle that no one, not even the president, is above the law. First, in the British system, the public had no choice over the monarch who ruled them. In our Constitution, the framers allowed elections to serve as one means for ensuring presidential accountability for misconduct. Second, in the British system, the king could do no wrong, and no other parts of the government could check his

misconduct. In our Constitution, the framers developed the concept of separation of powers, which consists of checks and balances designed to prevent any branch, including the presidency, from becoming tyrannical. Third, in the British system, everyone but the king was impeachable. Our framers' generation pledged their "lives and fortunes" to rebel against a monarch whom they saw as corrupt, tyrannical, and claimed entitlement to do no wrong. In our Declaration of Independence, the framers set forth a series of impeachable offenses that the King had committed against the American colonists. When the framers later convened in Philadelphia to draft our Constitution, they were united around a simple, indisputable principle that was a major safeguard for the public, "We the people," against tyranny of any kind. A people, who had overthrown a king, were not going to turn around, just after securing their independence from corrupt monarchical tyranny, and create an office that, like the king, was above the law and could do no wrong. The framers created a chief executive to bring energy to the administration of federal laws but to be accountable to Congress for "treason, bribery, or other high crimes and misdemeanors."

The framers' concern about the need to protect against a corrupt president was evident throughout the constitutional convention. "Shall any man be above Justice?" Virginia delegate George Mason asked, "Above all shall that man be above it, who can commit the most extensive injustice?" Further, he queried, "Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment?" George Mason further worried that if the President "has the power of granting pardons before indictment or conviction, may he not stop inquiry and prevent detection?" James Madison responded that, "There is one security in this case to which gentlemen may not have averted: 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; they can suspend him when suspected, and the power will devolve on the Vice-President. Should he be suspected also, he may likewise be suspended and be impeached and removed.” James Iredell from North Carolina, whom President Washington later appointed to the Supreme Court, assured his fellow delegates, the president “is of a very different nature from a monarch. He is to be [p]ersonally responsible for any abuse of the great trust placed in him.” Gouverneur Morris agreed that the president “may be bribed by a greater interest to betray his trust, and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay, without being able to guard against it by displacing him.” He emphasized that, “This Magistrate is not the King but the prime minister. The people are the King.” James Wilson, another one of President Washington’s first appointments to the Supreme Court, agreed that, “far from being above the laws, he is amenable to the laws in his private character as a citizen, and in his public character by impeachment.” Madison, who would become known as the Father of our Constitution, argued for the inclusion of impeachment in our Constitution, because a president might “pervert his administration into a scheme of peculation or oppression” or “betray his trust **to foreign leaders.**” William Davie, a North Carolina delegate, warned that **“If he be not impeachable whilst in office, he will spare no effort or means whatever to get himself re-elected”** (emphasis added). These aren’t the words of people planning to create an unaccountable chief executive, nor of constitutional designers who thought to leave the remedy for abuse of office simply to elections. Their concerns and observations closely mirror the current questions before this House.

One such question, which has been raised in nearly every impeachment proceeding, has is what are the legitimate grounds for impeachment, conviction, and removal. The Constitution defines treason (Article III, section 3), and the term “bribery,” which could be understood simply as a president’s taking or offering “an undue reward to influence” on his exercise, or non-exercise, of his power. As for “other high crimes and misdemeanors,” these terms derive from the British, who understood the class of cases to refer to “political crimes,” which included “great” offenses against the United States, “attempts to subvert the Constitution,” when the President “deviates from his duty” or “dare[s] to abuse the power invested in him by the people,” breaches of the public trust, and serious injuries to the Republic.

In his influential essay in *The Federalist Papers*, Alexander Hamilton declared that impeachable offenses are “those offences which proceed from the misconduct of public men, or, in other words, the abuse or violation of some public trust” and “relate chiefly to injuries done immediately to the society itself.” In his influential lectures on the Constitution, given shortly after ratification, Justice James Wilson said impeachable offenses were “*political crimes* and misdemeanors.” In his equally influential *Commentaries on the Constitution*, Justice Joseph Story explained that impeachable “offenses” are “offenses, which are committed by public men in violation of their public trust and duties” and “partakes of a political character, as it respects injuries to the society in its political character.”

Several themes emerge from the framers’ discussions of the scope of impeachable offenses and impeachment practice. We know that not all impeachable offenses are violations of criminal statutes, and we know that not all felonies are impeachable offenses. We know

further that what matters in determining whether particular misconduct constitutes a “high crime and misdemeanor” is ultimately the context and gravity of the misconduct in question.

When we apply our constitutional law to the facts found in the Mueller Report and other public sources, I cannot help but conclude that this president has attacked each of the Constitution’s safeguards against establishing a monarchy in this country. Both the context and gravity of the president’s misconduct are clear: The “favor” he requested from Ukraine’s president was to receive – in exchange for his release of the funds Ukraine desperately needed -- Ukraine’s announcement of a criminal investigation of a political rival. The investigation was not the important action for the president; *the announcement was* because it could then be used in this country to manipulate the public into casting aside the president’s political rival because of concerns about his corruption.

The gravity of the president’s misconduct is apparent when we compare it to the misconduct of the one president who resigned from office to avoid certain impeachment, conviction, and removal. After more than two years of investigations in the House and Senate and by a special prosecutor, the House Judiciary Committee approved three articles of impeachment against Richard Nixon, who resigned a few days later. The first article charged President Nixon with obstruction of justice by “personally” and “through subordinates” impeding the lawful investigations into the burglary of the Democratic headquarters, covering up and concealing those responsible, and covering up and concealing “other unlawful covert activities.” The Mueller Report found *at least* five instances of the president’s obstruction of the Justice Department’s criminal investigation into Russian interference in the 2016 election and possible collusion between the President’s campaign and Russia: (1) the president’s

ordering his then-White House Counsel, Don McGahn, to fire the special counsel, Mr. Mueller, in order to thwart the investigation he had been charged by the Deputy Attorney General to undertake; (2) ordering Mr. McGahn to create a false written record denying the president had ordered him to remove Mr. Mueller; (3) meeting with his former campaign manager, Corey Lewandowski, to direct him to deliver a message, which the president dictated, to then-Attorney General Sessions to curtail the Russia investigation; (4) tampering with and dangling pardons as incentives for Paul Manafort and Michael Flynn; and (5) intimidating Michael Cohen, the president's former private legal counsel, to keep from testifying against him. Taken either individually or collectively, these instances are strong evidence of criminal obstruction of justice.

The second article of impeachment approved against Richard Nixon charged him with abuse of power for ordering the heads of the FBI, IRS, and CIA to harass his political enemies. In the present circumstance, the President has engaged in a pattern of abusing the trust placed in him by the American people by soliciting foreign countries – including China, Russia, and Ukraine – to investigate his political opponents and interfere on his behalf in elections in which he is a candidate.

The third article approved against President Nixon charged that he had failed to comply with four legislative subpoenas. In the present circumstance, the President has refused to comply with and directed at least ten others in his administration not to comply with lawful congressional subpoenas, including Secretary of State Mike Pompeo, Energy Secretary Rick Perry, and Acting Chief of Staff and head of the Office of Management and Budget Mick Mulvaney. As Sen. Lindsey Graham (R-S.C.), now chair of the Senate Judiciary Committee, said

when he was a member of the House on the verge of impeaching President Bill Clinton, “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.” That is a perfectly good articulation of why obstruction of Congress is impeachable. Senator Graham dismisses the relevance of that statement now, but its relevance speaks for itself.

The president’s defiance of Congress is all the more troubling due to the rationale he claims for his obstruction: His arguments and those of his subordinates, including his White House Counsel Pat Cipollone in his October 8th letter to the Speaker and three committee chairs, boil down to the assertion that he is above the law. The president himself has declared the Constitution gives him “the right to do whatever I want as president.” Moreover, in his October 8th letter, Mr. Cipollone dismissed House impeachment proceedings as “constitutionally illegitimate,” with the overall aim of asserting that the president of the United States has the power to shut down an impeachment inquiry. He laid out the president’s grievances: The administration will not go along with what Mr. Cipollone described as a purely “partisan” inquiry; his letter decried “unfounded” allegations made by the whistleblower in his September 26, 2019 complaint and the unfairness of the impeachment inquiry; he said Democrats “seek to overturn the results of the 2016 election”; and he asserted that the July 25 phone call between Trump and Ukraine’s President Volodymyr Zelensky — at the heart of the inquiry — “was completely appropriate.” Mr. Cipollone condemned the House for operating “contrary to the Constitution of the United States — and all past bipartisan precedent.” I am not familiar with any such precedent, and I disagree with the characterizations of the

proceedings, since the Constitution expressly says, and the Supreme Court has unanimously affirmed, that the House has “the sole power of impeachment” and that, like the Senate, has the power “to determine the rules for its proceedings.”

In addition to the president’s declaration that he can do no wrong and the assertions in Mr. Cipollone’s October 8th letter, reportedly signed and drafted at the direction of the president, the president and his subordinates have argued further that the president is entitled to absolute immunity from any criminal procedures, *even an investigation*, for any criminal wrongdoing, including shooting someone on Fifth Avenue; the president is entitled to order everyone within the executive branch not to cooperate with and to refuse compliance with lawful directives of this Congress; the president is entitled to keep any information produced anywhere within the executive branch confidential from Congress even when acting at the zenith of its impeachment powers and even if it relates to the commission of a crime or abuse of power; and the president is entitled to shut this impeachment inquiry down – and any other means for holding him accountable – except for the one process, the next election, that he plainly tried to rig in his favor. 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 power 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.

The president’s serious misconduct, including bribery, soliciting a personal favor from a foreign leader in exchange for his exercise of power, and obstructing justice and Congress are worse than the misconduct of any prior president, including what previous presidents who

faced impeachment have done or been accused of doing. Other presidents have done just the opposite in recognizing the legitimacy of congressional investigative and impeachment authorities. Even President Nixon agreed to share information with Congress, ordered his subordinates to comply with subpoenas to testify and produce documents (with some limited exceptions), and to send his lawyers to ask questions in the House's impeachment hearings. The fact that we can easily transpose the articles of impeachment against Nixon onto the actions of this president speaks volumes – and that does not even include the most serious national security concerns and election interference concerns at the heart of this president's misconduct.

No misconduct is more antithetical to our democracy, and nothing injures the American people more than a president who uses his power to weaken their authority under the Constitution as well as the authority of the Constitution itself. No member of this House should ever want his or her legacy to be having left unchecked a president's assaults on our Constitution. If Congress fails to impeach here, then the impeachment process has lost all meaning, and, along with that, our Constitution's carefully crafted safeguards against the establishment of a king on American soil. No one, not even the president, is beyond the reach of our Constitution and our laws.

Chairman NADLER. Thank you, Professor.
Professor Turley.

TESTIMONY OF PROFESSOR JONATHAN TURLEY

Mr. TURLEY. Thank you. Chairman Nadler, Ranking Member Collins, members of the Judiciary Committee, it's an honor to appear before you today to discuss one of the most consequential functions you were given by the Framers, and that is the impeachment of a President of the United States.

Twenty-one years ago I sat before you, Chairman Nadler, and this committee, to testify at the impeachment of President William Jefferson Clinton. I never thought that I would have to appear a second time to address the same question with regard to another sitting President, yet here we are.

The elements are strikingly similar. The intense rancor and rage of the public debate is the same. The atmosphere that the Framers anticipated, the stifling intolerance of opposing views, is the same. I'd like to start therefore, perhaps incongruously, by stating an irrelevant fact: I'm not a supporter of President Trump. I voted against him. My personal views of President Trump are as irrelevant to my impeachment testimony as they should be to your impeachment vote.

President Trump will not be our last President. And what we leave in the wake of this scandal will shape our democracy for generations to come. I'm concerned about lowering impeachment standards to fit a paucity of evidence and an abundance of anger. I believe this impeachment not only fails to satisfy the standard of past impeachments but would create a dangerous precedent for future impeachments.

My testimony lays out the history of impeachment from early English cases to colonial cases to the present day. The early impeachments were raw political exercises using fluid definitions of criminal and noncriminal acts. When the Framers met in Philadelphia they were quite familiar with impeachment and its abuses, including the Hastings case, which was discussed in the convention, a case that was still pending for trial in England.

Unlike the English impeachments, the American model was more limited not only in its application to judicial and executive officials but its grounds. The Framers rejected a proposal to add maladministration because Madison objected that so vague a term would be equivalent to a tenure during the pleasure of the Senate.

In the end, various standards that had been used in the past were rejected, corruption, obtaining office by improper means, betraying the trust of a foreign—to a foreign power, negligence, perfidy, speculation, and oppression. Perfidy, or lying, and speculation, self-dealing, are particularly irrelevant to our current controversy.

My testimony explores the impeachment cases of Nixon, Johnson, and Clinton. The closest of these three cases is to the 1868 impeachment of Andrew Johnson. It is not a model or an association that this committee should relish. In that case, a group of opponents of the Presidents, called the "Radical Republicans," created a trap-door crime in order to impeach the President. They even defined it as a high misdemeanor.

There was another shared aspect besides the atmosphere of that impeachment and also the unconventional style of the two Presidents, and that shared element is speed. This impeachment would rival the Johnson impeachment as the shortest in history, depending on how one counts the relevant days.

Now, there are three distinctions when you look at these—or three commonalties when you look at these past cases. All involved established crimes. This would be the first impeachment in history where there would be considerable debate, and in my view, not compelling evidence of the commission of a crime.

Second, is the abbreviated period of this investigation, which is problematic and puzzling. This is a facially incomplete and inadequate record in order to impeach a President.

Allow me to be candid in my closing remarks because we have limited time. We are living in the very period described by Alexander Hamilton, a period of agitated passions. I get it. You're mad. The President is mad. My Republican friends are mad. My Democratic friends are mad. My wife is mad. My kids are mad. Even my dog seems mad, and Luna is a Goldendoodle and they don't get mad.

So we're all mad. Where has that taken us? Will a slip-shot impeachment make us less mad? Will it only invite an invitation for the madness to follow every future administration? That is why this is wrong. It's not wrong because President Trump is right. His call was anything but perfect. It's not wrong because the House has no legitimate reason to investigate the Ukrainian controversy. It's not wrong because we're in an election year. There is no good time for an impeachment.

No, it's wrong because this is not how you impeach an American President. This case is not a case of the unknowable. It's a case of the peripheral. We have a record of conflicts, defenses that have not been fully considered, un-subpoenaed witness with material evidence.

To impeach a President on this record would expose every future President to the same type of inchoate impeachment. Principle often takes us to a place we would prefer not to be. That was the place seven Republicans found themselves in the Johnson trial when they saved a President from acquittal that they despised. For generations they even celebrated his profiles of courage.

Senator Edmund Ross said it was like looking down into his open grave, and then he jumped because he didn't have any alternative. It's easy to celebrate those people from the distance of time and circumstance in an age of rage. It's appealing to listen to those saying, forget the definitions of crimes. Just do it, like this is some impulse buy Nike sneaker.

You can certainly do that. You can declare the definitions of crimes alleged are immaterial and just an exercise of politics, not the law. However, those legal definitions and standards, which I've addressed in my testimony, are the very thing that divide rage from reason.

This all brings up to me—and I will conclude with this—of a scene from "A Man for All Seasons" by—with Sir Thomas More when his son-in-law, William Roper, put the law—suggested that More was putting the law ahead of morality.

He said, More would give the devil the benefit of the law. When More asks Roper would he instead cut a great road through the law to get after the devil? Roper proudly declares, yes, I'd cut down every law of England to do that. More responds, and when the last law is cut down and the devil turned around on you, where would you hide, Roper, all the laws being flat?

He said, this country is planted thick with laws from coast to coast, man's laws, not God's. And if you cut them down, and you're just the man to do it, do you really think you could stand upright in the winds that would blow then? And he finished by saying, yes, I'd give the devil the benefit of the law for my own sake.

So I will conclude with this: Both sides of this controversy have demonized the other to justify any measure in their defense, much like Roper. Perhaps that's the saddest part of all of this. We have forgotten the common article of faith that binds each of us to each other in our Constitution.

However, before we cut down the tree so carefully planted by the Framers, I hope you will consider what you will do when the wind blows again, perhaps for a Democratic President. Where will you stand then when all the laws being flat?

Thank you again for the honor of testifying today, and I'd be happy to answer any questions.

[The statement of Mr. Turley follows:]

Written Statement

**Jonathan Turley,
Shapiro Professor of Public Interest Law
The George Washington University Law School**

*“The Impeachment Inquiry Into President Donald J. Trump:
The Constitutional Basis For Presidential Impeachment”*

**1100 House Office Building
United States House of Representatives
Committee on the Judiciary**

December 4, 2019

I. INTRODUCTION

Chairman Nadler, ranking member Collins, members of the Judiciary Committee, my name is Jonathan Turley, and I am a law professor at George Washington University where I hold the J.B. and Maurice C. Shapiro Chair of Public Interest Law.¹ It is an honor to appear before you today to discuss one of the most solemn and important constitutional functions bestowed on this House by the Framers of our Constitution: the impeachment of the President of the United States.

Twenty-one years ago, I sat here before you, Chairman Nadler, and other members of the Judiciary Committee to testify on the history and meaning of the constitutional impeachment standard as part of the impeachment of President William Jefferson Clinton. I never thought that I would have to appear a second time to address the same question with regard to another sitting president. Yet, here we are. Some elements are strikingly similar. The intense rancor and rage of the public debate is the same. It was an atmosphere that the Framers anticipated. Alexander Hamilton warned that charges of impeachable conduct “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.”² As with the Clinton impeachment, the Trump impeachment has again proven Hamilton’s words to be prophetic. The stifling intolerance for opposing views is the same. As was the case two decades ago, it is a perilous environment for a legal scholar who wants to

¹ I appear today in my academic capacity to present views founded in prior academic work on impeachment and the separation of powers. My testimony does not reflect the views or approval of CBS News, the BBC, or the newspapers for which I write as a columnist. My testimony was written exclusively by myself with editing assistance from Nicholas Contarino, Andrew Hile, Thomas Huff, and Seth Tate.

² ALEXANDER HAMILTON, FEDERALIST NO. 65 (1788), *reprinted in* THE FEDERALIST PAPERS 396, 396-97 (Clinton Rossiter ed., 1961).

explore the technical and arcane issues normally involved in an academic examination of a legal standard ratified 234 years ago. In truth, the Clinton impeachment hearing proved to be an exception to the tenor of the overall public debate. The testimony from witnesses, ranging from Arthur Schlesinger Jr. to Laurence Tribe to Cass Sunstein, contained divergent views and disciplines. Yet the hearing remained respectful and substantive as we all grappled with this difficult matter. I appear today in the hope that we can achieve that same objective of civil and meaningful discourse despite our good-faith differences on the impeachment standard and its application to the conduct of President Donald J. Trump.

I have spent decades writing about impeachment³ and presidential powers⁴ as an academic and as a legal commentator. My academic work reflects the bias of a Madisonian scholar. I tend to favor Congress in disputes with the Executive Branch and I have been critical of the sweeping claims of presidential power and privileges made by modern Administrations. My prior testimony mirrors my criticism of the expansion of executive powers and privileges.⁵ In truth, I have not held much fondness for any

³ See, e.g., Jonathan Turley, *"From Pillar to Post": The Prosecution of Sitting Presidents*, 37 AM. CRIM. L. REV. 1049 (2000); Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L.J. 1 (1999); Jonathan Turley, *The "Executive Function" Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999); Symposium, Jonathan Turley, *Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President*, 67 GEO. WASH. L. REV. 735 (1999); Symposium, Jonathan Turley, *Reflections on Murder, Misdemeanors, and Madison*, 28 HOFSTRA L. REV. 439 (1999).

⁴ See, e.g., Jonathan Turley, *A Fox In The Hedges: Vermeule's Optimizing Constitutionalism For A Suboptimal World*, 82 U. CHI. L. REV. 517 (2015); Jonathan Turley, *Madisonian Tectonics: How Function Follows Form in Constitutional and Architectural Interpretation*, 83 GEO. WASH. L. REV. 305 (2015); Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U. L. REV. 1523 (2013); Jonathan Turley, *Presidential Records and Popular Government: The Convergence of Constitutional and Property Theory in Claims of Control and Ownership of Presidential Records*, 88 CORNELL L. REV. 651 (2003); Jonathan Turley, *The Military Pocket Republic*, 97 NW. L. REV. 1 (2002); Jonathan Turley, *Tribunals and Tribulations: The Antithetical Elements of the Military Justice System in a Madisonian Democracy*, 70 GEO. WASH. L. REV. 649 (2002).

⁵ See United States House of Representatives, Committee on the Judiciary, "Executive Privilege and Congressional Oversight," May 15, 2019 (testimony of Professor Jonathan Turley); United States House of Representatives, House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, *The National Emergencies Act of 1976*, Feb. 28, 2019 (testimony of Professor Jonathan Turley); United States Senate, Committee on the Judiciary, *The Confirmation of William Pelham Barr As Attorney General of the United States Supreme Court*, Jan. 16, 2019 (testimony of Professor Jonathan Turley); United States Senate, Committee on Homeland Security and Governmental Affairs Committee, Subcommittee on Federal Spending Oversight and Emergency Management, *"War Powers and the Effects of Unauthorized Military*

president in my lifetime. Indeed, the last president whose executive philosophy I consistently admired was James Madison.

In addition to my academic work, I am a practicing criminal defense lawyer. Among my past cases, I represented the United States House of Representatives as lead counsel challenging payments made under the Affordable Care Act without congressional authorization. I also served as the last lead defense counsel in an impeachment trial in the Senate. With my co-lead counsel Daniel Schwartz, I argued the case on behalf of federal judge Thomas Porteous. (My opposing lead counsel for the House managers was Adam Schiff). In addition to my testimony with other constitutional scholars at the Clinton impeachment hearings, I also represented former Attorneys General during the Clinton impeachment litigation over privilege disputes triggered by the investigation of Independent Counsel Ken Starr. I also served as lead counsel in a bill of attainder case, the sister of impeachment that will be discussed below.⁶

Engagements on Federal Spending”, June 6, 2018 (testimony of Professor Jonathan Turley); United States Senate, *Confirmation Hearing For Judge Neil M. Gorsuch To Be Associate Justice of the United States*, United States Senate Committee on the Judiciary, Mar. 21, 2017 (testimony of Professor Jonathan Turley); United States House of Representatives, House Committee on Science, Space, and Technology, “*Affirming Congress’ Constitutional Oversight Responsibilities: Subpoena Authority and Recourse for Failure to Comply with Lawfully Issued Subpoenas*,” Sept. 14, 2016 (testimony and prepared statement of Jonathan Turley); United States House of Representatives, House Judiciary Committee, Regulatory Reform, Commercial and Antitrust Law, “*Examining The Allegations of Misconduct of IRS Commissioner John Koskinen*” June 22, 2016 (testimony and prepared statement of Jonathan Turley); United States Senate, Committee on Homeland Security and Governmental Affairs, “*The Administrative State: An Examination of Federal Rulemaking*,” Apr. 20, 2016 (testimony and prepared statement of Jonathan Turley); United States House of Representatives, House Judiciary Committee, Regulatory Reform, Commercial and Antitrust Law, “*The Chevron Doctrine: Constitutional and Statutory Questions in Judicial Deference to Agencies*,” Mar. 15, 2016 (testimony and prepared statement of Jonathan Turley); *Authorization to Initiate Litigation for Actions by the President Inconsistent with His Duties Under the Constitution of the United States: Hearing Before the H. Comm. on Rules*, 113th Cong. (2014) (prepared statement of Jonathan Turley, Shapiro Professor of Public Interest Law); *Enforcing The President’s Constitutional Duty to Faithfully Execute the Laws: Hearing Before the H. Comm. on the Judiciary*, 113th Cong. 30–47 (2014) (testimony and prepared statement of Jonathan Turley) (discussing nonenforcement issues and the rise of the Fourth Branch); *Executive Overreach: The President’s Unprecedented “Recess” Appointments: Hearing Before the H. Comm. on the Judiciary*, 112th Cong. 35–57 (2012) (prepared statement of Jonathan Turley); *see also Confirmation Hearing for Attorney General Nominee Loretta Lynch: Hearing Before the S. Comm. on the Judiciary*, 114th Cong. (2015) (prepared statement of Jonathan Turley). Parts of my testimony today is taken from this prior work.

⁶ *Foretich v. United States*, 351 F.3d 1198 (D.C. Cir. 2003).

I would like to start, perhaps incongruously, with a statement of three irrelevant facts. First, I am not a supporter of President Trump. I voted against him in 2016 and I have previously voted for Presidents Clinton and Obama. Second, I have been highly critical of President Trump, his policies, and his rhetoric, in dozens of columns. Third, I have repeatedly criticized his raising of the investigation of the Hunter Biden matter with the Ukrainian president. These points are not meant to curry favor or approval. Rather they are meant to drive home a simple point: one can oppose President Trump's policies or actions but still conclude that the current legal case for impeachment is not just woefully inadequate, but in some respects, dangerous, as the basis for the impeachment of an American president. To put it simply, I hold no brief for President Trump. My personal and political views of President Trump, however, are irrelevant to my impeachment testimony, as they should be to your impeachment vote. Today, my only concern is the integrity and coherence of the constitutional standard and process of impeachment. President Trump will not be our last president and what we leave in the wake of this scandal will shape our democracy for generations to come. I am concerned about lowering impeachment standards to fit a paucity of evidence and an abundance of anger. If the House proceeds solely on the Ukrainian allegations, this impeachment would stand out among modern impeachments as the shortest proceeding, with the thinnest evidentiary record, and the narrowest grounds ever used to impeach a president.⁷ That does not bode well for future presidents who are working in a country often sharply and, at times, bitterly divided.

Although I am citing a wide body of my relevant academic work on these questions, I will not repeat that work in this testimony. Instead, I will focus on the history and cases that bear most directly on the questions facing this Committee. My testimony will first address relevant elements of the history and meaning of the impeachment standard. Second, I will discuss the past presidential impeachments and inquiries in the context of this controversy. Finally, I will address some of the specific alleged impeachable offenses raised in this process. In the end, I believe that this process has raised serious and legitimate issues for investigation. Indeed, I have previously stated that a quid pro quo to force the investigation of a political rival in exchange for military aid can be impeachable, if proven. Yet moving forward primarily or exclusively with the Ukraine controversy on this record would be as precarious as it would premature. It comes down to a type of constitutional architecture. Such a slender foundation is a red flag for architects who operate on the accepted 1:10 ratio between the width and height of

⁷ The only non-modern presidential impeachment is an outlier in this sense. As I discussed below, the impeachment of Andrew Johnson was the shortest period from the underlying act (the firing of the Secretary of War) to the adoption of the articles of impeachment. However, the House had been preparing for such an impeachment before the firing and had started investigations of matters referenced in the articles. This was actually the fourth impeachment, with the prior three attempts extending over a year with similar complaints and inquiries. Thus, the actual period of the impeachment of Johnson and the operative record is debatable. I have previously discussed the striking similarities between the Johnson and Trump inquiries in terms of the brevity of the investigation and narrowest of the alleged impeachable offenses.

a structure. The physics are simple. The higher the building, the wider the foundation. There is no higher constitutional structure than the impeachment of a sitting president and, for that reason, an impeachment must have a wide foundation in order to be successful. The Ukraine controversy has not offered such a foundation and would easily collapse in a Senate trial.

Before I address these questions, I would like to make one last cautionary observation regarding the current political atmosphere. In his poem “The Happy Warrior,” William Wordsworth paid homage to Lord Horatio Nelson, a famous admiral and hero of the Napoleonic Wars. Wordsworth began by asking “Who is the happy Warrior? Who is he what every man in arms should wish to be?” The poem captured the deep public sentiment felt by Nelson’s passing and one reader sent Wordsworth a gushing letter proclaiming his love for the poem. Surprisingly, Wordsworth sent back an admonishing response. He told the reader “you are mistaken; your judgment is affected by your moral approval of the lines.”⁸ Wordsworth’s point was that it was not his poem that the reader loved, but its subject. My point is only this: it is easy to fall in love with lines that appeal to one’s moral approval. In impeachments, one’s feeling about the subject can distort one’s judgment on the true meaning or quality of an argument. We have too many happy warriors in this impeachment on both sides. What we need are more objective noncombatants, members willing to set aside political passion in favor of constitutional circumspection. Despite our differences of opinion, I believe that this esteemed panel can offer a foundation for such reasoned and civil discourse. If we are to impeach a president for only the third time in our history, we will need to rise above this age of rage and genuinely engage in a civil and substantive discussion. It is to that end that my testimony is offered today.

II. A BRIEF OVERVIEW OF THE HISTORY AND MEANING OF THE IMPEACHMENT STANDARD

Divining the intent of the Framers often borders on necromancy, with about the same level of reliability. Fortunately, there are some questions that were answered directly by the Framers during the Constitutional and Ratification Conventions. Any proper constitutional interpretation begins with the text of the Constitution. Indeed, such interpretations ideally end with the text when there is clarity as to a constitutional standard or procedure. Five provisions are material to impeachment cases, and therefore structure our analysis:

Article 1, Section 2: The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment. U.S. Const. art. I, cl. 8.

Article 1, Section 3: The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or

⁸ ALEXANDER BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS* 2 (Yale, 1962).

Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. U.S. Const. art. I, 3, cl. 6.

Article I, Section 3: Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to the Law. U.S. Const. art. I, 3, cl. 7.

Article II, Section 2: [The President] shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. U.S. Const., art. II, 2, cl. 1.

Article II, Section 4: The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. U.S. Const. art. II, 4.

For the purposes of this hearing, it is Article II, Section 4 that is the focus of our attention and, specifically, the meaning of “Treason, Bribery, or other high Crimes and Misdemeanors.” It is telling that the actual constitutional standard is contained in Article II (defining executive powers and obligations) rather than Article I (defining legislative powers and obligations). The location of that standard in Article II serves as a critical check on service as a president, qualifying the considerable powers bestowed upon the Chief Executive with the express limitations of that office. It is in this sense an executive, not legislative, standard set by the Framers. For presidents, it is essential that this condition be clear and consistent so that they are not subject to the whim of shifting majorities in Congress. That was a stated concern of the Framers and led to the adoption of the current standard and, equally probative, the express rejection of other standards.

A. Hastings and the English Model of Impeachments

It can be fairly stated that American impeachments stand on English feet.⁹ However, while the language of our standard can be directly traced to English precedent, the Framers rejected the scope and procedures of English impeachments. English impeachments are actually instructive as a model rejected by the Framers due to its history of abuse. Impeachments in England were originally quite broad in terms of the basis for impeachment as well as those subject to impeachments. Any citizen could be

⁹ Much of this history is taken from earlier work, including Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L.J. 1 (1999).

impeached, including legislators. Thus, in 1604, John Thornborough, Bishop of Bristol, was impeached for writing a book on the controversial union with Scotland.¹⁰

Thornborough was a member of the House of Lords, and his impeachment proved one of the many divisive issues between the two houses that ended in a draw. The Lords would ultimately rebuke the Bishop, but the House of Commons failed to secure a conviction. Impeachments could be tried by the Crown, and the convicted subjected to incarceration and even execution. The early standard was breathtakingly broad, including “treasons, felonies, and mischiefs done to our Lord, The King” and “divers deceits.” Not surprisingly, critics and political opponents of the Crown often found themselves the subject of such impeachments. Around 1400, procedures formed for impeachment but trials continued to serve as an extension of politics, including expressions of opposition to Crown governance by Parliament. Thus, Michael de la Pole, Earl of Suffolk, was impeached in 1386 for such offenses as appointing incompetent officers and “advising the King to grant liberties and privileges to certain persons to the hindrance of the due execution of the laws.” Others were impeached for “giving pernicious advice to the Crown” and “malversations and neglects in office; for encouraging pirates; for official oppression, extortions, and deceits; and especially for putting good magistrates out of office, and advancing bad.”¹¹

English impeachments were hardly a model system. Indeed, they were often not tried to verdict or were subject to a refusal to hold a trial by the House of Lords. Nevertheless, there was one impeachment in particular that would become part of the constitutional debates: the trial of Governor General Warren Hastings of the East India Company.¹² The trial would captivate colonial figures as a challenge to Crown authority while highlighting all of the flaws of English impeachments. Indeed, it is a case that bears some striking similarities to the allegations swirling around the Ukrainian controversy.

Hastings was first appointed as the Governor of Bengal and eventually the Governor-General in India. It was a country like Ukraine, rife with open corruption and bribery. The East India Company held quasi-governing authority and was accused of perpetuating such corruption. Burisma could not hold a candle to the East India Company. Hastings imposed British control over taxation and the courts. He intervened in military conflicts to secure concessions. His bitter feuds with prominent figures even led to a duel with British councilor Philip Francis, who Hastings shot and wounded. The record was heralded by some and vilified by others. Among the chief antagonists was Edmund Burke, one of the intellectual giants of his generation. Burke despised Hastings, who he described as the “captain-general of iniquity” and a “spider of Hell.” Indeed, even with the over-heated rhetoric of the current hearings, few comments have reached the level of Burke’s denouncement of Hastings as a “ravenous vulture devouring the

¹⁰ See COLIN G.C. TITE, *IMPEACHMENT AND PARLIAMENTARY JUDICATURE IN EARLY STUART ENGLAND* 57 (1974).

¹¹ 2 JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* § 798, at 268-69 (rev. ed. 1991).

¹² See Turley, *Senate Trials*, *supra* note 3. See also Jonathan Turley, *Adam Schiff’s Capacious Definition Of Bribery Was Tried In 1787*, WALL ST. J., Nov. 28, 2019.

carcasses of the dead.” Burke led the impeachment for bribery and other forms of abuse of power – proceedings that would take seven years. Burke made an observation that is also strikingly familiar in the current controversy. He insisted in a letter to Francis that the case came down to intent and Hastings’ defenders would not except any evidence as incriminating:

“Most of the facts, upon which we proceed, are confessed; some of them are boasted of. The labour will be on the criminality of the facts, where proof, as I apprehend, will not be contested. Guilt resides in the intention. But as we are before a tribunal, which having conceived a favourable opinion of Hastings (or what is of more moment, very favourable wishes for him) they will not judge of his intentions by the acts, but they will qualify his Acts by his presumed intentions. It is on this preposterous mode of judging that he had built all the Apologies for his conduct, which I have seen. Excuses, which in any criminal court would be considered with pity as the Straws, at which poor wretches drowning will catch, and which are such as no prosecutor thinks is worth his while to reply to, will be admitted in such a House of Commons as ours as a solid defence ... We know that we bring before a bribed tribunal a prejudged cause. In that situation all that we have to do is make a case strong in proof and in importance, and to draw inferences from it justifiable in logic, policy and criminal justice. As to all the rest, it is vain and idle.”¹³

That is an all-too-familiar refrain for the current controversy. Impeachment cases often come down to a question of intent, as does the current controversy. It also depends greatly on the willingness of the tribunal to consider the facts in a detached and neutral manner. Burke doubted the ability of the “bribed tribunal” to guarantee a fair trial—a complaint heard today on both sides of the controversy. Yet, ultimately for Burke, the judgment of history has not been good. While many of us think Burke truly believed the allegations against Hastings, Hastings was eventually acquitted and Burke ended up being censured after the impeachment.

Ultimately, the United States would incorporate the language of “high crimes and misdemeanors” from English impeachments, but fashion a very different standard and process for such cases.

B. The American Model of Impeachment

Colonial impeachments did occur with the same dubious standards and procedures that marked the English impeachments. Indeed, impeachments were used in the absence of direct political power. Much like parliamentary impeachments, the colonial impeachments became a way of contesting Crown governance. Thus, the first colonial impeachment in 1635 targeted Governor John Harvey of Virginia for

¹³ Letter from Edmund Burke to Philip Frances, *in* 5 THE CORRESPONDENCE OF EDMUND BURKE 241 (Holden Furber ed., 1965).

misfeasance in office, including tyrannical conduct in office. Likewise, the 1706 impeachment of James Logan, Pennsylvania provincial agent and secretary of the Pennsylvania council, was based largely on political grievances including “a wicked intent to create Divisions and Misunderstandings between him and the people.” These colonial impeachments often contained broad or ill-defined grounds for impeachment for such things as “loss of public trust.” Some impeachments involved Framers, from John Adams to Benjamin Franklin, and most were certainly known to the Framers as a whole.

Given this history, when the Framers met in Philadelphia to craft the Constitution, impeachment was understandably raised, including the Hastings impeachment, which had yet to go to trial in England. However, there was a contingent of Framers that viewed any impeachment of a president as unnecessary and even dangerous. Charles Pinckney of South Carolina, Gouverneur Morris of Pennsylvania, and Rufus King of Massachusetts opposed such a provision.¹⁴ That opposition may have been due to the history of the use of impeachment for political purposes in both England and the colonies that I just discussed. However, they were ultimately overruled by the majority who wanted this option included into the Constitution. As declared by William Davie of North Carolina, impeachment was viewed as the “essential security for the good behaviour of the Executive.”

Unlike the English impeachments, the American model would be limited to judicial and executive officials. The standard itself however led to an important exchange between George Mason and James Madison:

“Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offense. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined - As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments.

He movd. to add after “bribery” “or maladministration.”

Mr. Gerry seconded him -

Mr. Madison[.] So vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr. Govr Morris[.] It will not be put in force & can do no harm - An election of every four years will prevent maladministration.

Col. Mason withdrew “maladministration” & substitutes “other high crimes & misdemeanors” (“agst. the State”).

¹⁴ Turley, *Senate Trials*, *supra* note 3, at 34.

On the question thus altered [Ayes - 8; Noes - 3]”¹⁵

In the end, the Framers would reject various prior standards including “corruption,” “obtaining office by improper means,” betraying his trust to a foreign power, “negligence,” “perfidy,” “peculation,” and “oppression.” Perfidy (or lying) and peculation (self-dealing) are particularly interesting in the current controversy given similar accusations against President Trump in his Ukrainian comments and conduct.

It is worth noting that, while Madison objected to the inclusion of maladministration in the standard in favor of the English standard of “high crimes and misdemeanors,” he would later reference maladministration as something that could be part of an impeachment and declared that impeachment could address “the incapacity, negligence or perfidy of the chief Magistrate.”¹⁶ Likewise, Alexander Hamilton referred to impeachable offenses as “those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.”¹⁷ These seemingly conflicting statements can be reconciled if one accepts that some cases involving high crimes and misdemeanors can include such broader claims. Indeed, past impeachments have alleged criminal acts while citing examples of lying and violations of public trust. Many violations of federal law by presidents occur in the context of such perfidy and peculation – aspects that help show the necessity for the extreme measure of removal. Indeed, such factors can weigh more heavily in the United States Senate where the question is not simply whether impeachable offenses have occurred but whether such offenses, if proven, warrant the removal of a sitting president. However, the Framers clearly stated they adopted the current standard to avoid a vague and fluid definition of a core impeachable offense. The structure of the critical line cannot be ignored. The Framers cited two criminal offenses—treason and bribery—followed by a reference to “other high crimes and misdemeanors.” This is in contrast to when the Framers included “Treason, Felony, or other Crime” rather than “high crime” in the Extradition Clause of Article IV, Section 2. The word “other” reflects an obvious intent to convey that the

¹⁵ 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 550 (Max Farrand ed., 1937).

¹⁶ Madison noted that there are times when the public should not have to wait for the termination of a term to remove a person unfit for the office. Madison explained:

“[It is] indispensable that some provision should be made for defending the Community against the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression... In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.”

See 2 RECORDS, *supra* note 15, at 65-66. Capacity issues however have never been the subject of presidential impeachments. That danger was later address in the Twenty-Fifth Amendment.

¹⁷ THE FEDERALIST NO. 65, *supra* note 2, at 396.

impeachable acts other than bribery and treason were meant to reach a similar level of gravity and seriousness (even if they are not technically criminal acts). This was clearly a departure from the English model, which was abused because of the dangerous fluidity of the standard used to accuse officials. Thus, the core of American impeachments was intended to remain more defined and limited.

It is a discussion that should weigh heavily on the decision facing members of this House.

III. PRIOR PRESIDENTIAL IMPEACHMENTS AND THEIR RELEVANCE TO THE CURRENT INQUIRY

As I have stressed, it is possible to establish a case for impeachment based on a non-criminal allegation of abuse of power. However, although criminality is not required in such a case, clarity is necessary. That comes from a complete and comprehensive record that eliminates exculpatory motivations or explanations. The problem is that this is an exceptionally narrow impeachment resting on the thinnest possible evidentiary record. During the House Intelligence Committee proceedings, Democratic leaders indicated that they wanted to proceed exclusively or primarily on the Ukrainian allegations and wanted a vote by the end of December. I previously wrote that the current incomplete record is insufficient to sustain an impeachment case, a view recently voiced by the New York Times and other sources.¹⁸

Even under the most flexible English impeachment model, there remained an expectation that impeachments could not be based on presumption or speculation on key elements. If the underlying allegation could be non-criminal, the early English impeachments followed a format similar to a criminal trial, including the calling of witnesses. However, impeachments were often rejected by the House of Lords as facially inadequate, politically motivated, or lacking sufficient proof. Between 1626 and 1715, the House of Lords only held trials to verdict in five of the fifty-seven impeachment cases brought. For all its failings, The House of Lords still required evidence of real offenses supported by an evidentiary record for impeachment. Indeed, impeachments were viewed as more demanding than bills of attainder.

A bill of attainder¹⁹ involves a legislative form of punishment. While a person could be executed under a bill of attainder, it was still more difficult to sustain an

¹⁸ Editorial, *Sondland Has Implicated the President and His Top Men*, N.Y. TIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/11/20/opinion/sondland-impeachment-hearings.html> (“It is essential for the House to conduct a thorough inquiry, including hearing testimony from critical players who have yet to appear. Right now, the House Intelligence Committee has not scheduled testimony from any witnesses after Thursday. That is a mistake. No matter is more urgent, but it should not be rushed — for the protection of the nation’s security, and for the integrity of the presidency, and for the future of the Republic.”).

¹⁹ I also litigated this question as counsel in the successful challenge to the Elizabeth Morgan Act, which was struck down as a bill of attainder. *See* *Foretich v. United States*, 351 F.3d 1198 (D.C. Cir. 2003).

impeachment action. That difficulty is clearly shown by the impeachment of Thomas Wentworth, Earl of Strafford. Strafford was a key advisor to King Charles I, and was impeached in 1640 for the subversion of “the Fundamental Laws and Government of the Realms” and endeavoring “to introduce Arbitrary and Tyrannical Government against Law.” Strafford contested both the underlying charges and the record. The House of Commons responded by dropping the impeachment and adopting a bill of attainder. In doing so, the House of Commons avoided the need to establish a complete evidentiary record and Strafford was subject to the bill of attainder and executed. Fortunately, the Framers had the foresight to prohibit bills of attainder. However, the different treatment between the two actions reflects the (perhaps counterintuitive) difference in the expectations of proof. Impeachments were viewed as requiring a full record subjected to adversarial elements of a trial.

In the current case, the record is facially insufficient. The problem is not simply that the record does not contain direct evidence of the President stating a *quid pro quo*, as Chairman Schiff has suggested. The problem is that the House has not bothered to subpoena the key witnesses who would have such direct knowledge. This alone sets a dangerous precedent. A House in the future could avoid countervailing evidence by simply relying on tailored records with testimony from people who offer damning presumptions or speculation. It is not enough to simply shrug and say this is “close enough for jazz” in an impeachment. The expectation, as shown by dozens of failed English impeachments, was that the lower house must offer a complete and compelling record. That is not to say that the final record must have a confession or incriminating statement from the accused. Rather, it was meant to be a complete record of the key witnesses that establishes the full range of material evidence. Only then could the body reach a conclusion on the true weight of the evidence—a conclusion that carries sufficient legitimacy with the public to justify the remedy of removal.

The history of American presidential impeachment shows the same restraint even when there were substantive complaints against the conduct of presidents. Indeed, some of our greatest presidents could have been impeached for acts in direct violation of their constitutional oaths of office. Abraham Lincoln, for example, suspended habeas corpus during the Civil War despite the fact that Article 1, Section 9, of the Constitution leaves such a suspension to Congress “in Cases of Rebellion or Invasion the public Safety may require it.” The unconstitutional suspension of the “Great Writ” would normally be viewed as a violation of the greatest constitutional order. Other presidents faced impeachment inquiries that were not allowed to proceed, including John Tyler, Grover Cleveland, Herbert Hoover, Harry Truman, Richard Nixon, Ronald Reagan, and George Bush. President Tyler faced some allegations that had some common elements to our current controversy. Among the nine allegations raised by Rep. John Botts of Virginia, Tyler was accused of initiating an illegal investigation of the custom house in New York, withholding information from government agents, withholding actions necessary to “the just operation of government” and “shameless duplicity, equivocation, and falsehood, with his late cabinet and Congress.” Likewise, Cleveland was accused of high crimes and misdemeanors that included the use of the appointment power for political purposes (including influencing legislation) against the nation’s interest and “corrupt[ing] politics through the interference of Federal officeholders.” Truman faced an impeachment call over a variety of claims, including “attempting to disgrace the Congress of the United

States”; “repeatedly withholding information from Congress”; and “making reckless and inaccurate public statements, which jeopardized the good name, peace, and security of the United States.”

These efforts reflect the long history of impeachment being used as a way to amplify political differences and grievances. Such legislative throat clearing has been stopped by the House by more circumspect members before articles were drafted or passed. This misuse of impeachment has been plain during the Trump Administration. Members have called for removal based on a myriad of objections against this President. Rep. Al Green (D-Texas) filed a resolution in the House of Representatives for impeachment after Trump called for players kneeling during the national anthem to be fired.²⁰ Others called for impeachment over President Trump’s controversial statement on the Charlottesville protests.²¹ Rep. Steve Cohen’s (D-Tenn.) explained that “If the president can’t recognize the difference between these domestic terrorists and the people who oppose their anti-American attitudes, then he cannot defend us.”²² These calls have been joined by an array of legal experts who have insisted that clear criminal conduct by Trump, including treason, have been shown in the Russian investigation. Professor Lawrence Tribe argued that Trump’s pardoning of former Arizona sheriff Joe Arpaio is clearly impeachable and could even be overturned by the courts.²³ Richard Painter, chief White House ethics lawyer for George W. Bush and a professor at the University of Minnesota Law School, declared that President Trump’s participation in fundraisers for Senators, a common practice of all presidents in election years, is impeachable. Painter insists that any such fundraising can constitute “felony bribery” since these senators will likely sit in judgment in any impeachment trial. Painter declared “This is a bribe. Any other American who offered cash to the jury before a trial would go to prison for felony

²⁰ Nicole Cobler, *Texas lawmaker calls for impeachment vote over Trump’s NFL Remarks*, DALLAS MORNING NEWS (Sept. 26, 2017, 12:08 PM), <https://www.dallasnews.com/news/politics/2017/09/26/texas-lawmaker-calls-for-impeachment-vote-over-trump-s-nfl-remarks/>.

²¹ Jessica Estepa, *Democratic lawmaker to file articles of impeachment over Trump’s Charlottesville response*, USA TODAY (Aug. 17, 2017, 11:58 AM), <https://www.usatoday.com/story/news/politics/onpolitics/2017/08/17/democratic-lawmaker-to-file-articles-of-impeachment-over-trump-charlottesville-response/575892001/>.

²² Michael Collins & Daniel Connolly, *Rep. Cohen to file articles of impeachments against Trump*, THE TENNESSEAN (Aug. 17, 2017, 9:21 AM), <https://www.tennessean.com/story/news/2017/08/17/steve-cohen-impeach-president-trump-charlottesville/575764001/>.

²³ Laurence H. Tribe & Ron Fein, *‘Sheriff Joe’ is back in court. The impeachment inquiry should pay attention*, BOS. GLOBE (Oct. 23, 2019, 3:30 PM), <https://www.bostonglobe.com/opinion/2019/10/22/sheriff-joe-back-court-the-impeachment-inquiry-should-pay-attention/1Yv9YZmzwL93wP9gYIFj7J/story.html>.

bribery. But he can get away with it?”²⁴ CNN Legal Analyst Jeff Toobin declared, on the air, that Trump could be impeached solely on the basis of a tweet in which Trump criticized then Attorney General Jeff Sessions for federal charges brought against two Republican congressman shortly before the mid-term elections.²⁵ CNN Legal Analyst and former White House ethics attorney Norm Eisen claimed before the release of the Mueller report (which ultimately rejected any knowing collusion or conspiracy by Trump officials with Russian operatives) that the criminal case for collusion was “devastating” and that Trump is “colluding in plain sight.”²⁶ I have known many of these members and commentators for years on a professional or personal basis. I do not question their sincere beliefs on the grounds for such impeachments, but we have fundamental differences in the meaning and proper use of this rarely used constitutional device.

As I have previously written,²⁷ such misuses of impeachment would convert our process into a type of no-confidence vote of Parliament. Impeachment has become an impulse buy item in our raging political environment. Slate has even featured a running “Impeach-O-Meter.” Despite my disagreement with many of President Trump’s policies and statements, impeachment was never intended to be used as a mid-term corrective option for a divisive or unpopular leader. To its credit, the House has, in all but one case, arrested such impulsive moves before the transmittal of actual articles of impeachment to the Senate. Indeed, only two cases have warranted submission to the Senate and one was a demonstrative failure on the part of the House in adhering to the impeachment standard. Those two impeachments—and the third near-impeachment of Richard Nixon—warrant closer examination and comparison in the current environment.

A. The Johnson Impeachment

The closest of the three impeachments to the current (Ukrainian-based) impeachment would be the 1868 impeachment of Andrew Johnson. The most obvious point of comparison is the poisonous political environment and the controversial style of

²⁴ Jason Lemon, *Trump Is Committing ‘Felony Bribery’ By Giving Cash To GOP Senators Ahead Of Impeachment Trial: Ex-Bush Ethics Lawyer*, NEWSWEEK (Oct. 31, 2019, 10:28 AM), <https://www.newsweek.com/trump-committing-felony-bribery-giving-fundraising-cash-gop-senators-ahead-impeachment-trial-1468946>.

²⁵ Veronica Stracqualursi, *Toobin: ‘Trump’s attack against Sessions ‘an ‘impeachable offense’*, CNN (Sept. 4, 2018, 11:09 AM), <https://www.cnn.com/2018/09/04/politics/jeffrey-toobin-trump-sessions-tweet-cnn/index.html>.

²⁶ Ronn Blitzer, *Former Obama Ethics Lawyer Says Trump is Now ‘Colluding In Plain Sight’*, LAW & CRIME (Feb. 27, 2018, 9:40 AM), <https://lawandcrime.com/high-profile/fmr-obama-ethics-lawyer-says-trump-is-now-colluding-in-plain-sight/>.

²⁷ Jonathan Turley, *What’s worse than leaving Trump in office? Impeaching him*, WASH. POST (Aug. 24, 2017, 11:05 AM), <https://www.washingtonpost.com/news/posteverything/wp/2017/08/24/whats-worse-than-leaving-trump-in-office-impeaching-him/>.

the president. As a Southerner who ascended to the presidency as a result of the Lincoln assassination, Johnson faced an immediate challenge even before his acerbic and abrasive personality started to take its toll. Adding to this intense opposition to Johnson was his hostility to black suffrage, racist comments, and occupation of Southern states. He was widely ridiculed as the “accidental President” and specifically described by Representative John Farnsworth of Illinois, as an “ungrateful, despicable, besotted, traitorous man.” Woodrow Wilson described that Johnson “stopped neither to understand nor to persuade other men, but struck forward with crude, uncompromising force for his object, attempting mastery without wisdom or moderation.”²⁸ Johnson is widely regarded as one of the worst presidents in history—a view that started to form significantly while he was still in office.

The Radical Republicans in particular opposed Johnson, who was seen as opposing retributive measures against Southern states and full citizenship rights for freed African Americans. Johnson suggested hanging his political opponents and was widely accused of lowering the dignity of his office. At one point, he even reportedly compared himself to Jesus Christ. Like Trump, Johnson’s inflammatory language was blamed for racial violence against both blacks and immigrants. He was also blamed for reckless economic policies. He constantly obstructed the enforcement of federal laws and espoused racist views that even we find shocking for that time. Johnson also engaged in widespread firings that were criticized as undermining the functioning of government—objections not unlike those directed at the current Administration.

While Johnson’s refusal to follow federal law and his efforts to disenfranchise African Americans would have been viewed as impeachable (Johnson could not have worked harder to counterpunch his way into an impeachment), the actual impeachment proved relatively narrow. Radical Republicans and other members viewed Secretary of War Edwin M. Stanton as an ally and a critical counterbalance to Johnson. Johnson held the same view and was seen as planning to sack Stanton. To counter such a move (or lay a trap for impeachment), the Radical Republicans passed the Tenure of Office Act to prohibit a President from removing a cabinet officer without the appointment of a successor by the Senate. To facilitate an impeachment, the drafters included a provision stating that any violation of the Act would constitute a “high misdemeanor.” Violations were criminal and punishable “upon trial and conviction . . . by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding ten years, or both.”²⁹ The act was repealed in 1887 and the Supreme Court later declared that its provisions were presumptively constitutionally invalid.

Despite the facially invalid provisions, Johnson was impeached on eleven articles of impeachment narrowly crafted around the Tenure in Office Act. Other articles added intemperate language to unconstitutional limitations, impeaching Johnson for such grievances as trying to bring Congress “into disgrace, ridicule, hatred, contempt, and reproach” and making “with a loud voice certain intemperate, inflammatory, and scandalous harangues” Again, the comparison to the current impeachment inquiry is

²⁸ WOODROW WILSON, *A HISTORY OF THE AMERICAN PEOPLE*, vol. 5 (New York: Harper and Bros., 1903).

²⁹ Tenure in Office Act, ch. 154, 14 Stat. 430, 431 (1867).

obvious. After two years of members and commentators declaring a host of criminal and impeachable acts, the House is moving on the narrow grounds of an alleged *quid pro quo* while emphasizing the intemperate and inflammatory statements of the president. The rhetoric of the Johnson impeachment quickly outstripped its legal basis. In his presentation to the Senate, House manager John Logan expressed the view of President Johnson held by the Radical Republicans:

Almost from the time when the blood of Lincoln was warm on the floor of Ford's Theatre, Andrew Johnson was contemplating treason to all the fresh fruits of the overthrown and crushed rebellion, and an affiliation with and a practical official and hearty sympathy for those who had cost hecatombs of slain citizens, billions of treasure, and an almost ruined country. His great aim and purpose has been to subvert law, usurp authority, insult and outrage Congress, reconstruct the rebel States in the interests of treason... and deliver all snatched from wreck and ruin into the hands of unrepentant, but by him pardoned, traitors.

The Senate trial notably included key pre-trial votes on the evidentiary and procedural rules. The senators unanimously agreed that the trial should be judicial, not political, in character, but Johnson's opponents set about stacking the rules to guarantee easy conviction. On these votes, eleven Republicans broke from their ranks to insist on fairness for the accused. They were unsuccessful. Most Republican members turned a blind eye to the dubious basis for the impeachment. Their voters hated Johnson and cared little about the basis for his removal. However, Chief Justice Chase and other senators saw the flaws in the impeachment and opposed conviction. This included seven Republican senators—William Pitt Fessenden, James Grimes, Edmund Ross, Peter Van Winkle, John B. Henderson, Joseph Fowler, and Lyman Trumbull—who risked their careers to do the right thing, even for a president they despised. They became known as the “Republican Recusants.” Those seven dissenting Republicans represented a not-insignificant block of the forty-two Republican members voting in an intensely factional environment. Taking up the eleventh article as the threshold vote on May 16, 1868, 35 senators voted to convict while 19 voted to acquit—short of the two-thirds majority needed. Even after a ten-day delay with intense pressure on the defecting Republican members, two additional articles failed by the same vote and the proceedings were ended. The system prevailed despite the failure of a majority in the House and a majority of the Senate.

The comparison of the Johnson and Trump impeachment inquiries is striking given the similar political environments and the controversial qualities of the two presidents. Additionally, there was another shared element: speed. This impeachment would rival the Johnson impeachment as the shortest in history, depending on how one counts the relevant days. In the Johnson impeachment, Secretary of War Edwin Stanton was dismissed on February 21, 1868, and a resolution of impeachment was introduced that very day. On February 24, 1868, the resolution passed and articles of impeachment prepared. On March 2-3, 1868, eleven articles were adopted. The members considered the issue to be obvious in the Johnson case since the President had openly violated a statute that expressly defined violations as “high misdemeanors.” Of course, the scrutiny

of the underlying claims had been ongoing before the firing and this was the third attempted impeachment. Indeed, Congress passed legislation on March 2, 1867—one year before the first nine articles were adopted. Moreover, Johnson actually relieved Stanton of his duties in August 1867, and the House worked on the expected impeachment during this period. In December 1867, the House failed to adopt an impeachment resolution based on many of the same grievances because members did not feel that an actual crime had been committed. There were three prior impeachments with similar elements. When Stanton was actually fired, Johnson’s leading opponent Rep. Thaddeus Stevens of Pennsylvania (who had been pushing for impeachment for over a year) confronted the House members and demanded “What good did your moderation do you? If you don’t kill the beast, it will kill you.” With the former termination and the continued lobbying of Stevens, the House again moved to impeach and secured the votes. Thus, the actual resolution and adoption dates are a bit misleading. Yet, Johnson may technically remain the shortest investigation in history. However, whichever impeachment deserves the dubious distinction, history has shown that short impeachments are generally not strong impeachments.

While generally viewed as an abusive use of impeachment by most legal and historical scholars, the Johnson impeachment has curiously been cited as a basis for the current impeachment. Some believe that it is precedent that presidents can be impeached over purely “political disagreements.”³⁰ It is a chilling argument. Impeachment is not the remedy for political disagreement. The Johnson impeachment shows that the system can work to prevent an abusive impeachment even when the country and the Congress despise a president. The lasting lesson is that in every time and in every Congress, there remain leaders who can transcend their own insular political interests and defy the demands of some voters to fulfill their oaths to uphold the Constitution. Of course, the Constitution cannot take credit for such profiles of courage. Such courage rests within each member but the Constitution demands that each member summon that courage when the roll is called as it was on May 16, 1868.

B. The Nixon Inquiry

The Nixon “impeachment” is often referenced as the “gold standard” for impeachments even though it was not an actual impeachment. President Richard Nixon resigned before the House voted on the final articles of impeachment. Nevertheless, the Nixon inquiry was everything that the Johnson impeachment was not. It was based on an array of clearly defined criminal acts with a broad evidentiary foundation. That record was supported by a number of key judicial decisions on executive privilege claims. It is a worthy model for any presidential impeachment. However, the claim by Chairman Schiff that the Ukrainian controversy is “beyond anything Nixon did” is wildly at odds with the

³⁰ See generally Jonathan Turley, *What’s worse than leaving Trump in office? Impeaching him*, WASH. POST (Aug. 24, 2017, 11:05 AM), <https://www.washingtonpost.com/news/posteverything/wp/2017/08/24/whats-worse-than-leaving-trump-in-office-impeaching-him/>.

historical record.³¹ The allegations in Nixon began with a felony crime of burglary and swept to encompass an array of other crimes involving political slush funds, payments of hush money, maintenance of an enemies list, directing tax audits of critics, witness intimidation, multiple instances of perjury, and even an alleged kidnapping. Ultimately, there were nearly 70 officials charged and four dozen of them found guilty. Nixon was also named as an unindicted conspirator by a grand jury. The convicted officials include former Attorney General John N. Mitchell (perjury); former Attorney General Richard Kleindienst (contempt of court); former Deputy Director of the Committee to Re-elect The President Jeb Stuart Magruder (conspiracy to the burglary); former Chief of Staff H.R. Haldeman (conspiracy to the burglary, obstruction of justice, and perjury); former counsel and Assistant to the President for Domestic Affairs to Nixon John Ehrlichman (conspiracy to the burglary, obstruction of justice, and perjury); former White House Counsel John W. Dean II (obstruction of justice); and former special counsel to the President Charles Colson (obstruction of justice). Many of the Watergate defendants went to jail, with some of the defendants sentenced to as long as 35 years. The claim that the Ukrainian controversy eclipses Watergate is unhinged from history.

While the Ukrainian controversy could still establish impeachable conduct, it undermines that effort to distort the historical record to elevate the current record. Indeed, the comparison to the Nixon inquiry only highlights the glaring differences in the underlying investigations, scope of impeachable conduct, and evidentiary records with the current inquiry. It is a difference between the comprehensive and the cursory; the proven and the presumed. In other words, it is not a comparison the House should invite if it is serious about moving forward in a few weeks on an impeachment based primarily on the Ukrainian controversy. The Nixon inquiry was based on the broadest and most developed evidentiary in any impeachment. There were roughly 14 months of hearings – not 10 weeks. There were scandalous tape recordings of Nixon and a host of criminal pleas and prosecutions. That record included investigations in both the House and the Senate as well as investigations by two special prosecutors, Archibald Cox and Leon Jaworski, including grand jury material. While the inquiry proceeded along sharply partisan lines, the vote on the proposed articles of impeachment ultimately included the support of some Republican members who, again, showed that principle could transcend politics in such historic moments.

Three articles were approved in the Nixon inquiry alleging obstruction of justice, abuse of power, and defiance of committee subpoenas. Two articles of impeachment based on usurping Congress, lying about the bombing of Cambodia, and tax fraud, were rejected on a bipartisan basis. While the Nixon impeachment had the most developed record and comprehensive investigation, I am not a fan of the structure used for the articles. The Committee evaded the need for specificity in alleging crimes like obstruction of justice while listing a variety of specific felonies after a catchall line declaring that “the means used to implement this course of conduct or plan included one

³¹ See Jonathan Turley, *Watergate line speaks volumes about weak impeachment case*, THE HILL (Nov. 30, 2019, 10:00 AM), <https://thehill.com/opinion/judiciary/472461-watergate-line-speaks-volumes-about-weak-impeachment-case>.

or more of the following.” Given its gravity, impeachment should offer concrete and specific allegations in the actual articles. This is the case in most judicial impeachments.

The impeachment began with a felony when “agents of the Committee for the Re-election of the President committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence.” The first article of impeachment reflected the depth of the record and scope of the alleged crimes in citing Nixon’s personal involvement in the obstruction of federal and congressional investigations. The article included a host of specific criminal acts including lying to federal investigators, suborning perjury, and witness tampering. The second article of impeachment also alleged an array of criminal acts that were placed under the auspices of abuse of power. The article addressed Nixon’s rampant misuse of the IRS, CIA, and FBI to carry out his effort to conceal the evidence and crimes following the break-in. They included Nixon’s use of federal agencies to carry out “covert and unlawful activities” and how he used his office to block the investigation of federal agencies. The third article concerned defiance of Congress stemming from his refusal to turn over material to Congress.

These articles were never subjected to a vote of the full House. In my view, they were flawed in their language and structure. As noted earlier, there was a lack of specificity on the alleged acts due to the use of catch-all lists of alleged offenses. However, my greatest concern rests with Article 3. That article stated:

“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.”

This Article has been cited as precedent for impeaching a president whenever witnesses or documents are refused in an impeachment investigation, even under claims of executive immunities or privileges. The position of Chairman Peter Rodino was that Congress had the sole authority to decide what material had to be produced in such an investigation. That position would seem to do precisely what the article accused Nixon of doing: “assuming to [itself] functions and judgments” necessary for the Executive Branch. There is a third branch that is designated to resolve conflicts between the two political branches. In recognition of this responsibility, the Judiciary ruled on the Nixon disputes. In so doing, the Supreme Court found executive privilege claims are legitimate grounds to raise in disputes with Congress but ruled such claims can be set aside in the balancing of interests with Congress. What a president cannot do is ignore a final judicial order on such witnesses or evidence.

Putting aside my qualms with the drafting of the articles, the Nixon impeachment remains well-supported and well-based. He would have been likely impeached and removed, though I am not confident all of the articles would have been approved. I have particular reservations over the third article and its implications for presidents seeking judicial review. However, the Nixon inquiry had a foundation that included an array of criminal acts and a record that ultimately reached hundreds of thousands of pages. In the

end, Nixon was clearly guilty of directing a comprehensive conspiracy that involved slush funds, enemy lists, witness intimidation, obstruction of justice, and a host of other crimes. The breathtaking scope of the underlying criminality still shocks the conscience. The current controversy does not, as claimed, exceed the misconduct of Nixon, but that is not the test. Hopefully, we will not face another president responsible for this range of illegal conduct. Yet, that does not mean that other presidents are not guilty of impeachable conduct even if it does not rise to a Nixonian level. In other words, there is no need to out-Nixon Nixon. Impeachable will do. The question is whether the current allegation qualifies as impeachable, not uber-impeachable.

C. The Clinton Impeachment.

The third and final impeachment is of course the Clinton impeachment. That hearing involved 19 academics and, despite the rancor of the times, a remarkably substantive and civil intellectual exchange on the underlying issues. These are issues upon which reasonable people can disagree and the hearing remains a widely cited source on the historical and legal foundations for the impeachment standard. Like Johnson's impeachment, the Clinton impeachment rested on a narrow alleged crime: perjury. The underlying question for that hearing is well suited for today's analysis. We focused on whether a president could be impeached for lying under oath in a federal investigation run by an independent counsel. There was not a debate over whether Clinton lied under oath. Indeed, a federal court later confirmed that Clinton had committed perjury even though he was never charged. Rather, the issue was whether some felonies do not "rise to the level of impeachment" and, in that case, the alleged perjury and lying to federal investigators concerning an affair with White House intern, Monica Lewinsky.

My position in the Clinton impeachment hearing was simple and remains unchanged. Perjury is an impeachable offense. Period. It does not matter what the subject happened to be. The President heads the Executive Branch and is duty bound to enforce federal law including the perjury laws. Thousands of citizens have been sentenced to jail for the same act committed by President Clinton. He could refuse to answer the question and face the consequences, or he could tell the truth. What he could not do is lie and assume he had license to commit a crime that his own Administration was prosecuting others for. Emerging from that hearing was an "executive function" theory limiting "high crimes and misdemeanors" to misconduct related to the office of the President or misuse of official power.³² While supporters of the executive function theory recognized that this theory was not absolute and that some private conduct can be impeachable, it was argued that Clinton's conduct was personal and outside the realm of "other high crimes and misdemeanors."³³ This theory has been criticized in other articles. This threshold

³² Jonathan Turley, *The "Executive Function" Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999).

³³ Floor Debate, Clinton Impeachments, December 18, 1998 ("Perjury on a private matter, perjury regarding sex, is not a great and dangerous offense against the nation. It is not an abuse of uniquely presidential power. It does not threaten our form of government. It is not an impeachable offense.") (statement Rep. Jerrold Nadler, D., N.Y.).

argument, however, would appear again in the Senate trial. Notably, the defenders of the President argued that the standard of “high crimes and misdemeanors” should be treated differently for judicial, as opposed to presidential, officers. This argument was compelled by the fact that the Senate had previously removed Judge Claiborne for perjury before a grand jury and removed Judge Hastings, who had actually been acquitted on perjury charges by a court. I have previously written against this executive function theory of impeachable offenses.³⁴

The House Judiciary Committee delivered four articles of impeachment on a straight partisan vote. Article One alleged perjury before the federal grand jury. Article Two alleged perjury in a sexual harassment case. Article Three alleged obstruction of justice through witness tampering. Article Four alleged perjury in the President’s answers to Congress. On December 19, 1998, the House approved two of the four articles of impeachment: perjury before the grand jury and obstruction of justice. In both votes, although Republicans and Democrats crossed party lines, the final vote remained largely partisan. The impeachment was technically initiated on October 8, 1998 and the articles approved on December 19, 1998.

The Senate trial of President Clinton began on January 7, 1999, with Chief Justice William H. Rehnquist taking the oath. The rule adopted by the Senate created immediate problems for the House managers. The rules specifically required the House managers to prove their case for witnesses and imposed a witness-by-witness Senate vote on the House managers. Because the Independent Counsel had supplied an extensive record with testimony from key witnesses, the need to call witnesses like the Nixon hearings was greatly reduced. For that reason, the House moved quickly to the submission of articles of impeachment after the hearing of experts. However, the Senate only approved three witnesses, described by House manager and Judiciary Committee Chairman Henry Hyde as “a pitiful three.” It proved fateful. One of the witnesses not called was Lewinsky herself. Years later, Lewinsky revealed (as she might have if called as a witness) that she was told to lie about the relationship by close associates of President Clinton. In 2018, Lewinsky stated Clinton encouraged her to lie to the independent counsel, an allegation raising the possibility of a variety of crimes as well as supporting the articles of impeachment.³⁵ The disclosure many years after the trial is a cautionary tale for future impeachments, as the denial of key witnesses from the Senate trial can prove decisive.

³⁴ Jonathan Turley, *The “Executive Function” Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999).

³⁵ Jonathan Turley, *Lewinsky interview renews questions of Clinton crimes*, THE HILL (Nov. 26, 2018, 12:00 PM), <https://thehill.com/opinion/white-house/418237-lewinsky-interview-renews-questions-of-clinton-crimes>. Lewinsky said on the A&E documentary series “The Clinton Affair” that Clinton phoned her at 2:30 a.m. one morning in late 1997 to tell her she was on witness list for Jones’ civil suit against him. She said she was “petrified” and that “Bill helped me lock myself back from that and he said I could probably sign an affidavit to get out of it.” While he did not directly tell her to lie, she noted he did not tell her to tell the truth and that the conversation was about signing an affidavit “to get out of it.” Lewinsky went into details on how Clinton arranged for Lewinsky to meet with his close adviser and attorney Vernon Jordan. Jordan then

The Clinton impeachment was narrow but based on underlying criminal conduct largely investigated by an Independent Counsel. The allegation of perjury of a sitting president was supported by a long investigation and extensive record. Indeed, the perjury by Clinton was clear and acknowledged even by some of his supporters. The flaws in the Clinton impeachment emerged from the highly restrictive and outcome determinative rules imposed by the Senate. In comparison, the Trump impeachment inquiry has raised a number of criminal acts but each of those alleged crimes are undermined by legal and evidentiary deficiencies. As discussed below, the strongest claim is for a non-criminal abuse of power if a quid pro quo can be established on the record. That deficiency should be addressed before any articles are reported to the floor of the House.

D. Summary

A comparison of the current impeachment inquiry with the three prior presidential inquiries puts a few facts into sharp relief. First, this is a case without a clear criminal act and would be the first such case in history if the House proceeds without further evidence. In all three impeachment inquiries, the commission of criminal acts by Johnson, Nixon, and Clinton were clear and established. With Johnson, the House effectively created a trapdoor crime and Johnson knowingly jumped through it. The problem was that the law—the Tenure in Office Act—was presumptively unconstitutional and the impeachment was narrowly built around that dubious criminal act. With Nixon, there were a host of alleged criminal acts and dozens of officials who would be convicted of felonies. With Clinton, there was an act of perjury that even his supporters acknowledged was a felony, leaving them to argue that some felonies “do not rise to the level” of an impeachment. Despite clear and established allegations of criminal acts committed by the president, narrow impeachments like Johnson and Clinton have fared badly. As will be discussed further below, the recently suggested criminal acts related to the Ukrainian controversy are worse off, being highly questionable from a legal standpoint and far from established from an evidentiary standpoint.

Second, the abbreviated period of investigation into this controversy is both problematic and puzzling. Although the Johnson impeachment progressed quickly after the firing of the Secretary of War, that controversy had been building for over a year and was actually the fourth attempted impeachment. Moreover, Johnson fell into the trap laid a year before in the Tenure of Office Act. The formal termination was the event that triggered the statutory language of the act and thus there was no dispute as to the critical facts. We have never seen a controversy arise for the first time and move to an

arranged for Lewinsky to be represented by Frank Carter, who drafted a false affidavit denying any affair. Lewinsky, who had virtually no work history or relevant background, was offered a job with Revlon, where Jordan was a powerful member of the board of directors. Lewinsky said, “Frank Carter explained to me that if I signed an affidavit denying having had an intimate relationship with the president it might mean I would not have to be deposed in the Paula Jones case.” Those details – including Clinton’s encouragement for her to sign the affidavit and contracts after she became a witness – were never shared at the Senate trial.

impeachment in such a short period. Nixon and Clinton developed over many months of investigation and a wide array of witness testimony and grand jury proceedings. In the current matter, much remains unknown in terms of key witnesses and underlying documents. There is no explanation why the matter must be completed by December. After two years of endless talk of impeachable and criminal acts, little movement occurred toward an impeachment. Suddenly the House appears adamant that this impeachment must be completed by the end of December. To be blunt, if the schedule is being accelerated by the approach of the Iowa caucuses, it would be both an artificial and inimical element to introduce into the process. This is not the first impeachment occurring during a political season. In the Johnson impeachment, the vote on the articles was interrupted by the need for some Senators to go to the Republican National Convention. The bifurcated vote occurred in May 1868 and the election was held just six months later.

Finally, the difference in the record is striking. Again, Johnson's impeachment must be set aside as an outlier since it was based on a manufactured trap-door crime. Yet, even with Johnson, there was over a year of investigations and proceedings related to his alleged usurpation and defiance of the federal law. The Ukrainian matter is largely built around a handful of witnesses and a schedule that reportedly set the matter for a vote within weeks of the underlying presidential act. Such a wafer-thin record only magnifies the problems already present in a narrowly constructed impeachment. The question for the House remains whether it is seeking simply to secure an impeachment or actually trying to build a case for removal. If it is the latter, this is not the schedule or the process needed to build a viable case. The House should not assume that the Republican control of the Senate makes any serious effort at impeachment impractical or naïve. All four impeachment inquiries have occurred during rabid political periods. However, politicians can on occasion rise to the moment and chose principle over politics. Indeed, in the Johnson trial, senators knowingly sacrificed their careers to fulfill their constitutional oaths. If the House wants to make a serious effort at impeachment, it should focus on building the record to raise these allegations to the level of impeachable offenses and leave to the Senate the question of whether members will themselves rise to the moment that follows.

IV. THE CURRENT THEORIES OF IMPEACHABLE CONDUCT AGAINST PRESIDENT DONALD J. TRUMP

While all three acts in the impeachment standard refer to criminal acts in modern parlance, it is clear that "high crimes and misdemeanors" can encompass non-criminal conduct. It is also true that Congress has always looked to the criminal code in the fashioning of articles of impeachment. The reason is obvious. Criminal allegations not only represent the most serious forms of conduct under our laws, but they also offer an objective source for measuring and proving such conduct. We have never had a presidential impeachment proceed solely or primarily on an abuse of power allegation, though such allegations have been raised in the context of violations of federal or criminal law. Perhaps for that reason, there has been a recent shift away from a pure abuse of power allegation toward direct allegations of criminal conduct. That shift,

however, has taken the impeachment process far outside of the relevant definitions and case law on these crimes. It is to those allegations that I would now like to turn.

At the outset, however, two threshold issues are worth noting. First, this hearing is being held before any specific articles have been proposed. During the Clinton impeachment hearing, we were given a clear idea of the expected articles of impeachment and far greater time to prepare analysis of those allegations. The House leadership has repeatedly indicated that they are proceeding on the Ukrainian controversy and not the various alleged violations or crimes alleged during the Russian investigation. Recently, however, Chairman Schiff indicated that there might be additional allegations raised while continuing to reference the end of December as the working date for an impeachment vote. Thus, we are being asked to offer a sincere analysis on the grounds for impeachment while being left in the dark. My testimony is based on the public statements regarding the Ukrainian matter, which contain references to four alleged crimes and, most recently, a possible compromise proposal for censure.

Second, the crimes discussed below were recently raised as part of the House Intelligence Committee hearings as alternatives to the initial framework as an abuse of power. There may be a desire to refashion these facts into crimes with higher resonance with voters, such as bribery. In any case, Chairman Schiff and committee members began to specifically ask witnesses about elements that were pulled from criminal cases. When some of us noted that courts have rejected these broader interpretations or that there are missing elements for these crimes, advocates immediately shifted to a position that it really does not matter because “this is an impeachment.” This allows members to claim criminal acts while dismissing the need to actually support such allegations. If that were the case, members could simply claim any crime from treason to genocide. While impeachment does encompass non-crimes, including abuse of power, past impeachments have largely been structured around criminal definitions. The reason is simple and obvious. The impeachment standard was designed to be a high bar and felonies often were treated as inherently grave and serious. Legal definitions and case law also offer an objective and reliable point of reference for judging the conduct of judicial and executive officers. It is unfair to claim there is a clear case of a crime like bribery and simultaneously dismiss any need to substantiate such a claim under the controlling definitions and meaning of that crime. After all, the common mantra that “no one is above the law” is a reference to the law applied to all citizens, even presidents. If the House does not have the evidence to support a claim of a criminal act, it should either develop such evidence or abandon the claim. As noted below, abandoning such claims would still leave abuse of power as a viable ground for impeachment. It just must be proven.

A. Bribery

While the House Intelligence Committee hearings began with references to “abuse of power” in the imposition of a quid pro quo with Ukraine, it ended with repeated references to the elements of bribery. After hearing only two witnesses, House Speaker Nancy Pelosi declared witnesses offered “devastating” evidence that “corroborated” bribery. This view was developed further by House Intelligence Committee Chairman Adam Schiff who repeatedly returned to the definition of bribery

while adding the caveat that, even if this did not meet the legal definition of bribery, it might meet a prior definition under an uncharacteristically originalist view: “As the founders understood bribery, it was not as we understand it in law today. It was much broader. It connoted the breach of the public trust in a way where you’re offering official acts for some personal or political reason, not in the nation’s interest.”

The premise of the bribery allegations is that President Trump was soliciting a bribe from Ukraine when he withheld either a visit at the White House or military aid in order to secure investigations into the 2016 election meddling and the Hunter Biden contract by Ukraine. On its face, the bribery theory is undermined by the fact that Trump released the aid without the alleged pre-conditions. However, the legal flaws in this theory are more significant than such factual conflicts. As I have previously written,³⁶ this record does not support a bribery charge in either century. Before we address this bribery theory, it is important to note that any criminal allegation in an impeachment must be sufficiently clear and recognized to serve two purposes. First, it must put presidents on notice of where a line exists in the range of permissible comments or conduct in office. Second, it must be sufficiently clear to assure the public that an impeachment is not simply an exercise of partisan creativity in rationalizing a removal of a president. Neither of these purposes was satisfied in the Johnson impeachment where the crime was manufactured by Congress. This is why past impeachments focused on establishing criminal acts with reference to the criminal code and controlling case law. Moreover, when alleging bribery, it is the modern definition that is the most critical since presidents (and voters) expect clarity in the standards applied to presidential conduct. Rather than founding these allegations on clear and recognized definitions, the House has advanced a capacious and novel view of bribery to fit the limited facts. If impeachment is reduced to a test of creative redefinitions of crimes, no president will be confident in their ability to operate without the threat of removal. Finally, as noted earlier, dismissing the need to establish criminal conduct by arguing an act is “close enough for impeachment,” is a transparent and opportunistic spin. This is not improvisational jazz. “Close enough” is not nearly enough for a credible case of impeachment.

1. The Eighteenth-Century Case For Bribery

The position of Chairman Schiff is that the House can rely on a broader originalist understanding of bribery that “connoted the breach of the public trust in a way where you’re offering official acts for some personal or political reason, not in the nation’s interest.” The statement reflects a misunderstanding of early sources. Indeed, this interpretation reverses the import of early references to “violations of public trust.” Bribery was cited as an example of a violation of public trust. It was not defined as any violation of public trust. It is akin to defining murder as any violence offense because it is listed among violent offenses. Colonial laws often drew from English sources which barred the “taking of Bribes, Gifts, or any unlawful Fee or Reward, by Judges, Justices of

³⁶ Jonathan Turley, *Adam Schiff’s Capacious Definition of Bribery Was Tried in 1787*, WALL ST. J. (Nov. 28, 2019, 1:49 PM), <https://www.wsj.com/articles/adam-schiffs-capacious-definition-of-bribery-was-tried-in-1787-11574966979>.

the Peace, or any other Officers either magisterial or ministerial.”³⁷ Not surprisingly, these early laws categorized bribery as one of the crimes that constituted a violation of public trust. The categorization was important because such crimes could bar an official from holding public office. Thus, South Carolina's colonial law listed bribery as examples of acts barring service “[f]or the avoiding of corruption which may hereafter happen to be in the officers and ministers of those courts, places, or rooms wherein there is requisite to be had the true administration of justice or services of trust”³⁸

The expansion of bribery in earlier American law did not stem from the changing of the definition as much as it did the scope of the crime. Bribery laws were originally directed at judicial, not executive officers, and the receiving as opposed to the giving of bribes. These common law definitions barred judges from receiving “any undue reward to influence his behavior in office.”³⁹ The scope of such early laws was not broad but quite narrow.⁴⁰ Indeed, the narrow definition of bribery was cited as a reason for the English adoption of “high crimes and misdemeanors” which would allow for a broad base for impeachments. Story noted:

“In examining the parliamentary history of impeachments, it will be found, that many offences, not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanours worthy of this extraordinary remedy. Thus, lord chancellors, and judges, and other magistrates, have not only been impeached for bribery, and acting grossly contrary to the duties of their office; but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws, and introduce arbitrary power.”⁴¹

Thus, faced with the narrow meaning of bribery, the English augmented the impeachment standard with a separate broader offense.⁴²

³⁷ ACTS OF THE GENERAL ASSEMBLY OF THE PROVINCE OF NEW JERSEY, ch. XLI 23 (Samuel Allinson ed., Burlington, Isaac Collins 1776).

³⁸ THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA FROM ITS ESTABLISHMENT AS A BRITISH PROVINCE DOWN TO THE YEAR 1790, INCLUSIVE 14648 (John F. Grimke ed., Philadelphia, R. Aitken 1790).

³⁹ IV WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND: IN FOUR BOOKS 129 (1765-69).

⁴⁰ CONG. RESEARCH SERV., IMPEACHMENT AND THE CONSTITUTION, 43 (2019).

⁴¹ II JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 798 (1833).

⁴² Indeed, Chairman Schiff may be confusing the broader treatment given extortion in early laws, not bribery. See generally James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 875 (1988) (“Since bribery law remained undeveloped for so long, another crime was needed to fill the gap—especially against corruption by nonjudicial officers.”).

This view of bribery was also born out in the Constitutional Convention. As noted earlier, the Framers were familiar with the impeachment of Warren Hastings which was pending trial at the time of the drafting of the Constitution. The Hastings case reflected the broad impeachment standard and fluid interpretations applied in English cases. George Mason wanted to see this broader approach taken in the United States. Mason specifically objected to the use solely of “treason” and “bribery” because those terms were too narrow—the very opposite of the premise of Chairman Schiff’s remarks. Mason ultimately failed in his effort to adopt a tertiary standard with broader meaning to encompass acts deemed as “subvert[ing] the Constitution.” However, both Mason and Madison were in agreement on the implied meaning of bribery as a narrow, not broad crime. Likewise, Gouverneur Morris agreed, raising bribery as a central threat that might be deterred through the threat of impeachment:

“Our Executive was not like a Magistrate having a life interest, much less like one having a hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst it by displacing him. One would think the King of England well secured agst bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV.”⁴³

Bribery, as used here, did not indicate some broad definition of, but a classic payment of money. Louis XIV bribed Charles II to sign the secret Treaty of Dover of 1670 with the payment of a massive pension and other benefits kept secret from the English people. In return, Charles II not only agreed to convert to Catholicism, but to join France in a wartime alliance against the Dutch.⁴⁴

Under the common law definition, bribery remains relatively narrow and consistently defined among the states. “The core of the concept of a bribe is an inducement improperly influencing the performance of a public function meant to be gratuitously exercised.”⁴⁵ The definition does not lend itself to the current controversy. President Trump can argue military and other aid is often used to influence other countries in taking domestic or international actions. It might be a vote in the United Nations or an anti-corruption investigation within a nation. Aid is not assumed to be “gratuitously exercised” but rather it is used as part of foreign policy discussions and international relations. Moreover, discussing visits to the White House is hardly the stuff of bribery under any of these common law sources. Ambassador Sondland testified that the President expressly denied there was a quid pro quo and that he was never told of such preconditions. However, he also testified that he came to believe there was a quid pro quo, not for military aid, but rather for the visit to the White House: “Was there a ‘quid pro quo? With regard to the requested White House call and White House meeting,

⁴³ 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 68-69 (Max Farrand ed., 1937).

⁴⁴ GEORGE CLARK, THE LATER STUARTS (1660-1714) 86-87, 130 (2d ed. 1956).

⁴⁵ J. NOONAN, BRIBES xi (1984).

the answer is yes.” Such visits are routinely used as bargaining chips and not “gratuitously exercised.” As for the military aid, the withholding of the aid is difficult to fit into any common law definition of a bribe, particularly when it was ultimately provided without the satisfaction of the alleged pre-conditions. Early bribery laws did not even apply to executive officials and actual gifts were regularly given. Indeed, the Framers moved to stop such gifts separately through provisions like the Emoluments Clause. They also applied bribery to executive officials. Once again Morris’ example is illustrative. The payment was a direct payment to Charles II of personal wealth and even a young French mistress.

The narrow discussion of bribery by the Framers stands in stark contrast to an allegedly originalist interpretation that would change the meaning of bribery to include broader notions of acts against the public trust. This is why bribery allegations in past impeachments, particularly judicial impeachments, focused on contemporary understandings of that crime. To that question, I would like to now turn.

2. The Twenty-First Century Case For Bribery

Early American bribery followed elements of the British and common law approach to bribery. In 1789, Congress passed the first federal criminal statute prohibiting bribing a customs official⁴⁶ and one year later Congress passed "An Act for the Punishment of Certain Crimes against the United States" prohibiting the bribery of a federal judge.⁴⁷ Various public corruption and bribery provisions are currently on the books, but the standard provision is found in 18 U.S.C. § 201 which allows for prosecution when “[a] public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for ... being influenced in the performance of any official act.” While seemingly sweeping in its scope, the definition contains narrowing elements on the definition of what constitutes “a thing of value,” an “official act,” and “corrupt intent.”

The Supreme Court has repeatedly narrowed the scope of the statutory definition of bribery, including distinctions with direct relevance to the current controversy. In *McDonnell v. United States*,⁴⁸ the Court overturned the conviction of former Virginia governor Robert McDonnell. McDonnell and his wife were prosecuted for bribery under the Hobbs Act, applying the same elements as found in Section 201(a)(3). They were accused of accepting an array of loans, gifts, and other benefits from a businessman in return for McDonnell facilitating key meetings, hosting events, and contacting government officials on behalf of the businessman who ran a company called Star Scientific. The benefits exceeded \$175,000 and the alleged official acts were completed. Nevertheless, the Supreme Court unanimously overturned the conviction. As explained by Chief Justice Roberts:

⁴⁶ Act of July 31, 1789, ch. 5, 34-35, 1 Stat. 29.

⁴⁷ Act of April 30, 1790, ch. 9, 1, 1 Stat. 112.

⁴⁸ *McDonnell v. United States*, 136 S. Ct. 2355, 2372 (2016).

“[O]ur concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns. It is instead with the broader legal implications of the Government’s boundless interpretation of the federal bribery statute. A more limited interpretation of the term ‘official act’ leaves ample room for prosecuting corruption, while comporting with the text of the statute and the precedent of this Court.”⁴⁹

The opinion is rife with references that have a direct bearing on the current controversy. This includes the dismissal of meetings as insufficient acts. It also included the allegations that “recommending that senior government officials in the [Governor’s Office] meet with Star Scientific executives to discuss ways that the company’s products could lower healthcare costs.” While the meeting and contacts discussed by Ambassador Sondland as a quid pro quo are not entirely the same, the Court refused to recognize that “nearly anything a public official does—from arranging a meeting to inviting a guest to an event—counts as a *quo*.”⁵⁰ The Court also explained why such “boundless interpretations” are inimical to constitutional rights because they deny citizens the notice of what acts are presumptively criminal: “[U]nder the Government’s interpretation, the term ‘official act’ is not defined ‘with sufficient definiteness that ordinary people can understand what conduct is prohibited,’ or ‘in a manner that does not encourage arbitrary and discriminatory enforcement.’”⁵¹ That is precisely the danger raised earlier in using novel or creative interpretations of crimes like bribery to impeach a president. Such improvisational impeachment grounds deny presidents notice and deny the system predictability in the relations between the branches.

The limited statements from the House on the bribery theory for impeachment track an honest services fraud narrative. These have tended to be some of the most controversial fraud and bribery cases when brought against public officials. These cases are especially difficult when the alleged act was never taken by the public official. *McDonnell* resulted in the reversal of a number of convictions or dismissal of criminal counts against former public officials. One such case was *United States v. Silver* involving the prosecution of the former Speaker of the New York Assembly. Silver was accused of an array of bribes and kickbacks in the form of referral fees from law firms. He was convicted on all seven counts and sentenced to twelve years of imprisonment. It was overturned because of the same vagueness that undermined the conviction in *McDonnell*. The Second Circuit ruled the “overbroad” theory of prosecution “encompassed any action taken or to be taken under color of official authority.”⁵² Likewise, the Third Circuit reversed conviction on a variety of corruption

⁴⁹ *Id.* at 2375.

⁵⁰ *Id.* at 2372.

⁵¹ *Id.* at 2373.

⁵² *United States v. Silver*, 864 F.3d 102, 113 (2d Cir. 2017).

counts in *Fattah v. United States*.⁵³ Former Rep. Chaka Fattah (D-Penn.) was convicted on all twenty-two counts of corruption based on an honest services prosecution. The case also involved a variety of alleged “official acts” including the arranging of meetings with the U.S. Trade Representative. The Third Circuit ruled out the use of acts as an “official act.” As for the remanded remainder, the court noted it might be possible to use other acts, such as lobbying for an appointment of an ambassador, to make out the charge but stated that “[d]etermining, for example, just how forceful a strongly worded letter of recommendation must be before it becomes impermissible ‘pressure or advice’ is a fact-intensive inquiry that falls within the domain of a properly instructed jury.”⁵⁴ Faced with the post-*McDonnell* reversal and restrictive remand instructions, the Justice Department elected not to retry Fattah.⁵⁵ Such a fact-intensive inquiry would be far more problematic in the context of a conversation between two heads of state where policy and political issues are often intermixed.⁵⁶

The same result occurred in the post-*McDonnell* appeal by former Rep. William Jefferson. Jefferson was convicted of soliciting and receiving payments from various sources in return for his assistance. This included shares in a telecommunications company and the case became a classic corruption scandal when \$90,000 in cash was found in Jefferson’s freezer. The money was allegedly meant as a bribe for the Nigerian Vice President to secure assistance in his business endeavors. Jefferson was convicted on eleven counts and the conviction was upheld on ten of eleven of those counts. *McDonnell* was then handed down. The federal court agreed that the case imposed more limited definitions and instructions for bribery.⁵⁷ The instruction defining the element of “official acts” is notable given recent statements in the House hearings: “An act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law. Rather, official acts include those activities that have been clearly established by settled practice as part [of] a public official’s position.” The court agreed that such definitions are, as noted in *McDonnell*, unbounded. The court added:

⁵³ *United States v. Fattah*, 902 F.3d 197, 240 (3d Cir. 2018) (“in accordance with *McDonnell*, that Fattah’s arranging a meeting between Vederman and the U.S. Trade Representative was not itself an official act. Because the jury may have convicted Fattah for conduct that is not unlawful, we cannot conclude that the error in the jury instruction was harmless beyond a reasonable doubt.”).

⁵⁴ *Id.* at 241.

⁵⁵ Griffin Connolly, *DOJ Won’t Re-Try Ex-Rep Fatah*, ROLL CALL (May 2, 2019), <https://www.rollcall.com/news/congress/doj-wont-retry-ex-rep-fattah-overturned-convictions-wont-reduce-prison-time>. Rep. Fatah’s sentencing on other counts however left a ten-year sentence in place.

⁵⁶ The convictions of former New York Majority Leader Dean Skelos and his son for bribery or corruption were also vacated by Second Circuit over the definition of “official act.” *United States v. Skelos*, 707 Fed. Appx. 733, 733-36 (2d Cir. 2017). They were later retried and convicted.

⁵⁷ *United States v. Jefferson*, 289 F. Supp. 3d. 717, 721 (E.D. Va. 2017).

“the jury instructions in Jefferson's case did not explain that to qualify as an official act ‘the public official must make a decision or take an action on that question, matter, cause, suit, proceeding or controversy, or agree to do so.’ The jury charge in Jefferson's case did not require the jury to consider whether Jefferson could actually make a decision on a pending matter, nor did the instructions clarify that Jefferson's actions could include “using [an] official position to exert pressure on another official to perform an ‘official act,’ or to advise another official, knowing or intending that such advice will form the basis for an ‘official act’ by another official.” Without these instructions, the jury could have believed that any action Jefferson took to assist iGate or other businesses was an official act, even if those acts included the innocent conduct of attending a meeting, calling an official, or expressing support for a project.”⁵⁸

Accordingly, the court dismissed seven of ten of the counts, and Jefferson was released from prison.⁵⁹

McDonnell also shaped the corruption case against Sen. Robert Menendez (D-N.J.) who was charged with receiving a variety of gifts and benefits in exchange for his intervention on behalf of a wealthy businessman donor. Both Sen. Menendez and Dr. Salomon Melgen were charged in an eighteen-count indictment for bribery and honest services fraud in 2015.⁶⁰ The jury was given the more restrictive post-*McDonnell* definition and proceeded to deadlock on the charges, leading to a mistrial. As in the other cases, the Justice Department opted to dismiss the case—a decision attributed by experts to the view that *McDonnell* “significantly raised the bar for prosecutors who try to pursue corruption cases against elected officials.”⁶¹

Applying *McDonnell* and other cases to the current controversy undermines the bribery claims being raised. The Court noted that an “official act”

“is a decision or action on a ‘question, matter, cause, suit, proceeding or controversy.’ The ‘question, matter, cause, suit, proceeding or controversy’ must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee. It must also be something

⁵⁸ *Id.* at 735 (internal citations omitted).

⁵⁹ Rachel Weiner, *Judge lets former Louisiana congressman William Jefferson out of prison*, WASH. POST (Oct. 5, 2017), https://www.washingtonpost.com/local/public-safety/judge-lets-former-louisiana-congressman-william-jefferson-out-of-prison/2017/10/05/8b53619e-aa0b-11e7-850e-2bdd1236be5d_story.html.

⁶⁰ *United States v. Menendez*, 132 F. Supp. 3d 635 (D.N.J. 2015).

⁶¹ Nick Corasaniti, *Justice Department Dismisses Corruption Case Against Menendez*, N.Y. TIMES (Jan. 31, 2018), <https://www.nytimes.com/2018/01/31/nyregion/justice-department-moves-to-dismiss-corruption-case-against-menendez.html>.

specific and focused that is ‘pending’ or ‘may by law be brought’ before a public official.”

The discussion of a visit to the White House is facially inadequate for this task, as it is not a formal exercise of governmental power. However, withholding of military aid certainly does smack of a “determination before an agency.” Yet, that “quo” breaks down on closer scrutiny, even before getting to the question of a “corrupt intent.” Consider the specific act in this case. As the Ukrainians knew, Congress appropriated the \$391 million in military aid for Ukraine and the money was in the process of being apportioned. Witnesses before the House Intelligence Committee stated that it was not uncommon to have delays in such apportionment or for an Administration to hold back money for a period longer than the 55 days involved in these circumstances. Acting Chief of Staff Mike Mulvaney stated that the White House understood it was required to release the money by a date certain absent a lawful reason barring apportionment. That day was the end of September for the White House. Under the 1974 Impoundment Control Act (ICA), reserving the funds requires notice to Congress. This process has always been marked by administrative and diplomatic delays. As the witnesses indicated, it is not always clear why aid is delayed. Arguably, by the middle of October, the apportionment of the aid was effectively guaranteed. It is not contested that the Administration could delay the apportionment to resolve concerns over how the funds would be effectively used or apportioned. The White House had until the end of the fiscal year on September 30 to obligate the funds. On September 11, the funds were released. By September 30, all but \$35 million in the funds were obligated. However, on September 27, President Trump signed a spending bill that averted a government shutdown and extended current funding, specifically providing another year to send funds to Ukraine.⁶²

It is certainly fair to question the non-budgetary reasons for the delay in the release of the funds. Yet, the White House was largely locked into the statutory and regulatory process for obligating the funds by the end of September. Even if the President sought to mislead the Ukrainians on his ability to deny the funding, there is no evidence of such a direct statement in the record. Indeed, Ambassador Taylor testified that he believed the Ukrainians first raised their concerns over a pre-condition on August 28 with the publication of the Politico article on the withholding of the funds. The aid was released roughly ten days later, and no conditions were actually met. The question remains what the “official act” was for this theory given the deadline for aid release. Indeed, had a challenge been filed over the delay before the end of September, it would have most certainly been dismissed by a federal court as premature, if not frivolous.

Even if the “official act” were clear, any bribery case would collapse on the current lack of evidence of a corrupt intent. In the transcript of the call, President Trump

⁶² Caitlin Emma, *Trump signs stopgap spending bill to avoid a shutdown*, POLITICO (Sept. 27, 2019, 6:26 PM), <https://www.politico.com/news/2019/09/27/trump-signs-spending-bill-007275>; Joe Gould, *Senate passes Ukraine aid extension, averts government shutdown for now*, DEFENSENEWS (Sept. 26, 2019), <https://www.defensenews.com/congress/2019/09/26/senate-passes-ukraine-aid-extension-stopgap-spending-bill/>.

pushes President Zelensky for two investigations. First, he raises his ongoing concerns over Ukrainian involvement in the 2016 election:

“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. There are a lot of things that went on, the whole situation ... I think you’re surrounding yourself with some of the same people. 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. It ended with 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.”⁶³

Many have legitimately criticized the President for his fixation on Crowdstrike and his flawed understanding of that company’s role and Ukrainian ties. However, asking for an investigation into election interference in 2016 does not show a corrupt intent. U.S. Attorney John Durham is reportedly looking into the origins of the FBI investigation under the Obama Administration. That investigation necessarily includes the use of information from Ukrainian figures in the Steele dossier. Witnesses like Nellie Ohr referenced Ukrainian sources in the investigation paid for by the Democratic National Committee and the campaign of Hillary Clinton. While one can reasonably question the significance of such involvement (and it is certainly not on the scale of the Russian intervention into the election), it is part of an official investigation by the Justice Department. Trump may indeed be wildly off base in his concerns about Ukrainian efforts to influence the election. However, even if these views are clueless, they are not corrupt. The request does not ask for a particular finding but cooperation with the Justice Department and an investigation into Ukrainian conduct. Even if the findings were to support Trump’s view (and there is no guarantee that would be case), there is no reason to expect such findings within the remaining time before the election. Likewise, the release of unspecified findings from an official investigation at some unspecified date are not a “thing of value” under any reasonable definition of the statute.

The references to investigating possible 2016 election interference cannot be the basis for a credible claim of bribery or other crimes, at least on the current record. That, however, was not the only request. After President Zelensky raised the fact that his aides had spoken with Trump’s counsel, Rudy Giuliani, and stated his hope to speak with him directly, President Trump responded:

⁶³ *Telephone Conversation with President Zelenskyy of Ukraine on July 25, 2019* (Sept. 24, 2019) (available at <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>).

“Good because 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. 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. 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. The former ambassador from the United States, 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. 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.”⁶⁴

This is clearly the most serious problem with the call. In my view, the references to Biden and his son were highly inappropriate and should not have been part of the call. That does not, however, make this a plausible case for bribery. Trump does not state a quid pro quo in the call. He is using his influence to prompt the Ukrainians to investigate both of these matters and to cooperate with the Justice Department. After President Zelensky voiced a criticism of the prior U.S. ambassador, President Trump responded:

“Well, she's going to go through some things. 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'm sure you will figure it out. I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything. Your economy is going to get better and better I predict. You have a lot of assets. It's a great country. I have many Ukrainian friends, they're incredible people.”⁶⁵

Again, the issue is not whether these comments are correct, but whether they are corrupt. In my view, there is no case law that would support a claim of corrupt intent in such comments to support a bribery charge. There is no question that an investigation of the Bidens would help President Trump politically. However, if President Trump honestly believed that there was a corrupt arrangement with Hunter Biden that was not fully investigated by the Obama Administration, the request for an investigation is not corrupt, notwithstanding its inappropriateness. The Hunter Biden contract has been widely criticized as raw influence peddling. I have joined in that criticism. For many years, I have written about the common practice of companies and lobbyists attempting to curry favor with executive branch officials and members of Congress by giving windfall contracts or jobs to their children. This is a classic example of that corrupt practice. Indeed, the glaring appearance of a conflict was reportedly raised by George Kent, the

⁶⁴ *Id.* at 3-4.

⁶⁵ *Id.* at 4.

Deputy Assistant Secretary of State for European and Eurasian Affairs during the Obama Administration.

The reference to the Bidens also lacks the same element of a promised act on the part of President Trump. There is no satisfaction of a decision or action on the part of President Trump or an agreement to make such a decision or action. There is a presumption by critics that this exists, but the presumption is no substitute for proof. The current lack of proof is another reason why the abbreviated investigation into this matter is so damaging to the case for impeachment. In the prior bribery charges in *McDonnell* and later cases, benefits were actually exchanged but the courts still rejected the premise that the meetings and assistance were official acts committed with a corrupt intent.

Finally, the “boundless interpretations of the bribery statutes” rejected in *McDonnell* pale in comparison to the effort to twist these facts into the elements of that crime. I am not privy to conversations between heads of state, but I expect many prove to be fairly freewheeling and informal at points. I am confident that such leaders often discuss politics and the timing of actions in their respective countries. If this conversation is a case of bribery, we could have marched every living president off to the penitentiary. Presidents often use aid as leverage and seek to advance their administrations in the timing or content of actions. The media often discusses how foreign visits are used for political purposes, particularly as elections approach. The common reference to an “October surprise” reflects this suspicion that presidents often use their offices, and foreign policy, to improve their image. If these conversations are now going to be reviewed under sweeping definitions of bribery, the chilling effect on future presidents would be perfectly glacial.

The reference to the Hunter Biden deal with Burisma should never have occurred and is worthy of the criticism of President Trump that it has unleashed. However, it is not a case of bribery, whether you are adopting the view of an eighteenth century, or of a twenty-first century prosecutor. As a criminal defense attorney, I would view such an allegation from a prosecutor to be dubious to the point of being meritless.

B. Obstruction of Justice

Another crime that was sporadically mentioned during the House Intelligence hearings was obstruction of justice or obstruction of Congress.⁶⁶ Once again, with only a

⁶⁶ It is important to distinguish between claims of “obstruction of justice,” “obstruction of Congress,” and “contempt of Congress” – terms often just loosely in these controversies. Obstruction of Congress falls under the same provisions as obstruction of justice, specifically, 18 U.S.C. §1505 (prohibiting the “obstruction of proceedings before ... committees”). However, the Congress has also used its contempt powers to bring both civil and criminal actions. The provision on contempt states:

“Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, ... or any committee of either House of Congress, willfully makes default, or who, having

few days to prepare this testimony and with no public report on the specific allegations, my analysis remains mired in uncertainty as to any plan to bring such a claim to the foundational evidence for the charge. Most of the references to obstruction have been part of a Ukraine-based impeachment plan that does not include any past alleged crimes from the Russian investigation. I will therefore address the possibility of a Ukraine-related obstruction article of impeachment.⁶⁷ However, as I have previously written,⁶⁸ I believe an obstruction claim based on the Mueller Report would equally at odds with the record and the controlling case law.⁶⁹ The use of an obstruction theory from the Mueller Report

appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than [\$ 100,000] nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.”

2 U.S.C. §§192, 194. Thus, when the Obama Administration refused to turn over critical information in the Fast and Furious investigation, the Congress brought a contempt not an impeachment action against Attorney General Eric Holder. In this case, the House would skip any contempt action as well as any securing any order to compel testimony or documents. Instead, it would go directly to impeachment for the failure to turn over material or make available witnesses – a conflict that has arisen in virtually every modern Administration.

⁶⁷ For the record, I previously testified on obstruction theories in January in the context of the Mueller investigation before the United States Senate Committee of the Judiciary as part of the Barr confirmation hearing. United States Senate, Committee on the Judiciary, *The Confirmation of William Pelham Barr As Attorney General of the United States Supreme Court* (Jan. 16, 2019) (testimony of Professor Jonathan Turley).

⁶⁸ See, e.g., Jonathan Turley, *Mueller's end: A conclusion on collusion but confusion on Obstruction*, THE HILL (March 24, 2019, 8:30 PM), <https://thehill.com/opinion/white-house/435553-muellers-end-a-conclusion-on-collusion-but-confusion-on-obstruction>.

⁶⁹ I have previously criticized Special Counsel Mueller for his failure to reach a conclusion on obstruction as he did on the conspiracy allegation. See Jonathan Turley, *Why Mueller may be fighting a public hearing on Capitol Hill*, THE HILL (May 5, 2019, 10:00 AM), <https://thehill.com/opinion/judiciary/445534-why-mueller-may-be-fighting-a-public-hearing-on-capitol-hill>. However, the report clearly undermines any credible claim for obstruction. Mueller raises ten areas of concern over obstruction. The only substantive allegation concerns his alleged order to White House Counsel Don McGahn to fire Mueller. While the President has denied that order, the report itself destroys any real case for showing a corrupt intent as an element of this crime. Mueller finds that Trump had various non-criminal motivations for his comments regarding the investigation, including his belief that there is a deep-state conspiracy as well as an effort to belittle his 2016 election victory. Moreover, the Justice Department did what Mueller should have done: it reached a conclusion. Both Attorney General Bill Barr and Deputy Attorney General Rod Rosenstein reviewed the Mueller Report and concluded that no

would be unsupportable in the House and unsustainable in the Senate. Once again, the lack of information (just weeks before an expected impeachment vote) on the grounds for impeachment is both concerning and challenging. It is akin to being asked to diagnose a patient's survivability without knowing his specific illness.

Obstruction of justice is a more broadly defined crime than bribery and often overlaps with other crimes like witness tampering, subornation, or specific acts designed to obstruct a given proceeding. There are many federal provisions raising forms of obstruction that reference parallel crimes. Thus, influencing a witness is a standalone crime and also a form of obstruction under 18 U.S.C. 1504. In conventional criminal cases, prosecutions can be relatively straightforward, such as cases of witness intimidation under 18 U.S. 1503. Of course, this is no conventional case. The obstruction claims leveled against President Trump in the Ukrainian context have centered on two main allegations. First, there was considerable discussion of the moving of the transcript of the call with President Zelensky to a classified server as a possible premeditated effort to hide evidence. Second, there have been repeated references to the "obstruction" of President Trump by invoking executive privileges or immunities to withhold witnesses and documents from congressional committees. In my view, neither of these general allegations establishes a plausible case of criminal obstruction or a viable impeachable offense.

The various obstruction provisions generally share common elements. 18 U.S.C. § 1503, for example, broadly defines the crime of "corruptly" endeavoring "to influence, obstruct or impede the due administration of justice." This "omnibus" provision, however, is most properly used for judicial proceedings such as grand jury investigations, and the Supreme Court has narrowly construed its reach. There is also 18 U.S.C. § 1512(c), which contains a "residual clause" in subsection (c)(2), which reads:

(c) Whoever corruptly-- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) *otherwise* obstructs, influences, or impedes any official proceeding, or attempts to do so [is guilty of the crime of obstruction]. [emphasis added].

cognizable case was presented for an allegation of obstruction of justice. Many members of this Committee heralded the selection of Rosenstein as a consummate and apolitical professional who was responsible for the appointment of the Special Counsel. He reached this conclusion on the record sent by Mueller and, most importantly, the controlling case law. As with the campaign finance allegation discussed in this testimony, an article based on obstruction in the Russian investigation would seek the removal of a President on the basis of an act previously rejected as a crime by the Justice Department. Many of us have criticized the President for his many comments and tweets on the Russian investigation. However, this is a process that must focus on impeachable conduct, not imprudent or even obnoxious conduct.

This residual clause has long been the subject of spirited and good-faith debate, most recently including the confirmation of Attorney General Bill Barr. The controversy centers on how to read the sweeping language in subsection (c)(2) given the specific listing of acts in subsection (c)(1). It strains credulity to argue that, after limiting obstruction with the earlier language, Congress would then intentionally expand the provision beyond recognition with the use of the word “otherwise.” For that reason, it is often argued that the residual clause has a more limited meaning of other acts of a similar kind. As with the bribery cases, courts have sought to maintain clear and defined lines in such interpretations to give notice of citizens as to what is criminal conduct under federal law. The purpose is no less relevant in the context of impeachments.

The danger of ambiguity in criminal statutes is particularly great when they come into collision with constitutional functions or constitutional rights like free speech. Accordingly, federal courts have followed a doctrine of avoidance when ambiguous statutes collide with constitutional functions or powers. In *United States ex rel. Attorney General v. Delaware & Hudson Co.*,⁷⁰ the Court held that “Under that doctrine, when ‘a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.’”⁷¹ This doctrine of avoidance has been used in conflicts regarding proper the exercise of executive powers. Thus, when the Supreme Court considered the scope of the Federal Advisory Committee Act (“FACA”) it avoided a conflict with Article II powers through a narrower interpretation. In *Public Citizen v. U.S. Department of Justice*,⁷² the Court had a broad law governing procedures and disclosures committees, boards, and commissions. However, when applied to consultations with the American Bar Association regarding judicial nominations, the Administration objected to the conflict with executive privileges and powers. The Court adopted a narrow interpretation: “When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.”⁷³ These cases would weigh heavily in the context of executive privilege and the testimony of key White House figures on communications with the President.

⁷⁰ 213 U.S. 366 (1909).

⁷¹ *Id.* at 408; see also Op. Off. Legal Counsel 253, 278 (1996) (“It is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts. The canon is thus a means of giving effect to congressional intent, not of subverting it.”).

⁷² 491 U.S. 440 (1989).

⁷³ *Id.*; see also *Ass’n of American Physicians and Surgeons v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993) (“Article II not only gives the President the ability to consult with his advisers confidentially, but also, as a corollary, it gives him the flexibility to organize his advisers and seek advice from them as he wishes.”).

There is no evidence that President Trump acted with the corrupt intent required for obstruction of justice on the record created by the House Intelligence Committee. Let us start with the transfer of the file. The transfer of the transcript of the file was raised as a possible act of obstruction to hide evidence of a quid pro quo. However, the nefarious allegations behind the transfer were directly contradicted by Tim Morrison, the former Deputy Assistant to the President and Senior Director for Europe and Russia on the National Security Council. Morrison testified that he was the one who recommended that the transcript be restricted after questions were raised about President Trump's request for investigations. He said that he did so solely to protect against leaks and that he spoke to senior NSC lawyer John Eisenberg. When Morrison learned the transcript was transferred to a classified server, he asked Eisenberg about the move. He indicated that Eisenberg was surprised and told him it was a mistake. He described it as an "administrative error." Absent additional testimony or proof that Morrison has perjured himself, the allegation concerning the transfer of the transcript would seem entirely without factual support, let alone legal support, as a criminal obstructive act.

Most recently, the members have focused on an obstruction allegation centering on the instructions of the White House to current and former officials not to testify due to the expected assertions of executive privilege and immunity. Notably, the House has elected not to subpoena core witnesses with first-hand evidence on any quid pro quo in the Ukraine controversy. Democratic leaders have explained that they want a vote by the end of December, and they are not willing to wait for a decision from the court system as to the merits of these disputes. In my view, that position is entirely untenable and abusive in an impeachment. Essentially, these members are suggesting a president can be impeached for seeking a judicial review of a conflict over the testimony of high-ranking advisers to the President over direct communications with the President. The position is tragically ironic. The Democrats have at times legitimately criticized the President for treating Article II as a font of unilateral authority. Yet, they are now doing the very same thing in claiming Congress can demand any testimony or documents and then impeach any president who dares to go to the courts. Magnifying the flaws in this logic is the fact that the House has set out one of the shortest periods in history for this investigation—a virtual rocket docket for impeachment. House leaders are suggesting that they will move from notice of an alleged impeachable act at the beginning of September and adopt articles of impeachment based on controversy roughly 14 weeks later. On this logic, the House could give a president a week to produce his entire staff for testimony and then impeach him when he seeks review by a federal judge.

As extreme as that hypothetical may seem, it is precisely the position of some of those advancing this claim. In a recent exchange on National Public Radio with former Rep. Liz Holtzman, I raised the utter lack of due process and fairness in such a position.⁷⁴ Holtzman, one of the House Judiciary Committee members during the Nixon impeachment, insisted that a president has no right to seek judicial review and that he must turn over everything and anything demanded by Congress. Holtzman insisted that

⁷⁴ Public Impeachment Hearing Analysis From Nixon, Clinton Figures, WBUR (Nov. 14, 2019), <https://www.wbur.org/onpoint/2019/11/14/first-impeachment-hearing-congress-trump-taylor-kent>.

the position of her Chairman, Peter Rodino, was that the House alone dictates what must be produced. That is a position this Committee should not replicate. This returns us to the third article of impeachment against Nixon discussed earlier. That article stated:

“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... [i]n 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.”⁷⁵

Once again, I have always been critical of this article. Nixon certainly did obstruct the process in a myriad of ways, from witness tampering to other criminal acts. However, on the critical material sought by Congress, Nixon went to Court and ultimately lost in his effort to withhold the evidence. He had every right to do so. On July 25, 1974, the Court ruled in *United States v. Nixon*⁷⁶ that the President had to turn over the evidence. On August 8, 1974, Nixon announced his intention to resign. Notably, in that decision, the Court recognized the existence of executive privilege—a protection that requires a balancing of the interests of the legislative and executive branches by the judicial branch. The Court ruled that “[n]either the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”⁷⁷ Yet, the position stated in the current controversy is perfectly Nixonian. It is asserting the same “absolute, unqualified” authority of Congress to demand evidence while insisting that a president has no authority to refuse it. The answer is obvious. A President cannot “substitute[] his judgment” for Congress on what they are entitled to see and likewise Congress cannot substitute its judgment as to what a President can withhold. The balance of those interests is performed by the third branch that is constitutionally invested with the authority to review and resolve such disputes.

The recent decision by a federal court holding that former White House Counsel Don McGahn must appear before a House committee is an example of why such review is so important and proper.⁷⁸ I criticized the White House for telling McGahn and others not to appear before Congress under a claim of immunity. Indeed, when I last appeared before this Committee as a witness, I encouraged that litigation and said I believed the

⁷⁵ WATERGATE.INFO, <https://watergate.info/impeachment/articles-of-impeachment>.

⁷⁶ *United States v. Nixon*, 418 U.S. 683, 706 (1974).

⁷⁷ *Id.*

⁷⁸ Committee on the Judiciary v. McGahn, Civ. No. 19-cv-2379 (KBJ), 2019 U.S. Dist. LEXIS 203983 (D.D.C. 2019).

Committee would prevail.⁷⁹ Notably, the opinion in *Committee on the Judiciary v. McGahn* rejected the immunity claims of the White House but also reaffirmed “the Judiciary’s duty under the Constitution to interpret the law and to declare government overreaches unlawful.”⁸⁰ The Court stressed that

“the Framers made clear that the proper functioning of a federal government that is consistent with the preservation of constitutional rights hinges just as much on the intersectionality of the branches as it does on their separation, and it is the assigned role of the Judiciary to exercise the adjudicatory power prescribed to them under the Constitution’s framework to address the disputed legal issues that are spawned from the resulting friction.”⁸¹

The position of this Committee was made stronger by allowing the judiciary to rule on the question. Indeed, that ruling now lays the foundation for a valid case of obstruction. If President Trump defies a final order without a stay from a higher court, it would constitute real obstruction. Just yesterday, in *Trump v. Deutsche Bank*, the United States for the Second Circuit became the latest in a series of courts to reject the claims made by the President’s counsel to withhold financial or tax records from Congress.⁸² The Court reaffirmed that such access to evidence is “an important issue concerning the investigative authority.”⁸³ With such review, the courts stand with Congress on the issue of disclosure and ultimately obstruction in congressional investigations. Moreover, such cases can be expedited in the courts. In the Nixon litigation, courts moved those cases quickly to the Supreme Court. In contrast, the House leaderships have allowed two months to slip away without using its subpoena authority to secure the testimony of critical witnesses. The decision to adopt an abbreviated schedule for the investigation and not to seek to compel such testimony is a strategic choice of the House leadership. It is not the grounds for an impeachment.

If the House moves forward with this impeachment basis, it would be repeating the very same abusive tactics used against President Andrew Johnson. As discussed earlier, the House literally manufactured a crime upon which to impeach Johnson in the Tenure in Office Act. This was a clearly unconstitutional act with a trap-door criminal provision (transparently referenced as a “high misdemeanor”) if Johnson were to fire the Secretary of War. Congress created a crime it knew Johnson would commit by using his recognized authority as president to pick his own cabinet. In this matter, Congress set a

⁷⁹ See United States House of Representatives, Committee on the Judiciary, “Executive Privilege and Congressional Oversight” (May 15, 2019) (testimony of Professor Jonathan Turley).

⁸⁰ *McGahn*, 2019 U.S. Dist. LEXIS 203983, at *11.

⁸¹ *Id.* at 98.

⁸² *Trump v. Deutsche Bank*, No. 19-1540-cv (2d Cir. Dec. 3, 2019) (available at <https://www.documentcloud.org/documents/6565847-Deutsche-Bank-20191203.html>).

⁸³ *Id.*

short period for investigation and then announced Trump would be impeached for seeking, as other presidents have done, judicial review over the demand for testimony and documents.

The obstruction allegation is also undermined by the fact that many officials opted to testify, despite the orders from the President that they should decline. These include core witnesses in the impeachment hearings, like National Security Council Director of European Affairs Alexander Vindman, Ambassador William Taylor, Ambassador Gordon Sondland, Deputy Assistant Secretary of State George Kent, Acting Assistant Secretary of State Philip Reeker, Under Secretary of State David Hale, Deputy Associate Director of the Office of Management and Budget Mark Sandy, and Foreign Service Officer David Holmes. All remain in federal service in good standing. Thus, the President has sought judicial review without taking disciplinary actions against those who defied his instruction not to testify.

If this Committee elects to seek impeachment on the failure to yield to congressional demands in an oversight or impeachment investigation, it will have to distinguish a long line of cases where prior presidents sought the very same review while withholding witnesses and documents. Take the Obama administration position, for instance, on the investigation of “Fast and Furious,” which was a moronic gunwalking operation in which the government arranged for the illegal sale of powerful weapons to drug cartels in order to track their movement. One such weapon was used to murder Border Patrol Agent Brian Terry, and Congress, justifiably so, began an oversight investigation. Some members called for impeachment proceedings. But President Obama invoked executive privilege and barred essential testimony and documents. The Obama Administration then ran out the clock in the judiciary, despite a legal rejection of its untenable and extreme claim by a federal court. During its litigation, the Obama Administration argued the courts had no authority over its denial of such witnesses and evidence to Congress. In *Committee on Oversight & Government Reform v. Holder*,⁸⁴ Judge Amy Berman Jackson, ruled that “endorsing the proposition that the executive may assert an unreviewable right to withhold materials from the legislature would offend the Constitution more than undertaking to resolve the specific dispute that has been presented here. After all, the Constitution contemplates not only a separation, but a balance, of powers.” The position of the Obama Administration was extreme and absurd. It was also widely viewed as an effort to run out the clock on the investigation. Nevertheless, President Obama had every right to seek judicial review in the matter and many members of this very Committee supported his position.

Basing impeachment on this obstruction theory would itself be an abuse of power . . . by Congress. It would be an extremely dangerous precedent to set for future presidents and Congresses in making an appeal to the Judiciary into “high crime and misdemeanor.”

⁸⁴ 979 F. Supp. 2d 1, 3-4 (D.D.C. 2013).

C. Extortion.

As noted earlier, extortion and bribery cases share a common law lineage. Under laws like the Hobbs Act, prosecutors can allege different forms of extortion. The classic form of extortion is coercive extortion to secure property “by violence, force, or fear.”⁸⁵ Even if one were to claim the loss of military aid could instill fear in a country, that is obviously not a case of coercive extortion as that crime has previously been defined. Instead, it would presumably be alleged as extortion “under color of official right.”⁸⁶ Clearly, both forms of extortion have a coercive element, but the suggestion is that Trump was “trying to extort” the Ukrainians by withholding aid until they agreed to open investigations. The problem is that this allegation is no closer to the actual crime of extortion than it is to its close cousin bribery. The Hobbs Act defines extortion as “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear or under color of official right.”⁸⁷

As shown in cases like *United States v. Silver*,⁸⁸ extortion is subject to the same limiting definition as bribery and resulted in a similar overturning of convictions. Another obvious threshold problem is defining an investigation into alleged corruption as “property.” Blackstone described a broad definition of extortion in early English law as “an abuse of public, justice which consists in an officer's unlawfully taking, by colour of his office, from any man, any money or thing of value, that is not due him, or more than is due, or before it is due.”⁸⁹ The use of anything “of value” today would be instantly rejected. Extortion cases involve tangible property, not possible political advantage.⁹⁰ In this case, Trump asked for cooperation with the Justice Department in its investigation into the origins of the FBI investigation on the 2016 election. As noted before, that would make a poor basis for any criminal or impeachment theory. The Biden investigation may have tangible political benefits, but it is not a form of property. Indeed, Trump did not know when such an investigation would be completed or what it might find. Thus, the request was for an investigation that might not even benefit Trump.

The theory advanced for impeachment bears a close similarity to one of the extortion theories in *United States v. Blagojevich* where the Seventh Circuit overturned an extortion conviction based on the Governor of Illinois, Rod Blagojevich, pressuring then Sen. Barack Obama to make him a cabinet member or help arrange for a high-paying job in exchange for Blagojevich appointing a friend of Obama's to a vacant Senate seat. The prosecutors argued such a favor was property for the purposes of extortion. The court dismissed the notion, stating “The President-elect did not have a

⁸⁵ 18 U.S.C. §§ 1951 (2018).

⁸⁶ *Id.*

⁸⁷ 18 U.S.C. § 1951(b)(2).

⁸⁸ 864 F.3d 102 (2d Cir. 2017).

⁸⁹ 4 WILLIAM BLACKSTONE, COMMENTARIES 141 (1769).

⁹⁰ See *Scheidler v. Nat'l Org. for Women*, 537 U.S. 393, 404 (2003) (citing *United States v. Enmons*, 410 U.S. 396, 400 (1973)).

property interest in any Cabinet job, so an attempt to get him to appoint a particular person to the Cabinet is not an attempt to secure ‘property’ from the President (or the citizenry at large).”⁹¹ In the recent hearings, witnesses spoke of the desire for “deliverables” sought with the aid. Whatever those “deliverables” may have been, they were not property as defined for the purposes of extortion any more than the “logrolling” rejected in *Blagojevich*.

There is one other aspect of the *Blagojevich* opinion worth noting. As I discussed earlier, the fact that the military aid was required to be obligated by the end of September weakens the allegation of bribery. Witnesses called before the House Intelligence Committee testified that delays were common, but that aid had to be released by September 30th. It was released on September 11th. The ability to deny the aid, or to even withhold it past September 30th is questionable and could have been challenged in court. The status of the funds also undermines the expansive claims on what constitutes an “official right” or “property”:

“The indictment charged Blagojevich with the ‘color of official right’ version of extortion, but none of the evidence suggests that Blagojevich claimed to have an ‘official right’ to a job in the Cabinet. He did have an ‘official right’ to appoint a new Senator, but unless a position in the Cabinet is ‘property’ from the President’s perspective, then seeking it does not amount to extortion. Yet a political office belongs to the people, not to the incumbent (or to someone hankering after the position). *Cleveland v. United States*, 531 U.S. 12 (2000), holds that state and municipal licenses, and similar documents, are not ‘property’ in the hands of a public agency. That’s equally true of public positions. The President-elect did not have a property interest in any Cabinet job, so an attempt to get him to appoint a particular person to the Cabinet is not an attempt to secure ‘property’ from the President (or the citizenry at large).”⁹²

A request for an investigation in another country or the release of money already authorized for Ukraine are even more far afield from the property concepts addressed by the Seventh Circuit.

The obvious flaws in the extortion theory were also made plain by the Supreme Court in *Sekhar v. United States*,⁹³ where the defendant sent emails threatening to reveal embarrassing personal information to the New York State Comptroller’s general counsel in order to secure the investment of pension funds with the defendant. In an argument analogous to the current claims, the prosecutors suggested political or administrative support was a form of intangible property. As in *McDonnell*, the Court was unanimous in rejecting the “absurd” definition of property. The Court was highly dismissive of such convenient linguistic arguments and noted that “shifting and imprecise characterization of

⁹¹ *United States v. Blagojevich*, 794 F.3d 729, 735 (7th Cir. 2015).

⁹² *Id.*

⁹³ 570 U.S. 729 (2013).

the alleged property at issue betrays the weakness of its case.”⁹⁴ It concluded that “[a]dopting the Government’s theory here would not only make nonsense of words; it would collapse the longstanding distinction between extortion and coercion and ignore Congress’s choice to penalize one but not the other. That we cannot do.”⁹⁵ Nor should Congress. Much like such expansive interpretations would be “absurd” for citizens in criminal cases, it would be equally absurd in impeachment cases.

To define a request of this kind as extortion would again convert much of politics into a criminal enterprise. Indeed, much of politics is the leveraging of aid or subsidies or grants for votes and support. In *Blagojevich*, the court dismissed such “logrolling” as the basis for extortion since it is “a common exercise.”⁹⁶ If anything of political value is now the subject of the Hobbs Act, the challenge in Washington would not be defining what extortion is, but what it is not.

D. Campaign Finance Violation

Some individuals have claimed that the request for investigations also constitutes a felony violation of the election finance laws. Given the clear language of that law and the controlling case law, there are no good-faith grounds for such an argument. To put it simply, this dog won’t hunt as either a criminal or impeachment matter. U.S.C. section 30121 of Title 52 states: “It shall be unlawful for a foreign national, directly or indirectly, to make a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a federal, state, or local election.”

On first blush, federal election laws would seem to offer more flexibility to the House since the Federal Election Commission has adopted a broad interpretation of what can constitute a “thing of value” as a contribution. The Commission states “‘Anything of value’ includes all ‘in-kind contributions,’ defined as ‘the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.’”⁹⁷ However, the Justice Department already reviewed the call and correctly concluded it was not a federal election violation. This determination was made by the prosecutors who make the decisions on whether to bring such cases. The Justice Department concluded that the call did not involve a request for a “thing of value” under the federal law. Congress would be alleging a crime that has been declared not to be a crime by career prosecutors. Such a decision would highlight the danger of claiming criminal acts, while insisting that impeachment does not require actual crimes. The “close enough for impeachment” argument will only undermine the legitimacy of the

⁹⁴ *Id.* at 737.

⁹⁵ *Id.*

⁹⁶ *Blagojevich*, 794 F.3d at 735.

⁹⁷ FEDERAL ELECTION COMMISSION, THE LAW OF A ‘THING OF VALUE’ (Oct. 2019), <https://www.fec.gov/resources/cms-content/documents/2019-10-ELW-the-law-of-a-thing-of-value.pdf>.

impeachment process, particularly if dependent on an election fraud allegation that itself is based on a demonstrably slipshod theory.

The effort to pound these facts into an election law violation would require some arbitrary and unsupported findings. First, to establish a felony violation, the thing of value must be worth \$25,000 or more. As previously mentioned, we do not know if the Ukrainians would conclude an investigation in the year before an election. We also do not know whether an investigation would offer a favorable or unfavorable conclusion. It could prove costly or worthless. In order for the investigation to have value, you would have to assume one of two acts were valuable. First, there may be value in the announcement of an investigation, but an announcement is not a finding of fact against the Bidens. It is pure speculation what value such an announcement might have had or whether it would have occurred at a time or in a way to have such value. Second, you could assume that the Bidens would be found to have engaged in a corrupt practice and that the investigation would make those findings within the year. There is no cognizable basis to place a value on such unknown information that might be produced at some time in the future. Additionally, this theory would make any encouragement (or discouragement) of an investigation into another country a possible campaign violation if it could prove beneficial to a president. As discussed below, diplomatic cables suggest that the Obama Administration pressured other countries to drop criminal investigations into the U.S. torture program. Such charges would have proven damaging to President Obama who was criticized for shifting his position on the campaign in favor of investigations.⁹⁸ Would an agreement to scuttle investigations be viewed as a “thing of value” for a president like Obama? The question is the lack of a limiting principle in this expansive view of campaign contributions.

There is also the towering problem of using federal campaign laws to regulate communications between the heads of state. Any conversation between heads of state are inherently political. Every American president facing reelection schedules foreign trips and actions to advance their political standing. Indeed, such trips and signing ceremonies are often discussed as transparently political decisions by incumbents. Under the logic of this theory, any request that could benefit a president is suddenly an unlawful campaign finance violation valued arbitrarily at \$25,000 or more. Such a charge would have no chance of surviving a threshold of motion to dismiss.

Even if such cases were to make it to a jury, few such cases have been brought and the theory has fared poorly. The best-known usage of the theory was during the prosecution of former Sen. John Edwards. Edwards was running for the Democratic nomination in 2008 when rumors surfaced that he not only had an affair with filmmaker Rielle Hunter but also sired a child with her. He denied the affair, as did Hunter. Later it

⁹⁸ Adam Serwer, *Obama's Legacy of Impunity For Torture*, THE ATLANTIC (Mar. 14, 2018), <https://www.theatlantic.com/politics/archive/2018/03/obamas-legacy-of-impunity-for-torture/555578/>; Kenneth Roth, *Barack Obama's Shaky Legacy on Human Rights*, FOREIGN POLICY (Jan. 4, 2017), <https://foreignpolicy.com/2017/01/04/barack-obamas-shaky-legacy-on-human-rights/>; *CIA Off The Hook For Past Waterboarding*, CBS NEWS (Apr. 16, 2009, 2:43 PM), <https://www.cbsnews.com/news/cia-off-the-hook-for-past-waterboarding/>.

was revealed that Fred Baron, the Edwards campaign finance chairman, gave money to Hunter, but he insisted it was his own money and that he was doing so without the knowledge of Edwards. Andrew Young, an Edwards campaign aide, also obtained funds from heiress Rachel Lambert Mellon to pay to Hunter. In the end, Mellon gave \$700,000 in order to provide for the child and mother in what prosecutors alleged as a campaign contribution in violation of federal campaign-finance law.⁹⁹ The jury acquitted Edwards and the Justice Department dropped all remaining counts.¹⁰⁰

Although the Edwards case involved large quantities of cash the jury failed to convict because they found the connection to the election too attenuated. The theory being advanced in the current proceedings views non-existent information that may never be produced as a contribution to an election that might occur before any report is issued. That is the basis upon which some would currently impeach a president, under a standard that the Framers wanted to be clear and exacting. Framers like Madison rejected “vague” standards that would “be equivalent to a tenure during pleasure of the Senate.” The campaign finance claim makes “maladministration” look like the model of clarity and precision in the comparison to a standard based on an assumption of future findings to be delivered at an unknown time.

E. Abuse of Power

The Ukraine controversy was originally characterized not as one of these forced criminal allegations, but as a simple abuse of power. As I stated from the outset of this controversy, a president can be impeached for abuses of power. In Federalist #65, Alexander Hamilton referred to impeachable offenses as “those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.”¹⁰¹ Even though every presidential impeachment has been founded on criminal allegations, it is possible to impeach a president for non-criminal acts. Indeed, some of the allegations contained in the articles of impeachment against all three presidents were distinctly non-criminal in character. The problem is that we have never impeached a president solely or even largely on the basis of a non-criminal abuse of power allegation. There is good reason for that unbroken record. Abuses of power tend to be even less defined and more debatable as a basis for impeachment than some of the crimes already mentioned. Again, while a crime is not required to impeach, clarity is necessary. In this case, there needs to be clear and unequivocal proof of a quid pro quo. That is why I have been critical of how this impeachment has unfolded. I am particularly

⁹⁹ Manuel Roig-Franzia, *John Edwards trial: Jurors seek information on "Bunny" Mellon's Role*, WASH. POST (May 23, 2012), https://www.washingtonpost.com/politics/john-edwards-trial-jurors-seek-information-on-bunny-mellons-role/2012/05/23/gJQAtiFzkU_story.html.

¹⁰⁰ Dave Levinthal, *Campaign cash laws tough to enforce*, POLITICO (June 1, 2012, 1:47 PM), <http://www.politico.com/news/stories/0612/76961.html>.

¹⁰¹ ALEXANDER HAMILTON, FEDERALIST NO. 65 (1788), *reprinted in* THE FEDERALIST PAPERS 396, 396 (Clinton Rossiter ed., 1961).

concerned about the abbreviated schedule and thin record that will be submitted to the full house.

Unlike the other dubious criminal allegations, the problem with the abuse of power allegation is its lack of foundation. As I have previously discussed, there remain core witnesses and documents that have not been sought through the courts. The failure to seek this foundation seems to stem from an arbitrary deadline at the end of December. Meeting that deadline appears more important than building a viable case for impeachment. Two months have been wasted that should have been put toward litigating access to this missing evidence. The choice remains with the House. It must decide if it wants a real or recreational impeachment. If it is the former, my earlier testimony and some of my previous writing show how a stronger impeachment can be developed.¹⁰²

The principle problem with proving an abuse of power theory is the lack of direct evidence due to the failure to compel key witnesses to testify or production of key documents. The current record does not establish a quid pro quo. What we know is that President Trump wanted two investigations. The first investigation into the 2016 election is not a viable basis for an abuse of power, as I have previously addressed. The second investigation into the Bidens would be sufficient, but there is no direct evidence President Trump intended to violate federal law in withholding the aid past the September 30th deadline or even wanted a quid pro quo maintained in discussions with the Ukrainians regarding the aid. If Trump encouraged an investigation into the Bidens alone, it would not be a viable impeachment claim. The request was inappropriate, but it was not an offer to trade public money for a foreign investigation. President Trump continued to push for these investigations but that does not mean that he was planning to violate federal law. Indeed, Ambassador Sondland testified that, when he concluded there was a quid pro quo, he understood it was a visit to the White House being withheld. White House visits are often used as leverage from everything from United Nations votes to domestic policy changes. Trump can maintain he was suspicious about the Ukrainians in supporting his 2016 rival and did not want to grant such a meeting without a demonstration of political neutrality. If he dangled a White House meeting in these communications, few would view that as unprecedented, let alone impeachable.

Presidents often put pressure on other countries which many of us view as inimical to our values or national security. Presidents George W. Bush and Barack Obama reportedly put pressure on other countries not to investigate the U.S. torture program or seek the arrest of those responsible.¹⁰³ President Obama and his staff also reportedly pressured the Justice Department not to initiate criminal prosecution stemming

¹⁰² Jonathan Turley, *How The Democrats can build a better case to impeach President Trump*, THE HILL (Nov. 25, 2019, 12:00 PM), <https://thehill.com/opinion/judiciary/471890-how-democrats-can-build-a-better-case-to-impeach-president-trump>.

¹⁰³ David Corn, *Obama and GOPers Worked Together to Kill Bush Torture Probe*, MOTHER JONES (Dec. 1, 2010), <https://www.motherjones.com/politics/2010/12/wikileaks-cable-obama-quashed-torture-investigation/> (discussing cables pressuring the Spanish government to shut down a judicial investigation into torture).

from the torture program.¹⁰⁴ Moreover, presidents often discuss political issues with their counterparts and make comments that are troubling or inappropriate. However, contemptible is not synonymous with impeachable. Impeachment is not a vehicle to monitor presidential communications for such transgressions. That is why making the case of a quid pro quo is so important – a case made on proof, not presumptions. While critics have insisted that there is no alternative explanation, it is willful blindness to ignore the obvious defense. Trump can argue that he believed the Obama Administration failed to investigate a corrupt contract between Burisma and Hunter Biden. He publicly called for the investigation into the Ukraine matters. Requesting an investigation is not illegal any more than a leader asking for actions from their counterparts during election years.

Trump will also be able to point to three direct conversations on the record. His call with President Zelensky does not state a quid pro quo. In his August conversation with Sen. Ron Johnson (R., WI.), President Trump reportedly denied any quid pro quo. In his September conversation with Ambassador Sondland, he also denied any quid pro quo. The House Intelligence Committee did an excellent job in undermining the strength of the final two calls by showing that President Trump was already aware of the whistleblower controversy emerging on Capitol Hill. However, that does not alter the fact that those direct accounts stand uncontradicted by countervailing statements from the President. In addition, President Zelensky himself has said that he did not discuss any quid pro quo with President Trump. Indeed, Ambassador Taylor testified that it was not until the publication of the *Politico* article on August 28th that the Ukrainians voiced concerns over possible preconditions. That was just ten days before the release of the aid. That means that the record lacks not only direct conversations with President Trump (other than the three previously mentioned) but even direct communications with the Ukrainians on a possible quid pro quo did not occur until shortly before the aid release. Yet, just yesterday, new reports filtered out on possible knowledge before that date—highlighting the premature move to drafting articles of impeachment without a full and complete record.¹⁰⁵

Voters should not be asked to assume that President Trump would have violated federal law and denied the aid without a guarantee on the investigations. The current narrative is that President Trump only did the right thing when “he was caught.” It is possible that he never intended to withhold the aid past the September 30th deadline while also continuing to push the Ukrainians on the corruption investigation. It is possible that Trump believed that the White House meeting was leverage, not the military aid, to push for investigations. It is certainly true that both criminal and impeachment cases can be

¹⁰⁴ Glenn Greenwald, *Obama's justice department grants final immunity to Bush's CIA torturers*, THE GUARDIAN (Aug. 31, 2012 12:00PM) <https://www.theguardian.com/commentisfree/2012/aug/31/obama-justice-department-immunity-bush-cia-torturer>.

¹⁰⁵ Andrew Kramer, *Ukraine Knew Of Aid Freeze in July, Says Ex-Top Official In Kyiv*, N.Y. TIMES (Dec. 3, 2019, 7:59 am), <https://www.nytimes.com/2019/12/03/world/europe/ukraine-impeachment-military-aid.html>.

based on circumstantial evidence, but that is less common when direct evidence is available but unsecured in the investigation. Proceeding to a vote on this incomplete record is a dangerous precedent to set for this country. Removing a sitting President is not supposed to be easy or fast. It is meant to be thorough and complete. This is neither.

F. The Censure Option

Finally, there is one recurring option that was also raised during the Clinton impeachment: censure. I have been a long critic of censure as a part of impeachment inquiries and I will not attempt to hide my disdain for this option. It is not a creature of impeachment and indeed is often used by members as an impeachment-lite alternative for those who do not want the full constitutional caloric load of an actual impeachment. Censure has no constitutional foundation or significance. Noting the use of censure in a couple of prior cases does not make it precedent any more than Senator Arlen Specter's invocation of the Scottish "Not Proven" in the Clinton trial means that we now have a third option in Senate voting. If the question is whether Congress can pass a resolution with censure in its title, the answer is clearly yes. However, having half of Congress express their condemnation for this president with the other half opposing such a condemnation will hardly be news to most voters. I am agnostic about such extra-constitutional options except to caution that members should be honest and not call such resolutions part of the impeachment process.

V. CONCLUSION

Allow me to be candid in my closing remarks.

I get it. You are mad. The President is mad. My Democratic friends are mad. My Republican friends are mad. My wife is mad. My kids are mad. Even my dog is mad . . . and Luna is a golden doodle and they are never mad. We are all mad and where has it taken us? Will a slipshod impeachment make us less mad or will it only give an invitation for the madness to follow in every future administration?

That is why this is wrong. It is not wrong because President Trump is right. His call was anything but "perfect" and his reference to the Bidens was highly inappropriate. It is not wrong because the House has no legitimate reason to investigate the Ukrainian controversy. The use of military aid for a quid pro quo to investigate one's political opponent, if proven, can be an impeachable offense.

It is not wrong because we are in an election year. There is no good time for an impeachment, but this process concerns the constitutional right to hold office in this term, not the next.

No, it is wrong because this is not how an American president should be impeached. For two years, members of this Committee have declared that criminal and impeachable acts were established for everything from treason to conspiracy to obstruction. However, no action was taken to impeach. Suddenly, just a few weeks ago, the House announced it would begin an impeachment inquiry and push for a final vote in just a matter of weeks. To do so, the House Intelligence Committee declared that it would

not subpoena a host of witnesses who have direct knowledge of any quid pro quo. Instead, it will proceed on a record composed of a relatively small number of witnesses with largely second-hand knowledge of the position. The only three direct conversations with President Trump do not contain a statement of a quid pro quo and two expressly deny such a pre-condition. The House has offered compelling arguments why those two calls can be discounted by the fact that President Trump had knowledge of the underlying whistleblower complaint. However, this does not change the fact that it is moving forward based on conjecture, assuming what the evidence would show if there existed the time or inclination to establish it. The military aid was released after a delay that the witnesses described as “not uncommon” for this or prior Administrations. This is not a case of the unknowable. It is a case of the peripheral. The House testimony is replete with references to witnesses like John Bolton, Rudy Giuliani, and Mike Mulvaney who clearly hold material information. To impeach a president on such a record would be to expose every future president to the same type of inchoate impeachment.

Principle often takes us to a place where we would prefer not to be. That was the place the “Republican Recusants” found themselves in 1868 when sitting in judgment of a president they loathed and despised. However, they took an oath not to Andrew Johnson, but to the Constitution. One of the greatest among them, Lyman Trumbull (R-Ill.) explained his fateful decision to vote against Johnson’s impeachment charges even at the cost of his own career:

“Once 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 who happens to differ with the majority of the House and two-thirds of the Senate ...

I tremble for the future of my country. I cannot be an instrument to produce such a result; and at the hazard of the ties even of friendship and affection, till calmer times shall do justice to my motives, no alternative is left me...”¹⁰⁶

Trumbull acted in the same type of age of rage that we have today. He knew that raising a question about the underlying crime or the supporting evidence would instantly be condemned as approving of the underlying conduct of a president. In an age of rage, there seems to be no room for nuance or reservation. Yet, that is what the Constitution expects of us. Expects of you.

For generations, the seven Republicans who defected to save President Johnson from removal have been heralded as profiles of courage. In recalling the moment he was called to vote, Senator Edmund Ross of Kansas said he “almost literally looked down into my open grave.” He jumped because the price was too great not to. Such moments are easy to celebrate from a distance of time and circumstance. However, that is precisely the moment in which you now find yourself. “When the excitement of the hour [has]

¹⁰⁶ WILLIAM H. REHNQUIST, *GRAND INQUESTS: THE HISTORIC IMPEACHMENTS OF JUSTICE SAMUEL CHASE AND PRESIDENT ANDREW JOHNSON* 243-44 (1992).

subsided” and “calmer times” prevail, I do not believe that this impeachment will be viewed as bringing credit upon this body. It is possible that a case for impeachment could be made, but it cannot be made on this record. To return to Wordsworth, the Constitution is not a call to arms for the “Happy Warriors.” The Constitution calls for circumspection, not celebration, at the prospect of the removal of an American president. It is easy to allow one’s “judgment [to be] affected by your moral approval of the lines” in an impeachment narrative. But your oath demands more, even personal and political sacrifice, in deciding whether to impeach a president for only the third time in the history of this Republic.

In this age of rage, many are appealing for us to simply put the law aside and “just do it” like this is some impulse-buy Nike sneaker. You can certainly do that. You can declare the definitions of crimes alleged are immaterial and this is an exercise of politics, not law. However, the legal definitions and standards that I have addressed in my testimony are the very thing dividing rage from reason. Listening to these calls to dispense with such legal niceties, brings to mind a famous scene with Sir Thomas More in “A Man For All Seasons.” In a critical exchange, More is accused by his son-in-law William Roper of putting the law before morality and that More would “give the Devil the benefit of law!” When More asks if Roper would instead “cut a great road through the law to get after the Devil?,” Roper proudly declares “Yes, I’d cut down every law in England to do that!” More responds by saying “And when the last law was down, and the Devil turned ‘round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man’s laws, not God’s! And if you cut them down, and you’re just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil benefit of law, for my own safety’s sake!”

Both sides in this controversy have demonized the other to justify any measure in defense much like Roper. Perhaps that is the saddest part of all of this. We have forgotten the common article of faith that binds each of us to each other in our Constitution. However, before we cut down the trees so carefully planted by the Framers, I hope you consider what you will do when the wind blows again . . . perhaps for a Democratic president. Where will you stand then “the laws all being flat?”¹⁰⁷

Thank you again for the honor of testifying before you today. I am happy to answer any questions that you may have.¹⁰⁸

¹⁰⁷ R. BOLT, *A MAN FOR ALL SEASONS* 37-38 (Vintage ed. 1962).

¹⁰⁸ As discussed above, I have been asked to include some of my relevant scholarship: Jonathan Turley, *A Fox In The Hedges: Vermeule’s Optimizing Constitutionalism For A Suboptimal World*, 82 U. CHI. L. REV. 517 (2015); Jonathan Turley, *Madisonian Tectonics: How Form Follows Function in Constitutional and Architectural Interpretation*, 83 GEO. WASH. L. REV. 305 (2015); Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U. L. REV. 1523 (2013); Jonathan Turley, *Constitutional Adverse Possession: Recess Appointments and the Role of Historical Practice in Constitutional Interpretation*, 2013 WIS. L. REV. 965 (2013); Jonathan Turley, *Paradise Lost: The Clinton Administration and the Erosion of*

Presidential Privilege, 60 MD. L. REV. 205 (2000) (Symposium); Jonathan Turley, "From Pillar to Post": *The Prosecution of Sitting Presidents*, 37 AM. CRIM. L. REV. 1049 (2000); Jonathan Turley, *A Crisis of Faith: Congress and The Federal Tobacco Litigation*, 37 HARV. J. ON LEGIS. 433 (2000); Jonathan Turley, *Through a Looking Glass Darkly: National Security and Statutory Interpretation*, 53 SMU L. REV. 205 (2000) (Symposium); Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L.J. 1 (1999); Jonathan Turley, *The "Executive Function" Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999); Jonathan Turley, *Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President*, 67 GEO. WASH. L. REV. 735-790 (1999) (Symposium); Jonathan Turley, *Reflections on Murder, Misdemeanors, and Madison*, 28 HOFSTRA L. REV. 439 (1999) (Symposium); Jonathan Turley, *Dualistic Values in the Age of International Legisprudence*, 44 HASTINGS L.J. 145 (1992).

Chairman NADLER. I thank the witnesses.

Mr. RESCHENTHALER. Mr. Chairman, I seek recognition.

Chairman NADLER. Who seeks recognition?

Mr. RESCHENTHALER. Me, Mr. Chairman.

Chairman NADLER. For what purpose does the gentleman seek recognition?

Mr. RESCHENTHALER. Mr. Chairman, I have a motion pursuant to Rule 11, specifically 2(k)(6), I move to subpoena the individual commonly referred to as the whistleblower. I ask to do this in executive session——

Chairman NADLER. The gentleman has stated his motion. Do I hear a motion to table?

Ms. LOFGREN. I move to table the motion.

Chairman NADLER. The motion is tabled.

All in favor say aye.

Opposed no.

The motion to table——

Mr. RESCHENTHALER. Mr. Chairman, roll call vote.

Chairman NADLER [continuing]. Is approved. The roll call is requested.

The clerk will call the roll.

Ms. STRASSER. Mr. Nadler?

Chairman NADLER. Aye.

Ms. STRASSER. Mr. Nadler votes aye.

Ms. Lofgren?

Ms. LOFGREN. Aye.

Ms. STRASSER. Ms. Lofgren votes aye.

Ms. Jackson Lee?

Ms. JACKSON LEE. Aye.

Ms. STRASSER. Ms. Jackson Lee votes aye.

Mr. Cohen?

Mr. COHEN. Aye.

Ms. STRASSER. Mr. Cohen votes aye.

Mr. Johnson of Georgia?

Mr. JOHNSON of Georgia. Aye.

Ms. STRASSER. Mr. Johnson of Georgia votes aye.

Mr. Deutch?

Mr. DEUTCH. Aye.

Ms. STRASSER. Mr. Deutch votes aye.

Ms. Bass?

Ms. BASS. Aye.

Ms. STRASSER. Ms. Bass votes aye.

Mr. Richmond?

Mr. RICHMOND. Aye.

Ms. STRASSER. Mr. Richmond votes aye.

Mr. Jeffries?

Mr. JEFFRIES. Aye.

Ms. STRASSER. Mr. Jeffries votes aye.

Mr. Cicilline?

Mr. CICILLINE. Aye.

Ms. STRASSER. Mr. Cicilline votes aye.

Mr. Swalwell?

Mr. SWALWELL. Aye.

Ms. STRASSER. Mr. Swalwell votes aye.

Mr. Lieu?
Mr. LIEU. Aye.
Ms. STRASSER. Mr. Lieu votes aye.
Mr. Raskin?
Mr. RASKIN. Aye.
Ms. STRASSER. Mr. Raskin votes aye.
Ms. Jayapal?
Ms. JAYAPAL. Aye.
Ms. STRASSER. Ms. Jayapal votes aye.
Mrs. Demings?
Mrs. DEMINGS. Aye.
Ms. STRASSER. Mrs. Demings votes aye.
Mr. Correa?
Mr. CORREA. Aye.
Ms. STRASSER. Mr. Correa votes aye.
Ms. Scanlon?
Ms. SCANLON. Aye.
Ms. STRASSER. Ms. Scanlon votes aye.
Ms. Garcia?
Ms. GARCIA. Aye.
Ms. STRASSER. Ms. Garcia votes aye.
Mr. Neguse?
Mr. NEGUSE. Aye.
Ms. STRASSER. Mr. Neguse votes aye.
Mrs. McBath?
Mrs. MCBATH. Aye.
Ms. STRASSER. Mrs. McBath votes aye.
Mr. Stanton?
Mr. STANTON. Aye.
Ms. STRASSER. Mr. Stanton votes aye.
Ms. Dean?
Ms. DEAN. Aye.
Ms. STRASSER. Ms. Dean votes aye.
Ms. Mucarsel-Powell?
Ms. MUCARSEL-POWELL. Aye.
Ms. STRASSER. Ms. Mucarsel-Powell votes aye.
Ms. Escobar?
Ms. ESCOBAR. Aye.
Ms. STRASSER. Ms. Escobar votes aye.
Mr. Collins?
[No response.]
Ms. STRASSER. Mr. Sensenbrenner?
[No response.]
Ms. STRASSER. Mr. Chabot?
Mr. CHABOT. No.
Ms. STRASSER. Mr. Chabot votes no.
Mr. Gohmert?
Mr. GOHMERT. No.
Ms. STRASSER. Mr. Gohmert votes no.
Mr. Jordan?
Mr. JORDAN. No.
Ms. STRASSER. Mr. Jordan votes no.
Mr. Buck?
Mr. BUCK. No.

Ms. STRASSER. Mr. Buck votes no.

Mr. Ratcliffe?

Mr. RATCLIFFE. No.

Ms. STRASSER. Mr. Ratcliffe votes no.

Mrs. Roby?

Mrs. ROBY. No.

Ms. STRASSER. Mrs. Roby votes no.

Mr. Gaetz?

Mr. GAETZ. No.

Ms. STRASSER. Mr. Gaetz votes no.

Mr. Johnson of Louisiana?

Mr. JOHNSON of Louisiana. No.

Ms. STRASSER. Mr. Johnson of Louisiana votes no.

Mr. Biggs?

Mr. BIGGS. No.

Ms. STRASSER. Mr. Biggs votes no.

Mr. McClintock?

Mr. MCCLINTOCK. No.

Ms. STRASSER. Mr. McClintock votes no.

Mrs. Lesko?

Mrs. LESKO. No.

Ms. STRASSER. Mrs. Lesko votes no.

Mr. Reschenthaler?

Mr. RESCHENTHALER. No.

Ms. STRASSER. Mr. Reschenthaler votes no.

Mr. Cline?

Mr. CLINE. No.

Ms. STRASSER. Mr. Cline votes no.

Mr. Armstrong?

Mr. ARMSTRONG. No.

Ms. STRASSER. Mr. Armstrong votes no.

Mr. Steube?

Mr. STEUBE. No.

Ms. STRASSER. Mr. Steube votes no.

Chairman NADLER. Has everyone voted who wishes to vote?

Mr. COLLINS. Mr. Chairman, how am I recorded?

Ms. STRASSER. Mr. Collins, you are not recorded.

Mr. COLLINS. No.

Ms. STRASSER. Mr. Collins votes no.

Chairman NADLER. Is there anyone else who wishes to vote?

Mr. SENSENBRENNER. Mr. Chairman, how am I recorded?

Ms. STRASSER. Mr. Sensenbrenner, you are not recorded.

Mr. SENSENBRENNER. No.

Ms. STRASSER. Mr. Sensenbrenner votes no.

Chairman NADLER. Anyone else?

The clerk will report.

Ms. STRASSER. Mr. Chairman, there are 24 ayes and 17 noes.

Chairman NADLER. The motion to table is adopted.

We will now proceed to the first round of questions.

Pursuant to House Resolution 660 and its accompanying Judiciary Committee procedures, there will be 45 minutes of questions conducted by the chairman or majority counsel followed by 45 minutes for the ranking member or minority counsel. Only the chair

and ranking member and their respective counsels may question witnesses during this period.

Following that, unless I specify additional equal time for extended questioning, we will proceed under the 5-minute rule, and every member will have the chance to ask questions.

I now recognize myself for the first round of questions.

Professors, thank you for being here today. The committee has been charged with the grave responsibility of considering whether to recommend articles of impeachment against the President. I speak for my colleagues when I say that we do not take this lightly and we are committed to ensuring that today's hearing, as well as the larger responsibility before us, are grounded in the Constitution.

The Intelligence Committee's report concluded that the President pressured a foreign leader to interfere in our elections by initiating and announcing investigations into President Trump's political adversaries. He then sought to prevent Congress from investigating his conduct by ordering his administration and everyone in it to defy House subpoenas.

Professor Karlan, as you said, the right to vote is the most precious legal right we have in this country. Does the President's conduct endanger that right?

Ms. KARLAN. Yes, Mr. Chairman, it does.

Chairman NADLER. Thank you. And how does it do so?

Ms. KARLAN. The way that it does it is exactly what President Washington warned about, by inviting a foreign government to influence our elections. It takes the right away from the American people and it turns that into a right that foreign governments decide to interfere for their own benefit. Foreign governments don't interfere in our elections to benefit us; they intervene to benefit themselves.

Chairman NADLER. Thank you.

Professor Gerhardt, you have written extensively about our system of checks and balances. What happens to that system when a President undertakes a blockade of Congress' impeachment inquiry when he orders all witnesses not to testify, and what is our recourse?

Mr. GERHARDT. When a President does that separation of powers means nothing. The subpoenas that have been issued, of course, are lawful orders. In our law schools we would teach our students, this is an easy, straightforward situation. You comply with the law. Lawyers all the time have to comply with subpoenas.

But in this situation the full-scale obstruction, full-scale obstruction of those subpoenas, I think, torpedoes separation of powers, and therefore your only recourse is to, in a sense, protect your institutional prerogatives, and that would include impeachment.

Chairman NADLER. And the same is true of defying congressional subpoenas on a wholesale basis with respect to oversight not just through impeachment?

Mr. GERHARDT. Absolutely, yes, sir.

Chairman NADLER. Thank you.

Professor Feldman, as I understand it, the Framers intended impeachment to be used infrequently, not as punishment, but to save our democracy from threats so significant that we cannot wait for

the next election. In your testimony you suggest that we face that kind of threat. Can you explain why you think impeachment is the appropriate recourse here, why we cannot wait for the next election?

Those are two questions if you want them to be.

Mr. 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.

On the facts that we have before the House right now, the President solicited assistance from a foreign government in order to assist his own reelection; that is, he used the power of his office that no one else could possibly have used in order to gain personal advantage for himself distorting the election, and that's precisely what the Framers anticipated.

Chairman NADLER. Thank you very much.

I now yield the remainder of my time to Mr. Eisen for counsel questions.

Mr. Eisen.

Mr. EISEN. Professors, good morning. Thank you for being here. I want to ask you some questions about the following high crimes and misdemeanors that were mentioned in the opening statements: Abuse of power and bribery, obstruction of Congress, and obstruction of justice.

Professor Feldman, what is abuse of power?

Mr. FELDMAN. Abuse of power is when the President uses his office, takes an action that is part of the presidency, not to serve the public interest but to serve his private benefit. And, in particular, it's an abuse of power if he does it to facilitate his reelection or to gain an advantage that is not available to anyone who is not the President.

Mr. EISEN. Sir, why is that impeachable conduct?

Mr. FELDMAN. If the President uses his office for personal gain, the only recourse available under the Constitution is for him to be impeached because the President cannot be, as a practical matter, charged criminally while he is in office because the Department of Justice works for the President. So the only mechanism available for a President who tries to distort the electoral process for personal gain is to impeach him. That is why we have impeachment.

Mr. EISEN. Professor Karlan, do scholars of impeachment generally agree that abuse of power is an impeachable offense?

Ms. KARLAN. Yes, they do.

Mr. EISEN. Professor Gerhardt, do you agree that abuse of power is impeachable?

Mr. GERHARDT. Yes, sir.

Mr. EISEN. I'd like to focus the panel on the evidence they considered and the findings in the Intelligence Committee report that the President solicited the interference of a foreign government, Ukraine, in the 2020 U.S. presidential election.

Professor Feldman, did President Trump commit the impeachable high crime and misdemeanor of abuse of power based on that evidence and those findings?

Mr. FELDMAN. Based on that evidence and those findings, the President did commit an impeachable abuse of office.

Mr. EISEN. Professor Karlan, same question.

Ms. KARLAN. Same answer.

Mr. EISEN. And, Professor Gerhardt, did President Trump commit the impeachable high crime and misdemeanor of abuse of power?

Mr. GERHARDT. We three are unanimous, yes.

Mr. EISEN. Professor Feldman, I'd like to quickly look at the evidence in the report. On July 25th, President Trump told the President of Ukraine, and I quote, "I would like you to do us a favor though," and he asked about looking into the Bidens. Was the memorandum of that call relevant to your opinion that the President committed abuse of power?

Mr. FELDMAN. The memorandum of that call between the two Presidents is absolutely crucial to the determination—to my determination that the President abused his office.

Mr. EISEN. And did you consider the findings of fact that the Intelligence Committee made, including that—and again I quote—the President withheld official acts of value to Ukraine and conditioned their fulfillment on actions by Ukraine that would benefit his personal political interests?

Mr. FELDMAN. Yes. In making the determination that the President committed an impeachable offense, I relied on the evidence that was before the House and the testimony. And then when this report was issued, I continued to rely on that.

Mr. EISEN. Sir, did you review the following testimony from our Ambassador to Ukraine, Ambassador William Tayleur?

[Video played.]

Mr. FELDMAN. Yes, that evidence underscored the way that the President's actions undercut national security.

Mr. EISEN. Professor Feldman, will you please explain why you concluded that the President committed the high crime of abuse of power and why it matters?

Mr. FELDMAN. The abuse of power occurs when the President uses his office for personal advantage or gain. That matters fundamentally to the American people, because if we cannot impeach a President who abuses his office for personal advantage, we no longer live in a democracy; we live in a monarchy or we live under a dictatorship. That's why the Framers created the possibility of impeachment.

Mr. EISEN. Now, Professor Karlan, this high crime and misdemeanor of abuse of power, was it some kind of loose or undefined concept to the founders of our country and the Framers of our Constitution?

Ms. KARLAN. No, I don't think it was an—it was a loose concept at all. It had a long lineage in the common law in England of parliamentary impeachments of lower-level officers. Obviously they had not talked about impeaching, as you've heard earlier, the king or the like.

Mr. EISEN. And can you share a little bit about that lineage, please?

Ms. KARLAN. Yes. So the—you know, the parliament in England impeached officers of the crown when those people abused their power, and if I could give you one example that might be a little helpful here.

Right after the restoration of the kingship in England, there was an impeachment. And, you know, when they impeach somebody, they had to say what were they impeaching him for. So sometimes it would be, we're impeaching him for treason or the like, and sometimes they would use the phrase "high crime or misdemeanor."

And there was an impeachment of Viscount Mordaunt, which is a great name to have, but Viscount Mordaunt, and he was impeached because he was the sheriff of Windsor. And as the parliamentary election was coming up, he arrested William Tayleur. And I just want to read to you from the article of impeachment in front of the House of Commons because it's so telling.

Here's what article I of the impeachment said. It said, understanding that one William Tayleur did intend to stand for the election of one of the burgesses of the Borough of Windsor to serve in this present parliament—in other words, he was running as a member of parliament, this is what Viscount Mordaunt did—to disparage and prevent the free election of the said William Tayleur and strike a terror into those of the said borough which should give their voices for him and deprive them of the freedom of their voices at the election, Viscount Mordaunt did command and cause the said William Tayleur to be forcibly, illegally, and arbitrarily seized upon by soldiers, and then he detained him. In other words, he went after a political opponent, and that was a high crime or misdemeanor to use your office to go after a political opponent.

Mr. EISEN. Now, Professor Gerhardt, does a high crime and misdemeanor require an actual statutory crime?

Mr. 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 and gravity of the misconduct.

Mr. EISEN. And, Professor Turley, you recently wrote in the Wall Street Journal, and I quote, "There is much that is worthy of investigation in the Ukraine scandal, and it is true that impeachment doesn't require a crime."

Mr. TURLEY. That's true, but I also added an important caveat. First of all—

Mr. EISEN. Sir, it was a yes or a no question. Did you write in the Wall Street Journal, "There is much that is worthy of investigation in the Ukraine scandal, and it is true that impeachment does not require a crime"?

Is that an accurate quote, sir?

Mr. TURLEY. That's—you read it well.

Mr. EISEN. So, Professors Feldman, Karlan, and Gerhardt, you have identified that on the evidence here there is an impeachable act, a high crime and misdemeanor of abuse of power, correct?

Mr. GERHARDT. Correct.

Ms. KARLAN. Yes.

Mr. FELDMAN. Yes.

Mr. EISEN. And, Professor Feldman, what does the Constitution say is the responsibility of the House of Representatives in dealing with presidential high crimes and misdemeanors like abuse of power?

Mr. FELDMAN. The Constitution gives the House of Representatives the sole power of impeachment. That means the House has the right and the responsibility to investigate presidential misconduct and, where appropriate, to create and pass articles of impeachment.

Mr. EISEN. And, Professor Karlan, what does that responsibility mean for this committee with respect to President Trump's abuse of power?

Ms. KARLAN. Well, because this is an abuse that cuts to the heart of democracy, you need to ask yourselves, if you don't impeach a President who has done what this President has done, or at least you don't investigate and then impeach if you conclude that the House Select Committee on Intelligence findings are correct, then what you're saying is it's fine to go ahead and do this again.

And I think that as the—you know, in the report that came out last night, the report talks about the clear and present danger to the elections system. And it's your responsibility to make sure that all Americans get to vote in a free and fair election next November.

Mr. EISEN. Professor Karlan, I'd like to direct you to the words in the Constitution, other high crimes and misdemeanors. And we're still going to talk about abuse of power. Can I ask, did the Constitution spell out every other high crime and misdemeanor?

Ms. KARLAN. No, it did not. It—

Mr. EISEN. Why—please. Please answer.

Ms. KARLAN. Well, in part because they recognize that the inventiveness of man and the likelihood that this Constitution would endure for generations meant they couldn't list all of the crimes that might be committed. They couldn't imagine an abuse of power, for example, that involved burglarizing and stealing computer files from an adversary because they couldn't have imagined computers. They couldn't necessarily have imagined wiretapping because we had no wires in 1789.

So what they did is they put in a phrase that the English had used and had adapted over a period of centuries to take into account that the idea of high crimes and misdemeanors is to get at things that people in office use to strike at the very heart of our democracy.

Mr. EISEN. And, Professor, in your written testimony you mention two additional aspects of high crimes and misdemeanors besides abuse of power. You talked about betrayal of the national interest and corruption of the electoral process.

And can you say a little bit more about what the Framers' concerns were about corruption of elections and betrayal of the national interest involving foreign powers and how they come into play here.

Ms. KARLAN. Sure. So let me start with the Framers and what they were concerned with and then bring it up to date, because I think there's some modern stuff as well that's important. So the

Framers were very worried that elections could be corrupted, they could be corrupted in a variety of different ways, and they spent a lot of time trying to design an election system that wouldn't be subject to that kind of corruption.

And there are a number of different provisions in the Constitution that deal with the kinds of corruption they were worried about, two that I'd just like to highlight here because I think they go to this idea about the national interest and foreign governments, are one that seems today I think to most of us to be really a kind of remnant of a past time, which is if you become an American citizen, almost everything in this country is open to you.

You can become Chief Justice of the United States. You can become Secretary of State. But the one office that's not open to you, even though you're a citizen just like all of the rest of us, is the presidency because of the natural-born citizen clause of the Constitution. And the reason they put that in is they were so worried about foreign influence over a President.

The other clause, which, you know, probably no one had heard of, you know, 5 years ago but now everybody talks about is the Emoluments Clause. They were really worried that the President, because he was only going to be in office for a little while, would use it to get everything he could and he would take gifts from foreign countries, not even necessarily bribes but just gifts, and they were worried about that as well.

So they were very concerned about those elections. But it's not just them. And I want to say something about what our national interest is today, because our national interest today is different in some important ways than it was in 1789. What the Framers were worried about was that we would be a weak country and we could be exploited by foreign countries.

Now, we're a strong power now, the strongest power in the world. We can still be exploited by foreign countries. But the other thing that we've done—and this is one of the things that I think we as Americans should be proudest of—is we have become what John Winthrop said in his sermon in 1640 and what Ronald Reagan said in his final address to the country as he left office, we have become the shining city on a hill. We have become the Nation that leads the world in understanding what democracy is.

And one of the things we understand most profoundly is, it's not a real democracy, it's not a mature democracy if the party in power uses the criminal process to go after its enemies.

And I think you heard testimony that—the Intelligence Committee heard testimony about how it isn't just our national interest in protecting our own elections, it's not just our national interest in making sure that the Ukraine remains strong and on the front lines so they fight the Russians there and we don't have to fight them here, but it's also our national interest in promoting democracy worldwide.

And if we look hypocritical about this, if we look like we're asking other countries to interfere in our election, if we look like we're asking other countries to engage in criminal investigations of our President's political opponents, then we are not doing our job of promoting our national interest in being that shining city on a hill.

Mr. EISEN. Professor Feldman, anything to add?

Mr. FELDMAN. Ultimately, the reason that the Constitution provided for impeachment was to anticipate a situation like the one that is before you today. The Framers were not prophets, but they were very smart people with a very sophisticated understanding of human incentives.

And they understood that a President would be motivated naturally to try to use the tremendous power of office to gain personal advantage to keep himself in office, to corrupt the electoral process, and potentially to subvert the national interest.

The facts strongly suggest that this is what President Trump has done, and under those circumstances, the Framers would expect the House of Representatives to take action in the form of impeachment.

Mr. EISEN. And, Professor Feldman, did you review the Intelligence Committee report finding that President Trump compromised national security to advance his personal political interests?

Mr. FELDMAN. I did.

Mr. EISEN. And will you explain, in your view, how that happened?

Mr. FELDMAN. The President sought personal gain and advantage by soliciting the announcement of investigations, and presumably investigations, from Ukraine, and to do so he withheld critical assistance that the Government of Ukraine needed, and by doing so, he undermined the national security interest of the United States in helping Ukraine, our ally, in a war that it is fighting against Russia.

So in the simplest possible terms, the President put his personal gain ahead of the national security interest as expressed, according to the evidence before you, by the entirety of a unanimous national security community.

Mr. EISEN. Sir, is it your view that the Framers would conclude that there was a betrayal of the national interest or national security by President Trump on these facts?

Mr. FELDMAN. In my view, if the Framers were aware that a President of the United States had put his personal gain and interest ahead of the national security of the United States by conditioning aid to a crucial ally that's in the midst of a war on investigations aimed at his own personal gain, they would certainly conclude that that was an abuse of the office of the presidency, and they would conclude that that conduct was impeachable under the Constitution.

Mr. EISEN. Professor Gerhardt, what are your thoughts on the abuse of power, betrayal of national security or national interest, and the corruption of elections, sir?

Mr. GERHARDT. Well, I have a lot of thoughts. One of them is that what we haven't mentioned yet and brought into this conversation is the fact that the impeachment power requires this committee, this House to be able to investigate presidential misconduct.

And if a President can block an investigation, undermine it, stop it, then the impeachment power itself as a check against misconduct is undermined completely.

Mr. EISEN. And, Professor Karlan, can you have an impeachable offense of abuse of power that is supported by considerations of a President's betrayal of the national interest or national security and by corruption of elections?

Ms. KARLAN. Yes, you can.

Mr. EISEN. And do we have that here, ma'am?

Ms. KARLAN. Based on the evidence that I've seen, which is reviewing the twelve—the transcripts of the twelve witnesses who testified, looking at the call readout, looking at some of the President's other statements, looking at the statement by Mr. Mulvaney and the like, yes, we do.

Mr. EISEN. And, Professor Feldman, do you agree?

Mr. FELDMAN. Yes.

Mr. EISEN. Professor Gerhardt?

Mr. GERHARDT. Yes, I do.

Mr. EISEN. Professor Karlan, we've been talking about the category of other high crimes and misdemeanors, like abuse of power. But there are some additional high crimes and misdemeanors that are specifically identified in the text of the Constitution, correct?

Ms. KARLAN. Yes, that's true.

Mr. EISEN. What are they?

Ms. KARLAN. Treason and bribery.

Mr. EISEN. Do President Trump's demands on Ukraine also establish the high crime of bribery?

Ms. KARLAN. Yes, they do.

Mr. EISEN. Can you explain why, please?

Ms. KARLAN. Sure. So the high crime or misdemeanor of bribery, I think it's important to distinguish that from whatever the U.S. Code calls bribery today. And the reason for this in part is because in 1789 when the Framers were writing the Constitution, there was no Federal Criminal Code.

The first bribery statutes that the United States Congress passed would not have reached a President at all because the first one was just about customs officials, and the second one was only about judges.

So it wasn't until, I don't know, 60 years or so after the Constitution was ratified that we had any general Federal crime of bribery at all. So when they say explicitly in the Constitution that the President can be impeached and removed from office for bribery, they weren't referring to a statute. And I will say, I'm not an expert on Federal—substantive Federal criminal law. All I will say here is, the bribery statute is a very complicated statute.

So what they were thinking about was bribery as it was understood in the 18th century based on the common law up until that point. And that understanding was an understanding that someone—and generally even then it was mostly talking about a judge, it wasn't talking about a President because there was no President before then.

And it wasn't talking about the king because the king could do no wrong. But what they were understanding then was the idea that when you took private benefits or when you asked for private benefits in return for an official act, or somebody gave them to you to influence an official act, that was bribery.

Mr. EISEN. And so we have constitutional bribery here, the high crime and misdemeanor of constitutional bribery against President Trump?

Ms. KARLAN. If you conclude that he asked for the investigation of Vice President Biden and his son for political reasons, that is to aid his reelection, then, yes, you have bribery here.

Mr. EISEN. And in forming that opinion, did you review the memorandum of the President's telephone call with the Ukrainian President, the one where President Trump asked, "I would like you to do us a favor though," and also asked about looking into his U.S. political opponents?

Ms. KARLAN. Yes, I did rely on that.

Mr. EISEN. And did you consider the following testimony from our Ambassador to the European Union, Ambassador Sondland?

[Video played.]

Mr. EISEN. Did you consider that, Professor?

Ms. KARLAN. I did consider that, yes.

Mr. EISEN. And did you also consider the findings of fact that the Intelligence Committee made including that, and I quote from finding of fact number five, "The President withheld official acts of value to Ukraine and conditioned their fulfillment on actions by Ukraine that would benefit his personal political interests?"

Ms. KARLAN. I did rely on that, in addition, because as I've already testified, I read the witnesses—the transcripts of all of the witnesses and the like, I relied on testimony from Ambassador Sondland and testimony from Mr. Morrison, testimony from Lieutenant Colonel Vindman, testimony for Ambassador Taylor.

I relied on the fact that when—I think it was Ambassador Taylor, but I may be getting which one of these people wrong, sent the cable that said, you know, it's crazy to hold this up based on domestic political concern. No one wrote back and said, that's not why we're doing it. I relied on what Mr. Mulvaney said in his press conference. So there was—you know, there's a lot to suggest here that this is about political benefit. And I don't know if I can talk about another piece of Ambassador Sondland's testimony now or I should wait. Tell me.

Mr. EISEN. Please, talk about it.

Ms. KARLAN. So I want to just point to what I consider to be the most striking example of this and the most—you know, I spent all of Thanksgiving vacation sitting there reading these transcripts. I didn't, you know—I ate like a turkey that came to us in the mail that was already cooked because I was spending my time doing this.

And the most chilling line for me of the entire process was the following: Ambassador Sondland said, he had to announce the investigations. He's talking about President Zelensky. "He had to announce the investigations. He didn't actually have to do them, as I understood it." And then he said, "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 they had to be announced in some form."

And what I took that to mean was this was not about whether Vice President Biden actually committed corruption or not; this

was about injuring somebody who the President thinks of as a particularly hard opponent. And that's for his private beliefs.

Because if I can say one last thing about the interests of the United States: the Constitution of the United States does not care whether the next President of the United States is Donald J. Trump or any one of the Democrats or anybody running on a third party.

The Constitution is indifferent to that. What the Constitution cares about is that we have free elections. And so it is only in the President's interest—It is not the national interest that a particular President be elected or be defeated at the next election. The Constitution is indifferent to that.

Mr. EISEN. Professor Feldman, any thoughts on the subject of the high crime and misdemeanor of bribery and the evidence that Professor Karlan laid out?

Mr. FELDMAN. The clear sense of bribery at the time when the Framers adopted this language in the Constitution was that bribery existed under the Constitution when the President corruptly asked for or received something of value to him from someone who could be affected by his official office.

So if the House of Representatives and the members of this committee were to determine that getting the investigations either announced or undertaken was a thing of value to President Trump and that that was what he sought, then this committee and this House could safely conclude that the President had committed bribery under the Constitution.

Mr. EISEN. Professor Gerhardt, what is your view?

Mr. GERHARDT. I, of course, agree with Professor Karlan and Professor Feldman. And 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.

And if there's no action, if Congress concludes they're going to give a pass to the President here, as Professor Karlan suggested earlier, every other President will say, okay, then I can do the same thing and the boundaries will just evaporate, and those boundaries are set up by the Constitution. And we may be witnessing, unfortunately, their erosion, and that is a danger to all of us.

Mr. EISEN. And what can this committee and the House of Representatives do, sir, to defend those boundaries and to protect against that erosion?

Mr. GERHARDT. Precisely what you're doing.

Mr. EISEN. And does it matter—I'll ask all the panelists—does it matter to impeachment that the \$391 million, U.S. taxpayer dollars in military assistance that the President withheld was ultimately delivered? Professor Feldman, does that matter to the question of impeachment?

Mr. FELDMAN. No, it does not. If the President of the United States attempts to abuse his office, that is a complete impeachable offense. The possibility that the President might get caught in the process of attempting to abuse his office and then not be able to pull it off does not undercut in any way the impeachability of the act.

If you'll pardon a comparison, President Nixon was subject to articles of impeachment preferred by this committee for attempting to cover up the Watergate break-in. The fact that President Nixon was not ultimately successful in covering up the break-in was not grounds for not impeaching him. The attempt itself is the impeachable act.

Mr. EISEN. Professor Karlan, does it matter to impeachment that the unfounded investigations the President sought were ultimately never announced?

Ms. KARLAN. No, it doesn't. And if I could give an example that I think shows why soliciting is enough, imagine that you were pulled over for speeding by a police officer and the officer comes up to the window and says, you were speeding but, you know, if you give me 20 bucks I'll drop the ticket. And you look in your wallet and you say to the officer, I don't have the \$20. And the officer says, okay, well, just go ahead. Have a nice day.

The officer would still be guilty of soliciting a bribe there even though he ultimately let you off without your paying. Soliciting itself is the impeachable offense regardless whether the other person comes up with this.

So imagine that the President had said, will you do us a favor, will you investigate Joe Biden, and the President of Ukraine said, you know what, no, I won't, because we've already looked into this and it's totally baseless. The President would still have committed an impeachable act even if he had been refused right there on the phone. So I don't see why the ultimate decision has anything to do with the President's impeachable conduct.

Mr. EISEN. What's the danger if Congress does not respond to that attempt?

Ms. KARLAN. Well, we've already seen a little bit of it, which is he gets out on the White House lawn and says, "China, I think you should investigate Joe Biden."

Mr. EISEN. And, Professor Gerhardt, your view?

Mr. GERHARDT. I certainly would agree with what has been said. One of the things to understand from the history of impeachment is everybody who's impeached has failed. They failed to get what they wanted, and what they wanted was not just to do what they did but to get away with it.

And the point of impeachment is, and it's made possible through investigation, is to catch that person, charge that person, and ultimately remove that person from office. But impeachments are always focusing on somebody who didn't quite get as far as they wanted to.

You know, nobody is better than Professor Karlan at hypotheticals, but I'll dare to raise yet another one. Imagine a bank robbery and the police come and the person is in the middle of a bank robbery and the person then drops the money and says, I'm going to leave without the money. Everybody understands that's bur—that's rob—I mean that's burglary. I'll get it right, yeah. And in this situation, we've got somebody really caught in the middle of it, and that doesn't excuse the person from the consequences.

Mr. EISEN. Professors, we've talked about abuse of power and bribery. When we started we said we would also discuss obstruc-

tion of Congress. So I'd like to ask you some questions about obstruction of Congress.

Professor Gerhardt, in your view, is there enough evidence here to charge President Trump with the high crime and misdemeanor of obstruction of Congress?

Mr. GERHARDT. I think there's more than enough. As I mentioned in my statement, just to really underscore this, the third article of impeachment approved by the House Judiciary Committee against President Nixon charged him with misconduct because he had failed to comply with four legislative subpoenas.

Here it is far more than four that this President has failed to comply with, and he's ordered the executive branch as well not to cooperate with Congress. Those, together with a lot of other evidence, suggests obstruction of Congress.

Mr. EISEN. Professor Karlan, do you agree?

Ms. KARLAN. I'm a scholar of the law of democracy, so as a citizen, I agree with what Professor Gerhardt said. As an expert, my limitation is that I'm a scholar of the law of democracy. I'm not a scholar of obstruction of justice or obstruction of Congress.

Mr. EISEN. We will accept your opinion as a citizen.

Professor Feldman.

Mr. FELDMAN. The obstruction of Congress is a problem because it undermines the basic principle of the Constitution. If you're going to have three branches of government, each of the branches has to be able to do its job. The job of the House is to investigate impeachment and to impeach.

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.

When you add to that the fact that the same President says, my Department of Justice cannot charge me with a crime, the President puts himself above the law when he says he will not cooperate in an impeachment inquiry. I don't think it's possible to emphasize this strongly enough. A President who will not cooperate in an impeachment inquiry is putting himself above the law.

Now, putting yourself above the law as President is the core of an impeachable offense because if the President could not be impeached for that, he would, in fact, not be responsible to anybody.

Mr. EISEN. And, sir, in forming your opinion, did you review these statements from President Trump?

[Video played.]

Mr. FELDMAN. I did, and as someone who cares about the Constitution, the second of those in particular struck a kind of horror in me.

Mr. EISEN. And, Professor Gerhardt, in forming your opinion that President Trump has committed the impeachable offense of obstruction of Congress, did you consider the Intelligence Committee report and its findings, including finding 9, that President Trump ordered and implemented a campaign to conceal his conduct from the public and to frustrate and obstruct the House of Representatives' impeachment inquiry?

Mr. GERHARDT. I read that report last night after I had submitted my statement, but I watched and read all the other tran-

scripts that were available. The report that was issued reinforces everything else that came before it, so, yes.

Mr. EISEN. So we've talked first about abuse of power and bribery and then about obstruction of Congress. Professor Gerhardt, I'd like to now ask you some questions about a third impeachable offense and that is obstruction of justice. Sir, have you formed an opinion as to whether President Trump committed the impeachable offense of obstruction of justice?

Mr. GERHARDT. Yes, I have.

Mr. EISEN. And what is your opinion, sir?

Mr. GERHARDT. Well, based on—so I've come here, like every other witness, assuming the facts that have been put together in official reports. The Mueller report cites a number of facts that indicate the President of the United States obstructed justice. And that's an impeachable offense.

Mr. EISEN. And in your testimony, sir, you pointed out that the Mueller report found at least five instances of the President's obstruction of the Justice Department's criminal investigation into Russian interference in the 2016 election, correct?

Mr. GERHARDT. Yes, sir.

Mr. EISEN. And the first of those instances, was the President's ordering his then-White House counsel, Don McGahn, to fire the special counsel rather than have the special counsel fired in order to thwart the investigation of the President, correct?

Mr. GERHARDT. That is correct.

Mr. EISEN. And the second was the President ordering Mr. McGahn to create a false written record denying that the President had ordered him to have Mr. Mueller removed?

Mr. GERHARDT. That's correct.

Mr. EISEN. And you also point to the meeting of the President with his former campaign manager, Corey Lewandowski, in order to get him to take steps to have the investigation curtailed, right?

Mr. GERHARDT. Yes, sir, I did.

Mr. EISEN. And you also point to pardoned angling and witness tampering as to Paul Manafort and Michael Cohen, former campaign official, former personal lawyer of the President?

Mr. GERHARDT. Both individually and collectively, these are evidence of obstruction of justice.

Mr. EISEN. How serious is that evidence of obstruction of justice, sir?

Mr. GERHARDT. It is quite serious, and that's not all of it, of course. And we know, as you've mentioned before and others have mentioned, obstruction of justice has been recognized as an impeachable offense both against President Clinton and President Nixon. This evidence that has been put forward by Mr. Mueller that's in the public record is very strong evidence of obstruction of justice.

Mr. EISEN. Professor Karlan, when you look at the Department of Justice Russia investigation and how the President responded to that, and when you look at Congress' Ukraine investigation and how the President responded to that, do you see a pattern?

Ms. KARLAN. Yes, I see a pattern in which the President's views about the propriety of foreign governments intervening in our election process are the antithesis of what our Framers were com-

mitted to. Our Framers were committed to the idea that we as Americans, we as Americans decide our elections, we don't want foreign interference in those elections. And the reason we don't want foreign interference in those elections is because we're a self-determining democracy.

And if I could just read one quotation to you that I think is helpful in understanding this, it's somebody who's pointing to what he calls a straightforward principle. "It is fundamental to the definition of our national political community that foreign citizens do not have a constitutional right to participate in and thus may be excluded from activities of democratic self-government."

And the person who wrote those words is now-Justice Brett Kavanaugh in upholding the constitutionality of a Federal statute that denies foreign citizens the right to participate in our elections by spending money on electioneering or by giving money to PACs. They have long been forbidden to give contributions to candidates, and the reason for that is because that denies us our right to self-government.

And then-Judge, now-Justice Brett Kavanaugh, was so correct in seeing this that the Supreme Court, which as you know, has taken campaign finance case after campaign finance case to talk about the First Amendment, summarily affirmed here, that is, they didn't even need to hear argument to know that it's constitutional to keep foreigners out of our election process.

Mr. EISEN. Professor Feldman, you were somewhat of an impeachment skeptic at the time of the release of the Mueller report. Were you not?

Mr. FELDMAN. I was.

Mr. EISEN. What's changed for you, sir?

Mr. FELDMAN. What changed for me was the revelation of the July 25th call, and then the evidence that emerged subsequently of the President of the United States in a format where he was heard by others and now known to a whole public, openly abused his office by seeking a personal advantage in order to get himself reelected, and act against the national security of the United States.

And that is precisely the situation that the Framers anticipated. It's very unusual for the Framers' predictions to come true that precisely, and when they do, we have to ask ourselves. Some day we will no longer be alive, and we'll go wherever it is we go, the good place or the other place, and you know, we may meet there, Madison and Hamilton, and they will ask us: When the President of the United States acted to corrupt the structure of the Republic, what did you do? And our answer to that question must be that we followed the guidance of the Framers. And it must be that if the evidence supports that conclusion, that the House of Representatives moves to impeach him.

Mr. EISEN. Thank you.

I yield my time back to the chairman.

Chairman NADLER. And my time has expired. I yield back. Before I recognize the Ranking Member for his round—first round of questions, the committee will stand in a 10-minute humanitarian recess.

I ask everyone in the room to please remain seated and quiet while the witnesses exit the room. I also want to announce to those in the audience, that you may not be guaranteed your seat if you leave the hearing room at this time.

Once the witnesses have left the hearing room—at this time the committee will stand in a short recess.

[Recess.]

Chairman NADLER. The committee will come back to order after the recess.

The chair now recognizes the Ranking Member for his first round of questions. Pursuant to House Resolution 660, the Ranking Member or his counsel have 45 minutes to question the witnesses. Ranking member.

Mr. COLLINS. Thank you, Mr. Chairman. Before I begin on the questioning, I do want to revisit a comment that was made earlier by you, Mr. Chairman, it was our demand for a minority hearing day, and you said that you would rule on it later. I just wanted to remind you, the Rules of the House do not permit a ruling on this, they do not permit a vote, and you cannot shut it down.

And according to your own words, the minority is entitled to a day of hearings, it is a right rarely exercised, but it guards against the majority abusing its power to exclude competing views. Call it the fair and balance rule.

It's not the chairman's right to determine whether we deserve a hearing. It's not the chairman's right to decide whether prior hearings were sufficient. It's not the chairman's right to decide what we say or think is acceptable. It is certainly not the chairman's right to violate the rules in order to interfere with our right to conduct a hearing.

And I just commend Mr. Sensenbrenner for bringing that forward, and look forward to that schedule—that you getting that scheduled expeditiously.

Moving on, interesting part, now we hit Phase II. You've had one side, and I have to say it was eloquently argued by not only the counsel and by the witnesses involved, but there is always a Phase II. A Phase II is what is problematic here. Because as I said in my opening statement, this is one that would be, and for many, one of the most disputed impeachments on just the facts themselves.

What was interesting is we actually showed videos of witnesses, in fact, one of them was an opening statement, again, I believe, which, again, the closest thing to perfect outside your resume this side of heaven is an opening statement because it is unchallenged, and I agree with that. And it should be.

And we have had great witnesses here to talk about this. But we didn't talk about anything about Kurt Volker, who said nothing about it. We said nothing about the aid being held up. Morrison, who contradicted Vindman and others, we have not done that. And I don't expect the majority to because that's not what they're here for. They're not here to give exculpatory evidence. Just like the Schiff reported gives nothing of exculpatory evidence.

And also there's still evidence being withheld by Adam Schiff that has not come to this committee, and we still have not got any any of the underlying stuff that came from that investigation, according to House Rule—H 660, we believe we're supposed to get.

One being the very important part is the Inspector General—the IC Inspector General, his testimony is still being held. And there is a, quote, secret on it, or they are holding it in classification. The last time I checked, we have plenty of places in this building and other buildings to handle classified information if they still want to do that. But it is being withheld from us, I have to believe now there is a reason it's being withheld because undoubtedly there's a problem with it, and we'll just have to see as that goes forward.

So anybody in the media, anybody watching today, the first, you know, 45 minutes as we went through have painted a very interesting picture. It's painted an interesting picture that goes back many, many years. It paints an interesting picture of picking and choosing which part of the last few weeks we want to talk about, and that's fine, because we'll have the rest of the day to go about this.

But, Professor Turley, you're now well-rested. And you got one question you were asked a yes/no on and not given to elaborate. But I want to start here. Let's just do this. Elaborate, if you would, because you tried to on the question that was asked to you, and then if there's anything else that you've heard this morning that you would disagree with, or have an answer to, I will go ahead and allow you some time to talk.

By the way, just for the information, Mr. Chairman, this is the coldest hearing room in the world. And also for those of you who are worried about I'm uncomfortable or upset, I'm happy as a lark, but this chair is terrible. I mean, it is amazing. But, Mr. Turley, go ahead.

Mr. TURLEY. Well, it's a challenge to think of anything I was not able to cover in my robust exchange with majority counsel, but I'd like to try.

Mr. COLLINS. Go right ahead.

Mr. TURLEY. There's a couple of things I just wanted to highlight, I'm not going to take a great deal of time. I respect my colleagues, I know all of them, and I consider them friends. And I certainly respect what they have said today. We have fundamental disagreements. And I'd like to start with the issue of bribery.

The statement has been made, and not just by these witnesses, but Chairman Schiff and others, that this is a clear case of bribery. It's not. And Chairman Schiff said that it might not fit today's definition of bribery, but it would fit the definition back in the 18th century.

Now, putting aside Mr. Schiff's turn toward originalism, I think that it might come as a relief to him and his supporters that his career will be a short one. That there is not an originalist future in that argument.

The bribery theory being put forward, it's as flawed in the 18th century as it is in this century. The statement that was made by one of my esteemed colleagues is that bribery really wasn't defined until much later, there was no bribery statute, and that is certainly true. But it obviously had a meaning, that's why they put it in this important standard.

Bribery was not this overarching concept that Chairman Schiff indicated. Quite to the contrary. The original standard was treason and bribery. That led Mason to object that it was too narrow. If

bribery could include any time you did anything for personal interest instead of public interest, if you have this overarching definition, that exchange would have been completely useless.

The Framers didn't disagree with Mason's view that bribery was too narrow. What they disagreed with was when he suggested maladministration to add to the standard because he wanted it to be broader. And what James Madison said is that that's too broad. That that would essentially create what you might call a vote of no confidence in England. It would basically allow Congress to toss out a President that they did not like.

But, once again, we're all channelling the intent of the Framers, and that's always a dangerous thing to do. The only more dangerous spot to stand in is between Congress and an impeachment as an academic. But I would offer instead the words of the Framers themselves. You see, in that exchange they didn't just say bribery was too narrow, they actually gave an example of bribery, and it was nothing like what was described.

When the objection was made by Mason, I'm so sorry, made by Madison, ultimately the Framers agreed. And then Morris, who was referred to earlier, did say we need to adopt this standard. But what was left out was what came afterwards. What Morris said is that we need to protect against bribery because we don't want anything like what happened with Louis XIV and Charles II. The example he gave of bribery was accepting actual money as the Head of State.

So what had happened in that example that Morris gave as his example of bribery, was that Louis XIV, who was a bit of a recidivist when it came to bribes, gave Charles II a huge amount of money, as well as other benefits, including, apparently, a French mistress, in exchange for the secret Treaty of Dover of 1670. It also was an exchange for his converting to Catholicism. But that wasn't some broad notion of bribery, it was actually quite narrow. So I don't think that dog will hunt in the 18th century, and I don't think it will hunt today.

Because if you look at the 21st century, bribery is well-defined. And you shouldn't just take our word for it, you should look to how it's defined by the United States Supreme Court.

In a case called *McDonnell v. United States*, the Supreme Court looked at a public corruption bribery case. This was a case where gifts were actually received. Benefits were actually extended. There was completion. This was not some hypothetical of a crime that was not fulfilled or an action that was not actually taken.

The Supreme Court unanimously overturned that conviction unanimously. And what they said was that you cannot take the bribery crime and use what they called a boundless interpretation. All the justices said that it's a dangerous thing to take a crime like bribery and apply a boundless interpretation. They rejected the notion, for example, that bribery could be used in terms of setting up meetings and other types of things that occur in the course of a public service career.

So what I would caution the committee is that these crimes have meaning. It gives me no joy to disagree with my colleagues here. And I really don't have a dog in this fight, but you can't accuse a President of bribery, and then when some of us note that the Su-

preme Court has rejected your type of boundless interpretation, say, well, it's just impeachment, we really don't have to prove the elements. That is a favorite mantra that is served close enough for jazz.

Well, this isn't improvisational jazz. Close enough is not good enough. If you're going to accuse a President of bribery, you need to make it stick because you're trying to remove a duly elected President of the United States.

Now, it's unfair to accuse someone of a crime. And when others say, well, those interpretations you're using to define the crime are not valid, and to say they don't have to be valid because this is impeachment. That has not been the standard, historically.

My testimony lays out the criminal allegations in the previous impeachments. Those were not just proven crimes, they were accepted crimes. That is, even the Democrats on that—the Judiciary Committee agreed that Bill Clinton had committed perjury. That is on the record. And a Federal judge later said it was perjury.

In the case of Nixon, the crimes were established. No one seriously disagreed with those crimes. Now, Johnson is the outlier because Johnson was a trap door crime. They basically created a crime knowing that Johnson wanted to replace Secretary of War Stanton. And Johnson did because they had serious trouble in the cabinet.

So they created a trap door crime, waited for him to fire the Secretary of War, and then they impeached him. But there's no question that he committed the crime, it's just the underlying statute was unconstitutional.

So I would caution you not only about bribery but also obstruction. I'm sorry, ranking member, you——

Mr. COLLINS. No, you're doing a good job. Go ahead.

Mr. TURLEY. I'd also caution you about obstruction. Obstruction is a crime also with meaning. It has elements. It has controlling case authority. The record does not establish obstruction in this case. That is, what my esteemed colleague said was certainly true. If you accept all of their presumptions, it would be obstruction.

But impeachments have to be based on proof, not presumptions. That's the problem when you move towards impeachment on this abbreviated schedule that has not been explained to me, why you want to set the record for the fastest impeachment. Fast is not good for impeachment. Narrow, fast impeachments have failed, just ask Johnson.

So the obstruction issue is an example of this problem. And here is my concern. The theory being put forward is that President Trump obstructed Congress by not turning over material requested by the committee. And citations have been made to the third article of the Nixon impeachment.

First of all, I want to confess, I have been a critic of the third article of the Nixon impeachment my whole life. My hair catches on fire every time someone mentions the third article. Why? Because you would be replicating one of the worst articles written on impeachment.

Here is the reason why. Peter Rodino's position as Chairman of Judiciary was that Congress alone decides what information may be given to it alone. His position was that the courts have no role

in this. And so if any—by that theory, any refusal by a President, based on executive privilege or immunities, would be the basis of impeachment. That is essentially the theory that's being replicated today.

President Trump has gone to Congress—to the courts. He's allowed to do that. We have three branches, not two. I happen to agree with some of your criticism about President Trump, including that earlier quote where my colleagues talked about his saying that there's this Article II, and he gives his overriding interpretation. I share that criticism. You're doing the same thing with Article I.

You're saying Article I gives us complete authority that when we demand information from another branch, it must be turned over or we'll impeach you in record time. Now, making that worse is that you have such a short investigation. It's a perfect storm. You set an incredibly short period, demand a huge amount of information, and when the President goes to court, you then impeach him. Now, does that track with what you've heard about impeachment? Does that track with the rule of law that we've talked about?

So on obstruction, I would encourage you to think about this. In Nixon, it did go to the courts, and Nixon lost. And that was the reason Nixon resigned. He resigned a few days after the Supreme Court ruled against him in that critical case. But in that case, the Court recognized there are executive privilege arguments that can be made. It didn't say, you had no right coming to us, don't darken our doorstep again. It said, we've heard your arguments, we've heard Congress' arguments, and you know what, you lose. Turn over the material to Congress. What that did for the judiciary is it gave this body legitimacy. It wasn't the Rodino extreme position that only you decide what information can be produced.

Now, recently there's some rulings against President Trump, including a rule involving Don McGahn. Mr. Chairman, I testified in front of you a few months ago, and if you recall, we had an exchange and I encouraged you to bring those actions. And I said I thought you would win. And you did. And I think it was an important win for this committee because I don't agree with President Trump's argument in that case. But that's an example of what can happen if you actually subpoena witnesses and go to court.

Then you have an obstruction case because a court issues an order. And unless they stay that order by a higher court, you have obstruction. But I can't emphasize this enough, and I'll just say it one more time. If you impeach a President, if you make a High Crime and Misdemeanor out of going to the courts, it is an abuse of power. It's your abuse of power. You're doing precisely what you're criticizing the President for doing. We have a third branch that deals with conflicts of the other two branches. And what comes out of there and what you do with it is the very definition of legitimacy.

Mr. COLLINS. Let's continue on. Let's unpack what you've been talking about. First of all, the McDonnell case, how was that decided? Was that a very split court? Were they really torn about that? That case came out how?

Mr. TURLEY. Yeah, it came out unanimous, so did a couple of the other cases I cite in my testimony, which also refute these criminal theories.

Mr. COLLINS. One of the things that you said also, and I think it could be summed up, and I use it sometimes, it's the layman's language here, is facts don't matter. And that's what I heard a lot of in the 45 minutes.

Well, the facts said this or the facts are disputed this, but if this, if that, if this, it rises to an impeachment level, and that was sort of what you're saying that crimes—I think your word was crimes have meanings. And I think this is the concern that I have.

Is there a concern that if we just say that facts don't matter, that we're also, as you've said, abusing our power as we go forward here in looking at what people would actually deem as an impeachable offense?

Mr. TURLEY. I think so. And part of the problem is to bring a couple of these articles, you have to contradict the position of President Obama. President Obama withheld evidence from Congress in Fast and Furious, an investigation, a rather moronic program that led to the death of a Federal agent.

President Obama gave a sweeping argument that he was not only not going to give evidence to this body, but that a court had absolutely no role in determining whether he could withhold the evidence.

Mr. COLLINS. Mr. Turley, I have a question on that because you brought up Mr. Obama and you brought up other Presidents in this process. Is there not an obligation by the Office of the President, we'll just use that term, not to be Obama, Trump, Clinton, anybody.

Isn't there an obligation by the President to actually assert the constitutional privileges or authorities that have been given or when accused of something or a crime or anything else?

Mr. TURLEY. Yeah. I think that President Obama has invoked too broadly. But, on the other hand, he has actually released a lot of information. You know, I've been friends with Bill Barr for a long time. We disagree on executive privilege.

I'm a Madisonian scholar, I tend to favor Congress in disputes. And he is the inverse. His natural default is Article II. My natural default is Article I. But he actually has released more privileged information than any attorney general in my lifetime, including the Mueller report. These transcripts of these calls would be core executive privilege material, there is no question about that.

Mr. COLLINS. And that is something, again, not pointed out when you're doing a back and forth like we're doing. The transcript of the call released, the things that have been released to Mueller. As we go back through this, there has been work in progress by this administration.

I think the interesting point that I want to talk about is two things. Number one, Congress is abuse of its own power, which has not been discussed here, even internally, where we have had committees not willing to let Members see transcripts. Not being willing to give those up under the guise of impeachment, or you shouldn't be able to see them. Although, the rules of the House were never invoked to stop that.

What we're seeing here, and I want to hit something else before we move on to something else, is the timing issue that you talked about here. Again, I believe we talked about this with the Mueller

report, we talked about this with the everything else. This is one of the fastest, you know, we're on track—I said this earlier, we're on a clock. The clock and the calendar are seemingly dominating this. Irregardless of what anybody on this committee, and especially Members not of this committee, to think about what we're actually seeing of fact witnesses and people moving forward, we don't have that yet.

So the question becomes, is an election pending when facts are in dispute, and you made mention of this. This is one in which the facts are not unanimous. There's not universal, there's not even bipartisan agreement on the facts and what they lead to, especially when there's exculpatory evidence that has been presented, not in the Schiff report but in other reports.

Does that timing bother you, from a historical perspective, not only in the past but moving forward as well?

Mr. TURLEY. Yeah. Fast and narrow is not a good recipe for impeachment. That's the case with Johnson. Narrow was the case with Clinton. They tend not to survive. They tend to collapse in front of the Senate.

Impeachments are like buildings, there's a ratio between your foundation and your height. And this is the highest structure you can build under the Constitution. You want to build an impeachment, you have to have a foundation broad enough to support it. This is the narrowest impeachment in history. You could argue with Johnson—Johnson might actually be the fastest impeachment.

Johnson actually was—what happened in Johnson was actually the fourth impeachment attempt against Johnson. And, actually, the record goes back a year before, they laid that trap door a year before, so it was not as fast as it made it out—it might appear.

Mr. COLLINS. And, again, let's go back—I want to go back to something else. And talked about bribery, and Mr. Taylor is going to address a good bit of that, but I want to go back to something you talk about because it really bothers, I think the perception out there of what's going on here and the disputed transcript being—the call has been laid out there, the President said, I wanted nothing for this.

There is all this exculpatory evidence that was not presented in the last 45 minutes, but there's one thing that's interesting, and it's been reported in the mainstream media, and it goes back to your issue, does crimes matter, or what this definition is.

The House—the majority initially accused the President, and they kept saying quid pro quo, and we still hear it as we go through, but then, as reported, they used a political focus group to determine whether the phrase polled well. And apparently it didn't poll well, so they agreed to change their theory of the case to the bribery.

Does that not just feed into more about what you're saying how where actually the crime matters and that facts do matter in a case like this, or the at least it should matter?

Mr. TURLEY. It does. There's a reason why every past impeachment has established crimes, and it's obvious. It's not that you can't impeach on a noncrime, you can. In fact, noncrimes have been part of past impeachments, it's just that they have never gone up alone or primarily as the basis for impeachment. That's the prob-

lem here. If you prove a quid pro quo, you might have an impeachable offense. But to go up only on a noncriminal case would be the first time in history. So why is that the case?

The reason is that crimes have an established definition and case law. So there's a concrete, independent body of law, that assures the public that this is not just political. That this is a President who did something they could not do. You can't say the President is above the law if you then say the crimes you accuse him of really don't have to be established.

Mr. COLLINS. I think that's the problem right now that many Members of this House, Members of this body, and especially the American public are looking at that if you say it's above the law but then you don't define it or you define the facts to whatever you want to have, that is the ultimate railroad that everybody in this country should not be afforded.

Everyone is afforded due process. Everyone is afforded the process to actually make their case heard. That's the concern that I have in this committee right now, and we've already seen it voted down that we're not going to look at certain fact witnesses. We're not even been promised other hearings in which this committee.

And in the words and the concerns that echoed almost 20 years ago from the chairman where he did not want to take the advice of another body or entity giving us, the Judiciary Committee, a report, and then acting as a rubber stamp if we didn't do this.

Just as a reminder, it was almost 2 1/2 weeks before the discussion of this kind of a hearing back then before the hearing actually took place. These are the kind of things that, as timing goes, I think the obvious point here is that timing is becoming more of the issue because the concern, as been stated before, about elections.

They're more concerned about trying to fit the facts in to what the President supposedly did, presumably did, and make those hypotheticals stick to the American public. The problem is their timing, the definition of crimes, the definition of the fact—the bribery as defined by the Supreme Court is not making their case, it's not fitting what they need to do.

The issue that we have to deal with going forward is, why the rush? Why do we have still not have the information from the Intelligence Committee? Why is the Inspector General's report from the IC Committee being withheld even in a nonclassified—in a classified setting. These are the problems that you have now highlighted and I think that need to be. And this is why the next 45 minutes and the rest of the day is going to be applicable, because both sides matter.

And at the end of the day, this is a fast impeachment, the fastest we're seeing, based on disputed facts on crimes or disturbances that are made up with the facts to fit each part.

With that, I'm going to turn it over to my counsel, Mr. Taylor.

Mr. TAYLOR. Professor Turley, I'd like to turn to the subject of partisanship as the Founders feared it and as it exists today. It's a subject Alexander Hamilton was very concerned about when it came to impeachment. He wrote some prescient words in Federalist Paper, Number 65, in advocating for the ratification of the Constitution. The Federalist Papers laid out the reasons Madison and,

principally Hamilton, thought the impeachment clause was necessary, but he also flagged concerns.

He said: In many cases of impeachment, it will connect itself with the pre-existing factions and will enlist all their animosities, partialities, influence, and interests on one side, or on the other. And in such cases, there will always be the greater danger that the decision will be regulated more by the comparative strength of parties than by the real demonstrations of innocence or guilt.

Professor Turley, do you think Hamilton predicted a real danger here of hyperpartisan impeachments?

Mr. TURLEY. Well certainly, that has been proven to be the case, it is certainly of the two impeachments that we have seen. It's also important to note, by the way, that we often think that our times are unique.

You know, this provision wasn't just written for times like ours, it was written in times like ours. That is, you know, these are people that were even more severe than the rhetoric today. I mean, you have to keep in mind, Jefferson referred to the administration of the Federalist as the reign of the witches.

So this was not a period where people didn't have the strong feelings, and indeed, when people talk about members of this committee acting like they want to kill each other. Back then they were actually trying to kill each other, that's what the sedition law was. You were trying to kill people that disagreed with you. But what's notable is they didn't have a whole slew of impeachments. They knew not to do it. And I think that that's a lesson that actually can be taken from that period.

That the Framers created a standard that would not be endlessly fluid and flexible. And that standard has kept us from impeachments despite periods in which we have really despised each other. And that, I think, is the most distressing things for most of us today. There's so much more rage than reason. You can't even talk about these issues without people saying, you must be in favor of the Ukrainians taking over the country, or the Russians moving into the White House.

At some point, as people, we have to have a serious discussion about the grounds to remove a duly elected President.

Mr. TAYLOR. Professor Turley, in your testimony you said that when it comes to impeachment, we don't need happy ideological warriors, we need circumspect legal analysis. But let's take a quick look at the deeply partisan landscape on which this particularly partisan impeachment is being waged.

I mean, the Democratic leaders pushing Trump's impeachment represent some of the most far left urban coastal areas of the country. The bar graphs here show counties, and the height of the bars indicate total votes cast, and the color of the bars show the margin of victory for the winner in the 2016 election.

As you can see, the parts of the country represented by these Democrat impeachment leaders voted overwhelmingly for Hillary Clinton during the last Presidential election. Also, during the 2016 Presidential election, lawyer campaign contributions tilted 97 percent for Clinton, 3 percent for Trump. And the situation is essentially the same at law schools around the country, including those represented on the panel here today.

Now, Professor Turley, I'd like to turn now to the partisan process that defines these impeachment proceedings. This is how the Nixon impeachment effort was described in the bipartisan 1974 staff report. We're talking about the initiation of the impeachment inquiry.

It says, this action was not partisan, it was supported by the overwhelming majority of both political parties, and it was. Regarding the authorization of the Clinton impeachment inquiry, it was supported by all Republicans and 31 Democrats.

Now, fast forward to the current impeachment. The House Democrats' Trump impeachment drive was subsequently approved only by Democrats, and indeed it was approved over the opposition of two Democrats and all Republicans.

Professor Turley, how does this trend comport with how the Founders understood how impeachment should operate?

MR. TURLEY. Well I believe the Founders certainly had aspirations that we would come together as a people, but they didn't have any delusions. It certainly was not something that they achieved in their own lifetime. Although, you'd be surprised that some of these Framers actually did, at the ends of their lives, including Jefferson and Adams, sort of reconcile.

Indeed, I think one of the most weighty and significant moments in constitutional history is the one that is rarely discussed. That Adams and Jefferson reached out to each other. That they wanted to—they wanted to reconcile before they died, and they met and they did. And maybe that is something that we can learn from.

But I think that the greater thing I would point to is the seven Republicans in the Johnson impeachment. If I could just read one thing to you, and everyone often talks about one of the Senators, but not this one. And it's Lyman Trumbull, who was a fantastic Senator. He became a great advocate for civil liberties.

You have to understand that most of these Senators, when it was said that they jumped into their political graves, it was true. Most of their political careers ended. They knew they would end because of the animosity of the period.

Trumbull said the following. He said: Once this 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 who happens to differ from the majority of the House and two-thirds of the Senate.

He said: I tremble for the future of my country. I cannot be an instrument to produce such a result, and that the hazard of the ties, even of friendship and affection to calmer times shall do justice to my motives, no alternatives are left to me. And he proceeded to give the vote that ended his career.

You can't wait for calmer times. The time for you is now. And I would say that what Trumbull said has more bearing today, because I believe that this is much like the Johnson impeachment, it's manufactured until you build a record. I'm not saying you can't build a record, but you can't do it like this, and you can't impeach a President like this.

MR. TAYLOR. Now Professor Turley, there's a recent book on impeachment by Harvard law professor Laurence Tribe and Joshua Matz that discusses what they consider to be a legitimate impeach-

ment process. The book is pretty anti-Trump, it's called *To End a Presidency*.

And in that book the authors state the following: When an impeachment is purely partisan or appears that way, it is presumptively illegitimate. When only Republicans or only Democrats view the President's conduct as justifying removal, there's a strong risk that policy disagreements or partisan animus have overtaken the proper measure of congressional impartiality.

Another quote is: We can also expect that opposition leaders to the President will be pushed to impeach and will suffer internal blowback if they don't. The key question is whether they will cave to this pressure. One risk of our broken politics is that the House will undertake additional doomed partisan impeachments, a development that would be disastrous for the Nation as a whole.

Professor Turley, is that advice being followed by House Democrats in this case?

Mr. TURLEY. Not on this schedule. The one thing, if you look at—I laid out the three impeachments. The one thing that comes out of those impeachments in terms of what bipartisan support occurred, is that impeachments require certain periods of saturation and maturation. That is, the public has to catch up.

I'm not prejudging what your record would show, but if you rush this impeachment, you're going to leave half the country behind. And, certainly, that's not what the President—what the Framers wanted.

You have to give the time to build a record. This isn't an impulse buy item. You're trying to remove a duly elected President of the United States, and that takes time and takes work. But at the end, if you look at Nixon, which was the gold standard in this respect, the public did catch up. They originally did not support impeachment, but they changed their mind. You changed their mind, and so did, by the way, the courts, because you allowed these issues to be heard in the courts.

Mr. TAYLOR. Professor Turley, the Nixon and Clinton impeachments were debated solidly in the high crimes category, correct?

Mr. TURLEY. Yes.

Mr. TAYLOR. Crimes were at issue. But on the evidence presented so far, is it your view that there's no credible evidence that any crime was committed by President Trump?

Mr. TURLEY. Yes, I've gone through all of the crimes mentioned. They do not meet any reasonable interpretation of those crimes, and I'm relying on express statements from the Federal courts.

I understand that the language in the statutes are often broad, that's not the controlling language. It's the language of the interpretation of Federal courts. And I think that all of those decisions stand mightily in the way of these theories.

And if you can't make out those crimes, then don't call it that crime. If it doesn't matter, then what's the point. Call it treason. Call it endangered species violations. If none of this matters.

Mr. TAYLOR. So that would put the Democrats move to impeach President Trump in the category of High Misdemeanors. In James Madison's notes of the constitutional convention debates, they clearly show that the term High Misdemeanor was explicitly referred to as a technical term. And it wasn't just something that any

majority of partisan members might happen to think was at any given time.

And often when there's a debated about a technical term, people turn to dictionaries. And the first truly comprehensive English dictionary was Samuel Johnson's, a dictionary of the English language, it was first published in 1755. And the Founders in many of their libraries had this book and on the theirs desks. And the Supreme Court still cites Johnson's dictionary to determine the original public understanding of the words used in the Constitution.

So here is how the 1785 Edition of Johnson's dictionary defines the relevant terms of High Misdemeanor. High, the relevant sub-definition is, capital, great, opposed to little, as high treason. The definition of misdemeanor is defined as something less than an atrocious crime. And atrocious is defined as wicked in a high degree, enormous, horribly criminal.

So if you look at how these words were defined during the time the Constitution was debated and ratified, a misdemeanor is something less than an atrocious crime, and atrocious is wicked in a high degree. And as a result, a High Misdemeanor must be something like just less than a crime that is wicked in a high degree.

Now, Professor Turley, does that generally comport with your understanding of the phrase High Misdemeanor, that was understood by the Founders, with the purpose of narrowing that phrase to prevent the sorts of abuses that you've described?

Mr. TURLEY. It did. I mean, if you compare this to the extradition clause, the language that was used was different for a reason. They did not want to establish a type of broad meeting. According to the view of some people as to the meaning of High Crimes and Misdemeanors, those provisions would be essentially identical, and that's clearly not what they wanted.

Mr. TAYLOR. Professor Turley, next I'd like to explore how this impeachment is based on no crime and no request for false information, unlike the Nixon and Clinton impeachments.

I'd like to start with some background. The American media for years has been asking questions about former Vice President Biden's son and his paid involvement with a corrupt Ukrainian energy company, Burisma, is one example of those media reports from June 20, 2019, it was an ABC News investigation, titled: Hunter Biden's Foreign Deals: Did Joe Biden's Son Profit Off Father's Position as Vice President? There's a still clip of it here with a Burisma promotional video.

And many have seen the video of Joe Biden talking about getting the Ukrainian prosecutor, who was investigating Burisma, fired. And a New York Times article says, from May 1st, 2019, referring to Joseph R. Biden. One of his most memorable performances came on a trip to Kyiv in March 2016 when he threatened to withhold a billion dollars in United States loan guarantees if Ukraine's leaders did not dismiss the country's top prosecutor. Among those who had a stake in the outcome was Hunter Biden. Mr. Biden's younger son, who at the time was on the board of an energy company owned by a Ukrainian oligarch, who had been in the sites of the fired prosecutor general.

So even if Hunter Biden engaged in no crimes regarding his sitting on the board of Burisma, if an investigation led to the bankruptcy of the corrupt company, Hunter Biden's lucrative position on the Burisma board would have been eliminated, along with his \$50,000 a month payments. That was his stake in a potential prosecution involving the company.

In fact, even Neal Katyal, the former acting solicitor general under President Obama, in his recent book entitled *Impeach*, says the following: Is what Hunter Biden did wrong? Absolutely. Hunter Biden had no real experience in the energy sector, which made him wholly unqualified to sit on the board of Burisma. The only logical reason the company could have had for appointing him was his ties to Vice President Biden. This kind of nepotism isn't only wrong, it is a potential danger to our country, since it makes it easier for foreign powers to buy influence. No politician from either party should allow a foreign power to conduct this kind of influence peddling with their family members.

Also, Lieutenant Colonel Vindman was asked at his hearing: Would it ever be U.S. Foreign policy, in your experience, to ask a foreign leader to open a political investigation? And he replied: Certainly, the President is well within his right to do that.

So the American media and others were asking questions about Hunter Biden, his involvement in Ukraine. And President Trump, in his call with the Ukrainian President, simply asked the same questions the media was asking.

Now, Professor Turley, it is your understanding that the House impeached Nixon for helping cover up his administration's involvement in a crime, and that the evidentiary record showed Nixon knew of criminal acts and sought to conceal them, including tape recordings of Presidential Nixon ordering a cover-up of the Watergate break-in shortly after it occurred?

Mr. TURLEY. It is.

Mr. TAYLOR. And it is also your understanding that the House impeached Clinton for the crime of lying under oath to deny a woman suing him for sexual harassment, evidence she was legally entitled to?

Mr. TURLEY. That's correct.

Mr. TAYLOR. So there were requests for false information in both the Nixon and Clinton scandals by the President's aides or associates or by the President himself. Correct?

Mr. TURLEY. Yes.

Mr. TAYLOR. But there are no words in the four corners of the transcript of President Trump's call that show a request for false information, are there?

Mr. TURLEY. No. And that's one of the reasons why if you want to establish the opposing view, you have to investigate this further.

Mr. TAYLOR. Now, let me walk through the standard of evidence House Democrats insisted upon during the Clinton impeachment. The minority views in the Clinton impeachment report were signed by, among others, current Senator Minority Schumer and current House Judiciary Chairman Nadler, and they say that: One of the professors who testified, quote, has meticulously documented how in the Nixon inquiry, everyone agreed, the majority, the minority,

and the President's counsel, that the standard of proof for the committee and the House was clear and convincing evidence.

Professor Turley, would you agree that the evidence compiled to date by House Democrats during these current impeachment proceedings fails to meet the standard of clear and convincing evidence?

Mr. TURLEY. I do by considerable measure.

Mr. TAYLOR. Now, let me turn again to the book *To End a Presidency*. In that book, the author states the following, quote: Except in the most extraordinary circumstances, impeaching with a partial or plausibly contested understanding of key facts is a bad idea.

Professor Turley, do you think that impeaching in this case would constitute impeaching with a partial or plausibly contested understanding of key facts?

Mr. TURLEY. I think that that's clear because this is one of the thinnest records ever to go forward on impeachment. I mean, the Johnson record, once again, we can debate, because that was the fourth attempt at an impeachment.

But this is certainly the thinnest of a modern record. If you take a look at the size of the record of Clinton and Nixon, they were massive in comparison to this, which is almost wafer thin in comparison. And it has left doubts. Not just doubts in the minds of people supporting President Trump, doubts in the minds of people like myself, about what actually occurred.

There's a difference between requesting investigations and a quid pro quo. You need to stick the landing on the quid pro quo. You need to get the evidence to support it. It might be out there, I don't know, but it's not in this record.

I agree with my colleagues, we've all read the record and I just come to a different conclusion. I don't see proof of a quid pro quo, no matter what my presumptions, assumptions, or bias might be.

Mr. TAYLOR. On that point, I'd like to turn now to the current impeachment procedures. Professor Turley, would you agree that a full and fair adversary system in which each side gets to present its own evidence and witnesses is essential to the search for truth?

Mr. TURLEY. It is. And the interesting thing, on the English impeachment model that was rejected by the Framers, they took the language, but they actually rejected the model of the impeachment from England, particularly in terms of Hastings. But even in England, it was a robust adversarial process.

And if you want to see adversarial work, take a look at what Edmund Burke did to Warren Hastings, he was on him like ugly on moose for the entire trial.

Mr. TAYLOR. And as you know, in the minority views and the Clinton impeachment report, the House Democrat wrote the following: We believe it is incumbent upon the committee to provide these basic protections, as Representative Barbara Jordan observed during the Watergate inquiry. Impeachment not only mandates due process, but due process quadrupled.

The same minority views also support the right to cross-examination in a variety of context in the Clinton example.

Now, Professor Turley, you describe how Monica Lewinsky wasn't allowed to be called as a witness in the Senate impeachment trial. And after her original testimony, she revealed how she had

been told to lie about her relationship with President Clinton by his close associates. It is a cautionary tale about the dangers of denying key witnesses. Can you elaborate on that?

Mr. TURLEY. Yeah, the only reason I mentioned that is that was in the portion of my testimony dealing with how you structure these impeachments.

What happened during the Clinton impeachment, and it came up during the hearing that we had previously, was a question of how much the House had to do in terms of Clinton impeachment because you had this robust record created by the independent counsel, and they had a lot of testimony, videotapes, et cetera. So the House basically incorporated that. And the assumption was that those witnesses would be called at the Senate, but there was a failure at the Senate.

The rules that were applied, in my view, were not fair. They restricted witnesses to only three. And that's why I brought up the Lewinsky matter. About a year ago, Monica Lewinsky revealed that she had been told that if she signed that affidavit that we now know is untrue, that she would not be called as a witness. If you actually called live witnesses, that type of information would have been part of the record.

Mr. COLLINS. Thank you.

Mr. Chairman, I yield back.

Chairman NADLER. The gentleman yields back. I note that this is the moment in which the White House would have had an opportunity to question the witnesses, but they declined their invitation. So we will now proceed to questions under the 5-minute rule. I yield myself 5 minutes for the purpose of questioning the witnesses.

Professor Feldman, would you respond to Professor Turley's comments about bribery, especially about the relevance of the elements of criminal bribery?

Mr. FELDMAN. Yes. Bribery had a clear meaning to the Framers, it was—when the President, using the power of his office, solicits or receives something of personal value from someone affected by his official powers.

And I want to be very clear. The Constitution is law. The Constitution is the supreme law of the land. So, of course, Professor Turley is right, you wouldn't want to impeach someone who didn't violate the law, but the Constitution, the supreme law of the land, specifies bribery as a ground of impeachment as it specifies other High Crimes and Misdemeanors. Bribery had a clear meaning.

If the House believes that the President solicited something of value in the form of investigations or an announcement of investigations, and that he did corruptly for personal gain, then that would constitute bribery under the meaning of the Constitution. And it would not be lawless. It would be bribery under the law.

Chairman NADLER. So the Supreme Court case in McDonnell interpreting the Federal bribery statute and other decisions interpreting the statutes would not be relevant?

Mr. FELDMAN. The Constitution is the supreme law, and the Constitution specifies what bribery means. Federal statutes can't trump the Constitution. They can't defeat what's in the Constitution.

Chairman NADLER. Thank you.

Professor Gerhardt, would you respond to Professor Turley's comments about obstruction of justice or obstruction of Congress, please.

Mr. GERHARDT. Yes. On obstruction of justice, one thing I want to emphasize, that obstruction of justice is not just about obstruction of a court, it's obstruction of any lawful proceeding. And so the obstruction isn't limited to whatever is happening in the courts, and obviously here there are judicial proceedings going on, but there's also a really critical Congressional proceeding, which brings us to obstruction of Congress.

With obstruction of Congress, I don't think—in fact, I can say, I know there's never been anything like the President's refusal to comply with subpoenas from this body. These are lawful subpoenas. These have the force of law to them. These are the things that every other President has complied with, and actually acted in alignment with, except for President Nixon in a small but significant set of materials.

Chairman NADLER. Professor Turley implied that as long as the President asserts a fanciful, ultimately nonexistent privilege like absolute immunity, he can't be charged with obstruction of Congress because, after all, it hasn't gone through the courts yet. Would you comment on that?

Professor Gerhardt.

Mr. GERHARDT. I'm sorry, I missed part of the question. Please, I'm sorry.

Chairman NADLER. Professor Turley implied that we can't charge the President with obstruction of Congress for refusing all subpoenas as long as he has any fanciful claim until the courts reject those fanciful claims.

Mr. GERHARDT. I have to respectfully disagree. No, his refusal to comply with those subpoenas is an independent event. It's a part from the courts. It's a direct assault on the legitimacy of this inquiry, which is crucial to the exercise of this power.

Chairman NADLER. Thank you. Professor Karlan, I'll give you a chance to respond, if you would like as well to the same question.

Ms. KARLAN. I wanted to respond to the first question about bribery. If I could instead. Which is—

Chairman NADLER. Yeah. Go ahead.

Ms. KARLAN. Although counsel for the minority read Samuel Johnson's definition of High Crime and Misdemeanor, he didn't read the definition of bribery. Now, I have the 1792 version of Johnson's dictionary, I don't have the initial one. And there he defines bribery as the crime of giving or taking rewards for bad practices.

So if you think it's a bad practice to deny military appropriations to an ally that have been given to them. If you think it's a bad practice not to hold a meeting to buck up the legitimacy of a government that's on the front line, and you do that in return for the reward of getting help with your reelection, that's Samuel Johnson's definition of bribery.

Chairman NADLER. Professor Feldman, if Washington were here today, if he were joined by Madison and Hamilton and other Fram-

ers, what do you believe they would say if presented with the evidence before us about President Trump's conduct?

Mr. FELDMAN. I believe the Framers would identify President Trump's conduct as exactly the kind of abuse of office, High Crime and Misdemeanor that they were worried about, and they would want the House of Representatives to take appropriate action and to impeach.

Chairman NADLER. And they would find obstruction of justice, obstruction of Congress, and abuse of power, or some of them?

Mr. FELDMAN. I believe that if the evidence supported those things in their minds, and if the Congress determines that that is what the evidence means, then they would believe strongly that that is what Congress ought to do.

Chairman NADLER. Thank you. I'll yield back the balance of my time. I'll now recognize the Ranking Member of the Judiciary Committee, the gentleman from Georgia, Mr. Collins, for 5 minutes for questioning the witnesses.

Mr. COLLINS. This just keeps getting more amazing. I think we just put in the jury pool the Founding Fathers, and said, what would they think? I don't think we have any idea what they would think, in all due respect, with this because of the different times and different things we've talked about.

But, also, to in some way insinuate on a live mike with a lot of people listening, that the Founding Fathers would have found President Trump guilty, is just simply malpractice with these fact before us. That is just simply pandering to a camera. That is just simply not right. I mean, this is amazing.

We can disagree—what's amazing on this committee is we don't even disagree on the facts. We cannot even find a fact right now, with it—it is not going through the public testimony, and also the transcripts and all, it is not.

Mr. Turley, are we going to depute someone between now and the Founders into the jury pool here?

Mr. TURLEY. Well, first of all, only I will speak for James Madison. No, no, we all will speak for James Madison with about the same level of accuracy. It is a form of necromancy that academics do all the time, and that's what we get paid for. But I just want to note a couple things. First of all I do find it rather surprising that you would have George Washington in this jury pool. I would strike him for cause.

George Washington was the first guy to raise extreme executive privilege claims. He had a rather robust view of what a President could say. If you were going to make a case to George Washington that you could impeach over a conversation he had with another Head of State, I expect his hair—his powdered hair would catch on fire.

Also, I just want to note one other thing. I am impressed with carrying an 18th century copy of Samuel Johnson with you.

Ms. KARLAN. It's just the online version.

Mr. TURLEY. It's just the online version. As an academic, I was pretty darn impressed. I just want to note one thing, which may explain part of our difference. The statutes today on bribery are written broadly, just like they were back then. That was my point.

The meaning of those words are subject to interpretation. They are written broadly because they don't want them to be too narrow. That was the case in the 18th century as they are today.

But the idea that bad practices could be the definition of bribery. Really? I mean, is that what you get from the constitutional convention that bad practices—is that why Mason wanted to put in maladministration because bad practices is not broad enough? This is where I disagree.

Now, the other thing that I just wanted to note is, and I have so much respect for Noah, and I'm just going to disagree on this point. I feel it is a rather circular argument to say, well, the Constitution is law, upon that, we are in agreement. But the Constitution refers to a crime. To say, well, you can't trump the Constitution because it defines the crime. It doesn't define the crime. It references the crime.

Now, the crime—the examples were given during the constitutional convention, and those do not comport with bad practices, they comport with real bribery. But to say that the Supreme Court's decision on what constitutes bribery is somehow irrelevant is rather odd. What the Constitution contains is a reference to a crime, and then we have to decide if that crime has been committed.

Mr. COLLINS. And I think one of the things that came out just a second ago, was also this discussion of, you know, and we had had this discussion earlier about, is it the Presidential prerogative and also members of the President's cabinet to assert privileges and rights. And we talked about the Fast and Furious with President Obama. Remember, Attorney General Holder was held in contempt by this body for withholding and not complying with subpoenas.

I mean, you just can't pick and choose history here, what you want to have. But I think also you just made a statement, and it was brought up earlier, talk about bad practice. It is also the law of the land that we're supposed to ensure that countries given aid are not corrupt.

And I think this is also something missing from this discussion, is well, if the President has had a long seeded distrust of foreign companies, especially Ukraine and others with a history of corruption.

I made this statement earlier, it's in the report from the HPSCI side on our side, 68 percent of those polled in the Ukraine over the previous year had bribed a public official.

Ukraine had corruption issues. It came back from the Obama administration. It came through the Trump administration. And our rule is that they have to actually look at the corruption before giving taxpayer dollars. The President was doing that, and now it has been blown up because we've now found in this hearing today, facts really don't matter if we're trying to fit it into a law or fitting it into a breaking of rule that we want to impeach on.

And, as I've said, the reason we're doing this is the train is on the track. This is a clocked calendar impeachment, not a fact impeachment.

I yield back.

Chairman NADLER. The gentleman yields back. I now recognize Ms. Lofgren for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman. This has been mentioned only the third time in modern history that the committee has assumed the grave responsibility of considering impeachment, and oddly enough, I have been present at all three. I was staff of Congressman Don Edwards during the Nixon impeachment, present on the committee during the Clinton impeachment, and here we are today.

At its core, I think, the impeachment power really is about preservation of our democratic systems. And the question we must answer is whether the activity of the President threatens our Constitution and our democracy. And it's about whether he's above the law, and whether he's honoring his oath of office.

Now, the House Judiciary Committee staff, and it wasn't me, it was other staff, wrote an excellent report in 1974, and this is what they said: Impeachment of a President is a grave step for the Nation. It is predicated only upon conduct seriously incompatible with either the constitutional form in principle of our government or the proper performance of constitutional duties of the Presidential office.

Ms. LOFGREN. And I'd ask unanimous consent to enter the House Judiciary Committee report on constitutional grounds into the record.

Chairman NADLER. Without objection.

[The information follows:]

MS. LOFGREN FOR THE OFFICIAL RECORD

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COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
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FIRST SESSION



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Foreword by Mr. Nadler

I am pleased to make available a report prepared by the majority staff addressing constitutional grounds for presidential impeachment. The staff of the Committee on the Judiciary first produced a report addressing this topic in 1974, during the impeachment inquiry into President Richard M. Nixon, and that report was updated by the majority and minority staff in 1998, during the impeachment inquiry into President William Jefferson Clinton. Over the past several decades, however, legal scholars and historians have undertaken a substantial study of the subject. The earlier reports remain useful points of reference, but no longer reflect the best available learning on questions relating to presidential impeachment. Further, they do not address several issues of constitutional law with particular relevance to the ongoing impeachment inquiry respecting President Donald J. Trump. For that reason, the majority staff of the Committee have prepared this report for the use of the Committee on the Judiciary.

The views and conclusions contained in the report are staff views and do not necessarily reflect those of the Committee on the Judiciary or any of its members.

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Constitutional Grounds for Presidential Impeachment

Report by the Staff of the Committee on the Judiciary

I. Introduction

Our President holds the ultimate public trust. He is vested with powers so great that they frightened the Framers of our Constitution; in exchange, he swears an oath to faithfully execute the laws that hold those powers in check. This oath is no formality. The Framers foresaw that a faithless President could destroy their experiment in democracy. As George Mason warned at the Constitutional Convention, held in Philadelphia in 1787, “if we do not provide against corruption, our government will soon be at an end.”¹ Mason evoked a well-known historical truth: when corrupt motives take root, they drive an endless thirst for power and contempt for checks and balances. It is then only the smallest of steps toward acts of oppression and assaults on free and fair elections. A President faithful only to himself—who will sell out democracy and national security for his own personal advantage—is a danger to every American. Indeed, he threatens America itself.

Impeachment is the Constitution’s final answer to a President who mistakes himself for a monarch. Aware that power corrupts, our Framers built other guardrails against that error. The Constitution thus separates governmental powers, imposes an oath of faithful execution, prohibits profiting from office, and guarantees accountability through regular elections. But the Framers were not naïve. They knew, and feared, that someday a corrupt executive might claim he could do anything he wanted as President. Determined to protect our democracy, the Framers built a safety valve into the Constitution: A President can be removed from office if the House of Representatives approves articles of impeachment charging him with “Treason, Bribery, or other high Crimes and Misdemeanors,” and if two-thirds of the Senate votes to find the President guilty of such misconduct after a trial.²

As Justice Joseph Story recognized, “the power of impeachment is not one expected in any government to be in constant or frequent exercise.”³ When faced with credible evidence of extraordinary wrongdoing, however, it is incumbent on the House to investigate and determine whether impeachment is warranted. On October 31, 2019, the House approved H. Res. 660, which, among other things, confirmed the preexisting inquiry “into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional

¹ Max Farrand, ed., *The Records of the Federal Convention of 1787*, 392 (1911) (hereinafter, “Records of the Federal Convention”).

² U.S. CONST. Art. II, § 4; *id.* Art. I, § 5, cl. 5; *id.* Art. I, § 3, cl. 6.

³ 2 Joseph Story, *Commentaries on the Constitution of the United States*, 221 (1833).

power to impeach Donald John Trump, President of the United States of America.”⁴

The Judiciary Committee now faces questions of extraordinary importance. In prior impeachment inquiries addressing allegations of Presidential misconduct, the staff of the Judiciary Committee has prepared reports addressing relevant principles of constitutional law.⁵ Consistent with that practice, and to assist the Committee and the House in working toward a resolution of the questions before them, this staff report explores the meaning of the words in the Constitution’s Impeachment Clause: “Treason, Bribery, or other high Crimes and Misdemeanors.” It also describes the impeachment process and addresses several mistaken claims about impeachment that have recently drawn public notice.

II. Summary of Principal Conclusions

Our principal conclusions are as follows.

The purpose of impeachment. As the Framers deliberated in Philadelphia, Mason posed a profound question: “Shall any man be above justice?”⁶ By authorizing Congress to remove Presidents for egregious misconduct, the Framers offered a resounding answer. As Mason elaborated, “some mode of displacing an unfit magistrate is rendered indispensable by the fallibility of those who choose, as well as by the corruptibility of the man chosen.”⁷ Unlike Britain’s monarch, the President would answer personally—to Congress and thus to the Nation—if he engaged in serious wrongdoing. Alexander Hamilton explained that the President would have no more resemblance to the British king than to “the Grand Seignior, to the khan of Tartary, [or] to the Man of the Seven Mountains.”⁸ Whereas “the person of the king of Great Britain is sacred and inviolable,” the President of the United States could be “impeached, tried, and upon conviction . . . removed from office.”⁹ Critically, though, impeachment goes no further. It results only in loss of political power. This speaks to the nature of impeachment: it exists not to inflict punishment for past wrongdoing, but rather to save the Nation from misconduct that endangers democracy and the rule of law. Thus, the ultimate question in an impeachment is whether leaving the President in our highest office imperils the Constitution.¹⁰

Impeachable offenses. The Framers were careful students of history and 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. The Framers thus intended impeachment to reach the full spectrum of Presidential misconduct that menaced the Constitution. Because they could not anticipate and prohibit every threat a President might

⁴ H. Res. 660, 116th Cong. (2019).

⁵ STAFF OF H. COMM. ON THE JUDICIARY, 93D CONG., CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT 4 (Comm. Print 1974) (hereinafter “Constitutional Grounds for Presidential Impeachment (1974)”; STAFF OF H. COMM. ON THE JUDICIARY, 105TH CONG., CONSTITUTIONAL GROUNDS FOR PRESIDENTIAL IMPEACHMENT: MODERN PRECEDENTS (Comm. Print 1998) (hereinafter “Constitutional Grounds for Presidential Impeachment: Modern Precedents (1998)”).

⁶ 2 Farrand, *Records of the Federal Convention*, at 65.

⁷ 1 Farrand, *Records of the Federal Convention*, at 86.

⁸ Alexander Hamilton, *Federalist No. 69*, 444 (Benjamin Fletcher Wright ed., 2004).

⁹ *Id.*

¹⁰ See Laurence H. Tribe, *American Constitutional Law* 155 (3d ed. 2000).

someday pose, the Framers adopted a standard sufficiently general and flexible to meet unknown future circumstances: "Treason, Bribery, or other high Crimes and Misdemeanors." This standard was proposed by Mason and was meant, in his words, to capture all manner of "great and dangerous offenses" against the Constitution.¹¹

Treason and bribery. Applying traditional tools of interpretation puts a sharper point on this definition of "high Crimes and Misdemeanors." For starters, it is useful to consider the two impeachable offenses that the Framers identified for us. "Treason" is an unforgiveable betrayal of the Nation and its security. A President who levies war against the government, or lends aid and comfort to our enemies, cannot persist in office; a President who betrays the Nation once will most certainly do so again. "Bribery," in turn, sounds in abuse of power. Impeachable bribery occurs when the President offers, solicits, or accepts something of personal value to influence his own official actions. By rendering such bribery impeachable, the Framers sought to ensure that the Nation could expel a leader who would sell out the interests of "We the People" for his own personal gain.

In identifying "other high Crimes and Misdemeanors," we are guided by the text and structure of the Constitution, the records of the Constitutional Convention and state ratifying debates, and the history of impeachment practice. These sources demonstrate that the Framers principally intended impeachment for three overlapping forms of Presidential wrongdoing: (1) abuse of power, (2) betrayal of the nation through foreign entanglements, and (3) corruption of office and elections. Any one of these violations of the public trust justifies impeachment; when combined in a single course of conduct, they state the strongest possible case for impeachment and removal from office.

Abuse of power. There are at least as many ways to abuse power as there are powers vested in the President. It would thus be an exercise in futility to attempt a list of every abuse of power constituting "high Crimes and Misdemeanors." That said, impeachable abuse of power can be roughly divided into two categories: engaging in official acts forbidden by law and engaging in official action with motives forbidden by law. As James Iredell explained, "the president would be liable to impeachments [if] he had . . . acted from some corrupt motive or other."¹² This warning echoed Edmund Randolph's teaching that impeachment must be allowed because "the Executive will have great opportunities of abusing his power."¹³ President Richard Nixon's conduct has come to exemplify impeachable abuse of power: he acted with corrupt motives in obstructing justice and using official power to target his political opponents, and his decision to unlawfully defy subpoenas issued by the House impeachment inquiry was unconstitutional on its face.

Betrayal involving foreign powers. As much as the Framers feared abuse, they feared betrayal still more. That anxiety is shot

¹¹ 2 Farrand, *Records of the Federal Convention*, at 550.

¹² Quoted in *Background and History of Impeachment: Hearing before the Subcomm. On the Constitution of the H. Comm on the Judiciary*, 105th Cong. 49 (1999) (hereinafter "1998 Background and History of Impeachment Hearing").

¹³ 2 Farrand, *Records of the Federal Convention* at 67.

through their discussion of impeachment—and explains why “Treason” heads the Constitution’s list of impeachable offenses. James Madison put it simply: the President “might betray his trust to foreign powers.”¹⁴ Although the Framers did not intend impeachment for good faith disagreements on matters of diplomacy, they were explicit that betrayal of the Nation through schemes with foreign powers justified that remedy. Indeed, foreign interference in the American political system was among the gravest dangers feared by the Founders of our Nation and the Framers of our Constitution. In his farewell address, George Washington thus warned Americans “to be constantly awake, since history and experience prove that foreign influence is one of the most baneful foes of republican government.”¹⁵ And in a letter to Thomas Jefferson, John Adams wrote: “You are apprehensive of foreign Interference, Intrigue, Influence. So am I. But, as often as Elections happen, the danger of foreign Influence recurs.”¹⁶

Corruption. Lurking beneath the Framers’ discussion of impeachment was the most ancient and implacable foe of democracy: corruption. The Framers saw no shortage of threats to the Republic, and sought to guard against them, “but the big fear underlying all the small fears was whether they’d be able to control corruption.”¹⁷ As Madison put it, corruption “might be fatal to the Republic.”¹⁸ This was not just a matter of thwarting bribes; it was a far more expansive challenge. The Framers celebrated civic virtue and love of country; they wrote rules to ensure officials would not use public power for private gain.

Impeachment was seen as especially necessary for Presidential conduct corrupting our system of political self-government. That concern arose in multiple contexts as the Framers debated the Constitution. The most important was the risk that Presidents would place their personal interest in re-election above our bedrock national commitment to democracy. The Framers knew that corrupt leaders concentrate power by manipulating elections and undercutting adversaries. They despised King George III, who “resorted to influencing the electoral process and the representatives in Parliament in order to gain [his] treacherous ends.”¹⁹ That is why the Framers deemed electoral treachery a central ground for impeachment. The very premise of the Constitution is that the American people govern themselves, and choose their leaders, through free and fair elections. When the President concludes that elections might threaten his grasp on power and abuses his office to sabotage opponents or invite inference, he rejects democracy itself and must be removed.

Conclusions regarding the nature of impeachable offenses. In sum, history teaches that “high Crimes and Misdemeanors” referred mainly to acts committed by public officials, using their power or privileges, that inflicted grave harm on our political order.

¹⁴ *Id.*, at 65–66.

¹⁵ George Washington Farewell Address (1796), *George Washington Papers, Series 2, Letterbooks 1754–1799: Letterbook 24, April 3, 1793–March 3, 1797*, Library of Congress.

¹⁶ To Thomas Jefferson from John Adams, 6 December 1787, National Archives, Founders Online.

¹⁷ Zephyr Teachout, *Corruption in America: From Benjamin Franklin’s Snuff Box to Citizens United* 57 (2014).

¹⁸ 2 Farrand, *Records of the Federal Convention*, at 66.

¹⁹ Gordon S. Wood, *The Creation of the American Republic, 1776–1787* 33 (1998).

Such great and dangerous offenses included treason, bribery, serious abuse of power, betrayal of the national interest through foreign entanglements, and corruption of office and elections. They were unified by a clear theme: officials who abused, abandoned, or sought personal benefit from their public trust—and who threatened the rule of law if left in power—faced impeachment. Each of these acts, moreover, should be plainly wrong to reasonable officials and persons of honor. When a political official uses political power in ways that substantially harm our political system, Congress can strip them of that power.

Within these parameters, and guided by fidelity to the Constitution, the House must judge whether the President's misconduct is grave enough to require impeachment. That step must never be taken lightly. It is a momentous act, justified only when the President's full course of conduct, assessed without favor or prejudice, is "seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office."²⁰ But when that high standard is met, the Constitution calls the House to action—and the House, in turn, must rise to the occasion. In such cases, a decision not to impeach can harm democracy and set an ominous precedent.

The criminality issue. It is occasionally suggested that Presidents can be impeached only if they have committed crimes. That position was rejected in President Nixon's case, and then rejected again in President Clinton's, and should be rejected once more. Offenses against the Constitution are different than offenses against the criminal code. Some crimes, like jaywalking, are not impeachable. And some forms of misconduct may offend both 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 for impeachment and removal. Ultimately, the House must judge whether a President's conduct offends and endangers the Constitution itself.

Fallacies about impeachment. In the final section of this Report, we briefly address six falsehoods about impeachment that have recently drawn public notice.

First, contrary to mistaken claims otherwise, we demonstrate that the current impeachment inquiry has complied in every respect with the Constitution, the Rules of the House, and historic practice and precedent of the House.

Second, we address several evidentiary matters. The House impeachment inquiry has compiled substantial direct and circumstantial evidence bearing on the issues at hand. Nonetheless, President Trump has objected that some of the evidence gathered by the House comes from witnesses lacking first-hand knowledge of his conduct. But in the same breath, he has unlawfully ordered many witnesses with first-hand knowledge to defy House subpoenas. As we show, President Trump's assertions regarding the evidence before the House are misplaced as a matter of constitutional law and common sense.

²⁰ REPORT OF THE COMMITTEE ON THE JUDICIARY, IMPEACHMENT OF RICHARD M. NIXON, PRESIDENT OF THE UNITED STATES, H.R. REP. NO. 93-1305 8 (1974) (hereinafter "Committee Report on Nixon Articles of Impeachment (1974)").

Third, we consider President Trump's claim that his actions are protected because of his right under Article II of the Constitution "to do whatever I want as president."²¹ This claim is wrong, and profoundly so, because our Constitution rejects pretensions to monarchy and binds Presidents with law. That is true even of powers vested exclusively in the chief executive. If those powers are invoked for corrupt reasons, or wielded in an abusive manner harming the constitutional system, the President is subject to impeachment for "high Crimes and Misdemeanors." This is a core premise of the impeachment power.

Fourth, we address whether the House must accept at face value President Trump's claim that his motives were not corrupt. In short, no. When the House probes a President's state of mind, its mandate is to find the facts. That means evaluating the President's account of his motives to see if it rings true. The question is not whether the President's conduct could have resulted from permissible motives. It is whether the President's real reasons, the ones in his mind at the time, were legitimate. Where the House discovers persuasive evidence of corrupt wrongdoing, it is entitled to rely upon that evidence to impeach.

Fifth, we explain that attempted Presidential wrongdoing is impeachable. Mason himself said so at the Constitutional Convention, where he described "attempts to subvert the Constitution" as a core example of "great and dangerous offenses."²² Moreover, the Judiciary Committee reached the same conclusion in President Nixon's case. Historical precedent thus confirms that ineptitude and insubordination do not afford the President a defense to impeachment. A President cannot escape impeachment just because his scheme to abuse power, betray the nation, or corrupt elections was discovered and abandoned.

Finally, we consider whether impeachment "nullifies" the last election or denies voters their voice in the next one. The Framers themselves weighed this question. They considered relying solely on elections—rather than impeachment—to remove wayward Presidents. That position was firmly rejected. No President is entitled to persist in office after committing "high Crimes and Misdemeanors," and no one who voted for him in the last election is entitled to expect he will do so. Where the President's misconduct is aimed at corrupting elections, relying on elections to solve the problem is no safeguard at all.

III. The Purpose of Impeachment

Freedom must not be taken for granted. It demands constant protection from leaders whose taste of power sparks a voracious need for more. Time and again, republics have fallen to officials who care little for the law and use the public trust for private gain.

The Framers of the Constitution knew this well. They saw corruption erode the British constitution from within. They heard kings boast of their own excellence while conspiring with foreign powers and consorting with shady figures. As talk of revolution

²¹ *Remarks by President Trump at Turning Point USA's Teen Student Action Summit 2019*, July 23, 2019, THE WHITE HOUSE.

²² Cass R. Sunstein, *Impeachment: A Citizen's Guide* 47 (2017).

spread, they objected as King George III used favors and party politics to control Parliament, aided by men who sold their souls and welcomed oppression.

The Framers risked their freedom, and their lives, to escape that monarchy. So did their families and many of their friends. Together, they resolved to build a nation committed to democracy and the rule of law—a beacon to the world in an age of aristocracy. In the United States of America, “We the People” would be sovereign. We would choose our own leaders and hold them accountable for how they exercised power.

As they designed our government at the Constitutional Convention, however, the Framers faced a dilemma. On the one hand, many of them embraced the need for a powerful chief executive. This had been cast into stark relief by the failure of the Nation’s very first constitution, the Articles of Confederation, which put Congress in charge at the federal level. The ensuing discord led James Madison to warn, “it is not possible that a government can last long under these circumstances.”²³ The Framers therefore created the Presidency. A single official could lead the Nation with integrity, energy, and dispatch—and would be held personally responsible for honoring that immense public trust.

Power, though, is a double-edged sword. “The power to do good meant also the power to do harm, the power to serve the republic also meant the power to demean and defile it.”²⁴ The President would be vested with breathtaking authority. If corrupt motives took root in his mind, displacing civic virtue and love of country, he could sabotage the Constitution. That was clear to the Framers, who saw corruption as “the great force that had undermined republics throughout history.”²⁵ Obsessed with the fall of Rome, they knew that corruption marked a leader’s path to abuse and betrayal. Mason thus emphasized, “if we do not provide against corruption, our government will soon be at an end.” This warning against corruption—echoed no fewer than 54 times by 15 delegates at the Convention—extended far beyond bribes and presents. To the Framers, corruption was fundamentally about the misuse of a position of public trust for any improper private benefit. It thus went to the heart of their conception of public service. As a leading historian recounts, “a corrupt political actor would either purposely ignore or forget the public good as he used the reins of power.”²⁶ Because men and women are not angels, corruption could not be fully eradicated, even in virtuous officials, but “its power can be subdued with the right combination of culture and political rules.”²⁷

The Framers therefore erected safeguards against Presidential abuse. Most famously, they divided power among three branches of government that had the means and motive to balance each other. “Ambition,” Madison reasoned, “must be made to counteract ambition.”²⁸ In addition, the Framers subjected the President to election every four years and established the Electoral College (which,

²³ Quoted in *id.*, at 27.

²⁴ Arthur M. Schlesinger, Jr., *The Imperial Presidency* 415 (1973).

²⁵ Elizabeth B. Wydra & Brienne J. Gorod, *The First Magistrate in Foreign Pay*, *THE NEW REPUBLIC*, Nov. 11, 2019.

²⁶ Teachout, *Corruption in America*, at 48.

²⁷ *Id.*, at 47.

²⁸ James Madison, *Federalist No. 51*, at 356.

they hoped, would select virtuous, capable leaders and refuse to reelect corrupt or unpopular ones). Finally, the Framers imposed on the President a duty to faithfully execute the laws—and required him to accept that duty in a solemn oath.²⁹ To the Framers, the concept of faithful execution was profoundly important. It prohibited the President from taking official acts in bad faith or with corrupt intent, as well as acts beyond what the law authorized.³⁰

A few Framers would have stopped there. This minority feared vesting any branch of government with the power to end a Presidency; as they saw it, even extreme Presidential wrongdoing could be managed in the normal course (mainly by periodic elections).

That view was decisively rejected. As Professor Raoul Berger writes, “the Framers were steeped in English history; the shades of despotic kings and conniving ministers marched before them.”³¹ Haunted by those lessons, and convening in the shadow of revolution, the Framers would not deny the Nation an escape from Presidents who deemed themselves above the law. So they turned to a mighty constitutional power, one that offered a peaceful and politically accountable method for ending an oppressive Presidency.

This was impeachment, a legal relic from the British past that over the preceding century had found a new lease on life in the North American colonies. First deployed in 1376—and wielded in fits and starts over the following 400 years—impeachment allowed Parliament to charge royal ministers with abuse, remove them from office, and imprison them. Over time, impeachment helped Parliament shift power away from royal absolutism and encouraged more politically accountable administration. In 1679, it was thus proclaimed in the House of Commons that impeachment was “the chief institution for the preservation of government.”³² That sentiment was echoed in the New World. Even as Parliamentary impeachment fell into disuse by the early 1700s, colonists in Maryland, Pennsylvania, and Massachusetts laid claim to this prerogative as part of their English birthright. During the revolution, ten states ratified constitutions allowing the impeachment of executive officials—and put that power to use in cases of corruption and abuse of power.³³ Unlike in Britain, though, American impeachment did not result in fines or jailtime. It simply removed officials from political power when their conduct required it.

Familiar with the use of impeachment to address lawless officials, the Framers offered a clear answer to Mason’s question at the Constitutional Convention, “Shall any man be above justice”?³⁴ 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 corruptibility of the man chosen.”³⁵ Future Vice President Elbridge Gerry agreed, adding that impeachment repudiates the fallacy that our “chief magistrate could do no

²⁹ U.S. CONST. Art. II, § 1, cl. 8.

³⁰ See Andrew Kent, Ethan J. Leib & Jed Handelsman Shugerman, *Faithful Execution and Article II*, 132 HARV. L. REV. 2111–2121 (2019).

³¹ Raoul Berger, *Impeachment: The Constitutional Problems* 4 (1974).

³² *Id.*, at 1 n.2.

³³ Frank O. Bowman, III, *High Crimes and Misdemeanors: A History of Impeachment for the Age of Trump* 72 (2019).

³⁴ 2 Farrand, *Records of the Federal Convention*, at 65–67.

³⁵ 1 Farrand, *Records of the Federal Convention*, at 66.

wrong.”³⁶ Benjamin Franklin, in turn, made the case that impeachment is “the best way” to assess claims of serious wrongdoing by a President; without it, those accusations would fester unresolved and invite enduring conflict over Presidential malfeasance.³⁷

Unlike in Britain, the President would answer personally—to Congress and thus to the Nation—for any serious wrongdoing. For that reason, as Hamilton later explained, the President would have no more resemblance to the British king than to “the Grand Seigneur, to the khan of Tartary, [or] to the Man of the Seven Mountains.”³⁸ Whereas “the person of the king of Great Britain is sacred and inviolable,” the President could be “impeached, tried, and upon conviction . . . removed from office.”³⁹

Of course, the decision to subject the President to impeachment was not the end of the story. The Framers also had to specify how this would work in practice. After long and searching debate they made three crucial decisions, each of which sheds light on their understanding of impeachment’s proper role in our constitutional system.

First, they limited the consequences of impeachment to “removal from Office” and “disqualification” from future officeholding.⁴⁰ To the extent the President’s wrongful conduct also breaks the law, the Constitution expressly reserves criminal punishment for the ordinary processes of criminal law. In that respect, “the consequences of impeachment and conviction go just far enough, and no further than, to remove the threat posed to the Republic by an unfit official.”⁴¹ This speaks to the very nature of impeachment: it 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.⁴²

Second, the Framers vested the House with “the sole Power of Impeachment.”⁴³ The House thus serves in a role analogous to a grand jury and prosecutor: it investigates the President’s misconduct and decides whether to formally accuse him of impeachable acts. As James Iredell explained during debates over whether to ratify the Constitution, “this power is lodged in those who represent the great body of the people, because the occasion for its exercise will arise from acts of great injury to the community.”⁴⁴ The Senate, in turn, holds “the sole Power to try all Impeachments.”⁴⁵ When the Senate sits as a court of impeachment for the President, each Senator must swear a special oath, the Chief Justice of the United States presides, and conviction requires “the concurrence of two thirds of the Members present.”⁴⁶ By designating Congress to accuse the President and conduct his trial, the Framers confirmed—in Hamilton’s words—that impeachment concerns an

³⁶ 2 Farrand, *Records of the Federal Convention*, at 66.

³⁷ James Madison, *Notes on Debates in the Federal Convention of 1787* 332 (1987).

³⁸ Alexander Hamilton, *Federalist No. 69*, at 444.

³⁹ *Id.*

⁴⁰ U.S. CONST. Art. I, § 43, cl. 7.

⁴¹ John O. McGinnis, *Impeachment: The Structural Understanding*, 67 GEO. WASH. L. REV. 650, 650 (1999).

⁴² See Tribe, *American Constitutional Law*, at 155.

⁴³ U.S. CONST. Art. I, § 2, cl. 5.

⁴⁴ 4 Jonathan Elliot, ed., *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 113 (1861) (hereinafter “*Debates in the Several State Conventions*”).

⁴⁵ U.S. CONST. Art. I, § 3, cl. 6.

⁴⁶ *Id.*

“abuse or violation of some public trust” with “injuries done immediately to the society itself.”⁴⁷ Impeachment is reserved for offenses against our political system. It is therefore prosecuted and judged by Congress, speaking for the Nation.

Last, but not least, the Framers imposed a rule of wrongdoing. The President cannot be removed based on poor management, general incompetence, or unpopular policies. Instead, the question in any impeachment inquiry is whether the President has engaged in misconduct justifying an early end to his term in office: “Treason, Bribery, or other high Crimes and Misdemeanors.”⁴⁸ This phrase had a particular legal meaning to the Framers. It is to that understanding, and to its application in prior Presidential impeachments, that we now turn.

IV. Impeachable Offenses

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, Hamilton offered an especially striking portrait:

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 [sic] 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.⁴⁹

This prophesy echoed Hamilton’s warning, in *Federalist No. 1*, that “of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants.”⁵⁰

The Framers thus intended impeachment to reach the full spectrum of Presidential misconduct that threatened the Constitution. They also intended our Constitution to endure for the ages. Because they could not anticipate and specifically prohibit every threat a President might someday pose, the Framers adopted a standard sufficiently general and flexible to meet unknown future circumstances. This standard was meant—as Mason put it—to capture all manner of “great and dangerous offenses” incompatible with the Constitution. When the President uses the powers of his high office to benefit himself, while injuring or ignoring the Amer-

⁴⁷ Alexander Hamilton, *Federalist No. 65*, at 426.

⁴⁸ U.S. CONST. Art. II, § 4.

⁴⁹ Alexander Hamilton, “*Objections and Answers respecting the Administration of the Government*,” Founders Online, National Archives.

⁵⁰ Alexander Hamilton, *Federalist No. 1*, at 91.

ican people he is oath-bound to serve, he has committed an impeachable offense.

Applying the tools of legal interpretation, as we do below, puts a sharper point on this definition of “high Crimes and Misdemeanors.” It also confirms that the Framers principally aimed the impeachment power at a few core evils, each grounded in a unifying fear that a President might abandon his duty to faithfully execute the laws. Where the President engages in serious abuse of power, betrays the national interest through foreign entanglements, or corrupts his office or elections, he has undoubtedly committed “high Crimes and Misdemeanors” as understood by the Framers. Any one of these violations of the public trust is impeachable. When combined in a scheme to advance the President’s personal interests while ignoring or injuring the Constitution, they state the strongest possible case for impeachment and removal from office.

A. LESSONS FROM BRITISH AND EARLY AMERICAN HISTORY

As Hamilton recounted, Britain afforded “[t]he model from which the idea of [impeachment] has been borrowed.”⁵¹ That was manifestly true of the phrase “high Crimes and Misdemeanors.” The Framers could have authorized impeachment for “crimes” or “serious crimes.” Or they could have followed the practice of many American state constitutions and permitted impeachment for “maladministration” or “malpractice.”⁵² But they instead selected a “unique phrase used for centuries in English parliamentary impeachments.”⁵³ To understand their choice requires a quick tour through history.

That tour offers two lessons. The first is that the phrase “high Crimes and Misdemeanors” was used *only* for parliamentary impeachments; it was never used in the ordinary criminal law.⁵⁴ Moreover, in the 400-year history of British impeachments, the House of Commons impeached many officials on grounds that did not involve any discernibly criminal conduct. Indeed, the House of Commons did so yet again just as the Framers gathered in Philadelphia. That same month, Edmund Burke—the celebrated champion of American liberty—brought twenty-two articles of impeachment against Warren Hastings, the Governor General of India. Burke charged Hastings with offenses including abuse of power, corruption, disregarding treaty obligations, and misconduct of local wars. Historians have confirmed that “none of the charges could fairly be classed as criminal conduct in any technical sense.”⁵⁵ Aware of that fact, Burke accused Hastings of “[c]rimes, not against forms, but against those eternal laws of justice, which are our rule and our birthright: his offenses are not in formal, technical language, but in reality, in substance and effect, High Crimes and High Misdemeanors.”⁵⁶

⁵¹ Alexander Hamilton, *Federalist* No. 65, at 427.

⁵² Bowman, *High Crimes and Misdemeanors*, at 65–72.

⁵³ Constitutional Grounds for Presidential Impeachment (1974), at 4.

⁵⁴ See *id.*

⁵⁵ Bowman, *High Crimes and Misdemeanors*, at 41.

⁵⁶ *Id.*

Burke's denunciation of Hastings points to the second lesson from British history: "high Crimes and Misdemeanors" were understood as offenses against the constitutional system itself. This is confirmed by use of the word "high," as well as Parliamentary practice. From 1376 to 1787, the House of Commons impeached officials on seven general grounds: (1) abuse of power; (2) betrayal of the nation's security and foreign policy; (3) corruption; (4) armed rebellion [a.k.a. treason]; (5) bribery; (6) neglect of duty; and (7) violating Parliament's constitutional prerogatives.⁵⁷ To the Framers and their contemporaries learned in the law, the phrase "high Crimes and Misdemeanors" would have called to mind these offenses against the body politic.

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.⁵⁸ Many Framers at the Constitutional Convention had participated in drafting their state constitutions, or in colonial and state removal proceedings, and were steeped in this outlook on impeachment. Further, the Framers knew well the Declaration of Independence, "whose bill of particulars against King George III modeled what [we would] now view as articles of impeachment."⁵⁹ That bill of particulars did not dwell on technicalities of criminal law, but rather charged the king with a "long train of abuses and usurpations," including misuse of power, efforts to obstruct and undermine elections, and violating individual rights.⁶⁰

History thus teaches that "high Crimes and Misdemeanors" referred mainly to acts committed by public officials, using their power or privileges, that inflicted grave harm on society itself. Such great and dangerous offenses included treason, bribery, abuse of power, betrayal of the nation, and corruption of office. They were unified by a clear theme: officials who abused, abandoned, or sought personal benefit from their public trust—and who threatened the rule of law if left in power—faced impeachment and removal.

B. TREASON AND BRIBERY

For the briefest of moments at the Constitutional Convention, it appeared as though Presidential impeachment might be restricted to "treason, or bribery."⁶¹ But when this suggestion reached the floor, Mason revolted. With undisguised alarm, he warned that such limited grounds for impeachment would miss "attempts to subvert the Constitution," as well as "many great and dangerous offenses."⁶² Here he invoked the charges pending in Parliament against Hastings as a case warranting impeachment for reasons other than treason. To "extend the power of impeachments," Mason

⁵⁷ *Id.*, at 46; Berger, *Impeachment*, at 70.

⁵⁸ See Peter Charles Hoffer & N. E. H. Hull, *Impeachment in America, 1635-1805* 1-106 (1984).

⁵⁹ Laurence H. Tribe & Joshua Matz, *To End a Presidency: The Power of Impeachment* 7 (2018).

⁶⁰ The Declaration of Independence, Thomas Jefferson, et al, July 4, 1776, Copy of Declaration of Independence, Library of Congress.

⁶¹ 2 Farrand, *Records of the Federal Convention*, at 550.

⁶² *Id.*

initially suggested adding “or maladministration” after “treason, or bribery.”⁶³ Madison, however, objected that “so vague a term will be equivalent to a tenure during the pleasure of the Senate.”⁶⁴ In response, Mason substituted “*other* high Crimes and Misdemeanors.”⁶⁵ Apparently pleased with Mason’s compromise, the Convention accepted his proposal and moved on.

This discussion confirms that Presidential impeachment is warranted for all manner of great and dangerous offenses that subvert the Constitution. It also sheds helpful light on the nature of impeachable offenses: in identifying “*other* high Crimes and Misdemeanors,” we can start with two that the Framers identified for us, “Treason” and “Bribery.”

1. IMPEACHABLE TREASON

Under Article III of the Constitution, “treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort.”⁶⁶ In other words, a person commits treason if he uses armed force in an attempt to overthrow the government, or if he knowingly gives aid and comfort to nations (or organizations) with which the United States is in a state of declared or open war. At the very heart of “Treason” is deliberate betrayal of the nation and its security. Such betrayal would not only be unforgivable, but would also confirm that the President remains a threat if allowed to remain in office. A President who has knowingly betrayed national security is a President who will do so again. He endangers our lives and those of our allies.

2. IMPEACHABLE BRIBERY

The essence of impeachable bribery is a government official’s exploitation of his or her public duties for personal gain. To the Framers, it was received wisdom that nothing can be “a greater Temptation to Officers [than] to abuse their Power by Bribery and Extortion.”⁶⁷ To guard against that risk, the Framers authorized the impeachment of a President who offers, solicits, or accepts something of personal value to influence his own official actions. By rendering such “Bribery” impeachable, the Framers sought to ensure that the Nation could expel a leader who would sell out the interests of “We the People” to achieve his own personal gain.

Unlike “Treason,” which is defined in Article III, “Bribery” is not given an express definition in the Constitution. But as Justice Joseph Story explained, a “proper exposition of the nature and limits of this offense” can be found in the Anglo-American common law tradition known well to our Framers.⁶⁸ That understanding, in turn, can be refined by reference to the Constitution’s text and the records of the Constitutional Convention.⁶⁹

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ U.S. CONST. Art. III, 3, cl. 1.

⁶⁷ William Hawkins, *A Treatise of Pleas to the Crown*, ch. 67, § 3 (1716).

⁶⁸ 2 Story, *Commentaries*, at 263; see also H.R. REP. NO. 946, at 19 (1912).

⁶⁹ For example, while the English common law tradition principally addressed itself to *judicial* bribery, the Framers repeatedly made clear at the Constitutional Convention that they intended

To start with common law: At the time of the Constitutional Convention, bribery was well understood in Anglo-American law to encompass *offering*, *soliciting*, or *accepting* bribes. In 1716, for example, William Hawkins defined bribery in an influential treatise as "the receiving or offering of any undue reward, by or to any person whatsoever . . . in order to incline him to do a thing against the known rules of honesty and integrity."⁷⁰ This description of the offense was echoed many times over the following decades. In a renowned bribery case involving the alleged solicitation of bribes, Lord Mansfield agreed that "[w]herever it is a crime to take, it is a crime to give: they are reciprocal."⁷¹ Two years later, William Blackstone confirmed that "taking bribes is punished," just as bribery is punishable for "those who offer a bribe, though not taken."⁷² Soliciting a bribe—even if it is not accepted—thus qualified as bribery at common law. Indeed, it was clear under the common law that "the attempt is a crime; it is complete on *his* side who *offers* it."⁷³

The Framers adopted that principle into the Constitution. As Judge John Noonan explains, the drafting history of the Impeachment Clause demonstrates that "Bribery" was read both actively and passively, including the chief magistrate bribing someone and being bribed."⁷⁴ Many scholars of Presidential impeachment have reached the same conclusion.⁷⁵ Impeachable "Bribery" thus covers—inter alia—the *offer*, *solicitation*, or *acceptance* of something of personal value by the President to influence his own official actions.

This conclusion draws still more support from a closely related part of the common law. In the late-17th century, "bribery" was a relatively new offense, and was understood as overlapping with the more ancient common law crime of "extortion."⁷⁶ "Extortion," in turn, was defined as the "abuse of public justice, which consists in any officer's unlawfully taking, by colour of his office, from any man, any money or thing of value, that is not due to him, or more

to subject the President to impeachment for bribery. They confirmed this intention in the Impeachment Clause, which authorizes the impeachment of "[t]he President, Vice President and all civil Officers of the United States" for "Treason, Bribery, or other high Crimes and Misdemeanors." U.S. CONST., Art. 2, § 4. It is therefore proper to draw upon common law principles and to apply them to the office of the Presidency.

⁷⁰ Hawkins, *A Treatise of Pleas to the Crown*, ch. 67, § 2 (1716).

⁷¹ *Rex v. Vaughan*, 98 Eng. Rep. 308, 311 (K.B. 1769).

⁷² William Blackstone, *Commentaries on the Laws of England*, Vol. 2, Book 4, Ch. 10, § 17 (1771).

⁷³ *Rex v. Vaughan*, 98 Eng. Rep. 308, 311 (K.B. 1769). American courts have subsequently repeated this precise formulation. See, e.g., *State v. Ellis*, 33 N.J.L. 102, 104 (N.J. Sup. Ct. 1868) ("The offence is complete when an offer or reward is made to influence the vote or action of the official."); see also William O. Russell, *A Treatise on Crimes and Misdemeanors* 239–240 (1st American Ed) (1824) ("The law abhors the least tendency to corruption; and up on the principle which has been already mentioned, of an attempt to commit even a misdemeanor, being itself a misdemeanor, (f) attempts to bribe, though unsuccessful, have in several cases been held to be criminal.")

⁷⁴ John T. Noonan, Jr., *Bribes: The Intellectual History of a Moral Idea*, 430 (1984).

⁷⁵ As Professor Bowman writes, bribery was "a common law crime that developed from a narrow beginning" to reach "giving, and offering to give, [any] improper rewards." Bowman, *High Crimes & Misdemeanors*, at 243; see also, e.g., Tribe & Matz, *To End A Presidency*, at 33 ("The corrupt exercise of power in exchange for a personal benefit defines impeachable bribery. That's self-evidently true whenever the president receives bribes to act a certain way. But it's also true when the president offers bribes to other officials—for example, to a federal judge, a legislator, or a member of the Electoral College . . . In either case, the president is fully complicit in a grave degradation of power, and he can never again be trusted to act as a faithful public servant.")

⁷⁶ See James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 839 (1988).

than is due, or before it is due.”⁷⁷ Under this definition, both bribery and extortion occurred when an official used his public position to obtain private benefits to which he was not entitled. Conduct which qualified as bribery was therefore “routinely punished as common law extortion.”⁷⁸ To the Framers, who would have seen bribery and extortion as virtually coextensive, when a President acted in his official capacity to offer, solicit, or accept an improper personal benefit, he committed “Bribery.”⁷⁹

Turning to the nature of the improper personal benefit: because officials can be corrupted in many ways, the benefit at issue in a bribe can be anything of subjective personal value to the President. This is not limited to money. Indeed, given their purposes, it would have made no sense for the Framers to confine “Bribery” to the offer, solicitation, or acceptance of money, and they expressed no desire to impose that restriction. To the contrary, in guarding against foreign efforts to subvert American officials, they confirmed their broad view of benefits that might cause corruption: a person who holds “any Office of Profit or Trust,” such as the President, is forbidden from accepting “any present, Office or Title, of any kind whatever, from . . . a foreign State.”⁸⁰ An equally pragmatic (and capacious) view applies to the impeachable offense of “Bribery.” This view is further anchored in the very same 17th and 18th century common law treatises that were well known to the Framers. Those authorities used broad language in defining what qualifies as a “thing of value” in the context of bribery: “any undue reward” or any “valuable consideration.”⁸¹

To summarize, impeachable “Bribery” occurs when a President offers, solicits, or accepts something of personal value to influence his own official actions. Bribery is thus an especially egregious and specific example of a President abusing his power for private gain. As Blackstone explained, bribery is “the genius of despotic countries where the true principles of government are never understood”—and where “it is imagined that there is no obligation from the superior to the inferior, no relative duty owing from the governor to the governed.”⁸² In our democracy, the Framers understood that there is no place for Presidents who would abuse their power and betray the public trust through bribery.

Like “Treason,” the offense of “Bribery” is thus aimed at a President who is a continuing threat to the Constitution. Someone who would willingly assist our enemies, or trade public power for personal favors, is the kind of person likely to break the rules again if they remain in office. But there is more: both “Treason” and “Bribery” are serious offenses with the capacity to corrupt constitutional governance and harm the Nation itself; both involve wrong-

⁷⁷ Blackstone, *Commentaries*, Vol. 2, Book 4, Ch. 10, §22 (1771) (citing 1 Hawk. P. C. 170); accord Giles Jacob, *A New Law-Dictionary* 102 (1782) (defining “Extortion” as “an unlawful taking by an officer, &c. by colour of his office, of any money, or valuable thing, from a person where none at all is due, or not so much is due, or before it is due”).

⁷⁸ Lindgren, *The Elusive Distinction*, 35 UCLA L. Rev. at 839.

⁷⁹ For all the reasons given below in our discussion of the criminality issue, impeachable “Bribery” does not refer to the meaning of bribery under modern federal criminal statutes. See also Bowman, *High Crimes & Misdemeanors*, at 243–44; Tribe & Matz, *To End A Presidency*, at 31–33.

⁸⁰ U.S. CONST. art. I, §9, cl.8.

⁸¹ Hawkins, *A Treatise of Pleas to the Crown*, ch. 67, §2 (1716).

⁸² Blackstone, *Commentaries on the Laws of England*, Book 4, Ch. 10 “Of Offenses Against Public Justice” (1765–1770).

doing that reveals the President as a continuing threat if left in power; and both offenses are “plainly wrong in themselves to a person of honor, or to a good citizen, regardless of words on the statute books.”⁸³ Looking to the Constitution’s text and history—including the British, colonial, and early American traditions discussed earlier—these characteristics also define “other high Crimes and Misdemeanors.”

C. ABUSE, BETRAYAL & CORRUPTION

With that understanding in place, the records of the Constitutional Convention offer even greater clarity. They demonstrate that the Framers principally intended impeachment for three forms of Presidential wrongdoing: serious abuse of power, betrayal of the national interest through foreign entanglements, and corruption of office and elections. When the President engages in such misconduct, and does so in ways that are recognizably wrong and injurious to our political system, impeachment is warranted. That is proven not only by debates surrounding adoption of the Constitution, but also by the historical practice of the House in exercising the impeachment power.

1. ABUSE OF POWER

As 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.”⁸⁴ Nowhere is that truer than in the Presidency. As the Framers created a formidable chief executive, they made clear that impeachment is justified for serious abuse of power. Edmund Randolph was explicit on this point. In explaining why the Constitution must authorize Presidential impeachment, he warned that “the Executive will have great opportunities of abusing his power.”⁸⁵ Madison, too, stated that impeachment is necessary because the President “might pervert his administration into a scheme of . . . oppression.”⁸⁶ This theme echoed through the state ratifying conventions. Advocating that New York ratify the Constitution, Hamilton set the standard for impeachment at an “abuse or violation of some public trust.”⁸⁷ In South Carolina, Charles Pinckney agreed that Presidents must be removed who “behave amiss or betray their public trust.”⁸⁸ In Massachusetts, Reverend Samuel Stillman asked, “With such a prospect [of impeachment], who will dare to abuse the powers vested in him by the people.”⁸⁹ Time and again, Americans who wrote and ratified the Constitution confirmed that Presidents may be impeached for abusing the power entrusted to them.

There are at least as many ways to abuse power as there are powers vested in the President. It would thus be an exercise in futility to attempt a list of every conceivable abuse constituting “high Crimes and Misdemeanors.” That said, abuse of power was no

⁸³ Charles L. Black Jr. & Philip Bobbitt, *Impeachment: A Handbook*, New Edition 34 (2018).

⁸⁴ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 640 (Jackson, J., concurring).

⁸⁵ 2 Farrand, *Records of the Federal Convention*, at 67.

⁸⁶ *Id.*, at 65–66.

⁸⁷ Alexander Hamilton, *Federalist* No. 65, at 426.

⁸⁸ Berger, *Impeachment*, at 89.

⁸⁹ 2 Elliot, *Debates in the Several State Conventions*, at 169.

vague notion to the Framers and their contemporaries. It had a very particular meaning to them. Impeachable abuse of power can take two basic forms: (1) the exercise of official power in a way that, on its very face, grossly exceeds the President's constitutional authority or violates legal limits on that authority; and (2) the exercise of official 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 forbidden acts, or by engaging in potentially permissible acts but for forbidden reasons (e.g., with the corrupt motive of obtaining a personal political benefit).

The first category involves conduct that is inherently and sharply inconsistent with the law—and that amounts to claims of monarchical prerogative. The generation that rebelled against King George III knew what absolute power looked like. The Framers had other ideas when they organized our government, and so they placed the chief executive within the bounds of law. That means the President may exercise only the powers expressly or impliedly vested in him by the Constitution, and he must also respect legal limits on the exercise of those powers (including the rights of Americans citizens). A President who refuses to abide these restrictions, thereby causing injury to society itself and engaging in recognizably wrongful conduct, may be subjected to impeachment for abuse of power.

That principle also covers conduct grossly inconsistent with and subversive of the separation of powers. The Framers knew that “[t]he accumulation of all powers, legislative, executive, and judiciary, in the same hands, . . . may justly be pronounced the very definition of tyranny.”⁹⁰ To protect liberty, they wrote a Constitution that creates a system of checks and balances within the federal government. Some of those rules are expressly enumerated in our founding charter; others are implied from its structure or from the history of inter-branch relations.⁹¹ When a President wields executive power in ways that usurp and destroy the prerogatives of Congress or the Judiciary, he exceeds the scope of his constitutional authority and violates limits on permissible conduct. Such abuses of power are therefore impeachable. That conclusion is further supported by the British origins of the phrase “high Crimes and Misdemeanors”: Parliament repeatedly impeached ministers for “subvert[ing] its conception of proper constitutional order in favor of the ‘arbitrary and tyrannical’ government of ambitious monarchs and their grasping minions.”⁹¹

The Supreme Court advanced similar logic in *Ex Parte Grossman*, which held the President can pardon officials who defy judicial orders and are held in criminal contempt of court.⁹³ This holding raised an obvious concern: what if the President used “successive pardons” to “deprive a court of power to enforce its orders”?⁹⁴ That could fatally weaken the Judiciary’s role under Article III of the Constitution. On behalf of a unanimous Court, Chief Justice

⁹⁰ James Madison, *Federalist No. 47*, at 336.

⁹¹ See generally *National Labor Relations Board v. Noel Canning, et al.*, 573 U.S. 513 (2014).

⁹² Bowman, *High Crimes and Misdemeanors*, at 109.

⁹³ *Ex Parte Grossman*, 267 U.S. 87 (1925).

⁹⁴ *Id.*, at 121.

William Howard Taft—who had previously served as President—explained that “exceptional cases like this . . . would suggest a resort to impeachment.”⁹⁵

Two 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 President Abraham Lincoln following his assassination at Ford’s Theatre. There, the articles approved by the House charged President Johnson with conduct forbidden by law: in firing the Secretary of War, he had 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.⁹⁶ President Johnson was thus accused of a facial abuse of power. In the Senate, though, he was acquitted by a single vote largely because the Tenure of Office Act was viewed by many Senators as likely unconstitutional (a conclusion later adopted by the Supreme Court in an opinion by Chief Justice Taft, who described the Act as “invalid”⁹⁷).

Just over 100 years later, this Committee accused a second chief executive of abusing his power. In a departure from prior Presidential practice—and in contravention of Article I of the Constitution—President Nixon had invoked specious claims of executive privilege to defy Congressional subpoenas served as part of an impeachment inquiry. His obstruction centered on tape recordings, papers, and memoranda relating to the Watergate break-in and its aftermath. As the House Judiciary Committee found, he had interposed “the powers of the presidency against the lawful subpoenas of the House of Representatives, thereby assuming to himself functions and judgments necessary to exercise the sole power of impeachment vested by the Constitution in the House of Representatives.”⁹⁸ Put simply, President Nixon purported to control the exercise of powers that belonged solely to the House and not to him—including the power of inquiry that is vital to any Congressional judgments about impeachment. In so doing, President Nixon injured the constitutional plan: “Unless the defiance of the Committee’s subpoenas under these circumstances is considered grounds for impeachment, it is difficult to conceive of any President acknowledging that he obligated to supply the relevant evidence necessary for Congress to exercise its constitutional responsibility in an impeachment proceeding.”⁹⁹ The House Judiciary Committee therefore approved an article of impeachment against President Nixon for abuse of power in obstructing the House impeachment inquiry.

But that was only part of President Nixon’s impeachable wrongdoing. The House Judiciary Committee also approved two additional articles of impeachment against him for abuse of power, one for obstruction of justice and the other for using Presidential power to target, harass, and surveil his political opponents. These articles

⁹⁵ *Id.*

⁹⁶ *Articles of Impeachment Exhibited By The House Of Representatives Against Andrew Johnson, President of the United States*, 40th Cong. (1868).

⁹⁷ *Myers v. United States*, 272 U.S. 52, 108 (1926).

⁹⁸ *Committee Report on Nixon Articles of Impeachment (1974)*, at 188.

⁹⁹ *Id.*, at 213.

demonstrate the second way in which a President can abuse power: by acting with improper motives.

This understanding of impeachable abuse of power is rooted in the Constitution's text, which commands the President to "faithfully execute" the law. At minimum, that duty requires Presidents "to exercise their power only when it is motivated in the public interest rather than in their private self-interest."¹⁰⁰ A President can thus be removed for exercising power with a corrupt purpose, even if his action would otherwise be permissible. As Iredell explained at the North Carolina ratifying convention, "the president would be liable to impeachments [if] he had . . . acted from some corrupt motive or other," or if he was "willfully abusing his trust."¹⁰¹ Madison made a similar point at Virginia's ratifying convention. There, he observed that the President could be impeached for abuse of the pardon power if there are "grounds to believe" he has used it to "shelter" persons with whom he is connected "in any suspicious manner."¹⁰² Such a pardon would technically be within the President's authority under Article II of the Constitution, but it would rank as an impeachable abuse of power because it arose from the forbidden purpose of obstructing justice. To the Framers, it was dangerous for officials to exceed their constitutional power, or to transgress legal limits, but it was equally dangerous (perhaps more so) for officials to conceal corrupt or illegitimate objectives behind superficially valid acts.

Again, President Nixon's case is instructive. After individuals associated with his campaign committee committed crimes to promote his reelection, he used the full powers of his office as part of a scheme to obstruct justice. Among many other wrongful acts, President Nixon dangled pardons to influence key witnesses, told a senior aide to have the CIA stop an FBI investigation into Watergate, meddled with Justice Department immunity decisions, and conveyed secret law enforcement information to suspects. Even if some of this conduct was formally within the scope of President Nixon's authority as head of the Executive Branch, it was undertaken with illegitimate motives. The House Judiciary Committee therefore included it within an article of impeachment charging him with obstruction of justice. Indeed, following President Nixon's resignation and the discovery of additional evidence concerning obstruction, all eleven members of the Committee who had originally voted against that article joined a statement affirming that "we were prepared to vote for his impeachment on proposed Article I had he not resigned his office."¹⁰³ Of course, several decades later, obstruction of justice was also the basis for an article of impeachment against President Clinton, though his conduct did not involve official acts.¹⁰⁴

¹⁰⁰ Kent et al., *Faithful Execution*, at 2120, 2179.

¹⁰¹ 1998 Background and History of Impeachment Hearing, at 49.

¹⁰² 3 Elliott, *Debates in the Several State Conventions*, at 497–98.

¹⁰³ Committee Report on Nixon Articles of Impeachment (1974), at 361.

¹⁰⁴ In President Clinton's case, the House approved the article of impeachment for obstruction of justice. There was virtually no disagreement in those proceedings over whether obstructing justice can be impeachable; scholars, lawyers, and legislators on all sides of the dispute recognized that it can be. See Daniel J. Hemel & Eric A. Posner, *Presidential Obstruction of Justice*, 106 CAL. L. REV. 1277, 1305–1307 (2018).

Publicly available evidence does not suggest that the Senate's acquittal of President Clinton was based on the view that obstruction of justice is not impeachable. Rather, Senators who voted for acquittal appear to have concluded that some of the factual charges were not supported

Yet obstruction of justice did not exhaust President Nixon's corrupt abuse of power. He was also accused of manipulating federal agencies to injure his opponents, aid his friends, gain personal political benefits, and violate the constitutional rights of American citizens. For instance, President Nixon improperly attempted to cause income tax audits of his perceived political adversaries; directed the FBI and Secret Service to engage in targeted (and unlawful) surveillance; and formed a secret investigative unit within the White House—financed with campaign contributions—that utilized CIA resources in its illegal covert activities. In explaining this additional article of impeachment, 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."¹⁰⁵ His abuses of executive power were thus "seriously incompatible with our system of constitutional government" and warranted removal from office.¹⁰⁶

With the benefit of hindsight, the House's decision to impeach President Johnson is best understood in a similar frame. Scholars now largely agree that President Johnson's impeachment was motivated not by violations of the Tenure of Office Act, but on his illegitimate use of power to undermine Reconstruction and subordinate African-Americans following the Civil War.¹⁰⁷ In that period, fundamental questions about the nature and future of the Union stood unanswered. Congress therefore passed a series of laws to "reconstruct the former Confederate states into political entities in which black Americans enjoyed constitutional protections."¹⁰⁸ This program, however, faced an unyielding enemy in President Johnson, who declared that "white men alone must manage the south."¹⁰⁹ Convinced that political control by African-Americans would cause a "relapse into barbarism," President Johnson vetoed civil rights laws; when Congress overrode him, he refused to enforce those laws.¹¹⁰ The results were disastrous. As Annette Gordon-Reed writes, "it would be impossible to exaggerate how devastating it was to have a man who affirmatively hated black people in charge of the program that was designed to settle the terms of their existence in post-Civil War America."¹¹¹ Congress tried to compromise with the President, but to no avail. A majority of the House finally determined that President Johnson posed a clear and present danger to the Nation if allowed to remain in office.

Rather than directly target President Johnson's faithless execution of the laws, and his illegitimate motives in wielding power, the House resorted to charges based on the Tenure of Office Act. But in reality, "the shaky claims prosecuted by [the House] obscured a far more compelling basis for removal: that Johnson's virulent use

and that, even if Presidential perjury and obstruction of justice might in some cases justify removal, the nature and circumstances of the conduct at issue (including its predominantly private character) rendered it insufficiently grave to warrant that remedy.

¹⁰⁵ Committee Report on Nixon Articles of Impeachment (1974), at 139.

¹⁰⁶ *Id.*

¹⁰⁷ See generally Michael Les Benedict, *The Impeachment and Trial of Andrew Johnson* (1999).

¹⁰⁸ Jeffrey A. Engel, Jon Meacham, Timothy Naftali, & Peter Baker, *Impeachment: An American History* 48 (2018).

¹⁰⁹ *Id.* at 49.

¹¹⁰ *Id.*

¹¹¹ See Annette Gordon-Reed, *Andrew Johnson: The American Presidents Series: the 17th President, 1865–1869* 12 (2011).

of executive power to sabotage Reconstruction posed a mortal threat to the nation—and to civil and political rights—as reconstituted after the Civil War . . . [T]he country was in the throes of a second founding. Yet Johnson abused the powers of his office and violated the Constitution to preserve institutions and practices that had nearly killed the Union. He could not be allowed to salt the earth as the Republic made itself anew.”¹¹² Viewed from that perspective, the case for impeaching President Johnson rested on his use of power with illegitimate motives.

Pulling this all together, the Framers repeatedly confirmed that Presidents can be impeached for grave abuse of power. Where the President engages in acts forbidden by law, or acts with an improper motive, he has committed an abuse of power under the Constitution. Where those abuses inflict substantial harm on our political system and are recognizably wrong, they warrant his impeachment and removal.¹¹³

2. BETRAYAL OF THE NATIONAL INTEREST THROUGH FOREIGN ENTANGLEMENTS

It is not a coincidence that the Framers started with “Treason” in defining impeachable offenses. Betrayal was no abstraction to them. They had recently waged a war for independence in which some of their fellow citizens remained loyal to the enemy. The infamous traitor, Benedict Arnold, had defected to Britain less than a decade earlier. As they looked outward, the Framers saw kings scheming for power, promising fabulous wealth to spies and deserters. 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.”¹¹⁴ 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.”¹¹⁵ Gouverneur Morris, who had initially opposed allowing impeachment, was convinced: “no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay, without being able to guard against it by displacing him.”¹¹⁶ In the same vein, Franklin noted “the case of the Prince of Orange during the late war,” in which a Dutch prince

¹¹² Tribe & Matz, *To End a Presidency*, at 55.

¹¹³ In President Clinton’s case, it was debated whether Presidents can be impeached for acts that do not involve their official powers. See *Constitutional Grounds for Presidential Impeachment: Modern Precedents* (1998), at 6–7; Minority Staff of H. Comm. on the Judiciary, 105th Cong., *Constitutional Grounds for Presidential Impeachment: Modern Precedents* Minority Views 3–4, 8–9, 13–16 (Comm. Print 1998). Many scholars have taken the view that such private conduct may be impeachable in extraordinary circumstances, such as where it renders the President unviable as the leader of a democratic nation committed to the rule of law. See, e.g., Tribe & Matz, *To End a Presidency*, at 10, 51; Black & Bobbitt, *Impeachment*, at 35. It also bears mention that some authority supports the view that Presidents might be subject to impeachment not for *abusing* their official powers, but by *failing* to use them and thus engaging in gross dereliction of official duty. See, e.g., Tribe & Matz, *To End a Presidency*, at 50; Akhil Reed Amar, *America’s Constitution: A Biography* 200 (2006); Black & Bobbitt, *Impeachment*, at 34.

¹¹⁴ Wydra & Gorod, *The First Magistrate in Foreign Pay*.

¹¹⁵ 2 Farrand, *Records of the Federal Convention*, at 65.

¹¹⁶ *Id.*, at 68.

reneged on a military treaty with France.¹¹⁷ Because there was no impeachment power or other method of inquiry, the prince's motives were secret and untested, drastically destabilizing Dutch politics and giving "birth to the most violent animosities and contentions."¹¹⁸

Impeachment for betrayal of the Nation's interest—and especially for betrayal of national security and foreign policy—was hardly exotic to the Framers. "The history of impeachment over the centuries shows an abiding awareness of how vulnerable the practice of foreign policy is to the misconduct of its makers."¹¹⁹ Indeed, "impeachments on this ground were a constant of parliamentary practice," and "a string of British ministers and royal advisors were impeached for using their official powers contrary to the country's vital foreign interests."¹²⁰ Although the Framers did not intend impeachment for genuine, good faith disagreements between the President and Congress over matters of diplomacy, they were explicit that betrayal of the Nation through plots with foreign powers justified removal.

In particular, foreign interference in the American political system was among the gravest dangers feared by the Founders of our Nation and the Framers of our Constitution. For example, in a letter to Thomas Jefferson, John Adams wrote: "You are apprehensive of foreign Interference, Intrigue, Influence. So am I.—But, as often as Elections happen, the danger of foreign Influence recurs."¹²¹ And in *Federalist No. 68*, Hamilton cautioned that the "most deadly adversaries of republican government" may come "chiefly from the desire in foreign powers to gain an improper ascendant in our councils."¹²²

The President's important role in foreign affairs does not disable the House from evaluating whether he committed impeachable offenses in that field. This conclusion follows from the Impeachment Clause itself but is also supported by the Constitution's many grants of power to Congress addressing foreign affairs. Congress is empowered to "declare War," "regulate Commerce with foreign Nations," "establish an uniform Rule of Naturalization," "define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations," "grant Letters of Marque and Reprisal," and "make Rules for the Government and Regulation of the land and naval Forces."¹²³ Congress also has the power to set policy, define law, undertake oversight and investigations, create executive departments, and authorize government funding for a slew of national security matters.¹²⁴ In addition, the President cannot make a treaty or appoint an ambassador without the approval of the Senate.¹²⁵ In those respects and many others, constitutional authority over the "conduct of the foreign relations of

¹¹⁷ *Id.*, at 67–68.

¹¹⁸ *Id.*

¹¹⁹ Frank O. Bowman, III, *Foreign Policy Has Always Been at the Heart of Impeachment*, Foreign Affairs (Nov 2019).

¹²⁰ Bowman, *High Crimes & Misdemeanors*, at 48, 106.

¹²¹ To Thomas Jefferson from John Adams, 6 December 1787, National Archives, Founders Online.

¹²² Alexander Hamilton, *Federalist No. 68*, at 441.

¹²³ U.S. Const., Art. I, § 8.

¹²⁴ See Lawrence Friedman & Victor Hansen, *There Is No Constitutional Impediment to an Impeachment Inquiry that Concerns National Security*, Just Security, Oct. 1, 2019.

¹²⁵ U.S. Const., Art. II, § 2, cl. 2.

our Government” is shared between “the Executive and Legislative [branches].”¹²⁶ Stated simply, “the Executive is not free from the ordinary controls and checks of Congress merely because foreign affairs are at issue.”¹²⁷ In these realms, as in many others, the Constitution “enjoins upon its branches separateness but interdependence, autonomy but reciprocity.”¹²⁸

Accordingly, where the President uses his foreign affairs power in ways that betray the national interest for his own benefit, or harm national security for equally corrupt reasons, he is subject to impeachment by the House. Any claims to the contrary would horrify the Framers. A President who perverts his role as chief diplomat to serve private rather than public ends has unquestionably engaged in “high Crimes and Misdemeanors”—especially if he invited, rather than opposed, foreign interference in our politics.

3. CORRUPTION OF OFFICE OR ELECTIONS

As should now be clear, the Framers feared corruption most of all, in its many and shifting manifestations. It was corruption that led to abuse of power and betrayal of the Nation. It was corruption that ruined empires, debased Britain, and menaced American freedom. The Framers saw no shortage of threats to the Republic, and fought valiantly to guard against them, “but the big fear underlying all the small fears was whether they’d be able to control corruption.”¹²⁹ This was not just a matter of thwarting bribes and extortion; it was a far greater challenge. The Framers aimed to build a country in which officials would not use public power for personal benefits, disregarding the public good in pursuit of their own advancement. This virtuous 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.”¹³⁰

The Framers therefore sought to ensure that “corruption was more effectually guarded against, in the manner this government was constituted, than in any other that had ever been formed.”¹³¹ Impeachment was central to that plan. At one point the Convention even provisionally adopted “treason, bribery, or corruption” as the standard for impeaching a President. And no fewer than four delegates—Morris, Madison, Mason, and Randolph—listed corruption as a reason why Presidents must be subject to removal. That understanding followed from history: “One invariable theme in [centuries] of Anglo-American impeachment practice has been corruption.”¹³² Treason posed a threat of swift national extinction, but the steady rot of corruption could destroy us from within. Presidents who succumbed to that instinct, serving themselves at the Nation’s expense, forfeited the public trust.

¹²⁶ *Medellin v. Texas*, 552 U.S. 491, 511 (2008).

¹²⁷ *Zivotofsky v. Kerry*, 135 S. Ct. 2076 (2015).

¹²⁸ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring).

¹²⁹ Teachout, *Corruption in America*, at 57.

¹³⁰ Jonathan Elliot ed., *Debates on the Adoption of the Federal Constitution in the Convention Held at Philadelphia*, in 1787 341 (1861) (hereinafter “*Debates on the Adoption of the Federal Constitution*”).

¹³¹ 4 Elliot, *Debates in the Several State Conventions*, at 302.

¹³² Bowman, *High Crimes & Misdemeanors*, at 277.

Impeachment was seen as especially necessary for Presidential conduct corrupting our system of political self-government. That concern arose in two contexts: the risk that Presidents would be swayed to prioritize foreign over domestic interests, and the risk that they would place their personal interest in re-election above our abiding commitment to democracy. The need for impeachment peaks where both threats converge at once.

First was the risk that foreign royals would use wealth, power, and titles to seduce American officials. This was not a hypothetical problem. Just a few years earlier, and consistent with European custom, King Louis XVI of France had bestowed on Benjamin Franklin (in his capacity as American emissary) a snuff box decorated with 408 diamonds “of a beautiful water.”¹³³ Magnificent gifts like this one could unconsciously shape how American officials carried out their duties. To guard against that peril, the Framers adopted the Foreign Emoluments Clause, which prohibits Presidents—among other federal officials—from accepting “any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State” unless Congress affirmatively consents.¹³⁴

The theory of the Foreign Emoluments Clause, based in history and the Framers’ lived experience, “is that a federal officeholder who receives something of value from a foreign power can be imperceptibly induced to compromise what the Constitution insists be his exclusive loyalty: the best interest of the United States of America.”¹³⁵ Rather than scrutinize every exchange for potential bribery, the Framers simply banned officials from receiving anything of value from foreign powers. Although this rule sweeps broadly, the Framers deemed it central to American self-governance. Speaking in Philadelphia, Charles Pinckney “urged the necessity of preserving foreign ministers, and other officers of the United States, independent of external influence.”¹³⁶ At Virginia’s convention, Randolph elaborated that “[i]t was thought proper, in order to exclude corruption and foreign influence, to prohibit any one in office from receiving or holding any *emoluments* from foreign states.”¹³⁷ Randolph added that if the President violated the Clause, “he may be impeached.”¹³⁸

The Framers also anticipated impeachment if a President placed his own interest in retaining power above the national interest in free and fair elections. Several delegates were explicit on this point when the topic arose at the Constitutional Convention. By then, the Framers had created the Electoral College. They were “satisfied with it as a tool for picking presidents but feared that individual electors might be intimidated or corrupted.”¹³⁹ Impeachment was their answer. William Davie led off the discussion, warning that a President who abused his office might seek to escape accountability by interfering with elections, sparing “no efforts or means whatever to get himself re-elected.”¹⁴⁰ Rendering the President “impeachable

¹³³ Teachout, *Corruption in America*, at 1.

¹³⁴ U.S. CONST., Art. I, §9, cl. 8.

¹³⁵ Norman L. Eisen, Richard Painter & Laurence H. Tribe, *The Emoluments Clause: Its Text, Meaning, And Application To Donald J. Trump*, BROOKINGS, Dec. 16, 2016.

¹³⁶ Elliot, *Debates on the Adoption of the Federal Constitution* at 467.

¹³⁷ 3 Elliot, *Debates in the Several State Conventions*, at 465.

¹³⁸ *Id.*, at 201.

¹³⁹ Tribe & Matz, *To End A Presidency*, at 4.

¹⁴⁰ 2 Farrand, *Records of the Federal Convention*, at 64.

whilst in office" was thus "an essential security for the good behaviour of the Executive."¹⁴¹ The Constitution thereby ensured that corrupt Presidents could not avoid justice by subverting elections and remaining in office.

George Mason built on Davie's position, directing attention to the Electoral College: "One objection agst. Electors was the danger of their being corrupted by the Candidates; & this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practised corruption & by that means procured his appointment in the first instance, be suffered to escape punishment, by repeating his guilt?"¹⁴² Mason's concern was straightforward. He feared that Presidents would win election by improperly influencing members of the Electoral College (e.g., by offering them bribes). If evidence of such wrongdoing came to light, it would be unthinkable to leave the President in office—especially given that he might seek to avoid punishment by corrupting the next election. In that circumstance, Mason concluded, the President should face impeachment and removal under the Constitution. Notably, Mason was not alone in this view. Speaking just a short while later, Gouverneur Morris emphatically agreed that "the Executive ought therefore to be impeachable for . . . Corrupting his electors."¹⁴³ Although not articulated expressly, it is reasonable to infer that the concerns raised by Davie, Mason, and Morris were especially salient because the Constitution—until ratification of the Twenty-Second Amendment in 1951—did not limit the number of terms a President could serve in office.¹⁴⁴ A President who twisted or sabotaged the electoral process could rule for life, much like a king.

This commitment to impeaching Presidents who corruptly interfered with elections was anchored in lessons from British rule. As historian Gordon Wood writes, "[t]hroughout the eighteenth century the Crown had slyly avoided the blunt and clumsy instrument of prerogative, and instead had resorted to influencing the electoral process and the representatives in Parliament in order to gain its treacherous ends."¹⁴⁵ In his influential *Second Treatise on Civil Government*, John Locke blasted such manipulation, warning that it serves to "cut up the government by the roots, and poison the very fountain of public security."¹⁴⁶ Channeling Locke, American revolutionaries vehemently objected to King George III's electoral shenanigans; ultimately, they listed several election-related charges in the Declaration of Independence. Those who wrote our Constitution knew, and feared, that the chief executive could threaten their plan of government by corrupting elections.

The true nature of this threat is its rejection of government by "We the People," who would "ordain and establish" the Constitution.¹⁴⁷ The beating heart of the Framers' project was a commitment to popular sovereignty. At a time when "democratic self- gov-

¹⁴¹ *Id.*

¹⁴² *Id.*, at 65.

¹⁴³ *Id.*, at 69.

¹⁴⁴ U.S. CONST. Amend. XXII.

¹⁴⁵ Wood, *The Creation of the American Republic*, at 33.

¹⁴⁶ John Locke, *Second Treatise of Government* 112 (C.B. Macpherson ed. 1980).

¹⁴⁷ U.S. CONST. Pmbi.

ernment existed almost nowhere on earth,"¹⁴⁸ the Framers imagined a society "where the true principles of representation are understood and practised, and where all authority flows from, and returns at stated periods to, the people."¹⁴⁹ That would be possible only if "those entrusted with [power] should be kept in dependence on the people."¹⁵⁰ This is why the President, and Members of Congress, must stand before the public for re-election on fixed terms. It is through free and fair elections that the American people protect their right to self-government, a right unforgivably denied to many as the Constitution was ratified in 1788 but now extended to all American citizens over the age of 18. When the President concludes that elections threaten his continued grasp on power, and therefore seeks to corrupt or interfere with them, he denies the very premise of our constitutional system. The American people choose their leaders; a President who wields power to destroy opponents or manipulate elections is a President who rejects democracy itself.

In sum, the Framers discussed the risk that Presidents would improperly conspire with foreign nations; they also discussed the risk that Presidents would place their interest in retaining power above the integrity of our elections. Both offenses, in their view, called for impeachment. That is doubly true where a President conspires with a foreign power to manipulate elections to his benefit—conduct that betrays American self-governance and joins the Framers' worst nightmares into a single impeachable offense.¹⁵¹

D. CONCLUSION

Writing in 1833, Justice Joseph Story remarked that impeachable offenses "are of so various and complex a character" that it would be "almost absurd" to attempt a comprehensive list.¹⁵² Consistent with Justice Story's wisdom, "the House has never, in any impeachment inquiry or proceeding, adopted either a comprehensive definition of 'high Crimes and Misdemeanors' or a catalog of offenses that are impeachable."¹⁵³ Rather than engage in abstract, advisory or hypothetical debates about the precise nature of conduct that calls for the exercise of its constitutional powers, the House has awaited a "full development of the facts."¹⁵⁴ Only then has it weighed articles of impeachment.

In making such judgments, however, each Member of the House has sworn an oath to follow the Constitution, which sets forth a

¹⁴⁸ Amar, *America's Constitution*, at 8.

¹⁴⁹ 4 Elliot, *Debates in the Several State Conventions*, at 331; see also James Madison, *Federalist* No. 14.

¹⁵⁰ James Madison, *Federalist* No. 37, at 268.

¹⁵¹ 151 In fact, the Framers were so concerned about improper foreign influence in the Presidency that they restricted that position to natural born citizens. U.S. CONST. Art. II, § 1. As one commentator observed, "Considering the greatness of the trust, and that this department is the ultimately efficient power in government, these restrictions will not appear altogether useless or unimportant. As the President is required to be a native citizen of the United States, ambitious foreigners cannot intrigue for the office, and the qualification of birth cuts off all those inducements from abroad to corruption, negotiation, and war, which have frequently and fatally harassed the elective monarchies of Germany and Poland, as well as the pontificate at Rome."

1 James Kent, *Commentaries on American Law* 255 (1826).

¹⁵² 2 Story, *Commentaries*, at 264.

¹⁵³ 1998 Background and History of Impeachment Hearing, at 2.

¹⁵⁴ Constitutional Grounds for Presidential Impeachment (1974), at 2.

legal standard governing when Presidential conduct warrants impeachment. That standard has three main parts.

First, as Mason explained just before proposing “high Crimes and Misdemeanors” as the basis for impeachment, the President’s conduct must constitute a “great and dangerous offense” against the Nation. The Constitution itself offers us two examples: “Treason” and “Bribery.” In identifying “other” offenses of the same kind, we are guided by Parliamentary and early American practice, records from the Constitutional Convention and state ratifying conventions, and insights from the Constitution’s text and structure. These sources prove that “high Crimes and Misdemeanors” involve misconduct that subverts and injures constitutional governance. Core instances of such misconduct by the President are serious abuse of power, betrayal of the national interest through foreign entanglements, and corruption of office and elections. The Framers included an impeachment power in the Constitution specifically to protect the Nation against these forms of wrongdoing.

Past practice of the House further illuminates the idea of a “great and dangerous offense.” President Nixon’s case is most helpful. There, as explained above, the House Judiciary Committee approved articles of impeachment on three grounds: (1) obstruction of an ongoing law enforcement investigation into unlawful acts by his presidential re-election campaign; (2) abuse of power in targeting his perceived political opponents; and (3) improper obstruction of a Congressional impeachment inquiry into his obstruction of justice and abuse of power. These articles of impeachment, moreover, were not confined to discrete acts. Each of them accused President Nixon of undertaking a course of conduct or scheme, and each of them supported that accusation with a list of discrete acts alleged to comprise and demonstrate the overarching impeachable offense.¹⁵⁵ Thus, where a President engages in a course of conduct involving serious abuse of power, betrayal of the national interest through foreign entanglements, or corruption of office and elections, impeachment is justified.

Second, impeachable offenses involve wrongdoing that reveal the President as a continuing threat to the constitutional system if he is allowed to remain in a position of political power. As Iredell remarked, impeachment does not exist for a “mistake.”¹⁵⁶ That is why the Framers rejected “maladministration” as a basis for impeachment, and it is why “high Crimes and Misdemeanors” are not simply unwise, unpopular, or unconsidered acts. Like “Treason” and “Bribery,” they reflect decisions by the President to embark on a course of conduct or to act with motives—inconsistent with our plan of government. Where the President makes such a decision, Congress may remove him to protect the Constitution, especially if there is reason to think that he will commit additional offenses if left in office (e.g., statements by the President that he did nothing

¹⁵⁵ Consistent with that understanding, one scholar remarks that it is the “repetition, pattern, [and] coherence” of official misconduct that “tend to establish the requisite degree of seriousness warranting the removal of a president from office.” John Labovitz, *Presidential Impeachment* 129–130 (1978); see also, e.g., McGinnis, *Impeachment*, at 659 (“[I]t has been well understood that the official’s course of conduct as a whole should be the subject of judgment.”); *Debate On Articles Of Impeachment: Hearing before the H. Comm. On the Judiciary*, 93rd Cong. (1974) (hereinafter “Debate on Nixon Articles of Impeachment (1974)”) (addressing the issue repeatedly from July 24, 1974 to July 30, 1974).

¹⁵⁶ Sunstein, *Impeachment*, at 59.

wrong and would do it all again). This forward-looking perspective follows from the limited consequences of impeachment. The question is not whether to punish the President; that decision is left to the criminal justice system. Instead, the ultimate question is whether to bring an early end to his four-year electoral term. In his analysis of the Constitution, Alexis de Tocqueville thus saw impeachment as “a preventive measure” which exists “to deprive the ill-disposed citizen of an authority which he has used amiss, and to prevent him from ever acquiring it again.”¹⁵⁷ That is particularly true when the President injures the Nation’s interests as part of a scheme to obtain personal benefits; someone so corrupt will again act corruptly.

Finally, “high Crimes and Misdemeanors” involve conduct that is recognizably wrong to a reasonable person. This principle resolves a potential tension in the Constitution. On the one hand, the Framers adopted a standard for impeachment that could stand the test of time. On the other hand, the structure of the Constitution—including its prohibition on bills of attainder and the Ex Post Facto Clause—implies that impeachable offenses should not come as a surprise.¹⁵⁸ Impeachment is aimed at Presidents who believe they are above the law, and who believe their own interests transcend those of the country and Constitution. Of course, as President Nixon proved, Presidents who have committed impeachable offenses may seek to confuse the public through manufactured ambiguity and crafty pretexts. That does not shield their misconduct from impeachment. The principle of a plainly wrong act is not about academic technicalities; it simply focuses impeachment on conduct that any person of honor would recognize as wrong under the Constitution.

To summarize: Like “Treason” and “Bribery,” and consistent with the offenses historically considered by Parliament to warrant impeachment, “high Crimes and Misdemeanors” are great and dangerous offenses that injure the constitutional system. Such offenses are defined mainly by abuse of power, betrayal of the national interest through foreign entanglements, and corruption of office and elections. In addition, impeachable offenses arise from wrongdoing that reveals the President as a continuing threat to the constitutional system if allowed to remain in a position of power. Finally, they involve conduct that reasonable officials would consider to be wrong in our democracy.

Within these parameters, and guided by fidelity to the Constitution, the House must judge whether the President’s misconduct is grave enough to require impeachment. That step must never be taken lightly. It is a momentous act, justified only when the President’s full course of conduct, assessed without favor or prejudice, is “seriously incompatible with either the constitutional form and principles of our government or the proper performance of constitutional duties of the presidential office.”¹⁵⁹ When that standard is met, however, the Constitution calls the House to action. In such cases, a decision *not* to impeach has grave consequences and sets

¹⁵⁷ Alexis de Tocqueville, *Democracy in America and Two Essays on America* 124–30 (Gerald E. Bevan, tr., 2003).

¹⁵⁸ See Black & Bobbitt, *Impeachment*, at 29–30.

¹⁵⁹ Constitutional Grounds for Presidential Impeachment (1974), at 27.

an ominous precedent. As Representative William Cohen remarked in President Nixon's case, "It also has been said to me that even if Mr. Nixon did commit these offenses, every other President . . . has engaged in some of the same conduct, at least to some degree, but the answer I think is that democracy, that solid rock of our system, may be eroded away by degree and its survival will be determined by the degree to which we will tolerate those silent and subtle subversions that absorb it slowly into the rule of a few."¹⁶⁰

V. The Criminality Issue

It is occasionally suggested that Presidents can be impeached only if they have committed crimes. That position was rejected in President Nixon's case, and then rejected again in President Clinton's, and should be rejected once more.¹⁶¹

Offenses against the Constitution are different in kind than offenses against the criminal code. Some crimes, like jaywalking, are not impeachable. Some impeachable offenses, like abuse of power, are not crimes. Some misconduct may offend both the Constitution and the criminal law. Impeachment and criminality must therefore be assessed separately—even though the commission of crimes may strengthen a case for removal.

A "great preponderance of authority" confirms that impeachable offenses are "not confined to criminal conduct."¹⁶² This authority includes nearly every legal scholar to have studied the issue, as well as multiple Supreme Court justices who addressed it in public remarks.¹⁶³ More important, the House itself has long treated "high Crimes and Misdemeanors" as distinct from crimes subject to indictment. That understanding follows from the Constitution's history, text, and structure, and reflects the absurdities and practical difficulties that would result were the impeachment power confined to indictable crimes.

A. HISTORY

"If there is one point established by . . . Anglo-American impeachment practice, it is that the phrase 'high Crimes and Misdemeanors' is not limited to indictable crimes."¹⁶⁴ As recounted above, impeachment was conceived in Parliament as a method for controlling abusive royal ministers. Consistent with that purpose,

¹⁶⁰ Debate on Nixon Articles of Impeachment (1974), at 79.

¹⁶¹ REPORT OF THE COMMITTEE ON THE JUDICIARY, HOUSE OF REPRESENTATIVES, TOGETHER WITH ADDITIONAL, MINORITY, AND DISSIDENT VIEWS TO ACCOMPANY H. RES. 611, IMPEACHMENT OF WILLIAM JEFFERSON CLINTON, PRESIDENT OF THE UNITED STATES, H.R. REP. NO. 105-830 (1998) (hereinafter "Committee Report on Clinton Articles of Impeachment (1998)"), at 64 ("Although, 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."). Constitutional Grounds for Presidential Impeachment (1974), at 22-26.

¹⁶² Berger, *Impeachment*, at 58.

¹⁶³ See, e.g., Black & Bobbitt, *Impeachment*, at 33-37, 559-565; Bowman, *High Crimes and Misdemeanors*, at 244-252; Tribe & Matz, *To End A Presidency*, at 43-53; Sunstein, *Impeachment*, at 117-134; Amar, *America's Constitution*, at 200-20; Charles J. Cooper, *A Perjurer in the White House: The Constitutional Case for Perjury and Obstruction of Justice as High Crimes and Misdemeanors*, 22 Harv. J. L. & Pub. Pol'y 619, 620 (1998-1999); Michael J. Gerhardt, *The Federal Impeachment Process: A Constitutional and Historical Analysis* 105-113 (3rd ed. 2019); Berger, *Impeachment*, at 58 (collecting sources); Merrill Otis, *A Proposed Tribunal: Is It Constitutional?*, 7 KAN. CITY. L. REV. 3, 22 (1938) (quoting Chief Justice Taft); Charles E. Hughes, *The Supreme Court of the United States* 19 (1928) (Chief Justice Hughes); 2 Henry Adams, *History of the United States of America* 223 (1962).

¹⁶⁴ Bowman, *High Crimes and Misdemeanors*, at 44.

it was not confined to accusations of criminal wrongdoing. Instead, it was applied to “many offenses, not easily definable by law,” such as abuse of power, betrayal of national security, corruption, neglect of duty, and violating Parliament’s constitutional prerogatives.¹⁶⁵ Many officials were impeached for non-criminal wrongs against the British system of government; notable examples include the Duke of Buckingham (1626), the Earl of Strafford (1640), the Lord Mayor of London (1642), the Earl of Orford and others (1701), and Governor General Warren Hastings (1787).¹⁶⁶ Across centuries of use, the phrase “high Crimes and Misdemeanors” thus assumed a “special historical meaning different from the ordinary meaning of the terms ‘crimes’ and ‘misdemeanors.’”¹⁶⁷ It became a term of art confined to impeachments, without “relation to whether an indictment would lie in the particular circumstances.”¹⁶⁸

That understanding extended to North America. Here, the impeachment process was used to address diverse misconduct by public officials, ranging from abuse of power and corruption to bribery and betrayal of the revolutionary cause.¹⁶⁹ As one scholar reports, “American colonists before the Revolution, and American states after the Revolution but before 1787, all impeached officials for non-criminal conduct.”¹⁷⁰

At the Constitutional Convention itself, no delegate linked impeachment to the technicalities of criminal law. On the contrary, the Framers invoked an array of broad, adaptable terms as grounds for removal—and when the standard was temporarily narrowed to “treason, or bribery,” Mason objected that it must reach “great and dangerous” offenses against the Constitution. Here he cited Burke’s call to impeach Hastings, whose acts were not crimes, but instead violated “those eternal laws of justice, which are our rule and our birthright.”¹⁷¹ To the Framers, impeachment was about abuse of power, betrayal of nation, and corruption of office and elections. It was meant to guard against these threats in every manifestation—known and unknown—that might someday afflict the Republic.

That view appeared repeatedly in the state ratifying debates. Delegates opined that the President could be impeached if he “deviates from his duty” or “dare[s] to abuse the power vested in him by the people.”¹⁷² In North Carolina, Iredell noted that “the person convicted [in an impeachment proceeding] is further liable to a trial at common law, and may receive such common-law punishment . . . if it be punishable by that law” (emphasis added).¹⁷³ Similarly, in Virginia, George Nicholas declared that the President “will be absolutely disqualified [by impeachment] to hold any place of profit, honor, or trust, and liable to further punishment if he has committed such high crimes as are punishable at common law” (emphasis added).¹⁷⁴ The premise underlying this statement—and

¹⁶⁵ 2 Story, *Commentaries*, at 268.

¹⁶⁶ See Bowman, *High Crimes and Misdemeanors*, at 44–47.

¹⁶⁷ Constitutional Grounds for Presidential Impeachment (1974), at 22.

¹⁶⁸ Berger, *Impeachment*, at 62.

¹⁶⁹ Hoffer & Hull, *Impeachment in America*, at 1–95.

¹⁷⁰ Bowman, *High Crimes and Misdemeanors*, at 244.

¹⁷¹ Edmund Burke, *Reflections on the Revolution in France and Other Writings* 409 (2015).

¹⁷² Quoted in Michael J. Gerhardt, *Impeachment: What Everyone Needs to Know* 60 (2018).

¹⁷³ Constitutional Grounds for Presidential Impeachment (1974), at 23.

¹⁷⁴ *Id.*

Iredell's—is that some Presidential “high Crimes and Misdemeanors” were *not* punishable by common law.

Leading minds echoed that position through the Nation's early years. In *Federalist No. 65*, Hamilton argued that impeachable offenses are defined by “the abuse or violation of some public trust.”¹⁷⁵ In that sense, he reasoned, “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.”¹⁷⁶ A few years later, Constitutional Convention delegate James Wilson reiterated Hamilton's point: “Impeachments, and offences and offenders impeachable, come not . . . within the sphere of ordinary jurisprudence. They are founded on different principles, are governed by different maxims, and are directed to different objects.”¹⁷⁷ Writing in 1829, William Rawle described impeachment as reserved for “men whose treachery to their country might be productive of the most serious disasters.”¹⁷⁸ Four years later, Justice Story emphasized that impeachable offenses ordinarily “must be examined upon very broad and comprehensive principles of public policy and duty.”¹⁷⁹

The American experience with impeachment confirms that lesson. A strong majority of the impeachments voted by the House since 1789 have included “one or more allegations that did not charge a violation of criminal law.”¹⁸⁰ Several officials, moreover, have subsequently been convicted on non-criminal articles of impeachment. For example, Judge Robert Archbald was removed in 1912 for non-criminal speculation in coal properties, and Judge Halsted Ritter was removed in 1936 for the non-criminal offense of bringing his court “into scandal and disrepute.”¹⁸¹ As House Judiciary Committee Chairman Hatton Sumners stated explicitly during Judge Ritter's case, “We do not assume the responsibility . . . of proving that the respondent is guilty of a crime as that term is known to criminal jurisprudence.”¹⁸² The House has also applied that principle in Presidential impeachments. Although President Nixon resigned before the House could consider the articles of impeachment against him, the Judiciary Committee's allegations encompassed many non-criminal acts.¹⁸³ And in President Clinton's case, the Judiciary Committee report accompanying 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.”¹⁸⁴

History thus affords exceptionally clear and consistent evidence that impeachable “high Crimes and Misdemeanors” are not limited to violations of the criminal code.

¹⁷⁵ Alexander Hamilton, *Federalist No. 65*, at 426.

¹⁷⁶ *Id.*

¹⁷⁷ James Wilson, *Collected Works of James Wilson* 736 (Kermit L. Hall and Mark David Hall ed. 2007).

¹⁷⁸ William Rawle, *A View of the Constitution of the United States of America* 218 (1829).

¹⁷⁹ 2 Story, *Commentaries*, at 234.

¹⁸⁰ Constitutional Grounds for Presidential Impeachment (1974), at 24.

¹⁸¹ REPORT OF THE COMMITTEE ON THE JUDICIARY, ROBERT W. ARCHBALD, JUDGE OF THE UNITED STATES COMMERCE COURT, H.R. REP. NO. 62-946 (1912); H. Res. 422, 74th Cong. (1936) (enacted).

¹⁸² Berger, *Impeachment*, at 57.

¹⁸³ See generally Committee Report on Nixon Articles of Impeachment (1974).

¹⁸⁴ Committee Report on Clinton Articles of Impeachment (1998), at 66.

B. CONSTITUTIONAL TEXT AND STRUCTURE

That historical conclusion is bolstered by the text and structure of the Constitution. Starting with the text, we must assign weight to use of the word “high.” That is true not only because “high Crimes and Misdemeanors” was a term of art with its own history, but also because “high” connotes an offense against the State itself. Thus, “high” treason in Britain was an offense against the Crown, whereas “petit” treason was the betrayal of a superior by a subordinate. The Framers were aware of this when they incorporated “high” as a limitation on impeachable offenses, signifying only constitutional wrongs.

That choice is particularly noteworthy because the Framers elsewhere referred to “crimes,” “offenses,” and “punishment” without using this modifier—and so we know “the Framers knew how to denote ordinary crimes when they wanted to do so.”¹⁸⁵ For example, the Fifth Amendment requires a grand jury indictment in cases of a “capital, or otherwise infamous crime.”¹⁸⁶ The Currency Clause, in turn, empowers Congress to “provide for the Punishment of counterfeiting the Securities and current Coin of the United States.”¹⁸⁷ The Law of Nations Clause authorizes Congress to “define and punish Piracies and Felonies committed on the high Seas, and Offenses against the Law of Nations.”¹⁸⁸ And the Interstate Extradition Clause provides that “[a] Person charged in any State with Treason, Felony, or other Crime” who flees from one state to another shall be returned upon request.¹⁸⁹ Only in the Impeachment Clause did the Framers refer to “high” crimes. By adding “high” in this one provision, while excluding it everywhere else, the Framers plainly sought to capture a distinct category of offenses against the state.¹⁹⁰

That interpretation is also most consistent with the structure of the Constitution. This is true in three respects.

First, as explained above, the Impeachment Clause restricts the consequences of impeachment to removal from office and disqualification from future federal officeholding. That speaks to the fundamental character of impeachment. In Justice Story’s words, it is “a proceeding purely of a political nature. It is not so much designed to punish an offender, as to secure the state against gross official misdemeanors. It touches neither his person, nor his property; but simply divests him of his political capacity.”¹⁹¹ Given that impeachment exists to address threats to the political system, applies

¹⁸⁵ Tribe & Matz, *To End a Presidency*, at 40.

¹⁸⁶ U.S. CONST. Amend. V, § 1.

¹⁸⁷ U.S. CONST. Art. I, § 8, cl. 6.

¹⁸⁸ U.S. CONST. Art. I, § 8, cl. 10.

¹⁸⁹ U.S. CONST. Art. IV, § 2, cl. 2.

¹⁹⁰ One might object that since “Treason” and “Bribery” are indictable crimes, the same must be true of “other high Crimes and Misdemeanors.” But this argument would fail. Although it is true that “other high Crimes and Misdemeanors” share certain characteristics with “Treason” and “Bribery,” the key question is *which* characteristics unify them. And for all the reasons given here, it is wrong to conclude that criminality is the unifying principle of impeachable offenses. Moreover, if the Framers’ goal was to limit impeachment to violations of the criminal law, it is passing strange that the Impeachment Clause uses a term of art—“high Crimes and Misdemeanors”—that appears neither in the criminal law itself nor anywhere else in the Constitution (which *does* elsewhere refer both to “crimes” and “offenses”). It would have been easy to write a provision limiting the impeachment power to serious crimes, and yet the Framers pointedly did not do so.

¹⁹¹ 2 Story, *Commentaries*, at 272.

only to political officials, and responds only by stripping political power, it makes sense to infer that “high Crimes and Misdemeanors” are offenses against the political system rather than indictable crimes.

Second, if impeachment were restricted to crimes, impeachment proceedings would be restricted to deciding whether the President had committed a specific crime. Such a view would create tension between the Impeachment Clause and other provisions of the Constitution. For example, the Double Jeopardy Clause protects against being tried twice for the same crime. Yet the Impeachment Clause contemplates that an official, once removed, can still face “Indictment, Trial, Judgment and Punishment, according to Law.” It would be strange if the Framers forbade double jeopardy, yet allowed the President to be tried in court for crimes after Congress convicted him in a proceeding that necessarily (and exclusively) decided whether he was guilty of those very same crimes.¹⁹² That oddity is avoided only if impeachment proceedings are seen “in noncriminal terms,” which occurs if impeachable offenses are understood as distinct from indictable crimes.¹⁹³

Finally, the Constitution was originally understood as limiting Congress’s power to create a federal law of crimes. It would therefore be strange if the Framers restricted impeachment to criminal offenses, while denying Congress the ability to criminalize many forms of Presidential wrongdoing that they repeatedly described as requiring impeachment.

To set this point in context, the Constitution expressly authorizes Congress to criminalize only a handful of wrongful acts: “counterfeiting, piracy, ‘offenses against the law of nations,’ and crimes that occur within the military.”¹⁹⁴ Early Congresses did not tread far beyond that core category of crimes, and the Supreme Court took a narrow view of federal power to pass criminal statutes. It was not until much later—in the twentieth century—that the Supreme Court came to recognize that Congress could enact a broader criminal code. As a result, early federal criminal statutes “covered relatively few categories of offenses.”¹⁹⁵ Many federal offenses were punishable only when committed “in special places, and within peculiar jurisdictions, as, for instance, on the high seas, or in forts, navy-yards, and arsenals ceded to the United States.”¹⁹⁶

The Framers were not fools. They authorized impeachment for a reason, and that reason would have been gutted if impeachment were limited to crimes. It is possible, of course, that the Framers thought the common law, rather than federal statutes, would define criminal offenses. That is undeniably true of “Bribery”: the Framers saw this impeachable offense as defined by the common law of bribery as it was understood at the time. But it is hard to believe that the Framers saw common law as the sole measure of impeachment. For one thing, the common law did not address itself to many wrongs that could be committed uniquely by the President in our republican system. The common law would thus have been

¹⁹² See Berger, *Impeachment*, at 80.

¹⁹³ *Id.*

¹⁹⁴ William J. Stuntz, *The Collapse of American Criminal Justice* 99 (2011).

¹⁹⁵ Tribe & Matz, *To End a Presidency*, at 48.

¹⁹⁶ 2 Story, *Commentaries*, at 264.

an extremely ineffective tool for achieving the Framers' stated purposes in authorizing impeachment. Moreover, the Supreme Court held in 1812 that there is no federal common law of crimes.¹⁹⁷ If the Framers thought only crimes could be impeachable offenses, and hoped common law would describe the relevant crimes, then they made a tragic mistake—and the Supreme Court's 1812 decision ruined their plans for the impeachment power.¹⁹⁸

Rather than assume the Framers wrote a Constitution full of empty words and internal contradictions, it makes far more sense to agree with Hamilton that impeachment is not about crimes. The better view, which the House itself has long embraced, confirms that impeachment targets offenses against the Constitution that threaten democracy.¹⁹⁹

C. THE PURPOSE OF IMPEACHMENT

The distinction between impeachable offenses and crimes also follows from the fundamentally different purposes that impeachment and the criminal law serve. At bottom, the impeachment power is "the first step in a remedial process—removal from office and possible disqualification from holding future office."²⁰⁰ It exists "primarily to maintain constitutional government" and is addressed exclusively to abuses perpetrated by federal officeholders.²⁰¹ It is through impeachment proceedings that "a President is called to account for abusing powers that only a President possesses."²⁰² The criminal law, in contrast, "sets a general standard of conduct that all must follow."²⁰³ It applies to all persons within its compass and ordinarily defines acts forbidden to everyone; in our legal tradition, the criminal code "does not address itself [expressly] to the abuses of presidential power."²⁰⁴

Indeed, "the early Congresses—filled with Framers—didn't even try to create a body of criminal law addressing many of the specific abuses that motivated adoption of the Impeachment Clause in the first place."²⁰⁵ This partly reflects "a tacit judgment that it [did] not deem such a code necessary."²⁰⁶ But that is not the only explanation. The Constitution vests "the sole Power of Impeachment" in the House; it is therefore doubtful that a statute enacted by one Congress (and signed by the President) could bind the House at a later date.²⁰⁷ Moreover, any such effort to define and criminalize all impeachable offenses would quickly run aground. As Justice

¹⁹⁷ *United States v. Hudson and Goodwin*, 11 U.S. 32 (1812).

¹⁹⁸ In the alternative, one might say that "high Crimes and Misdemeanors" occur when the president violates *state* criminal law. But that turns federalism upside down: invoking state criminal codes to supply the content of the federal Impeachment Clause would grant states a bizarre and incongruous primacy in the constitutional system. Especially given that impeachment is crucial to checks and balances *within* the federal government, it would be nonsensical for states to effectively control when this power may be wielded by Congress.

¹⁹⁹ Article III of the Constitution provides that "the Trial of all Crimes, except in Cases of Impeachment, shall be by Jury." Article III, §2. This provision recognizes that impeachable conduct *may* entail criminal conduct—and clarifies that in such cases, the trial of an impeachment still occurs in the Senate, not by jury.

²⁰⁰ Constitutional Grounds for Presidential Impeachment (1974), at 24.

²⁰¹ *Id.*

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ Tribe & Matz, *To End a Presidency*, at 48–49.

²⁰⁶ Berger, *Impeachment*, at 78.

²⁰⁷ Committee Report on Nixon Articles of Impeachment (1974), at 25.

Story cautioned, impeachable offenses “are of so various and complex a character, so utterly incapable of being defined, or classified, that the task of positive legislation would be impracticable, if it were not almost absurd to attempt it.”²⁰⁸

There are also general characteristics of the criminal law that make criminality inappropriate as an essential element of impeachable conduct. For example, criminal law traditionally forbids acts, rather than failures to act, yet impeachable conduct “may include the serious failure to discharge the affirmative duties imposed on the President by the Constitution.”²⁰⁹ In addition, unlike a criminal case focused on very specific conduct and nothing else, a Congressional impeachment proceeding may properly consider a broader course of conduct or scheme that tends to subvert constitutional government.²¹⁰ Finally, the application of general criminal statutes to the President may raise constitutional issues that have no bearing on an impeachment proceeding, the whole point of which is to assess whether the President has abused power in ways requiring his removal from office.²¹¹

For all these reasons, “[a] requirement of criminality would be incompatible with the intent of the framers to provide a mechanism broad enough to maintain the integrity of constitutional government. Impeachment is a constitutional safety valve; to fulfill this function, it must be flexible enough to cope with exigencies not now foreseeable.”²¹²

D. THE LIMITED RELEVANCE OF CRIMINALITY

As demonstrated, the President can commit “high Crimes and Misdemeanors” without violating federal criminal law. “To conclude otherwise would be to ignore the original meaning, purpose and history of the impeachment power; to subvert the constitutional design of a system of checks and balances; and to leave the nation unnecessarily vulnerable to abusive government officials.”²¹³ Yet the criminal law is not irrelevant. “Our criminal codes identify many terrible acts that would surely warrant removal if committed by the chief executive.”²¹⁴ Moreover, the President is sworn to uphold the law. If he violates it while grossly abusing power, betraying the national interest through foreign entanglements, or corrupting his office or elections, that weighs in favor of impeaching him.

VI. Addressing Fallacies About Impeachment

Since the House began its impeachment inquiry, a number of inaccurate claims have circulated about how impeachment works under the Constitution. To assist the Committee in its deliberations, we address six issues of potential relevance: (1) the law that governs House procedures for impeachment; (2) the law that gov-

²⁰⁸ 2 Story, *Commentaries*, at 264.

²⁰⁹ Constitutional Grounds for Presidential Impeachment (1974), at 24.

²¹⁰ *Id.*, at 24–25.

²¹¹ Robert S. Mueller, III, *Report On The Investigation Into Russian Interference In The 2016 Presidential Election*, Vol. II at 170–181 (March 2019).

²¹² Constitutional Grounds for Presidential Impeachment (1974), at 25.

²¹³ Keith E. Whittington, *Must Impeachable Offenses Be Violations of the Criminal Code?*, *LAWFARE*, Nov. 19, 2019.

²¹⁴ Tribe & Matz, *To End a Presidency*, at 51.

erns the evaluation of evidence, including where the President orders defiance of House subpoenas; (3) whether the President can be impeached for the abuse of his executive powers; (4) whether the President's claims regarding his motives must be accepted at face value; (5) whether the President is immune from impeachment if he attempts an impeachable offense but is caught before he completes it; and (6) whether it is preferable to await the next election when a President has sought to corrupt that very same election.

A. THE IMPEACHMENT PROCESS

It has been argued that the House has not followed proper procedure in its ongoing impeachment inquiry. We have considered those arguments and find that they lack merit.

To start with first principles, the Constitution vests the House with the “sole Power of Impeachment.”²¹⁵ It also vests the House with the sole power to “determine the Rules of its Proceedings.”²¹⁶ These provisions authorize the House to investigate potential “high Crimes and Misdemeanors,” to draft and debate articles of impeachment, and to establish whatever rules and procedures it deems proper for those proceedings.²¹⁷

When the House wields its constitutional impeachment power, it functions like a grand jury or prosecutor: its job is to figure out what the President did and why he did it, and then to decide whether the President should be charged with impeachable offenses. If the House approves any articles of impeachment, the President is entitled to present a full defense at trial in the Senate. It is thus in the Senate, and *not* in the House, where the President might properly raise certain protections associated with trials.²¹⁸

Starting in May 2019, the Judiciary Committee undertook an inquiry to determine whether to recommend articles of impeachment against President Trump. The Committee subsequently confirmed, many times, that it was engaged in an impeachment investigation. On June 11, 2019, the full House approved a resolution confirming that the Judiciary Committee possessed “any and all necessary authority under Article I of the Constitution” to continue its investigation; an accompanying Rules Committee Report emphasized that the “purposes” of the inquiry included “whether to approve ‘articles of impeachment with respect to the President.’”²¹⁹ As the Judiciary Committee continued with its investigation, evidence came to light that President Trump may have grossly abused the power of his office in dealings with Ukraine. At that point, the House Permanent Select Committee on Intelligence, and the House Oversight and Foreign Affairs Committees, began investigating potential of-

²¹⁵ U.S. CONST. Art. I, § 2, cl. 5.

²¹⁶ U.S. CONST. Art. I, § 5, cl. 2.

²¹⁷ See David Pozen, *Risk-Risk Tradeoffs in Presidential Impeachment*, TAKE CARE, Jun. 6, 2018 (“Both chambers of Congress enjoy vast discretion in how they run impeachment proceedings.”).

²¹⁸ *Contra* Letter from Pat A. Cipollone, Counsel to the President, to Hon. Nancy Pelosi, Speaker of the House, Hon. Adam B. Schiff, Chairman, H. Perm. Select Comm. on Intelligence, Hon. Eliot L. Engel, Chairman, H. Foreign Affairs Comm., and Hon. Elijah E. Cummings, Chairman, H. Comm. on Oversight and Reform (Oct. 8, 2019); *Leader McCarthy Speech Against the Sham Impeachment Vote*, Kevin McCarthy, Republican Leader, Oct. 31, 2019.

²¹⁹ H. Res. 430, 116th Cong. (2019); AUTHORIZING THE COMMITTEE ON THE JUDICIARY TO INITIATE OR INTERVENE IN JUDICIAL PROCEEDINGS TO ENFORCE CERTAIN SUBPOENAS AND FOR OTHER PURPOSES TO ACCOMPANY H. RES. 430, H.R. REP. 116–108, at 21 (2019).

fenses relating to Ukraine. On September 24, 2019, House Speaker Nancy Pelosi directed these committees, as well as the House Judiciary, Financial Services and Ways and Means Committees, to “proceed with their investigations under that umbrella of [an] impeachment inquiry.”²²⁰ Finally, on October 31, 2019, the full House approved H. Res. 660, which directed the six committees “to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America.”²²¹

This approach to investigating potential impeachable offenses adheres to the Constitution, the Rules of the House, and historical practice.²²² House Committees have frequently initiated and made substantial progress in impeachment inquiries before the full House considered a resolution formalizing their efforts. That is what happened in the cases of Presidents Johnson and Nixon, as well as in many judicial impeachments (which are subject to the same constitutional provisions).²²³ Indeed, numerous judges have been impeached without any prior vote of the full House authorizing a formal inquiry.²²⁴ It is both customary and sensible for committees—particularly the Judiciary Committee—to investigate evidence of serious wrongdoing before decisions are made by the full House.

In such investigations, the House’s initial task is to gather evidence. As is true of virtually any competent investigation, whether governmental or private, the House has historically conducted substantial parts of the initial fact-finding process out of public view to ensure more accurate and complete testimony.²²⁵ In President Nixon’s case, for instance, only the Judiciary Committee Chairman, Ranking Member, and Committee staff had access to material gathered by the impeachment inquiry in its first several months.²²⁶ There was no need for similar secrecy in President Clinton’s case, but only because the House did not engage in a substantial investigation of its own; it largely adopted the facts set forth in a report by Independent Counsel Kenneth Starr, who had spent years investigating behind closed doors.²²⁷

When grand juries and prosecutors investigate wrongdoing by private citizens and public officials, the person under investigation has no right to participate in the examination of witnesses and evidence that precedes a decision on whether to file charges. That is

²²⁰ *Pelosi Remarks Announcing Impeachment Inquiry*, Sep. 24 2019, NANCY PELOSI, SPEAKER OF THE HOUSE.

²²¹ H. Res. 660, 116th Cong. (2019).

²²² See generally H.R. REP. NO. 116–108.

²²³ See 3 Hinds Ch. 75 § 2400 (President Johnson); 3 Deschler Ch. 14, § 15 (President Nixon); H.R. REP. NO. 101–36, at 13–16 (1988) (Judge Walter Nixon); H.R. Res. 320, 100th Cong. (Judge Alcee Hastings); H.R. REP. NO. 99–688, at 3–7 (1986) (Judge Harry Claiborne); 3 Deschler Ch. 14 § 5 (Justice William O. Douglas).

²²⁴ See H. Res. 87, 101st Cong. (1989) (impeaching Judge Nixon); H. Res. 499, 100th Cong. (1988) (impeaching Judge Hastings); H. Res. 461, 99th Cong. (1986) (impeaching Judge Claiborne).

²²⁵ See Tribe & Matz, *To End A Presidency*, at 92 (“Historically, the House and Senate have investigated through their committees . . . Critically, although they may involve occasional public hearings, most investigatory activities must be kept secret until they have nearly reached an end.”).

²²⁶ Debate on Nixon Articles of Impeachment (1974), at 86.

²²⁷ Committee Report on Clinton Articles of Impeachment (1998), at 300.

black letter law under the Constitution, even in serious criminal cases that threaten loss of life or liberty. The same is true in impeachment proceedings, which threaten only loss of public office. Accordingly, even if the full panoply of rights held by criminal defendants hypothetically were to apply in the non-criminal setting of impeachment, the President has no “due process right” to interfere with, or inject himself into, the House’s fact-finding efforts. If the House ultimately approves articles of impeachment, any rights that the President might hold are properly secured at trial in the Senate, where he may be afforded an opportunity to present an evidentiary defense and test the strength of the House’s case.

Although under no constitutional or other legal obligation to do so, but consistent with historical practice, the full House approved a resolution—H. Res. 660—that ensures transparency, allows effective public hearings, and provides the President with opportunities to participate. The privileges afforded under H. Res. 660 are even greater than those provided to Presidents Nixon and Clinton. They allow the President or his counsel to participate in House Judiciary Committee proceedings by presenting their case, responding to evidence, submitting requests for additional evidence, attending hearings (including non-public hearings), objecting to testimony, and cross-examining witnesses. In addition, H. Res. 660 gave the minority the same rights to question witnesses that the majority has, as has been true at every step of this impeachment proceeding.

The impeachment inquiry concerning President Trump has thus complied in every respect with the Constitution, the Rules of the House, and historic practice of the House.

B. EVIDENTIARY CONSIDERATIONS AND PRESIDENTIAL OBSTRUCTION

The House impeachment inquiry has compiled substantial direct and circumstantial evidence bearing on the question whether President Trump may have committed impeachable offenses. President Trump has objected that some of this evidence comes from witnesses lacking first-hand knowledge of his conduct. In the same breath, though, he has ordered witnesses with first-hand knowledge to defy House subpoenas for testimony and documents—and has done so in a categorical, unqualified manner. President Trump’s evidentiary challenges are misplaced as a matter of constitutional law and common sense.

The Constitution does not prescribe rules of evidence for impeachment proceedings in the House or Senate. Consistent with its sole powers to impeach and to determine the rules of its proceedings, the House is constitutionally authorized to consider any evidence that it believes may illuminate the issues before it. At this fact-finding stage, “no technical ‘rules of evidence’ apply,” and “[e]vidence may come from investigations by committee staff, from grand jury matter made available to the committee, or from any other source.”²²⁸ The House may thus “subpoena documents, call witnesses, hold hearings, make legal determinations, and undertake any other activities necessary to fulfill [its] mandate.”²²⁹ When deciding whether to bring charges against the President, the

²²⁸ Black & Bobbitt, *Impeachment*, at 9.

²²⁹ Tribe & Matz, *To End a Presidency*, at 129.

House is not restricted by the Constitution in deciding which evidence to consider or how much weight to afford it.

Indeed, were rules of evidence to apply anywhere, it would be in the Senate, where impeachments are tried. Yet the Senate does not treat the law of evidence as controlling at such trials.²³⁰ As one scholar explains, “rules of evidence were elaborated primarily to hold *juries* within narrow limits. They have no place in the impeachment process. Both the House and the Senate ought to hear and consider *all* evidence which seems relevant, without regard to technical rules. Senators are in any case continually exposed to ‘hearsay’ evidence; they cannot be sequestered and kept away from newspapers, like a jury.”²³¹

Instead of adopting abstract or inflexible rules, the House and Senate have long relied on their common sense and good judgment to assess evidence in impeachments. When evidence is relevant but there is reason to question its reliability, those considerations affect how much weight the evidence is given, not whether it can be considered at all.

Here, the factual record is formidable and includes many forms of highly reliable evidence. It goes without saying, however, that the record might be more expansive if the House had full access to the documents and testimony it has lawfully subpoenaed from government officials. The reason the House lacks such access is an unprecedented decision by President Trump to order a total blockade of the House impeachment inquiry.

In contrast, the conduct of prior chief executives illustrates the lengths to which they complied with impeachment inquiries. As President James Polk conceded, the “power of the House” in cases of impeachment “would penetrate into the most secret recesses of the Executive Departments,” and “could command the attendance of any and every agent of the Government, and compel them to produce all papers, public or private, official or unofficial, and to testify on oath to all facts within their knowledge.”²³² Decades later, when the House conducted an impeachment inquiry into President Johnson, it interviewed cabinet officials and Presidential aides, obtained extensive records, and heard testimony about conversations with Presidential advisors.²³³ Presidents Grover Cleveland, Ulysses S. Grant, and Theodore Roosevelt each confirmed that Congress could obtain otherwise-shielded executive branch documents in an impeachment inquiry.²³⁴ And in President Nixon’s case—where the President’s refusal to turn over tapes led to an article of impeachment—the House Judiciary Committee still heard testimony from his chief of staff (H.R. Haldeman), special counsel

²³⁰ Gerhardt, *The Federal Impeachment Process*, at 42 (“[E]ven if the Senate could agree on such rules for impeachment trials, they would not be enforceable against or binding on individual senators, each of whom traditionally has had the discretion in an impeachment trial to follow any evidentiary standards he or she sees fit.”).

²³¹ Black & Bobbitt, *Impeachment*, at 18. *see also* Gerhardt, *The Federal Impeachment Process*, at 117 (“Both state and federal courts require special rules of evidence to make trials more efficient and fair or to keep certain evidence away from a jury, whose members might not understand or appreciate its reliability, credibility, or potentially prejudicial effect.”).

²³² H.R. Jour., 29th Cong., 1st Sess., 693 (1846); 4 James D. Richardson ed., *Messages and Papers of Presidents* 434–35 (1896).

²³³ *See generally* Reports of Committees, Impeachment Investigation, 40th Cong., 1st Sess. 183–578 (1867).

²³⁴ *See* Jonathan David Shaub, *The Executive’s Privilege: Rethinking the President’s Power to Withhold Information*, *LAWFARE* (Oct. 31, 2019).

(Charles Colson), personal attorney (Herbert Kalmbach), and deputy assistant (Alexander Butterfield). Indeed, with respect to the Senate Watergate investigation, President Nixon stated: "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."²³⁵ President Trump's categorical blockade of the House impeachment inquiry has no analogue in the history of the Republic.²³⁶

As a matter of constitutional law, the House may properly conclude that a President's obstruction of Congress is relevant to assessing the evidentiary record in an impeachment inquiry. For centuries, courts have recognized that "when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him."²³⁷ Moreover, it is routine for courts to draw adverse inferences where a party acts in bad faith to conceal or destroy evidence or preclude witnesses from testifying.²³⁸ Although those judicial rules do not control here, they are instructive in confirming that parties who interfere with fact-finding processes can suffer an evidentiary sanction. Consistent with that commonsense principle, the House has informed the administration that defiance of subpoenas at the direction or behest of the President or the White House could justify an adverse inference against the President. In light of President Trump's unlawful and unqualified direction that governmental officials violate their legal responsibilities to Congress, as well as his pattern of witness intimidation, the House may reasonably infer that their testimony would be harmful to the President—or at least not exculpatory. If this evidence were helpful to the President, he would not break the law to keep it hidden, nor would he engage in public acts of harassment to scare other witnesses who might consider coming forward.²³⁹

One noteworthy result of President Trump's obstruction is that the House has been improperly denied testimony by certain government officials who could have offered first-hand accounts of relevant events. That does not leave the House at sea: there is still robust evidence, both documentary and testimonial, bearing di-

²³⁵ *The President's Remarks Announcing Developments and Procedures to be Followed in Connection with the Investigation*, THE WHITE HOUSE Apr. 17, 1973. President Nixon initially stated that members of his "personal staff" would "decline a request for a formal appearance before a committee of the Congress," but reversed course approximately one month later, *Statement by the President, Executive Privilege* THE WHITE HOUSE Mar. 12, 1973.

²³⁶ See Tribe & Matz, *To End A Presidency*, at 129 ("Congress's investigatory powers are at their zenith in the realm of impeachment. They should ordinarily overcome almost any claim of executive privilege asserted by the president.").

²³⁷ *Int'l Union, United Auto., Aerospace & Agr. Implement Workers of Am. (UAW) v. N. L. R. B.*, 459 F.2d 1329, 1336 (D.C. Cir. 1972); see also *Interstate Circuit v. United States*, 306 U.S. 208, 225–26 (1939); *Rossi v. United States*, 289 U.S. 89, 91–92 (1933); *Mammoth Oil Co. v. United States*, 275 U.S. 13, 51–53 (1927); *Burdine v. Johnson*, 262 F.3d 336, 366 (5th Cir. 2001) (collecting cases); *United States v. Pitts*, 918 F.2d 197, 199 (D.C. Cir. 1990) (holding that, where a missing witness has "so much to offer that one would expect [him] to take the stand," and where "one of the parties had some special ability to produce him," the law allows an inference "that the missing witness would have given testimony damaging to that party").

²³⁸ See, e.g., *Bracey v. Grondin*, 712 F.3d 1012, 1018 (7th Cir. 2013); *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 107 (2d Cir. 2002); *Nation-Wide Check Corp. v. Forest Hills Distributors, Inc.*, 692 F.2d 214, 217 (1st Cir. 1982); see also 2 *Jones on Evidence* § 13:12 & § 13:15 (7th ed. 2019 update).

²³⁹ If the President could order all Executive Branch agencies and officials to defy House impeachment inquiries, and if the House were unable to draw any inferences from that order with respect to the President's alleged misconduct, the impeachment power would be a nullity in many cases where it plainly should apply.

rectly on his conduct and motives. But especially given the President's obstruction of Congress, the House is free under the Constitution to consider reliable testimony from officials who overheard—or later learned about—statements by the President to witnesses whose testimony he has blocked.²⁴⁰

To summarize: just like grand jurors and prosecutors, the House is not subject to rigid evidentiary rules in deciding whether to approve articles. Members of the House are trusted to fairly weigh evidence in an impeachment inquiry. Where the President illegally seeks to obstruct such an inquiry, the House is free to infer that evidence blocked from its view is harmful to the President's position. It is also free to rely on other relevant, reliable evidence that illuminates the ultimate factual issues. The President has no right to defy an impeachment inquiry and then demand that the House turn back because it lacks the very evidence he unlawfully concealed. If anything, such conduct confirms that the President sees himself as above the law and may therefore bear on the question of impeachment.²⁴¹

C. ABUSE OF PRESIDENTIAL POWER IS IMPEACHABLE

The powers of the President are immense, but they are not absolute. That principle applies to the current President just as it applied to his predecessors. President Nixon erred in asserting that “when the President does it, that means it is not illegal.”²⁴² And President Trump was equally mistaken when he declared he had “the right to do whatever I want as president.”²⁴³ The Constitution always matches power with constraint. That is true even of powers vested exclusively in the chief executive. If those powers are invoked for corrupt reasons, or in an abusive manner that threatens harm to constitutional governance, the President is subject to impeachment for “high Crimes and Misdemeanors.”

This conclusion follows from the Constitution's history and structure. As explained above, the Framers created a formidable Presidency, which they entrusted with “the executive Power” and a host

²⁴⁰ Under the Federal Rules of Evidence—which, again, are not applicable in Congressional impeachment proceedings—judges sometimes limit witnesses from offering testimony about someone else's out-of-court statements. They do so for reasons respecting reliability and with an eye to the unique risks presented by unsophisticated juries that may not properly evaluate evidence. But because hearsay evidence can in fact be highly reliable, and because it is “often relevant,” *Tome v. United States*, 513 U.S. 150, 163 (1995), there are many circumstances in which such testimony is admissible in federal judicial proceedings. Those circumstances include, but are by no means limited to, recorded recollections, records of regularly conducted activity, records of a public office, excited utterances, and statements against penal or other interest. Moreover, where hearsay evidence bears indicia of reliability, it is regularly used in many other profoundly important contexts, including federal sentencing and immigration proceedings. See, e.g., *Arrazabal v. Barr*, 929 F.3d 451, 462 (7th Cir. 2019); *United States v. Mitrovic*, 890 F.3d 1217, 1222 (11th Cir. 2018); *United States v. Woods*, 596 F.3d 445, 448 (8th Cir. 2010). Ironically, although some have complained that hearings related to the Ukraine affair initially occurred out of public sight, one reason for that measure was to ensure the integrity of witness testimony. Where multiple witnesses testified to the same point in separate, confidential hearings, that factual conclusion may be seen as corroborated and more highly reliable.

²⁴¹ The President has advanced numerous arguments to justify his across-the-board defiance of the House impeachment inquiry. These arguments lack merit. As this Committee recognized when it impeached President Nixon for obstruction of Congress, the impeachment power includes a corresponding power of inquiry that allows the House to investigate the Executive Branch and compel compliance with its subpoenas.

²⁴² *Document: Transcript of David Frost's Interview with Richard Nixon, 1977*, TEACHING AMERICAN HISTORY.

²⁴³ Michael Brice-Saddler, *While Bemoaning Mueller Probe, Trump Falsely Says the Constitution Gives Him “The Right To Do Whatever I Want”*, THE WASHINGTON POST, July 23, 2019.

of additional authorities. For example, the President alone can confer pardons, sign or veto legislation, recognize foreign nations, serve as Commander in Chief of the armed forces, and appoint or remove principal officers. The President also plays a significant (though not exclusive) role in conducting diplomacy, supervising law enforcement, and protecting national security. These are daunting powers for any one person to wield. If put to nefarious ends, they could wreak havoc on our democracy.

The Framers knew this. Fearful of tyranny in all its forms, they saw impeachment as a necessary guarantee that Presidents could be held accountable for how they exercised executive power. Many delegates at the Constitutional Convention and state ratifying conventions made this point, including Madison, Randolph, Pinckney, Stillman, and Iredell. Their view was widely shared. As James Wilson observed in Pennsylvania, "we have a responsibility in the person of our President"—who is "possessed of power"—since "far from being above the laws," he is "amenable to them . . . by impeachment."²⁴⁴ Hamilton struck the same note. In *Federalist No. 70*, he remarked that the Constitution affords Americans the "greatest securities they can have for the faithful exercise of any delegated power," including the power to discover "with facility and clearness" any misconduct requiring "removal from office."²⁴⁵ Impeachment and executive power were thus closely intertwined in the Framers' constitutional plan: the President could be vested with awesome power, but only because he faced removal from office for grave abuses.

The architects of checks and balances meant no exceptions to this rule. There is no power in the Constitution that a President can exercise immune from legal consequence. The existence of any such unchecked and uncheckable authority in the federal government would offend the bedrock principle that nobody is above the law. It would also upend the reasons why our Framers wrote impeachment into the Constitution: the *exact* forms of Presidential wrongdoing that they discussed in Philadelphia could be committed through use of executive powers, and it is unthinkable that the Framers left the Nation defenseless in such cases. In fact, when questioned by Mason in Virginia, Madison expressly stated that the President could be impeached for abuse of his exclusive pardon power—a view that the Supreme Court later echoed in *Ex Parte Grossman*.²⁴⁶ By the same token, a President could surely be impeached for treason if he fired the Attorney General to thwart the unmasking of an enemy spy in wartime; he could be impeached for bribery if he offered to divulge state secrets to a foreign nation, conditioned on regulatory exemptions for his family business.²⁴⁷

²⁴⁴ Elliot, *Debates in the Several State Conventions*, at 480.

²⁴⁵ Alexander Hamilton, *Federalist No. 70*, at 456.

²⁴⁶ Elliot, *Debates in the Several State Conventions*, 497–98; *Ex Parte Grossman*, 267 U.S. at 121. Madison adhered to this understanding after the Constitution was ratified. In 1789, he explained to his colleagues in the House that the President would be subject to impeachment for abuse of the removal power—which is held by the President alone—"if he suffers [his appointees] to perpetrate with impunity High crimes or misdemeanors against the United States, or neglects to superintend their conduct, so as to check their excesses." 1 *Annals of Congress* 387 (1789).

²⁴⁷ Scholars have offered many examples and hypotheticals that they see as illustrative of this point. See Bowman, *High Crimes and Misdemeanors*, at 258; Black & Bobbitt, *Impeachment*, 115; Hemel & Posner, *Presidential Obstruction of Justice*, at 1297; Tribe & Matz, *To End a Presidency*, at 61.

Simply put, “the fact that a power is exclusive to the executive—that is, the president alone may exercise it—does not mean the power cannot be exercised in clear bad faith, and that Congress cannot look into or act upon knowledge of that abuse.”²⁴⁸

The rule that abuse of power can lead to removal encompasses all three branches. The Impeachment Clause applies to “The President, Vice President and all civil Officers of the United States,” including Article III judges.²⁴⁹ There is no exception to impeachment for misconduct by federal judges involving the exercise of their official powers. In fact, the opposite is true: “If in the exercise of the powers with which they are clothed as ministers of justice, [judges] act with partiality, or maliciously, or corruptly, or arbitrarily, or oppressively, they may be called to an account by impeachment.”²⁵⁰ Similarly, if Members of Congress exercise legislative power abusively or with corrupt purposes, they may be removed pursuant to the Expulsion Clause, which permits each house of Congress to expel a member “with the Concurrence of two thirds.”²⁵¹ *Nobody* is entitled to wield power under the Constitution if they ignore or betray the Nation’s interests to advance their own.

This is confirmed by past practice of the House. President Nixon’s case directly illustrates the point. As head of the Executive Branch, he had the power to appoint and remove law enforcement officials, to issue pardons, and to oversee the White House, IRS, CIA, and FBI. But he did not have any warrant to exercise these Presidential powers abusively or corruptly. When he did so, the House Judiciary Committee properly approved multiple articles of impeachment against him. Several decades later, the House impeached President Clinton. There, the House witnessed substantial disagreement over whether the President could be impeached for obstruction of justice that did *not* involve using the powers of his office. But it was universally presumed—and never seriously questioned—that the President could be impeached for obstruction of justice that *did* involve abuse of those powers.²⁵² That view rested firmly on a correct understanding of the Constitution.

Our Constitution rejects pretensions to monarchy and binds Presidents with law. A President who sees no limit on his power manifestly threatens the Republic.

D. PRESIDENTIAL PRETEXTS NEED NOT BE ACCEPTED AT FACE VALUE

Impeachable offenses are often defined by corrupt intent. To repeat Iredell, “the president would be liable to impeachments [if] he had acted from some corrupt motive or other,” or if he was “willfully abusing his trust.”²⁵³ Consistent with that teaching, both “Treason” and “Bribery” require proof that the President acted with an improper state of mind, as would many other offenses described as impeachable at the Constitutional Convention. Contrary to occa-

²⁴⁸ Jane Chong, *Impeachment-Proof? The President’s Unconstitutional Abuse of His Constitutional Powers*, LAWFARE, Jan. 2 2018.

²⁴⁹ U.S. CONST. Art. II, § 4.

²⁵⁰ *Bradley v. Fisher* 80 U.S. 335, 350 (1871).

²⁵¹ U.S. CONST. Art. I, § 5, cl. 2.

²⁵² See generally 1998 Background and History of Impeachment Hearing.

²⁵³ *Id.*, at 49.

sional suggestions that the House may not examine the President's intent, an impeachment inquiry may therefore require the House to determine *why* the President acted the way he did. Understanding the President's motives may clarify whether he used power in forbidden ways, whether he was faithless in executing the laws, and whether he poses a continuing danger to the Nation if allowed to remain in office.

When the House probes a President's state of mind, its mandate is to find the facts. There is no room for legal fictions or lawyerly tricks that distort a clear assessment of the President's thinking. That means evaluating the President's explanations to see if they ring true. The question is not whether the President's conduct *could have* resulted from innocent motives. It is whether the President's *real reasons*—the ones actually in his mind as he exercised power—were legitimate. The Framers designed impeachment to root out abuse and corruption, even when a President masks improper intent with cover stories.

Accordingly, where the President's explanation of his motives defies common sense, or is otherwise unbelievable, the House is free to reject the pretextual explanation and to conclude that the President's false account of his thinking is itself evidence that he acted with corrupt motives. The President's honesty in an impeachment inquiry, or his lack thereof, can thus shed light on the underlying issue.²⁵⁴

President Nixon's case highlights the point. In its discussion of an article of impeachment for abuse of power, the House Judiciary Committee concluded that he had "falsely used a national security pretext" to direct executive agencies to engage in unlawful electronic surveillance investigations, thus violating "the constitutional rights of citizens."²⁵⁵ In its discussion of the same article, the Committee also found that President Nixon had interfered with the Justice Department by ordering it to cease investigating a crime "on the pretext that it involved national security."²⁵⁶ President Nixon's repeated claim that he had acted to protect national security could not be squared with the facts, and so the Committee rejected it in approving articles of impeachment against him for targeting political opponents.

Testing whether someone has falsely characterized their motives requires careful attention to the facts. In rare cases, "some implausible, fantastic, and silly explanations could be found to be pretextual without any further evidence."²⁵⁷ Sifting truth from fiction, though, usually demands a thorough review of the record—and a healthy dose of common sense. The question is whether "the evidence tells a story that does not match the explanation."²⁵⁸

Because courts assess motive all the time, they have identified warning signs that an explanation may be untrustworthy. Those red flags include the following:

²⁵⁴ See Tribe & Matz, *To End A Presidency*, at 92 ("Does the president admit error, apologize, and clean house? Does he prove his innocence, or at least his reasonable good faith? Or does he lie and obstruct until the bitter end? Maybe he fires investigators and stonewalls prosecutors? . . . These data points are invaluable when Congress asks whether leaving the president in office would pose a continuing threat to the nation.").

²⁵⁵ Committee Report on Nixon Articles of Impeachment (1974), at 146.

²⁵⁶ *Id.*, at 179.

²⁵⁷ *Purkett v. Elem*, 514 U.S. 765, 776–77 (1995) (Stevens, J., dissenting).

²⁵⁸ *Dep't of Commerce v. N.Y.*, No. 18–966, at 27 (U.S. Jun. 27, 2019).

First, *lack of fit between conduct and explanation*. This exists when someone claims they were trying to achieve a specific goal but then engaged in conduct poorly tailored to achieving it.²⁵⁹ For instance, imagine the President claims that he wants to solve a particular problem—but then he ignores many clear examples of that problem, weakens rules meant to stop it from occurring, acts in ways unlikely to address it, and seeks to punish only two alleged violators (both of whom happen to be his competitors). The lack of fit between his punitive conduct and his explanation for it strongly suggests that the explanation is false, and that he invented it as a pretext for corruptly targeting his competitors.

Second, *arbitrary discrimination*. When someone claims they were acting for a particular reason, look to see if they treated similarly-situated individuals the same.²⁶⁰ For example, if a President says that people doing business abroad should not engage in specific practices, does he punish everyone who breaks that rule, or does he pick and choose? If he picks and chooses, is there a good reason why he targets some people and not others, or does he appear to be targeting people for reasons unrelated to his stated motive? Where similarly-situated people are treated differently, the President should be able to explain why; if no such explanation exists, it follows that hidden motives are in play.

Third, *shifting explanations*. When someone repeatedly changes their story, it makes sense to infer that they began with a lie and may still be lying.²⁶¹ That is true in daily life and it is true in impeachments. The House may therefore doubt the President's account of his motives when he first denies that something occurred; then admits that it occurred but denies key facts; then admits those facts and tries to explain them away; and then changes his explanation as more evidence comes to light. Simply stated, the House is "not required to exhibit a naiveté from which ordinary citizens are free."²⁶²

Fourth, *irregular decisionmaking*. When someone breaks from the normal method of making decisions, and instead acts covertly or strangely, there is cause for suspicion. As the Supreme Court has reasoned, "[t]he specific sequence of events leading up the challenged decision" may "shed some light on the decisionmaker's purposes"—and "[d]epartures from the normal procedural sequence" might "afford evidence that improper purposes are playing a role."²⁶³ There are many personnel and procedures in place to ensure sound decisionmaking in the Executive Branch. When they are ignored, or replaced by secretive irregular channels, the House must closely scrutinize Presidential conduct.

Finally, *explanations based on falsehoods*. Where someone explains why they acted a certain way, but the explanation depends

²⁵⁹ See *Romer v. Evans*, 517 U.S. 620, 632 (1996); *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 425 (1975); *Miller-El v. Dretke*, 545 U.S. 231, 260 (2005).

²⁶⁰ *Flowers v. Mississippi*, 139 S. Ct. 2228, 2249 (2019); *Miller-El v. Cockrell*, 537 U.S. 322, 345 (2003).

²⁶¹ See *Foster v. Chatman*, 136 S. Ct. 1737, 1754 (2016); *Evans v. Sebelius*, 716 F.3d 617, 620–21 (D.C. Cir. 2013); *Geleta v. Gray*, 645 F.3d 408, 413–14 (D.C. Cir. 2011); *EEOC v. Sears Roebuck & Co.*, 243 F.3d 846, 853 (4th Cir.2001); *Dominguez-Cruz v. Suttle Caribe, Inc.*, 202 F.3d 424, 432 (1st Cir. 2000); *Thurman v. Yellow Freight Sys., Inc.*, 90 F.3d 1160, 1167 (6th Cir. 1996).

²⁶² *United States v. Stanchich*, 550 F.2d 1294, 1300 (2nd Cir. 1977) (Friendly, J.) (making a similar point about federal judges).

²⁶³ See *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 267 (1977).

on demonstrably false facts, then their explanation is suspect.²⁶⁴ For example, if a President publicly states that he withheld funds from a foreign nation due to its failure to meet certain conditions, but the federal agencies responsible for monitoring those conditions certify that they were satisfied, the House may conclude that the President's explanation is only a distraction from the truth.

When one or more of these red flags is present, there is reason to doubt that the President's account of his motives is accurate. When they are all present simultaneously, that conclusion is virtually unavoidable. Thus, in examining the President's motives as part of an impeachment inquiry, the House must test his story against the evidence to see if it holds water. If it does not, the House may find that he acted with corrupt motives—and that he has made false statements as part of an effort to stymie the impeachment inquiry.

E. ATTEMPTED PRESIDENTIAL MISCONDUCT IS IMPEACHABLE

As a matter of settled constitutional law, and contrary to recent suggestions otherwise, attempted Presidential wrongdoing can be impeachable. This is clear from the records of the Constitutional Convention. In the momentous exchange that led to adoption of the “high Crimes and Misdemeanors” standard, Mason championed impeaching Presidents for any “great and dangerous offenses.” It was therefore necessary, he argued, to avoid a narrow standard that would prevent impeachment for “*attempts* to subvert the Constitution” (emphasis added). Then, only minutes later, it was Mason himself who suggested “high Crimes and Misdemeanors” as the test for Presidential impeachment. The very author of the relevant constitutional text thus made clear it must cover “attempts.”

The House Judiciary Committee reached this conclusion in President Nixon's case. Its analysis is compelling and consistent with Mason's reasoning:

In some of the instances in which Richard M. Nixon abused the powers of his office, his unlawful or improper objective was not achieved. But this does not make the abuse of power any less serious, nor diminish the applicability of the impeachment remedy. The principle was stated by Supreme Court Justice William Johnson in 1808: “If an officer attempt[s] an act inconsistent with the duties of his station, it is presumed that the failure of the attempt would not exempt him from liability to impeachment. Should a President head a conspiracy for the usurpation of absolute power, it is hoped that no one will contend that defeating his machinations would restore him to innocence.” *Gilchrist v. Collector of Charleston*, 10 F. Cas. 355, 365 (No. 5, 420) (C.C.D.S.C. 1808).

Adhering to this legal analysis, the Committee approved articles of impeachment against President Nixon that encompassed acts of attempted wrongdoing that went nowhere or were thwarted. That in-

²⁶⁴ See, e.g., *Reeves v. Sanderson Plumbing Products*, 530 U.S. 133, 147 (2000); *Geleta v. Gray*, 645 F.3d 408, 414 (D.C. Cir. 2011); *Czekalski v. Peters*, 475 F.3d 360, 366 (D.C. Cir. 2007); *Murray v. Gilmore*, 406 F.3d 708, 716 (D.C. Cir. 2005); *Salazar v. Wash. Metro. Transit Auth.*, 401 F.3d 504, 511–12 (D.C. Cir. 2005); *Anderson v. Zubieta*, 180 F.3d 329, 348 (D.C. Cir. 1999).

cludes President Nixon's attempt to block an investigation by the Patman Committee into the Watergate break-ins,²⁶⁵ his attempt to block testimony by former aides,²⁶⁶ his attempt to "narrow and divert" the Senate Select Committee's investigation,²⁶⁷ and his attempt to have the IRS open tax audits of 575 members of George McGovern's staff and contributors to his campaign, at a time when McGovern was President Nixon's political opponent in the upcoming 1972 presidential election.²⁶⁸ Moreover, the article of impeachment against President Nixon for abuse of power charged that he "attempted to prejudice the constitutional right of an accused to a fair trial."²⁶⁹

History thus confirms that defiance by his own aides do not afford the President a defense to impeachment. The Nation is not required to cross its fingers and hope White House staff will persist in ignoring or sidelining a President who orders them to execute "high Crimes and Misdemeanors." Nor can a President escape impeachment just because his corrupt plan to abuse power or manipulate elections was discovered and abandoned. It is inconceivable that our Framers authorized the removal of Presidents who engage in treason or bribery, but disallowed the removal of Presidents who attempt such offenses and are caught before they succeed. Moreover, a President who takes concrete steps toward engaging in impeachable conduct is not entitled to any benefit of the doubt. As one scholar remarks in the context of attempts to manipulate elections, "when a substantial attempt is made by a candidate to procure the presidency by corrupt means, we may presume that he at least thought this would make a difference in the outcome, and thus we should resolve any doubts as to the effects of his efforts against him."²⁷⁰

Common sense confirms what the law provides: a President may be impeached where he attempts a grave abuse of power, is caught along the way, abandons his plan, and subsequently seeks to conceal his wrongdoing. A President who attempts impeachable offenses will surely attempt them again. The impeachment power exists so that the Nation can remove such Presidents from power before their attempts finally succeed.

F. IMPEACHMENT IS PART OF DEMOCRATIC GOVERNANCE

As House Judiciary Committee Chairman Peter Rodino emphasized in 1974, "it is under our Constitution, the supreme law of our land, that we proceed through the sole power of impeachment."²⁷¹ Impeachment is part of democratic constitutional governance, not an exception to it. It results in the President's removal from office only when a majority of the House, and then a super-majority of the Senate, conclude that he has engaged in sufficiently grave misconduct that his term in office must be brought to an early end. This process does not "nullify" the last election. No President is entitled to persist in office after committing "high Crimes and Mis-

²⁶⁵ Committee Report on Nixon Articles of Impeachment (1974), at 64.

²⁶⁶ *Id.*, at 120.

²⁶⁷ *Id.*

²⁶⁸ *Id.*, at 143.

²⁶⁹ *Id.*, at 3.

²⁷⁰ Black & Bobbitt, *Impeachment*, at 93.

²⁷¹ Debate on Nixon Articles of Impeachment (1974), at 2.

demeanors,” and no voter is entitled to expect that their preferred candidate will do so. Under the Constitution, when a President engages in great and dangerous offenses against the Nation—thus betraying their Oath of Office—impeachment and removal by Congress may be necessary to protect our democracy.

The Framers considered relying solely on elections, rather than impeachment, to remove wayward Presidents. But they overwhelmingly rejected that position. As Madison warned, waiting so long “might be fatal to the Republic.”²⁷² Particularly where the President’s misconduct is aimed at corrupting our democracy, relying on elections to solve the problem is insufficient: it makes no sense to wait for the ballot box when a President stands accused of interfering with elections and is poised to do so again. Numerous Framers spoke directly to this point at the Constitutional Convention. Impeachment is the remedy for a President who will do anything, legal or not, to remain in office. Allowing the President a free pass is thus the wrong move when he is caught trying to corrupt elections in the final year of his first four-year term—just as he prepares to face the voters.

Holding the President accountable for “high Crimes and Misdemeanors” not only upholds democracy, but also vindicates the separation of powers. Representative Robert Kastenmeier explained this well in 1974: “The power of impeachment is not intended to obstruct or weaken the office of the Presidency. It is intended as a final remedy against executive excess . . . [a]nd it is the obligation of the Congress to defend a democratic society against a Chief Executive who might be corrupt.”²⁷³ The impeachment power thus restores balance and order when Presidential misconduct threatens constitutional governance.

VII. Conclusion

As Madison recognized, “In framing a government which is to be administered by men over men, the great difficulty lies in this: You must first enable the government to control the governed; and in the next place oblige it control itself.”²⁷⁴ Impeachment is the House’s last and most extraordinary resort when faced with a President who threatens our constitutional system. It is a terrible power, but only “because it was forged to counter a terrible power: the despot who deems himself to be above the law.”²⁷⁵ The consideration of articles of impeachment is always a sad and solemn undertaking. In the end, it is the House—speaking for the Nation as a whole—that must decide whether the President’s conduct rises to the level of “high Crimes and Misdemeanors” warranting impeachment.

²⁷² Elliot, *Debates on the Adoption of the Federal Constitution*, at 341.

²⁷³ Debate on Nixon Articles of Impeachment (1974), at 16.

²⁷⁴ James Madison, *Federalist No. 51*, at 356.

²⁷⁵ Jill Lepore, *The Invention—And Reinvention—Of Impeachment*, THE NEW YORKER, Oct. 21 2019.

Minority Views

Voluminous academic writings and government publications have addressed standards of impeachment under the Constitution. The hearing of December 4, 2019, held by this committee, featured four academic witnesses, only one of whom (Professor Jonathan Turley) contributed something of significant substance to the record. Professor Turley's submitted written testimony is attached at the end of these views.²⁷⁶

Regarding the current impeachment proceedings directed at President Donald J. Trump, because the Committee invited no fact witnesses to testify, its Majority Views add nothing to the factual record—a record which the Republican Staff Report²⁷⁷ amply shows is based on nothing other than hearsay, opinion, and speculation. As a result, the Majority Views necessarily fail to make any plausible case for impeachment.

²⁷⁶ See also Written Statement of Jonathan Turley, H. Comm. on Judiciary hearing, "The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment," December 4, 2019, available at <https://docs.house.gov/meetings/JU/JU00/20191204/110281/HHRG-116-JU00-Wstate-TurleyP-20191204.pdf>.

²⁷⁷ See Report of Evidence in the Democrats' Impeachment Inquiry in the House of Representatives, December 2, 2019, available at <https://republicans-oversight.house.gov/wp-content/uploads/2019/12/2019-12-02-Report-of-Evidence-in-the-Democrats-Impeachment-Inquiry-in-the-House-of-Representatives.pdf>.

Written Statement

**Jonathan Turley,
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*"The Impeachment Inquiry Into President Donald J. Trump:
The Constitutional Basis For Presidential Impeachment"*

**1100 House Office Building
United States House of Representatives
Committee on the Judiciary**

December 4, 2019

I. INTRODUCTION

Chairman Nadler, ranking member Collins, members of the Judiciary Committee, my name is Jonathan Turley, and I am a law professor at George Washington University where I hold the J.B. and Maurice C. Shapiro Chair of Public Interest Law.¹ It is an honor to appear before you today to discuss one of the most solemn and important constitutional functions bestowed on this House by the Framers of our Constitution: the impeachment of the President of the United States.

Twenty-one years ago, I sat here before you, Chairman Nadler, and other members of the Judiciary Committee to testify on the history and meaning of the constitutional impeachment standard as part of the impeachment of President William Jefferson Clinton. I never thought that I would have to appear a second time to address the same question with regard to another sitting president. Yet, here we are. Some elements are strikingly similar. The intense rancor and rage of the public debate is the same. It was an atmosphere that the Framers anticipated. Alexander Hamilton warned that charges of impeachable conduct "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."² As with the Clinton impeachment, the Trump impeachment has again proven Hamilton's words to be prophetic. The stifling intolerance for opposing views is the same. As was the case two decades ago, it is a perilous environment for a legal scholar who wants to

¹ I appear today in my academic capacity to present views founded in prior academic work on impeachment and the separation of powers. My testimony does not reflect the views or approval of CBS News, the BBC, or the newspapers for which I write as a columnist. My testimony was written exclusively by myself with editing assistance from Nicholas Contarino, Andrew Hile, Thomas Huff, and Seth Tate.

² ALEXANDER HAMILTON, FEDERALIST NO. 65 (1788), *reprinted in* THE FEDERALIST PAPERS 396, 396-97 (Clinton Rossiter ed., 1961).

explore the technical and arcane issues normally involved in an academic examination of a legal standard ratified 234 years ago. In truth, the Clinton impeachment hearing proved to be an exception to the tenor of the overall public debate. The testimony from witnesses, ranging from Arthur Schlesinger Jr. to Laurence Tribe to Cass Sunstein, contained divergent views and disciplines. Yet the hearing remained respectful and substantive as we all grappled with this difficult matter. I appear today in the hope that we can achieve that same objective of civil and meaningful discourse despite our good-faith differences on the impeachment standard and its application to the conduct of President Donald J. Trump.

I have spent decades writing about impeachment³ and presidential powers⁴ as an academic and as a legal commentator. My academic work reflects the bias of a Madisonian scholar. I tend to favor Congress in disputes with the Executive Branch and I have been critical of the sweeping claims of presidential power and privileges made by modern Administrations. My prior testimony mirrors my criticism of the expansion of executive powers and privileges.⁵ In truth, I have not held much fondness for any

³ See, e.g., Jonathan Turley, *"From Pillar to Post": The Prosecution of Sitting Presidents*, 37 AM. CRIM. L. REV. 1049 (2000); Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L.J. 1 (1999); Jonathan Turley, *The "Executive Function" Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999); Symposium, Jonathan Turley, *Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President*, 67 GEO. WASH. L. REV. 735 (1999); Symposium, Jonathan Turley, *Reflections on Murder, Misdemeanors, and Madison*, 28 HOFSTRA L. REV. 439 (1999).

⁴ See, e.g., Jonathan Turley, *A Fox In The Hedges: Vermeule's Optimizing Constitutionalism For A Suboptimal World*, 82 U. CHI. L. REV. 517 (2015); Jonathan Turley, *Madisonian Tectonics: How Function Follows Form in Constitutional and Architectural Interpretation*, 83 GEO. WASH. L. REV. 305 (2015); Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U. L. REV. 1523 (2013); Jonathan Turley, *Presidential Records and Popular Government: The Convergence of Constitutional and Property Theory in Claims of Control and Ownership of Presidential Records*, 88 CORNELL L. REV. 651 (2003); Jonathan Turley, *The Military Pocket Republic*, 97 NW. L. REV. 1 (2002); Jonathan Turley, *Tribunals and Tribulations: The Antithetical Elements of the Military Justice System in a Madisonian Democracy*, 70 GEO. WASH. L. REV. 649 (2002).

⁵ See United States House of Representatives, Committee on the Judiciary, "Executive Privilege and Congressional Oversight," May 15, 2019 (testimony of Professor Jonathan Turley); United States House of Representatives, House Judiciary Committee, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, *The National Emergencies Act of 1976*, Feb. 28, 2019 (testimony of Professor Jonathan Turley); United States Senate, Committee on the Judiciary, *The Confirmation of William Pelham Barr As Attorney General of the United States Supreme Court*, Jan. 16, 2019 (testimony of Professor Jonathan Turley); United States Senate, Committee on Homeland Security and Governmental Affairs Committee, Subcommittee on Federal Spending Oversight and Emergency Management, *"War Powers and the Effects of Unauthorized Military*

president in my lifetime. Indeed, the last president whose executive philosophy I consistently admired was James Madison.

In addition to my academic work, I am a practicing criminal defense lawyer. Among my past cases, I represented the United States House of Representatives as lead counsel challenging payments made under the Affordable Care Act without congressional authorization. I also served as the last lead defense counsel in an impeachment trial in the Senate. With my co-lead counsel Daniel Schwartz, I argued the case on behalf of federal judge Thomas Porteous. (My opposing lead counsel for the House managers was Adam Schiff). In addition to my testimony with other constitutional scholars at the Clinton impeachment hearings, I also represented former Attorneys General during the Clinton impeachment litigation over privilege disputes triggered by the investigation of Independent Counsel Ken Starr. I also served as lead counsel in a bill of attainder case, the sister of impeachment that will be discussed below.⁶

Engagements on Federal Spending”, June 6, 2018 (testimony of Professor Jonathan Turley); United States Senate, *Confirmation Hearing For Judge Neil M. Gorsuch To Be Associate Justice of the United States*, United States Senate Committee on the Judiciary, Mar. 21, 2017 (testimony of Professor Jonathan Turley); United States House of Representatives, House Committee on Science, Space, and Technology, “*Affirming Congress’ Constitutional Oversight Responsibilities: Subpoena Authority and Recourse for Failure to Comply with Lawfully Issued Subpoenas*,” Sept. 14, 2016 (testimony and prepared statement of Jonathan Turley); United States House of Representatives, House Judiciary Committee, Regulatory Reform, Commercial and Antitrust Law, “*Examining The Allegations of Misconduct of IRS Commissioner John Koskinen*” June 22, 2016 (testimony and prepared statement of Jonathan Turley); United States Senate, Committee on Homeland Security and Governmental Affairs, “*The Administrative State: An Examination of Federal Rulemaking*,” Apr. 20, 2016 (testimony and prepared statement of Jonathan Turley); United States House of Representatives, House Judiciary Committee, Regulatory Reform, Commercial and Antitrust Law, “*The Chevron Doctrine: Constitutional and Statutory Questions in Judicial Deference to Agencies*,” Mar. 15, 2016 (testimony and prepared statement of Jonathan Turley); *Authorization to Initiate Litigation for Actions by the President Inconsistent with His Duties Under the Constitution of the United States: Hearing Before the H. Comm. on Rules*, 113th Cong. (2014) (prepared statement of Jonathan Turley, Shapiro Professor of Public Interest Law); *Enforcing The President’s Constitutional Duty to Faithfully Execute the Laws: Hearing Before the H. Comm. on the Judiciary*, 113th Cong. 30–47 (2014) (testimony and prepared statement of Jonathan Turley) (discussing nonenforcement issues and the rise of the Fourth Branch); *Executive Overreach: The President’s Unprecedented “Recess” Appointments: Hearing Before the H. Comm. on the Judiciary*, 112th Cong. 35–57 (2012) (prepared statement of Jonathan Turley); *see also Confirmation Hearing for Attorney General Nominee Loretta Lynch: Hearing Before the S. Comm. on the Judiciary*, 114th Cong. (2015) (prepared statement of Jonathan Turley). Parts of my testimony today is taken from this prior work.

⁶ *Foretich v. United States*, 351 F.3d 1198 (D.C. Cir. 2003).

I would like to start, perhaps incongruously, with a statement of three irrelevant facts. First, I am not a supporter of President Trump. I voted against him in 2016 and I have previously voted for Presidents Clinton and Obama. Second, I have been highly critical of President Trump, his policies, and his rhetoric, in dozens of columns. Third, I have repeatedly criticized his raising of the investigation of the Hunter Biden matter with the Ukrainian president. These points are not meant to curry favor or approval. Rather they are meant to drive home a simple point: one can oppose President Trump's policies or actions but still conclude that the current legal case for impeachment is not just woefully inadequate, but in some respects, dangerous, as the basis for the impeachment of an American president. To put it simply, I hold no brief for President Trump. My personal and political views of President Trump, however, are irrelevant to my impeachment testimony, as they should be to your impeachment vote. Today, my only concern is the integrity and coherence of the constitutional standard and process of impeachment. President Trump will not be our last president and what we leave in the wake of this scandal will shape our democracy for generations to come. I am concerned about lowering impeachment standards to fit a paucity of evidence and an abundance of anger. If the House proceeds solely on the Ukrainian allegations, this impeachment would stand out among modern impeachments as the shortest proceeding, with the thinnest evidentiary record, and the narrowest grounds ever used to impeach a president.⁷ That does not bode well for future presidents who are working in a country often sharply and, at times, bitterly divided.

Although I am citing a wide body of my relevant academic work on these questions, I will not repeat that work in this testimony. Instead, I will focus on the history and cases that bear most directly on the questions facing this Committee. My testimony will first address relevant elements of the history and meaning of the impeachment standard. Second, I will discuss the past presidential impeachments and inquiries in the context of this controversy. Finally, I will address some of the specific alleged impeachable offenses raised in this process. In the end, I believe that this process has raised serious and legitimate issues for investigation. Indeed, I have previously stated that a quid pro quo to force the investigation of a political rival in exchange for military aid can be impeachable, if proven. Yet moving forward primarily or exclusively with the Ukraine controversy on this record would be as precarious as it would premature. It comes down to a type of constitutional architecture. Such a slender foundation is a red flag for architects who operate on the accepted 1:10 ratio between the width and height of

⁷ The only non-modern presidential impeachment is an outlier in this sense. As I discussed below, the impeachment of Andrew Johnson was the shortest period from the underlying act (the firing of the Secretary of War) to the adoption of the articles of impeachment. However, the House had been preparing for such an impeachment before the firing and had started investigations of matters referenced in the articles. This was actually the fourth impeachment, with the prior three attempts extending over a year with similar complaints and inquiries. Thus, the actual period of the impeachment of Johnson and the operative record is debatable. I have previously discussed the striking similarities between the Johnson and Trump inquiries in terms of the brevity of the investigation and narrowest of the alleged impeachable offenses.

a structure. The physics are simple. The higher the building, the wider the foundation. There is no higher constitutional structure than the impeachment of a sitting president and, for that reason, an impeachment must have a wide foundation in order to be successful. The Ukraine controversy has not offered such a foundation and would easily collapse in a Senate trial.

Before I address these questions, I would like to make one last cautionary observation regarding the current political atmosphere. In his poem "The Happy Warrior," William Wordsworth paid homage to Lord Horatio Nelson, a famous admiral and hero of the Napoleonic Wars. Wordsworth began by asking "Who is the happy Warrior? Who is he what every man in arms should wish to be?" The poem captured the deep public sentiment felt by Nelson's passing and one reader sent Wordsworth a gushing letter proclaiming his love for the poem. Surprisingly, Wordsworth sent back an admonishing response. He told the reader "you are mistaken; your judgment is affected by your moral approval of the lines."⁸ Wordsworth's point was that it was not his poem that the reader loved, but its subject. My point is only this: it is easy to fall in love with lines that appeal to one's moral approval. In impeachments, one's feeling about the subject can distort one's judgment on the true meaning or quality of an argument. We have too many happy warriors in this impeachment on both sides. What we need are more objective noncombatants, members willing to set aside political passion in favor of constitutional circumspection. Despite our differences of opinion, I believe that this esteemed panel can offer a foundation for such reasoned and civil discourse. If we are to impeach a president for only the third time in our history, we will need to rise above this age of rage and genuinely engage in a civil and substantive discussion. It is to that end that my testimony is offered today.

II. A BRIEF OVERVIEW OF THE HISTORY AND MEANING OF THE IMPEACHMENT STANDARD

Divining the intent of the Framers often borders on necromancy, with about the same level of reliability. Fortunately, there are some questions that were answered directly by the Framers during the Constitutional and Ratification Conventions. Any proper constitutional interpretation begins with the text of the Constitution. Indeed, such interpretations ideally end with the text when there is clarity as to a constitutional standard or procedure. Five provisions are material to impeachment cases, and therefore structure our analysis:

Article I, Section 2: The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment. U.S. Const. art. I, cl. 8.

Article I, Section 3: The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or

⁸ ALEXANDER BICKEL, *THE LEAST DANGEROUS BRANCH: THE SUPREME COURT AT THE BAR OF POLITICS 2* (Yale, 1962).

Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. U.S. Const. art. I, 3, cl. 6.

Article I, Section 3: Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust, or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment, and Punishment, according to the Law. U.S. Const. art. I, 3, cl. 7.

Article II, Section 2: [The President] shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment. U.S. Const., art. II, 2, cl. 1.

Article II, Section 4: The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors. U.S. Const. art. II, 4.

For the purposes of this hearing, it is Article II, Section 4 that is the focus of our attention and, specifically, the meaning of “Treason, Bribery, or other high Crimes and Misdemeanors.” It is telling that the actual constitutional standard is contained in Article II (defining executive powers and obligations) rather than Article I (defining legislative powers and obligations). The location of that standard in Article II serves as a critical check on service as a president, qualifying the considerable powers bestowed upon the Chief Executive with the express limitations of that office. It is in this sense an executive, not legislative, standard set by the Framers. For presidents, it is essential that this condition be clear and consistent so that they are not subject to the whim of shifting majorities in Congress. That was a stated concern of the Framers and led to the adoption of the current standard and, equally probative, the express rejection of other standards.

A. Hastings and the English Model of Impeachments

It can be fairly stated that American impeachments stand on English feet.⁹ However, while the language of our standard can be directly traced to English precedent, the Framers rejected the scope and procedures of English impeachments. English impeachments are actually instructive as a model rejected by the Framers due to its history of abuse. Impeachments in England were originally quite broad in terms of the basis for impeachment as well as those subject to impeachments. Any citizen could be

⁹ Much of this history is taken from earlier work, including Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L.J. 1 (1999).

impeached, including legislators. Thus, in 1604, John Thornborough, Bishop of Bristol, was impeached for writing a book on the controversial union with Scotland.¹⁰

Thornborough was a member of the House of Lords, and his impeachment proved one of the many divisive issues between the two houses that ended in a draw. The Lords would ultimately rebuke the Bishop, but the House of Commons failed to secure a conviction. Impeachments could be tried by the Crown, and the convicted subjected to incarceration and even execution. The early standard was breathtakingly broad, including “treasons, felonies, and mischiefs done to our Lord, The King” and “divers deceits.” Not surprisingly, critics and political opponents of the Crown often found themselves the subject of such impeachments. Around 1400, procedures formed for impeachment but trials continued to serve as an extension of politics, including expressions of opposition to Crown governance by Parliament. Thus, Michael de la Pole, Earl of Suffolk, was impeached in 1386 for such offenses as appointing incompetent officers and “advising the King to grant liberties and privileges to certain persons to the hindrance of the due execution of the laws.” Others were impeached for “giving pernicious advice to the Crown” and “malversations and neglects in office; for encouraging pirates; for official oppression, extortions, and deceits; and especially for putting good magistrates out of office, and advancing bad.”¹¹

English impeachments were hardly a model system. Indeed, they were often not tried to verdict or were subject to a refusal to hold a trial by the House of Lords. Nevertheless, there was one impeachment in particular that would become part of the constitutional debates: the trial of Governor General Warren Hastings of the East India Company.¹² The trial would captivate colonial figures as a challenge to Crown authority while highlighting all of the flaws of English impeachments. Indeed, it is a case that bears some striking similarities to the allegations swirling around the Ukrainian controversy.

Hastings was first appointed as the Governor of Bengal and eventually the Governor-General in India. It was a country like Ukraine, rife with open corruption and bribery. The East India Company held quasi-governing authority and was accused of perpetuating such corruption. Burisma could not hold a candle to the East India Company. Hastings imposed British control over taxation and the courts. He intervened in military conflicts to secure concessions. His bitter feuds with prominent figures even led to a duel with British councilor Philip Francis, who Hastings shot and wounded. The record was heralded by some and vilified by others. Among the chief antagonists was Edmund Burke, one of the intellectual giants of his generation. Burke despised Hastings, who he described as the “captain-general of iniquity” and a “spider of Hell.” Indeed, even with the over-heated rhetoric of the current hearings, few comments have reached the level of Burke’s denouncement of Hastings as a “ravenous vulture devouring the

¹⁰ See COLIN G.C. TITE, *IMPEACHMENT AND PARLIAMENTARY JUDICATURE IN EARLY STUART ENGLAND* 57 (1974).

¹¹ 2 JOSEPH STORY, *COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* § 798, at 268-69 (rev. ed. 1991).

¹² See Turley, *Senate Trials*, *supra* note 3. See also Jonathan Turley, *Adam Schiff’s Capacious Definition Of Bribery Was Tried In 1787*, WALL ST. J., Nov. 28, 2019.

carcasses of the dead.” Burke led the impeachment for bribery and other forms of abuse of power – proceedings that would take seven years. Burke made an observation that is also strikingly familiar in the current controversy. He insisted in a letter to Francis that the case came down to intent and Hastings’ defenders would not except any evidence as incriminating:

“Most of the facts, upon which we proceed, are confessed; some of them are boasted of. The labour will be on the criminality of the facts, where proof, as I apprehend, will not be contested. Guilt resides in the intention. But as we are before a tribunal, which having conceived a favourable opinion of Hastings (or what is of more moment, very favourable wishes for him) they will not judge of his intentions by the acts, but they will qualify his Acts by his presumed intentions. It is on this preposterous mode of judging that he had built all the Apologies for his conduct, which I have seen. Excuses, which in any criminal court would be considered with pity as the Straws, at which poor wretches drowning will catch, and which are such as no prosecutor thinks is worth his while to reply to, will be admitted in such a House of Commons as ours as a solid defence ... We know that we bring before a bribed tribunal a prejudged cause. In that situation all that we have to do is make a case strong in proof and in importance, and to draw inferences from it justifiable in logick, policy and criminal justice. As to all the rest, it is vain and idle.”¹³

That is an all-too-familiar refrain for the current controversy. Impeachment cases often come down to a question of intent, as does the current controversy. It also depends greatly on the willingness of the tribunal to consider the facts in a detached and neutral manner. Burke doubted the ability of the “bribed tribunal” to guarantee a fair trial—a complaint heard today on both sides of the controversy. Yet, ultimately for Burke, the judgment of history has not been good. While many of us think Burke truly believed the allegations against Hastings, Hastings was eventually acquitted and Burke ended up being censured after the impeachment.

Ultimately, the United States would incorporate the language of “high crimes and misdemeanors” from English impeachments, but fashion a very different standard and process for such cases.

B. The American Model of Impeachment

Colonial impeachments did occur with the same dubious standards and procedures that marked the English impeachments. Indeed, impeachments were used in the absence of direct political power. Much like parliamentary impeachments, the colonial impeachments became a way of contesting Crown governance. Thus, the first colonial impeachment in 1635 targeted Governor John Harvey of Virginia for

¹³ Letter from Edmund Burke to Philip Frances, in 5 *THE CORRESPONDENCE OF EDMUND BURKE* 241 (Holden Furber ed., 1965).

misfeasance in office, including tyrannical conduct in office. Likewise, the 1706 impeachment of James Logan, Pennsylvania provincial agent and secretary of the Pennsylvania council, was based largely on political grievances including "a wicked intent to create Divisions and Misunderstandings between him and the people." These colonial impeachments often contained broad or ill-defined grounds for impeachment for such things as "loss of public trust." Some impeachments involved Framers, from John Adams to Benjamin Franklin, and most were certainly known to the Framers as a whole.

Given this history, when the Framers met in Philadelphia to craft the Constitution, impeachment was understandably raised, including the Hastings impeachment, which had yet to go to trial in England. However, there was a contingent of Framers that viewed any impeachment of a president as unnecessary and even dangerous. Charles Pinckney of South Carolina, Gouverneur Morris of Pennsylvania, and Rufus King of Massachusetts opposed such a provision.¹⁴ That opposition may have been due to the history of the use of impeachment for political purposes in both England and the colonies that I just discussed. However, they were ultimately overruled by the majority who wanted this option included into the Constitution. As declared by William Davie of North Carolina, impeachment was viewed as the "essential security for the good behaviour of the Executive."

Unlike the English impeachments, the American model would be limited to judicial and executive officials. The standard itself however led to an important exchange between George Mason and James Madison:

"Col. Mason. Why is the provision restrained to Treason & bribery only? Treason as defined in the Constitution will not reach many great and dangerous offense. Hastings is not guilty of Treason. Attempts to subvert the Constitution may not be Treason as above defined - As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments.

He movd. to add after "bribery" "or maladministration."

Mr. Gerry seconded him -

Mr. Madison[.] So vague a term will be equivalent to a tenure during pleasure of the Senate.

Mr. Govr Morris[.] It will not be put in force & can do no harm - An election of every four years will prevent maladministration.

Col. Mason withdrew "maladministration" & substitutes "other high crimes & misdemeanors" ("agst. the State").

¹⁴ Turley, *Senate Trials*, *supra* note 3, at 34.

On the question thus altered [Ayes - 8; Noes - 3]¹⁵

In the end, the Framers would reject various prior standards including “corruption,” “obtaining office by improper means”, betraying his trust to a foreign power, “negligence,” “perfidy,” “peculation,” and “oppression.” Perfidy (or lying) and peculation (self-dealing) are particularly interesting in the current controversy given similar accusations against President Trump in his Ukrainian comments and conduct.

It is worth noting that, while Madison objected to the inclusion of maladministration in the standard in favor of the English standard of “high crimes and misdemeanors,” he would later reference maladministration as something that could be part of an impeachment and declared that impeachment could address “the incapacity, negligence or perfidy of the chief Magistrate.”¹⁶ Likewise, Alexander Hamilton referred to impeachable offenses as “those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust.”¹⁷ These seemingly conflicting statements can be reconciled if one accepts that some cases involving high crimes and misdemeanors can include such broader claims. Indeed, past impeachments have alleged criminal acts while citing examples of lying and violations of public trust. Many violations of federal law by presidents occur in the context of such perfidy and peculation – aspects that help show the necessity for the extreme measure of removal. Indeed, such factors can weigh more heavily in the United States Senate where the question is not simply whether impeachable offenses have occurred but whether such offenses, if proven, warrant the removal of a sitting president. However, the Framers clearly stated they adopted the current standard to avoid a vague and fluid definition of a core impeachable offense. The structure of the critical line cannot be ignored. The Framers cited two criminal offenses—treason and bribery—followed by a reference to “other high crimes and misdemeanors.” This is in contrast to when the Framers included “Treason, Felony, or other Crime” rather than “high crime” in the Extradition Clause of Article IV, Section 2. The word “other” reflects an obvious intent to convey that the

¹⁵ 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, 550 (Max Farrand ed., 1937).

¹⁶ Madison noted that there are times when the public should not have to wait for the termination of a term to remove a person unfit for the office. Madison explained:

“[It is] indispensable that some provision should be made for defending the Community against the incapacity, negligence or perfidy of the chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression... In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.”

See 2 RECORDS, *supra* note 15, at 65–66. Capacity issues however have never been the subject of presidential impeachments. That danger was later address in the Twenty-Fifth Amendment.

¹⁷ THE FEDERALIST NO. 65, *supra* note 2, at 396.

impeachable acts other than bribery and treason were meant to reach a similar level of gravity and seriousness (even if they are not technically criminal acts). This was clearly a departure from the English model, which was abused because of the dangerous fluidity of the standard used to accuse officials. Thus, the core of American impeachments was intended to remain more defined and limited.

It is a discussion that should weigh heavily on the decision facing members of this House.

III. PRIOR PRESIDENTIAL IMPEACHMENTS AND THEIR RELEVANCE TO THE CURRENT INQUIRY

As I have stressed, it is possible to establish a case for impeachment based on a non-criminal allegation of abuse of power. However, although criminality is not required in such a case, clarity is necessary. That comes from a complete and comprehensive record that eliminates exculpatory motivations or explanations. The problem is that this is an exceptionally narrow impeachment resting on the thinnest possible evidentiary record. During the House Intelligence Committee proceedings, Democratic leaders indicated that they wanted to proceed exclusively or primarily on the Ukrainian allegations and wanted a vote by the end of December. I previously wrote that the current incomplete record is insufficient to sustain an impeachment case, a view recently voiced by the *New York Times* and other sources.¹⁸

Even under the most flexible English impeachment model, there remained an expectation that impeachments could not be based on presumption or speculation on key elements. If the underlying allegation could be non-criminal, the early English impeachments followed a format similar to a criminal trial, including the calling of witnesses. However, impeachments were often rejected by the House of Lords as facially inadequate, politically motivated, or lacking sufficient proof. Between 1626 and 1715, the House of Lords only held trials to verdict in five of the fifty-seven impeachment cases brought. For all its failings, The House of Lords still required evidence of real offenses supported by an evidentiary record for impeachment. Indeed, impeachments were viewed as more demanding than bills of attainder.

A bill of attainder¹⁹ involves a legislative form of punishment. While a person could be executed under a bill of attainder, it was still more difficult to sustain an

¹⁸ Editorial, *Sondland Has Implicated the President and His Top Men*, N.Y. TIMES (Nov. 20, 2019), <https://www.nytimes.com/2019/11/20/opinion/sondland-impeachment-hearings.html> (“It is essential for the House to conduct a thorough inquiry, including hearing testimony from critical players who have yet to appear. Right now, the House Intelligence Committee has not scheduled testimony from any witnesses after Thursday. That is a mistake. No matter is more urgent, but it should not be rushed — for the protection of the nation’s security, and for the integrity of the presidency, and for the future of the Republic.”).

¹⁹ I also litigated this question as counsel in the successful challenge to the Elizabeth Morgan Act, which was struck down as a bill of attainder. See *Foretich v. United States*, 351 F.3d 1198 (D.C. Cir. 2003).

impeachment action. That difficulty is clearly shown by the impeachment of Thomas Wentworth, Earl of Strafford. Strafford was a key advisor to King Charles I, and was impeached in 1640 for the subversion of “the Fundamental Laws and Government of the Realms” and endeavoring “to introduce Arbitrary and Tyrannical Government against Law.” Strafford contested both the underlying charges and the record. The House of Commons responded by dropping the impeachment and adopting a bill of attainder. In doing so, the House of Commons avoided the need to establish a complete evidentiary record and Strafford was subject to the bill of attainder and executed. Fortunately, the Framers had the foresight to prohibit bills of attainder. However, the different treatment between the two actions reflects the (perhaps counterintuitive) difference in the expectations of proof. Impeachments were viewed as requiring a full record subjected to adversarial elements of a trial.

In the current case, the record is facially insufficient. The problem is not simply that the record does not contain direct evidence of the President stating a *quid pro quo*, as Chairman Schiff has suggested. The problem is that the House has not bothered to subpoena the key witnesses who would have such direct knowledge. This alone sets a dangerous precedent. A House in the future could avoid countervailing evidence by simply relying on tailored records with testimony from people who offer damning presumptions or speculation. It is not enough to simply shrug and say this is “close enough for jazz” in an impeachment. The expectation, as shown by dozens of failed English impeachments, was that the lower house must offer a complete and compelling record. That is not to say that the final record must have a confession or incriminating statement from the accused. Rather, it was meant to be a complete record of the key witnesses that establishes the full range of material evidence. Only then could the body reach a conclusion on the true weight of the evidence—a conclusion that carries sufficient legitimacy with the public to justify the remedy of removal.

The history of American presidential impeachment shows the same restraint even when there were substantive complaints against the conduct of presidents. Indeed, some of our greatest presidents could have been impeached for acts in direct violation of their constitutional oaths of office. Abraham Lincoln, for example, suspended habeas corpus during the Civil War despite the fact that Article I, Section 9, of the Constitution leaves such a suspension to Congress “in Cases of Rebellion or Invasion the public Safety may require it.” The unconstitutional suspension of the “Great Writ” would normally be viewed as a violation of the greatest constitutional order. Other presidents faced impeachment inquiries that were not allowed to proceed, including John Tyler, Grover Cleveland, Herbert Hoover, Harry Truman, Richard Nixon, Ronald Reagan, and George Bush. President Tyler faced some allegations that had some common elements to our current controversy. Among the nine allegations raised by Rep. John Botts of Virginia, Tyler was accused of initiating an illegal investigation of the custom house in New York, withholding information from government agents, withholding actions necessary to “the just operation of government” and “shameless duplicity, equivocation, and falsehood, with his late cabinet and Congress.” Likewise, Cleveland was accused of high crimes and misdemeanors that included the use of the appointment power for political purposes (including influencing legislation) against the nation’s interest and “corrupt[ing] politics through the interference of Federal officeholders.” Truman faced an impeachment call over a variety of claims, including “attempting to disgrace the Congress of the United

States”; “repeatedly withholding information from Congress”; and “making reckless and inaccurate public statements, which jeopardized the good name, peace, and security of the United States.”

These efforts reflect the long history of impeachment being used as a way to amplify political differences and grievances. Such legislative throat clearing has been stopped by the House by more circumspect members before articles were drafted or passed. This misuse of impeachment has been plain during the Trump Administration. Members have called for removal based on a myriad of objections against this President. Rep. Al Green (D-Texas) filed a resolution in the House of Representatives for impeachment after Trump called for players kneeling during the national anthem to be fired.²⁰ Others called for impeachment over President Trump’s controversial statement on the Charlottesville protests.²¹ Rep. Steve Cohen’s (D-Tenn.) explained that “If the president can’t recognize the difference between these domestic terrorists and the people who oppose their anti-American attitudes, then he cannot defend us.”²² These calls have been joined by an array of legal experts who have insisted that clear criminal conduct by Trump, including treason, have been shown in the Russian investigation. Professor Lawrence Tribe argued that Trump’s pardoning of former Arizona sheriff Joe Arpaio is clearly impeachable and could even be overturned by the courts.²³ Richard Painter, chief White House ethics lawyer for George W. Bush and a professor at the University of Minnesota Law School, declared that President Trump’s participation in fundraisers for Senators, a common practice of all presidents in election years, is impeachable. Painter insists that any such fundraising can constitute “felony bribery” since these senators will likely sit in judgment in any impeachment trial. Painter declared “This is a bribe. Any other American who offered cash to the jury before a trial would go to prison for felony

²⁰ Nicole Cobler, *Texas lawmaker calls for impeachment vote over Trump’s NFL Remarks*, DALLAS MORNING NEWS (Sept. 26, 2017, 12:08 PM), <https://www.dallasnews.com/news/politics/2017/09/26/texas-lawmaker-calls-for-impeachment-vote-over-trump-s-nfl-remarks/>.

²¹ Jessica Estepa, *Democratic lawmaker to file articles of impeachment over Trump’s Charlottesville response*, USA TODAY (Aug. 17, 2017, 11:58 AM), <https://www.usatoday.com/story/news/politics/onpolitics/2017/08/17/democratic-lawmaker-to-file-articles-of-impeachment-over-trump-charlottesville-response/575892001/>.

²² Michael Collins & Daniel Connolly, *Rep. Cohen to file articles of impeachments against Trump*, THE TENNESSEAN (Aug. 17, 2017, 9:21 AM), <https://www.tennessean.com/story/news/2017/08/17/steve-cohen-impeach-president-trump-charlottesville/575764001/>.

²³ Laurence H. Tribe & Ron Fein, *‘Sheriff Joe’ is back in court. The impeachment inquiry should pay attention*, BOS. GLOBE (Oct. 23, 2019, 3:30 PM), <https://www.bostonglobe.com/opinion/2019/10/22/sheriff-joe-back-court-the-impeachment-inquiry-should-pay-attention/1Yv9YZmzwL93wP9gYIFj7J/story.html>.

bribery. But he can get away with it?"²⁴ CNN Legal Analyst Jeff Toobin declared, on the air, that Trump could be impeached solely on the basis of a tweet in which Trump criticized then Attorney General Jeff Sessions for federal charges brought against two Republican congressman shortly before the mid-term elections.²⁵ CNN Legal Analyst and former White House ethics attorney Norm Eisen claimed before the release of the Mueller report (which ultimately rejected any knowing collusion or conspiracy by Trump officials with Russian operatives) that the criminal case for collusion was "devastating" and that Trump is "colluding in plain sight."²⁶ I have known many of these members and commentators for years on a professional or personal basis. I do not question their sincere beliefs on the grounds for such impeachments, but we have fundamental differences in the meaning and proper use of this rarely used constitutional device.

As I have previously written,²⁷ such misuses of impeachment would convert our process into a type of no-confidence vote of Parliament. Impeachment has become an impulse buy item in our raging political environment. Slate has even featured a running "Impeach-O-Meter." Despite my disagreement with many of President Trump's policies and statements, impeachment was never intended to be used as a mid-term corrective option for a divisive or unpopular leader. To its credit, the House has, in all but one case, arrested such impulsive moves before the transmittal of actual articles of impeachment to the Senate. Indeed, only two cases have warranted submission to the Senate and one was a demonstrative failure on the part of the House in adhering to the impeachment standard. Those two impeachments—and the third near-impeachment of Richard Nixon—warrant closer examination and comparison in the current environment.

A. The Johnson Impeachment

The closest of the three impeachments to the current (Ukrainian-based) impeachment would be the 1868 impeachment of Andrew Johnson. The most obvious point of comparison is the poisonous political environment and the controversial style of

²⁴ Jason Lemon, *Trump Is Committing 'Felony Bribery' By Giving Cash To GOP Senators Ahead Of Impeachment Trial: Ex-Bush Ethics Lawyer*, NEWSWEEK (Oct. 31, 2019, 10:28 AM), <https://www.newsweek.com/trump-committing-felony-bribery-giving-fundraising-cash-gop-senators-ahead-impeachment-trial-1468946>.

²⁵ Veronica Stracqualursi, *Toobin: 'Trump's attack against Sessions "an 'impeachable offense'*, CNN (Sept. 4, 2018, 11:09 AM), <https://www.cnn.com/2018/09/04/politics/jeffrey-toobin-trump-sessions-tweet-cnn/tv/index.html>.

²⁶ Ronn Blitzer, *Former Obama Ethics Lawyer Says Trump is Now 'Colluding In Plain Sight'*, LAW & CRIME (Feb. 27, 2018, 9:40 AM), <https://lawandcrime.com/high-profile/fmr-obama-ethics-lawyer-says-trump-is-now-colluding-in-plain-sight/>.

²⁷ Jonathan Turley, *What's worse than leaving Trump in office? Impeaching him*, WASH. POST (Aug. 24, 2017, 11:05 AM), <https://www.washingtonpost.com/news/posteverything/wp/2017/08/24/whats-worse-than-leaving-trump-in-office-impeaching-him/>.

the president. As a Southerner who ascended to the presidency as a result of the Lincoln assassination, Johnson faced an immediate challenge even before his acerbic and abrasive personality started to take its toll. Adding to this intense opposition to Johnson was his hostility to black suffrage, racist comments, and occupation of Southern states. He was widely ridiculed as the “accidental President” and specifically described by Representative John Farnsworth of Illinois, as an “ungrateful, despicable, besotted, traitorous man.” Woodrow Wilson described that Johnson “stopped neither to understand nor to persuade other men, but struck forward with crude, uncompromising force for his object, attempting mastery without wisdom or moderation.”²⁸ Johnson is widely regarded as one of the worst presidents in history—a view that started to form significantly while he was still in office.

The Radical Republicans in particular opposed Johnson, who was seen as opposing retributive measures against Southern states and full citizenship rights for freed African Americans. Johnson suggested hanging his political opponents and was widely accused of lowering the dignity of his office. At one point, he even reportedly compared himself to Jesus Christ. Like Trump, Johnson’s inflammatory language was blamed for racial violence against both blacks and immigrants. He was also blamed for reckless economic policies. He constantly obstructed the enforcement of federal laws and espoused racist views that even we find shocking for that time. Johnson also engaged in widespread firings that were criticized as undermining the functioning of government—objections not unlike those directed at the current Administration.

While Johnson’s refusal to follow federal law and his efforts to disenfranchise African Americans would have been viewed as impeachable (Johnson could not have worked harder to counterpunch his way into an impeachment), the actual impeachment proved relatively narrow. Radical Republicans and other members viewed Secretary of War Edwin M. Stanton as an ally and a critical counterbalance to Johnson. Johnson held the same view and was seen as planning to sack Stanton. To counter such a move (or lay a trap for impeachment), the Radical Republicans passed the Tenure of Office Act to prohibit a President from removing a cabinet officer without the appointment of a successor by the Senate. To facilitate an impeachment, the drafters included a provision stating that any violation of the Act would constitute a “high misdemeanor.” Violations were criminal and punishable “upon trial and conviction . . . by a fine not exceeding ten thousand dollars, or by imprisonment not exceeding ten years, or both.”²⁹ The act was repealed in 1887 and the Supreme Court later declared that its provisions were presumptively constitutionally invalid.

Despite the facially invalid provisions, Johnson was impeached on eleven articles of impeachment narrowly crafted around the Tenure in Office Act. Other articles added intemperate language to unconstitutional limitations, impeaching Johnson for such grievances as trying to bring Congress “into disgrace, ridicule, hatred, contempt, and reproach” and making “with a loud voice certain intemperate, inflammatory, and scandalous harangues” Again, the comparison to the current impeachment inquiry is

²⁸ WOODROW WILSON, *A HISTORY OF THE AMERICAN PEOPLE*, vol. 5 (New York: Harper and Bros., 1903).

²⁹ Tenure in Office Act, ch. 154, 14 Stat. 430, 431 (1867).

obvious. After two years of members and commentators declaring a host of criminal and impeachable acts, the House is moving on the narrow grounds of an alleged *quid pro quo* while emphasizing the intemperate and inflammatory statements of the president. The rhetoric of the Johnson impeachment quickly outstripped its legal basis. In his presentation to the Senate, House manager John Logan expressed the view of President Johnson held by the Radical Republicans:

Almost from the time when the blood of Lincoln was warm on the floor of Ford's Theatre, Andrew Johnson was contemplating treason to all the fresh fruits of the overthrown and crushed rebellion, and an affiliation with and a practical official and hearty sympathy for those who had cost hecatombs of slain citizens, billions of treasure, and an almost ruined country. His great aim and purpose has been to subvert law, usurp authority, insult and outrage Congress, reconstruct the rebel States in the interests of treason... and deliver all snatched from wreck and ruin into the hands of unrepentant, but by him pardoned, traitors.

The Senate trial notably included key pre-trial votes on the evidentiary and procedural rules. The senators unanimously agreed that the trial should be judicial, not political, in character, but Johnson's opponents set about stacking the rules to guarantee easy conviction. On these votes, eleven Republicans broke from their ranks to insist on fairness for the accused. They were unsuccessful. Most Republican members turned a blind eye to the dubious basis for the impeachment. Their voters hated Johnson and cared little about the basis for his removal. However, Chief Justice Chase and other senators saw the flaws in the impeachment and opposed conviction. This included seven Republican senators—William Pitt Fessenden, James Grimes, Edmund Ross, Peter Van Winkle, John B. Henderson, Joseph Fowler, and Lyman Trumbull—who risked their careers to do the right thing, even for a president they despised. They became known as the “Republican Recusants.” Those seven dissenting Republicans represented a not-insignificant block of the forty-two Republican members voting in an intensely factional environment. Taking up the eleventh article as the threshold vote on May 16, 1868, 35 senators voted to convict while 19 voted to acquit—short of the two-thirds majority needed. Even after a ten-day delay with intense pressure on the defecting Republican members, two additional articles failed by the same vote and the proceedings were ended. The system prevailed despite the failure of a majority in the House and a majority of the Senate.

The comparison of the Johnson and Trump impeachment inquiries is striking given the similar political environments and the controversial qualities of the two presidents. Additionally, there was another shared element: speed. This impeachment would rival the Johnson impeachment as the shortest in history, depending on how one counts the relevant days. In the Johnson impeachment, Secretary of War Edwin Stanton was dismissed on February 21, 1868, and a resolution of impeachment was introduced that very day. On February 24, 1868, the resolution passed and articles of impeachment prepared. On March 2-3, 1868, eleven articles were adopted. The members considered the issue to be obvious in the Johnson case since the President had openly violated a statute that expressly defined violations as “high misdemeanors.” Of course, the scrutiny

of the underlying claims had been ongoing before the firing and this was the third attempted impeachment. Indeed, Congress passed legislation on March 2, 1867—one year before the first nine articles were adopted. Moreover, Johnson actually relieved Stanton of his duties in August 1867, and the House worked on the expected impeachment during this period. In December 1867, the House failed to adopt an impeachment resolution based on many of the same grievances because members did not feel that an actual crime had been committed. There were three prior impeachments with similar elements. When Stanton was actually fired, Johnson's leading opponent Rep. Thaddeus Stevens of Pennsylvania (who had been pushing for impeachment for over a year) confronted the House members and demanded "What good did your moderation do you? If you don't kill the beast, it will kill you." With the former termination and the continued lobbying of Stevens, the House again moved to impeach and secured the votes. Thus, the actual resolution and adoption dates are a bit misleading. Yet, Johnson may technically remain the shortest investigation in history. However, whichever impeachment deserves the dubious distinction, history has shown that short impeachments are generally not strong impeachments.

While generally viewed as an abusive use of impeachment by most legal and historical scholars, the Johnson impeachment has curiously been cited as a basis for the current impeachment. Some believe that it is precedent that presidents can be impeached over purely "political disagreements."³⁰ It is a chilling argument. Impeachment is not the remedy for political disagreement. The Johnson impeachment shows that the system can work to prevent an abusive impeachment even when the country and the Congress despise a president. The lasting lesson is that in every time and in every Congress, there remain leaders who can transcend their own insular political interests and defy the demands of some voters to fulfill their oaths to uphold the Constitution. Of course, the Constitution cannot take credit for such profiles of courage. Such courage rests within each member but the Constitution demands that each member summon that courage when the roll is called as it was on May 16, 1868.

B. The Nixon Inquiry

The Nixon "impeachment" is often referenced as the "gold standard" for impeachments even though it was not an actual impeachment. President Richard Nixon resigned before the House voted on the final articles of impeachment. Nevertheless, the Nixon inquiry was everything that the Johnson impeachment was not. It was based on an array of clearly defined criminal acts with a broad evidentiary foundation. That record was supported by a number of key judicial decisions on executive privilege claims. It is a worthy model for any presidential impeachment. However, the claim by Chairman Schiff that the Ukrainian controversy is "beyond anything Nixon did" is wildly at odds with the

³⁰ See generally Jonathan Turley, *What's worse than leaving Trump in office? Impeaching him*, WASH. POST (Aug. 24, 2017, 11:05 AM), <https://www.washingtonpost.com/news/posteverything/wp/2017/08/24/whats-worse-than-leaving-trump-in-office-impeaching-him/>.

historical record.³¹ The allegations in Nixon began with a felony crime of burglary and swept to encompass an array of other crimes involving political slush funds, payments of hush money, maintenance of an enemies list, directing tax audits of critics, witness intimidation, multiple instances of perjury, and even an alleged kidnapping. Ultimately, there were nearly 70 officials charged and four dozen of them found guilty. Nixon was also named as an unindicted conspirator by a grand jury. The convicted officials include former Attorney General John N. Mitchell (perjury); former Attorney General Richard Kleindienst (contempt of court); former Deputy Director of the Committee to Re-elect The President Jeb Stuart Magruder (conspiracy to the burglary); former Chief of Staff H.R. Haldeman (conspiracy to the burglary, obstruction of justice, and perjury); former counsel and Assistant to the President for Domestic Affairs to Nixon John Ehrlichman (conspiracy to the burglary, obstruction of justice, and perjury); former White House Counsel John W. Dean II (obstruction of justice); and former special counsel to the President Charles Colson (obstruction of justice). Many of the Watergate defendants went to jail, with some of the defendants sentenced to as long as 35 years. The claim that the Ukrainian controversy eclipses Watergate is unhinged from history.

While the Ukrainian controversy could still establish impeachable conduct, it undermines that effort to distort the historical record to elevate the current record. Indeed, the comparison to the Nixon inquiry only highlights the glaring differences in the underlying investigations, scope of impeachable conduct, and evidentiary records with the current inquiry. It is a difference between the comprehensive and the cursory; the proven and the presumed. In other words, it is not a comparison the House should invite if it is serious about moving forward in a few weeks on an impeachment based primarily on the Ukrainian controversy. The Nixon inquiry was based on the broadest and most developed evidentiary in any impeachment. There were roughly 14 months of hearings – not 10 weeks. There were scandalous tape recordings of Nixon and a host of criminal pleas and prosecutions. That record included investigations in both the House and the Senate as well as investigations by two special prosecutors, Archibald Cox and Leon Jaworski, including grand jury material. While the inquiry proceeded along sharply partisan lines, the vote on the proposed articles of impeachment ultimately included the support of some Republican members who, again, showed that principle could transcend politics in such historic moments.

Three articles were approved in the Nixon inquiry alleging obstruction of justice, abuse of power, and defiance of committee subpoenas. Two articles of impeachment based on usurping Congress, lying about the bombing of Cambodia, and tax fraud, were rejected on a bipartisan basis. While the Nixon impeachment had the most developed record and comprehensive investigation, I am not a fan of the structure used for the articles. The Committee evaded the need for specificity in alleging crimes like obstruction of justice while listing a variety of specific felonies after a catchall line declaring that “the means used to implement this course of conduct or plan included one

³¹ See Jonathan Turley, *Watergate line speaks volumes about weak impeachment case*, THE HILL (Nov. 30, 2019, 10:00 AM), <https://thehill.com/opinion/judiciary/472461-watergate-line-speaks-volumes-about-weak-impeachment-case>.

or more of the following.” Given its gravity, impeachment should offer concrete and specific allegations in the actual articles. This is the case in most judicial impeachments.

The impeachment began with a felony when “agents of the Committee for the Re-election of the President committed unlawful entry of the headquarters of the Democratic National Committee in Washington, District of Columbia, for the purpose of securing political intelligence.” The first article of impeachment reflected the depth of the record and scope of the alleged crimes in citing Nixon’s personal involvement in the obstruction of federal and congressional investigations. The article included a host of specific criminal acts including lying to federal investigators, suborning perjury, and witness tampering. The second article of impeachment also alleged an array of criminal acts that were placed under the auspices of abuse of power. The article addressed Nixon’s rampant misuse of the IRS, CIA, and FBI to carry out his effort to conceal the evidence and crimes following the break-in. They included Nixon’s use of federal agencies to carry out “covert and unlawful activities” and how he used his office to block the investigation of federal agencies. The third article concerned defiance of Congress stemming from his refusal to turn over material to Congress.

These articles were never subjected to a vote of the full House. In my view, they were flawed in their language and structure. As noted earlier, there was a lack of specificity on the alleged acts due to the use of catch-all lists of alleged offenses. However, my greatest concern rests with Article 3. That article stated:

“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.”

This Article has been cited as precedent for impeaching a president whenever witnesses or documents are refused in an impeachment investigation, even under claims of executive immunities or privileges. The position of Chairman Peter Rodino was that Congress had the sole authority to decide what material had to be produced in such an investigation. That position would seem to do precisely what the article accused Nixon of doing: “assuming to [itself] functions and judgments” necessary for the Executive Branch. There is a third branch that is designated to resolve conflicts between the two political branches. In recognition of this responsibility, the Judiciary ruled on the Nixon disputes. In so doing, the Supreme Court found executive privilege claims are legitimate grounds to raise in disputes with Congress but ruled such claims can be set aside in the balancing of interests with Congress. What a president cannot do is ignore a final judicial order on such witnesses or evidence.

Putting aside my qualms with the drafting of the articles, the Nixon impeachment remains well-supported and well-based. He would have been likely impeached and removed, though I am not confident all of the articles would have been approved. I have particular reservations over the third article and its implications for presidents seeking judicial review. However, the Nixon inquiry had a foundation that included an array of criminal acts and a record that ultimately reached hundreds of thousands of pages. In the

end, Nixon was clearly guilty of directing a comprehensive conspiracy that involved slush funds, enemy lists, witness intimidation, obstruction of justice, and a host of other crimes. The breathtaking scope of the underlying criminality still shocks the conscience. The current controversy does not, as claimed, exceed the misconduct of Nixon, but that is not the test. Hopefully, we will not face another president responsible for this range of illegal conduct. Yet, that does not mean that other presidents are not guilty of impeachable conduct even if it does not rise to a Nixonian level. In other words, there is no need to out-Nixon Nixon. Impeachable will do. The question is whether the current allegation qualifies as impeachable, not uber-impeachable.

C. The Clinton Impeachment.

The third and final impeachment is of course the Clinton impeachment. That hearing involved 19 academics and, despite the rancor of the times, a remarkably substantive and civil intellectual exchange on the underlying issues. These are issues upon which reasonable people can disagree and the hearing remains a widely cited source on the historical and legal foundations for the impeachment standard. Like Johnson's impeachment, the Clinton impeachment rested on a narrow alleged crime: perjury. The underlying question for that hearing is well suited for today's analysis. We focused on whether a president could be impeached for lying under oath in a federal investigation run by an independent counsel. There was not a debate over whether Clinton lied under oath. Indeed, a federal court later confirmed that Clinton had committed perjury even though he was never charged. Rather, the issue was whether some felonies do not "rise to the level of impeachment" and, in that case, the alleged perjury and lying to federal investigators concerning an affair with White House intern, Monica Lewinsky.

My position in the Clinton impeachment hearing was simple and remains unchanged. Perjury is an impeachable offense. Period. It does not matter what the subject happened to be. The President heads the Executive Branch and is duty bound to enforce federal law including the perjury laws. Thousands of citizens have been sentenced to jail for the same act committed by President Clinton. He could refuse to answer the question and face the consequences, or he could tell the truth. What he could not do is lie and assume he had license to commit a crime that his own Administration was prosecuting others for. Emerging from that hearing was an "executive function" theory limiting "high crimes and misdemeanors" to misconduct related to the office of the President or misuse of official power.³² While supporters of the executive function theory recognized that this theory was not absolute and that some private conduct can be impeachable, it was argued that Clinton's conduct was personal and outside the realm of "other high crimes and misdemeanors."³³ This theory has been criticized in other articles. This threshold

³² Jonathan Turley, *The "Executive Function" Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999).

³³ Floor Debate, Clinton Impeachments, December 18, 1998 ("Perjury on a private matter, perjury regarding sex, is not a great and dangerous offense against the nation. It is not an abuse of uniquely presidential power. It does not threaten our form of government. It is not an impeachable offense.") (statement Rep. Jerrold Nadler, D., N.Y.).

argument, however, would appear again in the Senate trial. Notably, the defenders of the President argued that the standard of “high crimes and misdemeanors” should be treated differently for judicial, as opposed to presidential, officers. This argument was compelled by the fact that the Senate had previously removed Judge Claiborne for perjury before a grand jury and removed Judge Hastings, who had actually been acquitted on perjury charges by a court. I have previously written against this executive function theory of impeachable offenses.³⁴

The House Judiciary Committee delivered four articles of impeachment on a straight partisan vote. Article One alleged perjury before the federal grand jury. Article Two alleged perjury in a sexual harassment case. Article Three alleged obstruction of justice through witness tampering. Article Four alleged perjury in the President's answers to Congress. On December 19, 1998, the House approved two of the four articles of impeachment: perjury before the grand jury and obstruction of justice. In both votes, although Republicans and Democrats crossed party lines, the final vote remained largely partisan. The impeachment was technically initiated on October 8, 1998 and the articles approved on December 19, 1998.

The Senate trial of President Clinton began on January 7, 1999, with Chief Justice William H. Rehnquist taking the oath. The rule adopted by the Senate created immediate problems for the House managers. The rules specifically required the House managers to prove their case for witnesses and imposed a witness-by-witness Senate vote on the House managers. Because the Independent Counsel had supplied an extensive record with testimony from key witnesses, the need to call witnesses like the Nixon hearings was greatly reduced. For that reason, the House moved quickly to the submission of articles of impeachment after the hearing of experts. However, the Senate only approved three witnesses, described by House manager and Judiciary Committee Chairman Henry Hyde as “a pitiful three.” It proved fateful. One of the witnesses not called was Lewinsky herself. Years later, Lewinsky revealed (as she might have if called as a witness) that she was told to lie about the relationship by close associates of President Clinton. In 2018, Lewinsky stated Clinton encouraged her to lie to the independent counsel, an allegation raising the possibility of a variety of crimes as well as supporting the articles of impeachment.³⁵ The disclosure many years after the trial is a cautionary tale for future impeachments, as the denial of key witnesses from the Senate trial can prove decisive.

³⁴ Jonathan Turley, *The “Executive Function” Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999).

³⁵ Jonathan Turley, *Lewinsky interview renews questions of Clinton crimes*, THE HILL (Nov. 26, 2018, 12:00 PM), <https://thehill.com/opinion/white-house/418237-lewinsky-interview-renews-questions-of-clinton-crimes>. Lewinsky said on the A&E documentary series “The Clinton Affair” that Clinton phoned her at 2:30 a.m. one morning in late 1997 to tell her she was on witness list for Jones’ civil suit against him. She said she was “petrified” and that “Bill helped me lock myself back from that and he said I could probably sign an affidavit to get out of it.” While he did not directly tell her to lie, she noted he did not tell her to tell the truth and that the conversation was about signing an affidavit “to get out of it.” Lewinsky went into details on how Clinton arranged for Lewinsky to meet with his close adviser and attorney Vernon Jordan. Jordan then

The Clinton impeachment was narrow but based on underlying criminal conduct largely investigated by an Independent Counsel. The allegation of perjury of a sitting president was supported by a long investigation and extensive record. Indeed, the perjury by Clinton was clear and acknowledged even by some of his supporters. The flaws in the Clinton impeachment emerged from the highly restrictive and outcome determinative rules imposed by the Senate. In comparison, the Trump impeachment inquiry has raised a number of criminal acts but each of those alleged crimes are undermined by legal and evidentiary deficiencies. As discussed below, the strongest claim is for a non-criminal abuse of power if a quid pro quo can be established on the record. That deficiency should be addressed before any articles are reported to the floor of the House.

D. Summary

A comparison of the current impeachment inquiry with the three prior presidential inquiries puts a few facts into sharp relief. First, this is a case without a clear criminal act and would be the first such case in history if the House proceeds without further evidence. In all three impeachment inquiries, the commission of criminal acts by Johnson, Nixon, and Clinton were clear and established. With Johnson, the House effectively created a trapdoor crime and Johnson knowingly jumped through it. The problem was that the law—the Tenure in Office Act—was presumptively unconstitutional and the impeachment was narrowly built around that dubious criminal act. With Nixon, there were a host of alleged criminal acts and dozens of officials who would be convicted of felonies. With Clinton, there was an act of perjury that even his supporters acknowledged was a felony, leaving them to argue that some felonies “do not rise to the level” of an impeachment. Despite clear and established allegations of criminal acts committed by the president, narrow impeachments like Johnson and Clinton have fared badly. As will be discussed further below, the recently suggested criminal acts related to the Ukrainian controversy are worse off, being highly questionable from a legal standpoint and far from established from an evidentiary standpoint.

Second, the abbreviated period of investigation into this controversy is both problematic and puzzling. Although the Johnson impeachment progressed quickly after the firing of the Secretary of War, that controversy had been building for over a year and was actually the fourth attempted impeachment. Moreover, Johnson fell into the trap laid a year before in the Tenure of Office Act. The formal termination was the event that triggered the statutory language of the act and thus there was no dispute as to the critical facts. We have never seen a controversy arise for the first time and move to an

arranged for Lewinsky to be represented by Frank Carter, who drafted a false affidavit denying any affair. Lewinsky, who had virtually no work history or relevant background, was offered a job with Revlon, where Jordan was a powerful member of the board of directors. Lewinsky said, “Frank Carter explained to me that if I signed an affidavit denying having had an intimate relationship with the president it might mean I would not have to be deposed in the Paula Jones case.” Those details – including Clinton’s encouragement for her to sign the affidavit and contracts after she became a witness – were never shared at the Senate trial.

impeachment in such a short period. Nixon and Clinton developed over many months of investigation and a wide array of witness testimony and grand jury proceedings. In the current matter, much remains unknown in terms of key witnesses and underlying documents. There is no explanation why the matter must be completed by December. After two years of endless talk of impeachable and criminal acts, little movement occurred toward an impeachment. Suddenly the House appears adamant that this impeachment must be completed by the end of December. To be blunt, if the schedule is being accelerated by the approach of the Iowa caucuses, it would be both an artificial and inimical element to introduce into the process. This is not the first impeachment occurring during a political season. In the Johnson impeachment, the vote on the articles was interrupted by the need for some Senators to go to the Republican National Convention. The bifurcated vote occurred in May 1868 and the election was held just six months later.

Finally, the difference in the record is striking. Again, Johnson's impeachment must be set aside as an outlier since it was based on a manufactured trap-door crime. Yet, even with Johnson, there was over a year of investigations and proceedings related to his alleged usurpation and defiance of the federal law. The Ukrainian matter is largely built around a handful of witnesses and a schedule that reportedly set the matter for a vote within weeks of the underlying presidential act. Such a wafer-thin record only magnifies the problems already present in a narrowly constructed impeachment. The question for the House remains whether it is seeking simply to secure an impeachment or actually trying to build a case for removal. If it is the latter, this is not the schedule or the process needed to build a viable case. The House should not assume that the Republican control of the Senate makes any serious effort at impeachment impractical or naïve. All four impeachment inquiries have occurred during rabid political periods. However, politicians can on occasion rise to the moment and chose principle over politics. Indeed, in the Johnson trial, senators knowingly sacrificed their careers to fulfill their constitutional oaths. If the House wants to make a serious effort at impeachment, it should focus on building the record to raise these allegations to the level of impeachable offenses and leave to the Senate the question of whether members will themselves rise to the moment that follows.

IV. THE CURRENT THEORIES OF IMPEACHABLE CONDUCT AGAINST PRESIDENT DONALD J. TRUMP

While all three acts in the impeachment standard refer to criminal acts in modern parlance, it is clear that "high crimes and misdemeanors" can encompass non-criminal conduct. It is also true that Congress has always looked to the criminal code in the fashioning of articles of impeachment. The reason is obvious. Criminal allegations not only represent the most serious forms of conduct under our laws, but they also offer an objective source for measuring and proving such conduct. We have never had a presidential impeachment proceed solely or primarily on an abuse of power allegation, though such allegations have been raised in the context of violations of federal or criminal law. Perhaps for that reason, there has been a recent shift away from a pure abuse of power allegation toward direct allegations of criminal conduct. That shift,

however, has taken the impeachment process far outside of the relevant definitions and case law on these crimes. It is to those allegations that I would now like to turn.

At the outset, however, two threshold issues are worth noting. First, this hearing is being held before any specific articles have been proposed. During the Clinton impeachment hearing, we were given a clear idea of the expected articles of impeachment and far greater time to prepare analysis of those allegations. The House leadership has repeatedly indicated that they are proceeding on the Ukrainian controversy and not the various alleged violations or crimes alleged during the Russian investigation. Recently, however, Chairman Schiff indicated that there might be additional allegations raised while continuing to reference the end of December as the working date for an impeachment vote. Thus, we are being asked to offer a sincere analysis on the grounds for impeachment while being left in the dark. My testimony is based on the public statements regarding the Ukrainian matter, which contain references to four alleged crimes and, most recently, a possible compromise proposal for censure.

Second, the crimes discussed below were recently raised as part of the House Intelligence Committee hearings as alternatives to the initial framework as an abuse of power. There may be a desire to refashion these facts into crimes with higher resonance with voters, such as bribery. In any case, Chairman Schiff and committee members began to specifically ask witnesses about elements that were pulled from criminal cases. When some of us noted that courts have rejected these broader interpretations or that there are missing elements for these crimes, advocates immediately shifted to a position that it really does not matter because “this is an impeachment.” This allows members to claim criminal acts while dismissing the need to actually support such allegations. If that were the case, members could simply claim any crime from treason to genocide. While impeachment does encompass non-crimes, including abuse of power, past impeachments have largely been structured around criminal definitions. The reason is simple and obvious. The impeachment standard was designed to be a high bar and felonies often were treated as inherently grave and serious. Legal definitions and case law also offer an objective and reliable point of reference for judging the conduct of judicial and executive officers. It is unfair to claim there is a clear case of a crime like bribery and simultaneously dismiss any need to substantiate such a claim under the controlling definitions and meaning of that crime. After all, the common mantra that “no one is above the law” is a reference to the law applied to all citizens, even presidents. If the House does not have the evidence to support a claim of a criminal act, it should either develop such evidence or abandon the claim. As noted below, abandoning such claims would still leave abuse of power as a viable ground for impeachment. It just must be proven.

A. Bribery

While the House Intelligence Committee hearings began with references to “abuse of power” in the imposition of a quid pro quo with Ukraine, it ended with repeated references to the elements of bribery. After hearing only two witnesses, House Speaker Nancy Pelosi declared witnesses offered “devastating” evidence that “corroborated” bribery. This view was developed further by House Intelligence Committee Chairman Adam Schiff who repeatedly returned to the definition of bribery

while adding the caveat that, even if this did not meet the legal definition of bribery, it might meet a prior definition under an uncharacteristically originalist view: “As the founders understood bribery, it was not as we understand it in law today. It was much broader. It connoted the breach of the public trust in a way where you’re offering official acts for some personal or political reason, not in the nation’s interest.”

The premise of the bribery allegations is that President Trump was soliciting a bribe from Ukraine when he withheld either a visit at the White House or military aid in order to secure investigations into the 2016 election meddling and the Hunter Biden contract by Ukraine. On its face, the bribery theory is undermined by the fact that Trump released the aid without the alleged pre-conditions. However, the legal flaws in this theory are more significant than such factual conflicts. As I have previously written,³⁶ this record does not support a bribery charge in either century. Before we address this bribery theory, it is important to note that any criminal allegation in an impeachment must be sufficiently clear and recognized to serve two purposes. First, it must put presidents on notice of where a line exists in the range of permissible comments or conduct in office. Second, it must be sufficiently clear to assure the public that an impeachment is not simply an exercise of partisan creativity in rationalizing a removal of a president. Neither of these purposes was satisfied in the Johnson impeachment where the crime was manufactured by Congress. This is why past impeachments focused on establishing criminal acts with reference to the criminal code and controlling case law. Moreover, when alleging bribery, it is the modern definition that is the most critical since presidents (and voters) expect clarity in the standards applied to presidential conduct. Rather than founding these allegations on clear and recognized definitions, the House has advanced a capacious and novel view of bribery to fit the limited facts. If impeachment is reduced to a test of creative redefinitions of crimes, no president will be confident in their ability to operate without the threat of removal. Finally, as noted earlier, dismissing the need to establish criminal conduct by arguing an act is “close enough for impeachment,” is a transparent and opportunistic spin. This is not improvisational jazz. “Close enough” is not nearly enough for a credible case of impeachment.

1. The Eighteenth-Century Case For Bribery

The position of Chairman Schiff is that the House can rely on a broader originalist understanding of bribery that “connoted the breach of the public trust in a way where you’re offering official acts for some personal or political reason, not in the nation’s interest.” The statement reflects a misunderstanding of early sources. Indeed, this interpretation reverses the import of early references to “violations of public trust.” Bribery was cited as an example of a violation of public trust. It was not defined as any violation of public trust. It is akin to defining murder as any violence offense because it is listed among violent offenses. Colonial laws often drew from English sources which barred the “taking of Bribes, Gifts, or any unlawful Fee or Reward, by Judges, Justices of

³⁶ Jonathan Turley, *Adam Schiff’s Capacious Definition of Bribery Was Tried in 1787*, WALL ST. J. (Nov. 28, 2019, 1:49 PM), <https://www.wsj.com/articles/adam-schiffs-capacious-definition-of-bribery-was-tried-in-1787-11574966979>.

the Peace, or any other Officers either magisterial or ministerial.”³⁷ Not surprisingly, these early laws categorized bribery as one of the crimes that constituted a violation of public trust. The categorization was important because such crimes could bar an official from holding public office. Thus, South Carolina's colonial law listed bribery as examples of acts barring service “[f]or the avoiding of corruption which may hereafter happen to be in the officers and ministers of those courts, places, or rooms wherein there is requisite to be had the true administration of justice or services of trust”³⁸

The expansion of bribery in earlier American law did not stem from the changing of the definition as much as it did the scope of the crime. Bribery laws were originally directed at judicial, not executive officers, and the receiving as opposed to the giving of bribes. These common law definitions barred judges from receiving “any undue reward to influence his behavior in office.”³⁹ The scope of such early laws was not broad but quite narrow.⁴⁰ Indeed, the narrow definition of bribery was cited as a reason for the English adoption of “high crimes and misdemeanors” which would allow for a broad base for impeachments. Story noted:

“In examining the parliamentary history of impeachments, it will be found, that many offences, not easily definable by law, and many of a purely political character, have been deemed high crimes and misdemeanours worthy of this extraordinary remedy. Thus, lord chancellors, and judges, and other magistrates, have not only been impeached for bribery, and acting grossly contrary to the duties of their office; but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws, and introduce arbitrary power.”⁴¹

Thus, faced with the narrow meaning of bribery, the English augmented the impeachment standard with a separate broader offense.⁴²

³⁷ ACTS OF THE GENERAL ASSEMBLY OF THE PROVINCE OF NEW JERSEY, ch. XLI 23 (Samuel Allinson ed., Burlington, Isaac Collins 1776).

³⁸ THE PUBLIC LAWS OF THE STATE OF SOUTH CAROLINA FROM ITS ESTABLISHMENT AS A BRITISH PROVINCE DOWN TO THE YEAR 1790, INCLUSIVE 14648 (John F. Grimke ed., Philadelphia, R. Aitken 1790).

³⁹ IV WILLIAM BLACKSTONE, COMMENTARIES ON THE LAW OF ENGLAND: IN FOUR BOOKS 129 (1765-69).

⁴⁰ CONG. RESEARCH SERV., IMPEACHMENT AND THE CONSTITUTION, 43 (2019).

⁴¹ II JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 798 (1833).

⁴² Indeed, Chairman Schiff may be confusing the broader treatment given extortion in early laws, not bribery. See generally James Lindgren, *The Elusive Distinction Between Bribery and Extortion: From the Common Law to the Hobbs Act*, 35 UCLA L. REV. 815, 875 (1988) (“Since bribery law remained undeveloped for so long, another crime was needed to fill the gap-especially against corruption by nonjudicial officers.”).

This view of bribery was also born out in the Constitutional Convention. As noted earlier, the Framers were familiar with the impeachment of Warren Hastings which was pending trial at the time of the drafting of the Constitution. The Hastings case reflected the broad impeachment standard and fluid interpretations applied in English cases. George Mason wanted to see this broader approach taken in the United States. Mason specifically objected to the use solely of “treason” and “bribery” because those terms were too narrow—the very opposite of the premise of Chairman Schiff’s remarks. Mason ultimately failed in his effort to adopt a tertiary standard with broader meaning to encompass acts deemed as “subvert[ing] the Constitution.” However, both Mason and Madison were in agreement on the implied meaning of bribery as a narrow, not broad crime. Likewise, Gouverneur Morris agreed, raising bribery as a central threat that might be deterred through the threat of impeachment:

“Our Executive was not like a Magistrate having a life interest, much less like one having a hereditary interest in his office. He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard agst it by displacing him. One would think the King of England well secured agst bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II was bribed by Louis XIV.”⁴³

Bribery, as used here, did not indicate some broad definition of, but a classic payment of money. Louis XIV bribed Charles II to sign the secret Treaty of Dover of 1670 with the payment of a massive pension and other benefits kept secret from the English people. In return, Charles II not only agreed to convert to Catholicism, but to join France in a wartime alliance against the Dutch.⁴⁴

Under the common law definition, bribery remains relatively narrow and consistently defined among the states. “The core of the concept of a bribe is an inducement improperly influencing the performance of a public function meant to be gratuitously exercised.”⁴⁵ The definition does not lend itself to the current controversy. President Trump can argue military and other aid is often used to influence other countries in taking domestic or international actions. It might be a vote in the United Nations or an anti-corruption investigation within a nation. Aid is not assumed to be “gratuitously exercised” but rather it is used as part of foreign policy discussions and international relations. Moreover, discussing visits to the White House is hardly the stuff of bribery under any of these common law sources. Ambassador Sondland testified that the President expressly denied there was a quid pro quo and that he was never told of such preconditions. However, he also testified that he came to believe there was a quid pro quo, not for military aid, but rather for the visit to the White House: “Was there a ‘quid pro quo? With regard to the requested White House call and White House meeting,

⁴³ 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 68-69 (Max Farrand ed., 1937).

⁴⁴ GEORGE CLARK, THE LATER STUARTS (1660-1714) 86-87, 130 (2d ed. 1956).

⁴⁵ J. NOONAN, BRIBES xi (1984).

the answer is yes.” Such visits are routinely used as bargaining chips and not “gratuitously exercised.” As for the military aid, the withholding of the aid is difficult to fit into any common law definition of a bribe, particularly when it was ultimately provided without the satisfaction of the alleged pre-conditions. Early bribery laws did not even apply to executive officials and actual gifts were regularly given. Indeed, the Framers moved to stop such gifts separately through provisions like the Emoluments Clause. They also applied bribery to executive officials. Once again Morris’ example is illustrative. The payment was a direct payment to Charles II of personal wealth and even a young French mistress.

The narrow discussion of bribery by the Framers stands in stark contrast to an allegedly originalist interpretation that would change the meaning of bribery to include broader notions of acts against the public trust. This is why bribery allegations in past impeachments, particularly judicial impeachments, focused on contemporary understandings of that crime. To that question, I would like to now turn.

2. The Twenty-First Century Case For Bribery

Early American bribery followed elements of the British and common law approach to bribery. In 1789, Congress passed the first federal criminal statute prohibiting bribing a customs official⁴⁶ and one year later Congress passed “An Act for the Punishment of Certain Crimes against the United States” prohibiting the bribery of a federal judge.⁴⁷ Various public corruption and bribery provisions are currently on the books, but the standard provision is found in 18 U.S.C. § 201 which allows for prosecution when “[a] public official or person selected to be a public official, directly or indirectly, corruptly demands, seeks, receives, accepts, or agrees to receive or accept anything of value personally or for any other person or entity, in return for ... being influenced in the performance of any official act.” While seemingly sweeping in its scope, the definition contains narrowing elements on the definition of what constitutes “a thing of value,” an “official act,” and “corrupt intent.”

The Supreme Court has repeatedly narrowed the scope of the statutory definition of bribery, including distinctions with direct relevance to the current controversy. In *McDonnell v. United States*,⁴⁸ the Court overturned the conviction of former Virginia governor Robert McDonnell. McDonnell and his wife were prosecuted for bribery under the Hobbs Act, applying the same elements as found in Section 201(a)(3). They were accused of accepting an array of loans, gifts, and other benefits from a businessman in return for McDonnell facilitating key meetings, hosting events, and contacting government officials on behalf of the businessman who ran a company called Star Scientific. The benefits exceeded \$175,000 and the alleged official acts were completed. Nevertheless, the Supreme Court unanimously overturned the conviction. As explained by Chief Justice Roberts:

⁴⁶ Act of July 31, 1789, ch. 5, 34-35, 1 Stat. 29.

⁴⁷ Act of April 30, 1790, ch. 9, 1, 1 Stat. 112.

⁴⁸ *McDonnell v. United States*, 136 S. Ct. 2355, 2372 (2016).

“[O]ur concern is not with tawdry tales of Ferraris, Rolexes, and ball gowns. It is instead with the broader legal implications of the Government’s boundless interpretation of the federal bribery statute. A more limited interpretation of the term ‘official act’ leaves ample room for prosecuting corruption, while comporting with the text of the statute and the precedent of this Court.”⁴⁹

The opinion is rife with references that have a direct bearing on the current controversy. This includes the dismissal of meetings as insufficient acts. It also included the allegations that “recommending that senior government officials in the [Governor’s Office] meet with Star Scientific executives to discuss ways that the company’s products could lower healthcare costs.” While the meeting and contacts discussed by Ambassador Sondland as a quid pro quo are not entirely the same, the Court refused to recognize that “nearly anything a public official does—from arranging a meeting to inviting a guest to an event—counts as a *quo*.”⁵⁰ The Court also explained why such “boundless interpretations” are inimical to constitutional rights because they deny citizens the notice of what acts are presumptively criminal: “[U]nder the Government’s interpretation, the term ‘official act’ is not defined ‘with sufficient definiteness that ordinary people can understand what conduct is prohibited,’ or ‘in a manner that does not encourage arbitrary and discriminatory enforcement.’”⁵¹ That is precisely the danger raised earlier in using novel or creative interpretations of crimes like bribery to impeach a president. Such improvisational impeachment grounds deny presidents notice and deny the system predictability in the relations between the branches.

The limited statements from the House on the bribery theory for impeachment track an honest services fraud narrative. These have tended to be some of the most controversial fraud and bribery cases when brought against public officials. These cases are especially difficult when the alleged act was never taken by the public official. *McDonnell* resulted in the reversal of a number of convictions or dismissal of criminal counts against former public officials. One such case was *United States v. Silver* involving the prosecution of the former Speaker of the New York Assembly. Silver was accused of an array of bribes and kickbacks in the form of referral fees from law firms. He was convicted on all seven counts and sentenced to twelve years of imprisonment. It was overturned because of the same vagueness that undermined the conviction in *McDonnell*. The Second Circuit ruled the “overbroad” theory of prosecution “encompassed any action taken or to be taken under color of official authority.”⁵² Likewise, the Third Circuit reversed conviction on a variety of corruption

⁴⁹ *Id.* at 2375.

⁵⁰ *Id.* at 2372.

⁵¹ *Id.* at 2373.

⁵² *United States v. Silver*, 864 F.3d 102, 113 (2d Cir. 2017).

counts in *Fattah v. United States*.⁵³ Former Rep. Chaka Fattah (D-Penn.) was convicted on all twenty-two counts of corruption based on an honest services prosecution. The case also involved a variety of alleged “official acts” including the arranging of meetings with the U.S. Trade Representative. The Third Circuit ruled out the use of acts as an “official act.” As for the remanded remainder, the court noted it might be possible to use other acts, such as lobbying for an appointment of an ambassador, to make out the charge but stated that “[d]etermining, for example, just how forceful a strongly worded letter of recommendation must be before it becomes impermissible ‘pressure or advice’ is a fact-intensive inquiry that falls within the domain of a properly instructed jury.”⁵⁴ Faced with the post-*McDonnell* reversal and restrictive remand instructions, the Justice Department elected not to retry Fattah.⁵⁵ Such a fact-intensive inquiry would be far more problematic in the context of a conversation between two heads of state where policy and political issues are often intermixed.⁵⁶

The same result occurred in the post-*McDonnell* appeal by former Rep. William Jefferson. Jefferson was convicted of soliciting and receiving payments from various sources in return for his assistance. This included shares in a telecommunications company and the case became a classic corruption scandal when \$90,000 in cash was found in Jefferson’s freezer. The money was allegedly meant as a bribe for the Nigerian Vice President to secure assistance in his business endeavors. Jefferson was convicted on eleven counts and the conviction was upheld on ten of eleven of those counts. *McDonnell* was then handed down. The federal court agreed that the case imposed more limited definitions and instructions for bribery.⁵⁷ The instruction defining the element of “official acts” is notable given recent statements in the House hearings: “An act may be official even if it was not taken pursuant to responsibilities explicitly assigned by law. Rather, official acts include those activities that have been clearly established by settled practice as part [of] a public official’s position.” The court agreed that such definitions are, as noted in *McDonnell*, unbounded. The court added:

⁵³ *United States v. Fattah*, 902 F.3d 197, 240 (3d Cir. 2018) (“in accordance with *McDonnell*, that Fattah’s arranging a meeting between Vederman and the U.S. Trade Representative was not itself an official act. Because the jury may have convicted Fattah for conduct that is not unlawful, we cannot conclude that the error in the jury instruction was harmless beyond a reasonable doubt.”).

⁵⁴ *Id.* at 241.

⁵⁵ Griffin Connolly, *DOJ Won’t Re-Try Ex-Rep Fatah*, ROLL CALL (May 2, 2019), <https://www.rollcall.com/news/congress/doj-wont-retry-ex-rep-fattah-overturned-convictions-wont-reduce-prison-time>. Rep. Fatah’s sentencing on other counts however left a ten-year sentence in place.

⁵⁶ The convictions of former New York Majority Leader Dean Skelos and his son for bribery or corruption were also vacated by Second Circuit over the definition of “official act.” *United States v. Skelos*, 707 Fed. Appx. 733, 733-36 (2d Cir. 2017). They were later retried and convicted.

⁵⁷ *United States v. Jefferson*, 289 F. Supp. 3d. 717, 721 (E.D. Va. 2017).

“the jury instructions in Jefferson's case did not explain that to qualify as an official act ‘the public official must make a decision or take an action on that question, matter, cause, suit, proceeding or controversy, or agree to do so.’ The jury charge in Jefferson's case did not require the jury to consider whether Jefferson could actually make a decision on a pending matter, nor did the instructions clarify that Jefferson's actions could include “using [an] official position to exert pressure on another official to perform an ‘official act,’ or to advise another official, knowing or intending that such advice will form the basis for an ‘official act’ by another official.” Without these instructions, the jury could have believed that any action Jefferson took to assist iGate or other businesses was an official act, even if those acts included the innocent conduct of attending a meeting, calling an official, or expressing support for a project.”⁵⁸

Accordingly, the court dismissed seven of ten of the counts, and Jefferson was released from prison.⁵⁹

McDonnell also shaped the corruption case against Sen. Robert Menendez (D-N.J.) who was charged with receiving a variety of gifts and benefits in exchange for his intervention on behalf of a wealthy businessman donor. Both Sen. Menendez and Dr. Salomon Melgen were charged in an eighteen-count indictment for bribery and honest services fraud in 2015.⁶⁰ The jury was given the more restrictive post-*McDonnell* definition and proceeded to deadlock on the charges, leading to a mistrial. As in the other cases, the Justice Department opted to dismiss the case—a decision attributed by experts to the view that *McDonnell* “significantly raised the bar for prosecutors who try to pursue corruption cases against elected officials.”⁶¹

Applying *McDonnell* and other cases to the current controversy undermines the bribery claims being raised. The Court noted that an “official act”

“is a decision or action on a ‘question, matter, cause, suit, proceeding or controversy.’ The ‘question, matter, cause, suit, proceeding or controversy’ must involve a formal exercise of governmental power that is similar in nature to a lawsuit before a court, a determination before an agency, or a hearing before a committee. It must also be something

⁵⁸ *Id.* at 735 (internal citations omitted).

⁵⁹ Rachel Weiner, *Judge lets former Louisiana congressman William Jefferson out of prison*, WASH. POST (Oct. 5, 2017), https://www.washingtonpost.com/local/public-safety/judge-lets-former-louisiana-congressman-william-jefferson-out-of-prison/2017/10/05/8b53619e-aa0b-11e7-850e-2bdd1236be5d_story.html.

⁶⁰ *United States v. Menendez*, 132 F. Supp. 3d 635 (D.N.J. 2015).

⁶¹ Nick Corasaniti, *Justice Department Dismisses Corruption Case Against Menendez*, N.Y. TIMES (Jan. 31, 2018), <https://www.nytimes.com/2018/01/31/nyregion/justice-department-moves-to-dismiss-corruption-case-against-menendez.html>.

specific and focused that is ‘pending’ or ‘may by law be brought’ before a public official.”

The discussion of a visit to the White House is facially inadequate for this task, as it is not a formal exercise of governmental power. However, withholding of military aid certainly does smack of a “determination before an agency.” Yet, that “quo” breaks down on closer scrutiny, even before getting to the question of a “corrupt intent.” Consider the specific act in this case. As the Ukrainians knew, Congress appropriated the \$391 million in military aid for Ukraine and the money was in the process of being apportioned. Witnesses before the House Intelligence Committee stated that it was not uncommon to have delays in such apportionment or for an Administration to hold back money for a period longer than the 55 days involved in these circumstances. Acting Chief of Staff Mike Mulvaney stated that the White House understood it was required to release the money by a date certain absent a lawful reason barring apportionment. That day was the end of September for the White House. Under the 1974 Impoundment Control Act (ICA), reserving the funds requires notice to Congress. This process has always been marked by administrative and diplomatic delays. As the witnesses indicated, it is not always clear why aid is delayed. Arguably, by the middle of October, the apportionment of the aid was effectively guaranteed. It is not contested that the Administration could delay the apportionment to resolve concerns over how the funds would be effectively used or apportioned. The White House had until the end of the fiscal year on September 30 to obligate the funds. On September 11, the funds were released. By September 30, all but \$35 million in the funds were obligated. However, on September 27, President Trump signed a spending bill that averted a government shutdown and extended current funding, specifically providing another year to send funds to Ukraine.⁶²

It is certainly fair to question the non-budgetary reasons for the delay in the release of the funds. Yet, the White House was largely locked into the statutory and regulatory process for obligating the funds by the end of September. Even if the President sought to mislead the Ukrainians on his ability to deny the funding, there is no evidence of such a direct statement in the record. Indeed, Ambassador Taylor testified that he believed the Ukrainians first raised their concerns over a pre-condition on August 28 with the publication of the Politico article on the withholding of the funds. The aid was released roughly ten days later, and no conditions were actually met. The question remains what the “official act” was for this theory given the deadline for aid release. Indeed, had a challenge been filed over the delay before the end of September, it would have most certainly been dismissed by a federal court as premature, if not frivolous.

Even if the “official act” were clear, any bribery case would collapse on the current lack of evidence of a corrupt intent. In the transcript of the call, President Trump

⁶² Caitlin Emma, *Trump signs stopgap spending bill to avoid a shutdown*, POLITICO (Sept. 27, 2019, 6:26 PM), <https://www.politico.com/news/2019/09/27/trump-signs-spending-bill-007275>; Joe Gould, *Senate passes Ukraine aid extension, averts government shutdown for now*, DEFENSENEWS (Sept. 26, 2019), <https://www.defensenews.com/congress/2019/09/26/senate-passes-ukraine-aid-extension-stopgap-spending-bill/>.

pushes President Zelensky for two investigations. First, he raises his ongoing concerns over Ukrainian involvement in the 2016 election:

"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. There are a lot of things that went on, the whole situation ... I think you're surrounding yourself with some of the same people. 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. It ended with 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."⁶³

Many have legitimately criticized the President for his fixation on Crowdstrike and his flawed understanding of that company's role and Ukrainian ties. However, asking for an investigation into election interference in 2016 does not show a corrupt intent. U.S. Attorney John Durham is reportedly looking into the origins of the FBI investigation under the Obama Administration. That investigation necessarily includes the use of information from Ukrainian figures in the Steele dossier. Witnesses like Nellie Ohr referenced Ukrainian sources in the investigation paid for by the Democratic National Committee and the campaign of Hillary Clinton. While one can reasonably question the significance of such involvement (and it is certainly not on the scale of the Russian intervention into the election), it is part of an official investigation by the Justice Department. Trump may indeed be wildly off base in his concerns about Ukrainian efforts to influence the election. However, even if these views are clueless, they are not corrupt. The request does not ask for a particular finding but cooperation with the Justice Department and an investigation into Ukrainian conduct. Even if the findings were to support Trump's view (and there is no guarantee that would be case), there is no reason to expect such findings within the remaining time before the election. Likewise, the release of unspecified findings from an official investigation at some unspecified date are not a "thing of value" under any reasonable definition of the statute.

The references to investigating possible 2016 election interference cannot be the basis for a credible claim of bribery or other crimes, at least on the current record. That, however, was not the only request. After President Zelensky raised the fact that his aides had spoken with Trump's counsel, Rudy Giuliani, and stated his hope to speak with him directly, President Trump responded:

⁶³ *Telephone Conversation with President Zelenskyy of Ukraine on July 25, 2019* (Sept. 24, 2019) (available at <https://www.whitehouse.gov/wp-content/uploads/2019/09/Unclassified09.2019.pdf>).

"Good because 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. 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. 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. The former ambassador from the United States, 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. 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."⁶⁴

This is clearly the most serious problem with the call. In my view, the references to Biden and his son were highly inappropriate and should not have been part of the call. That does not, however, make this a plausible case for bribery. Trump does not state a quid pro quo in the call. He is using his influence to prompt the Ukrainians to investigate both of these matters and to cooperate with the Justice Department. After President Zelensky voiced a criticism of the prior U.S. ambassador, President Trump responded:

"Well, she's going to go through some things. 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'm sure you will figure it out. I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything. Your economy is going to get better and better I predict. You have a lot of assets. It's a great country. I have many Ukrainian friends, they're incredible people."⁶⁵

Again, the issue is not whether these comments are correct, but whether they are corrupt. In my view, there is no case law that would support a claim of corrupt intent in such comments to support a bribery charge. There is no question that an investigation of the Bidens would help President Trump politically. However, if President Trump honestly believed that there was a corrupt arrangement with Hunter Biden that was not fully investigated by the Obama Administration, the request for an investigation is not corrupt, notwithstanding its inappropriateness. The Hunter Biden contract has been widely criticized as raw influence peddling. I have joined in that criticism. For many years, I have written about the common practice of companies and lobbyists attempting to curry favor with executive branch officials and members of Congress by giving windfall contracts or jobs to their children. This is a classic example of that corrupt practice. Indeed, the glaring appearance of a conflict was reportedly raised by George Kent, the

⁶⁴ *Id.* at 3-4.

⁶⁵ *Id.* at 4.

Deputy Assistant Secretary of State for European and Eurasian Affairs during the Obama Administration.

The reference to the Bidens also lacks the same element of a promised act on the part of President Trump. There is no satisfaction of a decision or action on the part of President Trump or an agreement to make such a decision or action. There is a presumption by critics that this exists, but the presumption is no substitute for proof. The current lack of proof is another reason why the abbreviated investigation into this matter is so damaging to the case for impeachment. In the prior bribery charges in *McDonnell* and later cases, benefits were actually exchanged but the courts still rejected the premise that the meetings and assistance were official acts committed with a corrupt intent.

Finally, the “boundless interpretations of the bribery statutes” rejected in *McDonnell* pale in comparison to the effort to twist these facts into the elements of that crime. I am not privy to conversations between heads of state, but I expect many prove to be fairly freewheeling and informal at points. I am confident that such leaders often discuss politics and the timing of actions in their respective countries. If this conversation is a case of bribery, we could have marched every living president off to the penitentiary. Presidents often use aid as leverage and seek to advance their administrations in the timing or content of actions. The media often discusses how foreign visits are used for political purposes, particularly as elections approach. The common reference to an “October surprise” reflects this suspicion that presidents often use their offices, and foreign policy, to improve their image. If these conversations are now going to be reviewed under sweeping definitions of bribery, the chilling effect on future presidents would be perfectly glacial.

The reference to the Hunter Biden deal with Burisma should never have occurred and is worthy of the criticism of President Trump that it has unleashed. However, it is not a case of bribery, whether you are adopting the view of an eighteenth century, or of a twenty-first century prosecutor. As a criminal defense attorney, I would view such an allegation from a prosecutor to be dubious to the point of being meritless.

B. Obstruction of Justice

Another crime that was sporadically mentioned during the House Intelligence hearings was obstruction of justice or obstruction of Congress.⁶⁶ Once again, with only a

⁶⁶ It is important to distinguish between claims of “obstruction of justice,” “obstruction of Congress,” and “contempt of Congress” – terms often just loosely in these controversies. Obstruction of Congress falls under the same provisions as obstruction of justice, specifically, 18 U.S.C. §1505 (prohibiting the “obstruction of proceedings before ... committees”). However, the Congress has also used its contempt powers to bring both civil and criminal actions. The provision on contempt states:

“Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, ... or any committee of either House of Congress, willfully makes default, or who, having

few days to prepare this testimony and with no public report on the specific allegations, my analysis remains mired in uncertainty as to any plan to bring such a claim to the foundational evidence for the charge. Most of the references to obstruction have been part of a Ukraine-based impeachment plan that does not include any past alleged crimes from the Russian investigation. I will therefore address the possibility of a Ukraine-related obstruction article of impeachment.⁶⁷ However, as I have previously written,⁶⁸ I believe an obstruction claim based on the Mueller Report would equally at odds with the record and the controlling case law.⁶⁹ The use of an obstruction theory from the Mueller Report

appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than [\$ 100,000] nor less than \$100 and imprisonment in a common jail for not less than one month nor more than twelve months.”

2 U.S.C. §§192, 194. Thus, when the Obama Administration refused to turn over critical information in the Fast and Furious investigation, the Congress brought a contempt not an impeachment action against Attorney General Eric Holder. In this case, the House would skip any contempt action as well as any securing any order to compel testimony or documents. Instead, it would go directly to impeachment for the failure to turn over material or make available witnesses – a conflict that has arisen in virtually every modern Administration.

⁶⁷ For the record, I previously testified on obstruction theories in January in the context of the Mueller investigation before the United States Senate Committee of the Judiciary as part of the Barr confirmation hearing. United States Senate, Committee on the Judiciary, *The Confirmation of William Pelham Barr As Attorney General of the United States Supreme Court* (Jan. 16, 2019) (testimony of Professor Jonathan Turley).

⁶⁸ See, e.g., Jonathan Turley, *Mueller's end: A conclusion on collusion but confusion on Obstruction*, THE HILL (March 24, 2019, 8:30 PM), <https://thehill.com/opinion/white-house/435553-muellers-end-a-conclusion-on-collusion-but-confusion-on-obstruction>.

⁶⁹ I have previously criticized Special Counsel Mueller for his failure to reach a conclusion on obstruction as he did on the conspiracy allegation. See Jonathan Turley, *Why Mueller may be fighting a public hearing on Capitol Hill*, THE HILL (May 5, 2019, 10:00 AM), <https://thehill.com/opinion/judiciary/445534-why-mueller-may-be-fighting-a-public-hearing-on-capitol-hill>. However, the report clearly undermines any credible claim for obstruction. Mueller raises ten areas of concern over obstruction. The only substantive allegation concerns his alleged order to White House Counsel Don McGahn to fire Mueller. While the President has denied that order, the report itself destroys any real case for showing a corrupt intent as an element of this crime. Mueller finds that Trump had various non-criminal motivations for his comments regarding the investigation, including his belief that there is a deep-state conspiracy as well as an effort to belittle his 2016 election victory. Moreover, the Justice Department did what Mueller should have done: it reached a conclusion. Both Attorney General Bill Barr and Deputy Attorney General Rod Rosenstein reviewed the Mueller Report and concluded that no

would be unsupportable in the House and unsustainable in the Senate. Once again, the lack of information (just weeks before an expected impeachment vote) on the grounds for impeachment is both concerning and challenging. It is akin to being asked to diagnose a patient's survivability without knowing his specific illness.

Obstruction of justice is a more broadly defined crime than bribery and often overlaps with other crimes like witness tampering, subornation, or specific acts designed to obstruct a given proceeding. There are many federal provisions raising forms of obstruction that reference parallel crimes. Thus, influencing a witness is a standalone crime and also a form of obstruction under 18 U.S.C. 1504. In conventional criminal cases, prosecutions can be relatively straightforward, such as cases of witness intimidation under 18 U.S. 1503. Of course, this is no conventional case. The obstruction claims leveled against President Trump in the Ukrainian context have centered on two main allegations. First, there was considerable discussion of the moving of the transcript of the call with President Zelensky to a classified server as a possible premeditated effort to hide evidence. Second, there have been repeated references to the "obstruction" of President Trump by invoking executive privileges or immunities to withhold witnesses and documents from congressional committees. In my view, neither of these general allegations establishes a plausible case of criminal obstruction or a viable impeachable offense.

The various obstruction provisions generally share common elements. 18 U.S.C. § 1503, for example, broadly defines the crime of "corruptly" endeavoring "to influence, obstruct or impede the due administration of justice." This "omnibus" provision, however, is most properly used for judicial proceedings such as grand jury investigations, and the Supreme Court has narrowly construed its reach. There is also 18 U.S.C. § 1512(c), which contains a "residual clause" in subsection (c)(2), which reads:

(c) Whoever corruptly-- (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) *otherwise* obstructs, influences, or impedes any official proceeding, or attempts to do so [is guilty of the crime of obstruction]. [emphasis added].

cognizable case was presented for an allegation of obstruction of justice. Many members of this Committee heralded the selection of Rosenstein as a consummate and apolitical professional who was responsible for the appointment of the Special Counsel. He reached this conclusion on the record sent by Mueller and, most importantly, the controlling case law. As with the campaign finance allegation discussed in this testimony, an article based on obstruction in the Russian investigation would seek the removal of a President on the basis of an act previously rejected as a crime by the Justice Department. Many of us have criticized the President for his many comments and tweets on the Russian investigation. However, this is a process that must focus on impeachable conduct, not imprudent or even obnoxious conduct.

This residual clause has long been the subject of spirited and good-faith debate, most recently including the confirmation of Attorney General Bill Barr. The controversy centers on how to read the sweeping language in subsection (c)(2) given the specific listing of acts in subsection (c)(1). It strains credulity to argue that, after limiting obstruction with the earlier language, Congress would then intentionally expand the provision beyond recognition with the use of the word "otherwise." For that reason, it is often argued that the residual clause has a more limited meaning of other acts of a similar kind. As with the bribery cases, courts have sought to maintain clear and defined lines in such interpretations to give notice of citizens as to what is criminal conduct under federal law. The purpose is no less relevant in the context of impeachments.

The danger of ambiguity in criminal statutes is particularly great when they come into collision with constitutional functions or constitutional rights like free speech. Accordingly, federal courts have followed a doctrine of avoidance when ambiguous statutes collide with constitutional functions or powers. In *United States ex rel. Attorney General v. Delaware & Hudson Co.*,⁷⁰ the Court held that "Under that doctrine, when 'a statute is susceptible of two constructions, by one of which grave and doubtful constitutional questions arise and by the other of which such questions are avoided, our duty is to adopt the latter.'"⁷¹ This doctrine of avoidance has been used in conflicts regarding proper the exercise of executive powers. Thus, when the Supreme Court considered the scope of the Federal Advisory Committee Act ("FACA") it avoided a conflict with Article II powers through a narrower interpretation. In *Public Citizen v. U.S. Department of Justice*,⁷² the Court had a broad law governing procedures and disclosures committees, boards, and commissions. However, when applied to consultations with the American Bar Association regarding judicial nominations, the Administration objected to the conflict with executive privileges and powers. The Court adopted a narrow interpretation: "When the validity of an act of the Congress is drawn in question, and even if a serious doubt of constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."⁷³ These cases would weigh heavily in the context of executive privilege and the testimony of key White House figures on communications with the President.

⁷⁰ 213 U.S. 366 (1909).

⁷¹ *Id.* at 408; see also Op. Off. Legal Counsel 253, 278 (1996) ("It is a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts. The canon is thus a means of giving effect to congressional intent, not of subverting it.").

⁷² 491 U.S. 440 (1989).

⁷³ *Id.*; see also *Ass'n of American Physicians and Surgeons v. Clinton*, 997 F.2d 898 (D.C. Cir. 1993) ("Article II not only gives the President the ability to consult with his advisers confidentially, but also, as a corollary, it gives him the flexibility to organize his advisers and seek advice from them as he wishes.").

There is no evidence that President Trump acted with the corrupt intent required for obstruction of justice on the record created by the House Intelligence Committee. Let us start with the transfer of the file. The transfer of the transcript of the file was raised as a possible act of obstruction to hide evidence of a quid pro quo. However, the nefarious allegations behind the transfer were directly contradicted by Tim Morrison, the former Deputy Assistant to the President and Senior Director for Europe and Russia on the National Security Council. Morrison testified that he was the one who recommended that the transcript be restricted after questions were raised about President Trump's request for investigations. He said that he did so solely to protect against leaks and that he spoke to senior NSC lawyer John Eisenberg. When Morrison learned the transcript was transferred to a classified server, he asked Eisenberg about the move. He indicated that Eisenberg was surprised and told him it was a mistake. He described it as an "administrative error." Absent additional testimony or proof that Morrison has perjured himself, the allegation concerning the transfer of the transcript would seem entirely without factual support, let alone legal support, as a criminal obstructive act.

Most recently, the members have focused on an obstruction allegation centering on the instructions of the White House to current and former officials not to testify due to the expected assertions of executive privilege and immunity. Notably, the House has elected not to subpoena core witnesses with first-hand evidence on any quid pro quo in the Ukraine controversy. Democratic leaders have explained that they want a vote by the end of December, and they are not willing to wait for a decision from the court system as to the merits of these disputes. In my view, that position is entirely untenable and abusive in an impeachment. Essentially, these members are suggesting a president can be impeached for seeking a judicial review of a conflict over the testimony of high-ranking advisers to the President over direct communications with the President. The position is tragically ironic. The Democrats have at times legitimately criticized the President for treating Article II as a font of unilateral authority. Yet, they are now doing the very same thing in claiming Congress can demand any testimony or documents and then impeach any president who dares to go to the courts. Magnifying the flaws in this logic is the fact that the House has set out one of the shortest periods in history for this investigation—a virtual rocket docket for impeachment. House leaders are suggesting that they will move from notice of an alleged impeachable act at the beginning of September and adopt articles of impeachment based on controversy roughly 14 weeks later. On this logic, the House could give a president a week to produce his entire staff for testimony and then impeach him when he seeks review by a federal judge.

As extreme as that hypothetical may seem, it is precisely the position of some of those advancing this claim. In a recent exchange on National Public Radio with former Rep. Liz Holtzman, I raised the utter lack of due process and fairness in such a position.⁷⁴ Holtzman, one of the House Judiciary Committee members during the Nixon impeachment, insisted that a president has no right to seek judicial review and that he must turn over everything and anything demanded by Congress. Holtzman insisted that

⁷⁴ Public Impeachment Hearing Analysis From Nixon, Clinton Figures, WBUR (Nov. 14, 2019), <https://www.wbur.org/onpoint/2019/11/14/first-impeachment-hearing-congress-trump-taylor-kent>.

the position of her Chairman, Peter Rodino, was that the House alone dictates what must be produced. That is a position this Committee should not replicate. This returns us to the third article of impeachment against Nixon discussed earlier. That article stated:

“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... [i]n 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.”⁷⁵

Once again, I have always been critical of this article. Nixon certainly did obstruct the process in a myriad of ways, from witness tampering to other criminal acts. However, on the critical material sought by Congress, Nixon went to Court and ultimately lost in his effort to withhold the evidence. He had every right to do so. On July 25, 1974, the Court ruled in *United States v. Nixon*⁷⁶ that the President had to turn over the evidence. On August 8, 1974, Nixon announced his intention to resign. Notably, in that decision, the Court recognized the existence of executive privilege—a protection that requires a balancing of the interests of the legislative and executive branches by the judicial branch. The Court ruled that “[n]either the doctrine of separation of powers, nor the need for confidentiality of high-level communications, without more, can sustain an absolute, unqualified Presidential privilege of immunity from judicial process under all circumstances.”⁷⁷ Yet, the position stated in the current controversy is perfectly Nixonian. It is asserting the same “absolute, unqualified” authority of Congress to demand evidence while insisting that a president has no authority to refuse it. The answer is obvious. A President cannot “substitute[] his judgment” for Congress on what they are entitled to see and likewise Congress cannot substitute its judgment as to what a President can withhold. The balance of those interests is performed by the third branch that is constitutionally invested with the authority to review and resolve such disputes.

The recent decision by a federal court holding that former White House Counsel Don McGahn must appear before a House committee is an example of why such review is so important and proper.⁷⁸ I criticized the White House for telling McGahn and others not to appear before Congress under a claim of immunity. Indeed, when I last appeared before this Committee as a witness, I encouraged that litigation and said I believed the

⁷⁵ WATERGATE.INFO, <https://watergate.info/impeachment/articles-of-impeachment>.

⁷⁶ *United States v. Nixon*, 418 U.S. 683, 706 (1974).

⁷⁷ *Id.*

⁷⁸ *Committee on the Judiciary v. McGahn*, Civ. No. 19-cv-2379 (KBJ), 2019 U.S. Dist. LEXIS 203983 (D.D.C. 2019).

Committee would prevail.⁷⁹ Notably, the opinion in *Committee on the Judiciary v. McGahn* rejected the immunity claims of the White House but also reaffirmed “the Judiciary’s duty under the Constitution to interpret the law and to declare government overreaches unlawful.”⁸⁰ The Court stressed that

“the Framers made clear that the proper functioning of a federal government that is consistent with the preservation of constitutional rights hinges just as much on the intersectionality of the branches as it does on their separation, and it is the assigned role of the Judiciary to exercise the adjudicatory power prescribed to them under the Constitution’s framework to address the disputed legal issues that are spawned from the resulting friction.”⁸¹

The position of this Committee was made stronger by allowing the judiciary to rule on the question. Indeed, that ruling now lays the foundation for a valid case of obstruction. If President Trump defies a final order without a stay from a higher court, it would constitute real obstruction. Just yesterday, in *Trump v. Deutsche Bank*, the United States for the Second Circuit became the latest in a series of courts to reject the claims made by the President’s counsel to withhold financial or tax records from Congress.⁸² The Court reaffirmed that such access to evidence is “an important issue concerning the investigative authority.”⁸³ With such review, the courts stand with Congress on the issue of disclosure and ultimately obstruction in congressional investigations. Moreover, such cases can be expedited in the courts. In the Nixon litigation, courts moved those cases quickly to the Supreme Court. In contrast, the House leaderships have allowed two months to slip away without using its subpoena authority to secure the testimony of critical witnesses. The decision to adopt an abbreviated schedule for the investigation and not to seek to compel such testimony is a strategic choice of the House leadership. It is not the grounds for an impeachment.

If the House moves forward with this impeachment basis, it would be repeating the very same abusive tactics used against President Andrew Johnson. As discussed earlier, the House literally manufactured a crime upon which to impeach Johnson in the Tenure in Office Act. This was a clearly unconstitutional act with a trap-door criminal provision (transparently referenced as a “high misdemeanor”) if Johnson were to fire the Secretary of War. Congress created a crime it knew Johnson would commit by using his recognized authority as president to pick his own cabinet. In this matter, Congress set a

⁷⁹ See United States House of Representatives, Committee on the Judiciary, “Executive Privilege and Congressional Oversight” (May 15, 2019) (testimony of Professor Jonathan Turley).

⁸⁰ *McGahn*, 2019 U.S. Dist. LEXIS 203983, at *11.

⁸¹ *Id.* at 98.

⁸² *Trump v. Deutsche Bank*, No. 19-1540-cv (2d Cir. Dec. 3, 2019) (available at <https://www.documentcloud.org/documents/6565847-Deutsche-Bank-20191203.html>).

⁸³ *Id.*

short period for investigation and then announced Trump would be impeached for seeking, as other presidents have done, judicial review over the demand for testimony and documents.

The obstruction allegation is also undermined by the fact that many officials opted to testify, despite the orders from the President that they should decline. These include core witnesses in the impeachment hearings, like National Security Council Director of European Affairs Alexander Vindman, Ambassador William Taylor, Ambassador Gordon Sondland, Deputy Assistant Secretary of State George Kent, Acting Assistant Secretary of State Philip Reeker, Under Secretary of State David Hale, Deputy Associate Director of the Office of Management and Budget Mark Sandy, and Foreign Service Officer David Holmes. All remain in federal service in good standing. Thus, the President has sought judicial review without taking disciplinary actions against those who defied his instruction not to testify.

If this Committee elects to seek impeachment on the failure to yield to congressional demands in an oversight or impeachment investigation, it will have to distinguish a long line of cases where prior presidents sought the very same review while withholding witnesses and documents. Take the Obama administration position, for instance, on the investigation of “Fast and Furious,” which was a moronic gunwalking operation in which the government arranged for the illegal sale of powerful weapons to drug cartels in order to track their movement. One such weapon was used to murder Border Patrol Agent Brian Terry, and Congress, justifiably so, began an oversight investigation. Some members called for impeachment proceedings. But President Obama invoked executive privilege and barred essential testimony and documents. The Obama Administration then ran out the clock in the judiciary, despite a legal rejection of its untenable and extreme claim by a federal court. During its litigation, the Obama Administration argued the courts had no authority over its denial of such witnesses and evidence to Congress. In *Committee on Oversight & Government Reform v. Holder*,⁸⁴ Judge Amy Berman Jackson, ruled that “endorsing the proposition that the executive may assert an unreviewable right to withhold materials from the legislature would offend the Constitution more than undertaking to resolve the specific dispute that has been presented here. After all, the Constitution contemplates not only a separation, but a balance, of powers.” The position of the Obama Administration was extreme and absurd. It was also widely viewed as an effort to run out the clock on the investigation. Nevertheless, President Obama had every right to seek judicial review in the matter and many members of this very Committee supported his position.

Basing impeachment on this obstruction theory would itself be an abuse of power . . . by Congress. It would be an extremely dangerous precedent to set for future presidents and Congresses in making an appeal to the Judiciary into “high crime and misdemeanor.”

⁸⁴ 979 F. Supp. 2d 1, 3-4 (D.D.C. 2013).

C. Extortion.

As noted earlier, extortion and bribery cases share a common law lineage. Under laws like the Hobbs Act, prosecutors can allege different forms of extortion. The classic form of extortion is coercive extortion to secure property “by violence, force, or fear.”⁸⁵ Even if one were to claim the loss of military aid could instill fear in a country, that is obviously not a case of coercive extortion as that crime has previously been defined. Instead, it would presumably be alleged as extortion “under color of official right.”⁸⁶ Clearly, both forms of extortion have a coercive element, but the suggestion is that Trump was “trying to extort” the Ukrainians by withholding aid until they agreed to open investigations. The problem is that this allegation is no closer to the actual crime of extortion than it is to its close cousin bribery. The Hobbs Act defines extortion as “the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear or under color of official right.”⁸⁷

As shown in cases like *United States v. Silver*,⁸⁸ extortion is subject to the same limiting definition as bribery and resulted in a similar overturning of convictions. Another obvious threshold problem is defining an investigation into alleged corruption as “property.” Blackstone described a broad definition of extortion in early English law as “an abuse of public, justice which consists in an officer's unlawfully taking, by colour of his office, from any man, any money or thing of value, that is not due him, or more than is due, or before it is due.”⁸⁹ The use of anything “of value” today would be instantly rejected. Extortion cases involve tangible property, not possible political advantage.⁹⁰ In this case, Trump asked for cooperation with the Justice Department in its investigation into the origins of the FBI investigation on the 2016 election. As noted before, that would make a poor basis for any criminal or impeachment theory. The Biden investigation may have tangible political benefits, but it is not a form of property. Indeed, Trump did not know when such an investigation would be completed or what it might find. Thus, the request was for an investigation that might not even benefit Trump.

The theory advanced for impeachment bears a close similarity to one of the extortion theories in *United States v. Blagojevich* where the Seventh Circuit overturned an extortion conviction based on the Governor of Illinois, Rod Blagojevich, pressuring then Sen. Barack Obama to make him a cabinet member or help arrange for a high-paying job in exchange for Blagojevich appointing a friend of Obama's to a vacant Senate seat. The prosecutors argued such a favor was property for the purposes of extortion. The court dismissed the notion, stating “The President-elect did not have a

⁸⁵ 18 U.S.C. §§ 1951 (2018).

⁸⁶ *Id.*

⁸⁷ 18 U.S.C. § 1951(b)(2).

⁸⁸ 864 F.3d 102 (2d Cir. 2017).

⁸⁹ 4 WILLIAM BLACKSTONE, COMMENTARIES 141 (1769).

⁹⁰ See *Scheidler v. Nat'l Org. for Women*, 537 U.S. 393, 404 (2003) (citing *United States v. Enmons*, 410 U.S. 396, 400 (1973)).

property interest in any Cabinet job, so an attempt to get him to appoint a particular person to the Cabinet is not an attempt to secure 'property' from the President (or the citizenry at large)."⁹¹ In the recent hearings, witnesses spoke of the desire for "deliverables" sought with the aid. Whatever those "deliverables" may have been, they were not property as defined for the purposes of extortion any more than the "logrolling" rejected in *Blagojevich*.

There is one other aspect of the *Blagojevich* opinion worth noting. As I discussed earlier, the fact that the military aid was required to be obligated by the end of September weakens the allegation of bribery. Witnesses called before the House Intelligence Committee testified that delays were common, but that aid had to be released by September 30th. It was released on September 11th. The ability to deny the aid, or to even withhold it past September 30th is questionable and could have been challenged in court. The status of the funds also undermines the expansive claims on what constitutes an "official right" or "property":

"The indictment charged Blagojevich with the 'color of official right' version of extortion, but none of the evidence suggests that Blagojevich claimed to have an 'official right' to a job in the Cabinet. He did have an 'official right' to appoint a new Senator, but unless a position in the Cabinet is 'property' from the President's perspective, then seeking it does not amount to extortion. Yet a political office belongs to the people, not to the incumbent (or to someone hankering after the position). *Cleveland v. United States*, 531 U.S. 12 (2000), holds that state and municipal licenses, and similar documents, are not 'property' in the hands of a public agency. That's equally true of public positions. The President-elect did not have a property interest in any Cabinet job, so an attempt to get him to appoint a particular person to the Cabinet is not an attempt to secure 'property' from the President (or the citizenry at large)."⁹²

A request for an investigation in another country or the release of money already authorized for Ukraine are even more far afield from the property concepts addressed by the Seventh Circuit.

The obvious flaws in the extortion theory were also made plain by the Supreme Court in *Sekhar v. United States*,⁹³ where the defendant sent emails threatening to reveal embarrassing personal information to the New York State Comptroller's general counsel in order to secure the investment of pension funds with the defendant. In an argument analogous to the current claims, the prosecutors suggested political or administrative support was a form of intangible property. As in *McDonnell*, the Court was unanimous in rejecting the "absurd" definition of property. The Court was highly dismissive of such convenient linguistic arguments and noted that "shifting and imprecise characterization of

⁹¹ *United States v. Blagojevich*, 794 F.3d 729, 735 (7th Cir. 2015).

⁹² *Id.*

⁹³ 570 U.S. 729 (2013).

the alleged property at issue betrays the weakness of its case.”⁹⁴ It concluded that “[a]dopting the Government’s theory here would not only make nonsense of words; it would collapse the longstanding distinction between extortion and coercion and ignore Congress’s choice to penalize one but not the other. That we cannot do.”⁹⁵ Nor should Congress. Much like such expansive interpretations would be “absurd” for citizens in criminal cases, it would be equally absurd in impeachment cases.

To define a request of this kind as extortion would again convert much of politics into a criminal enterprise. Indeed, much of politics is the leveraging of aid or subsidies or grants for votes and support. In *Blagojevich*, the court dismissed such “logrolling” as the basis for extortion since it is “a common exercise.”⁹⁶ If anything of political value is now the subject of the Hobbs Act, the challenge in Washington would not be defining what extortion is, but what it is not.

D. Campaign Finance Violation

Some individuals have claimed that the request for investigations also constitutes a felony violation of the election finance laws. Given the clear language of that law and the controlling case law, there are no good-faith grounds for such an argument. To put it simply, this dog won’t hunt as either a criminal or impeachment matter. U.S.C. section 30121 of Title 52 states: “It shall be unlawful for a foreign national, directly or indirectly, to make a contribution or donation of money or other thing of value, or to make an express or implied promise to make a contribution or donation, in connection with a federal, state, or local election.”

On first blush, federal election laws would seem to offer more flexibility to the House since the Federal Election Commission has adopted a broad interpretation of what can constitute a “thing of value” as a contribution. The Commission states “‘Anything of value’ includes all ‘in-kind contributions,’ defined as ‘the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services.’”⁹⁷ However, the Justice Department already reviewed the call and correctly concluded it was not a federal election violation. This determination was made by the prosecutors who make the decisions on whether to bring such cases. The Justice Department concluded that the call did not involve a request for a “thing of value” under the federal law. Congress would be alleging a crime that has been declared not to be a crime by career prosecutors. Such a decision would highlight the danger of claiming criminal acts, while insisting that impeachment does not require actual crimes. The “close enough for impeachment” argument will only undermine the legitimacy of the

⁹⁴ *Id.* at 737.

⁹⁵ *Id.*

⁹⁶ *Blagojevich*, 794 F.3d at 735.

⁹⁷ FEDERAL ELECTION COMMISSION, THE LAW OF A ‘THING OF VALUE’ (Oct. 2019), <https://www.fec.gov/resources/cms-content/documents/2019-10-ELW-the-law-of-a-thing-of-value.pdf>.

impeachment process, particularly if dependent on an election fraud allegation that itself is based on a demonstrably slipshod theory.

The effort to pound these facts into an election law violation would require some arbitrary and unsupported findings. First, to establish a felony violation, the thing of value must be worth \$25,000 or more. As previously mentioned, we do not know if the Ukrainians would conclude an investigation in the year before an election. We also do not know whether an investigation would offer a favorable or unfavorable conclusion. It could prove costly or worthless. In order for the investigation to have value, you would have to assume one of two acts were valuable. First, there may be value in the announcement of an investigation, but an announcement is not a finding of fact against the Bidens. It is pure speculation what value such an announcement might have had or whether it would have occurred at a time or in a way to have such value. Second, you could assume that the Bidens would be found to have engaged in a corrupt practice and that the investigation would make those findings within the year. There is no cognizable basis to place a value on such unknown information that might be produced at some time in the future. Additionally, this theory would make any encouragement (or discouragement) of an investigation into another country a possible campaign violation if it could prove beneficial to a president. As discussed below, diplomatic cables suggest that the Obama Administration pressured other countries to drop criminal investigations into the U.S. torture program. Such charges would have proven damaging to President Obama who was criticized for shifting his position on the campaign in favor of investigations.⁹⁸ Would an agreement to scuttle investigations be viewed as a “thing of value” for a president like Obama? The question is the lack of a limiting principle in this expansive view of campaign contributions.

There is also the towering problem of using federal campaign laws to regulate communications between the heads of state. Any conversation between heads of state are inherently political. Every American president facing reelection schedules foreign trips and actions to advance their political standing. Indeed, such trips and signing ceremonies are often discussed as transparently political decisions by incumbents. Under the logic of this theory, any request that could benefit a president is suddenly an unlawful campaign finance violation valued arbitrarily at \$25,000 or more. Such a charge would have no chance of surviving a threshold of motion to dismiss.

Even if such cases were to make it to a jury, few such cases have been brought and the theory has fared poorly. The best-known usage of the theory was during the prosecution of former Sen. John Edwards. Edwards was running for the Democratic nomination in 2008 when rumors surfaced that he not only had an affair with filmmaker Rielle Hunter but also sired a child with her. He denied the affair, as did Hunter. Later it

⁹⁸ Adam Serwer, *Obama's Legacy of Impunity For Torture*, THE ATLANTIC (Mar. 14, 2018), <https://www.theatlantic.com/politics/archive/2018/03/obamas-legacy-of-impunity-for-torture/555578/>; Kenneth Roth, *Barack Obama's Shaky Legacy on Human Rights*, FOREIGN POLICY (Jan. 4, 2017), <https://foreignpolicy.com/2017/01/04/barack-obamas-shaky-legacy-on-human-rights/>; *CIA Off The Hook For Past Waterboarding*, CBS NEWS (Apr. 16, 2009, 2:43 PM), <https://www.cbsnews.com/news/cia-off-the-hook-for-past-waterboarding/>.

was revealed that Fred Baron, the Edwards campaign finance chairman, gave money to Hunter, but he insisted it was his own money and that he was doing so without the knowledge of Edwards. Andrew Young, an Edwards campaign aide, also obtained funds from heiress Rachel Lambert Mellon to pay to Hunter. In the end, Mellon gave \$700,000 in order to provide for the child and mother in what prosecutors alleged as a campaign contribution in violation of federal campaign-finance law.⁹⁹ The jury acquitted Edwards and the Justice Department dropped all remaining counts.¹⁰⁰

Although the Edwards case involved large quantities of cash the jury failed to convict because they found the connection to the election too attenuated. The theory being advanced in the current proceedings views non-existent information that may never be produced as a contribution to an election that might occur before any report is issued. That is the basis upon which some would currently impeach a president, under a standard that the Framers wanted to be clear and exacting. Framers like Madison rejected "vague" standards that would "be equivalent to a tenure during pleasure of the Senate." The campaign finance claim makes "maladministration" look like the model of clarity and precision in the comparison to a standard based on an assumption of future findings to be delivered at an unknown time.

E. Abuse of Power

The Ukraine controversy was originally characterized not as one of these forced criminal allegations, but as a simple abuse of power. As I stated from the outset of this controversy, a president can be impeached for abuses of power. In Federalist #65, Alexander Hamilton referred to impeachable offenses as "those offences which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust."¹⁰¹ Even though every presidential impeachment has been founded on criminal allegations, it is possible to impeach a president for non-criminal acts. Indeed, some of the allegations contained in the articles of impeachment against all three presidents were distinctly non-criminal in character. The problem is that we have never impeached a president solely or even largely on the basis of a non-criminal abuse of power allegation. There is good reason for that unbroken record. Abuses of power tend to be even less defined and more debatable as a basis for impeachment than some of the crimes already mentioned. Again, while a crime is not required to impeach, clarity is necessary. In this case, there needs to be clear and unequivocal proof of a quid pro quo. That is why I have been critical of how this impeachment has unfolded. I am particularly

⁹⁹ Manuel Roig-Franzia, *John Edwards trial: Jurors seek information on 'Bunny' Mellon's Role*, WASH. POST (May 23, 2012), https://www.washingtonpost.com/politics/john-edwards-trial-jurors-seek-information-on-bunny-mellons-role/2012/05/23/gJQAtiFzkU_story.html.

¹⁰⁰ Dave Levinthal, *Campaign cash laws tough to enforce*, POLITICO (June 1, 2012, 1:47 PM), <http://www.politico.com/news/stories/0612/76961.html>.

¹⁰¹ ALEXANDER HAMILTON, FEDERALIST NO. 65 (1788), *reprinted in* THE FEDERALIST PAPERS 396, 396 (Clinton Rossiter ed., 1961).

concerned about the abbreviated schedule and thin record that will be submitted to the full house.

Unlike the other dubious criminal allegations, the problem with the abuse of power allegation is its lack of foundation. As I have previously discussed, there remain core witnesses and documents that have not been sought through the courts. The failure to seek this foundation seems to stem from an arbitrary deadline at the end of December. Meeting that deadline appears more important than building a viable case for impeachment. Two months have been wasted that should have been put toward litigating access to this missing evidence. The choice remains with the House. It must decide if it wants a real or recreational impeachment. If it is the former, my earlier testimony and some of my previous writing show how a stronger impeachment can be developed.¹⁰²

The principle problem with proving an abuse of power theory is the lack of direct evidence due to the failure to compel key witnesses to testify or production of key documents. The current record does not establish a quid pro quo. What we know is that President Trump wanted two investigations. The first investigation into the 2016 election is not a viable basis for an abuse of power, as I have previously addressed. The second investigation into the Bidens would be sufficient, but there is no direct evidence President Trump intended to violate federal law in withholding the aid past the September 30th deadline or even wanted a quid pro quo maintained in discussions with the Ukrainians regarding the aid. If Trump encouraged an investigation into the Bidens alone, it would not be a viable impeachment claim. The request was inappropriate, but it was not an offer to trade public money for a foreign investigation. President Trump continued to push for these investigations but that does not mean that he was planning to violate federal law. Indeed, Ambassador Sondland testified that, when he concluded there was a quid pro quo, he understood it was a visit to the White House being withheld. White House visits are often used as leverage from everything from United Nations votes to domestic policy changes. Trump can maintain he was suspicious about the Ukrainians in supporting his 2016 rival and did not want to grant such a meeting without a demonstration of political neutrality. If he dangled a White House meeting in these communications, few would view that as unprecedented, let alone impeachable.

Presidents often put pressure on other countries which many of us view as inimical to our values or national security. Presidents George W. Bush and Barack Obama reportedly put pressure on other countries not to investigate the U.S. torture program or seek the arrest of those responsible.¹⁰³ President Obama and his staff also reportedly pressured the Justice Department not to initiate criminal prosecution stemming

¹⁰² Jonathan Turley, *How The Democrats can build a better case to impeach President Trump*, THE HILL (Nov. 25, 2019, 12:00 PM), <https://thehill.com/opinion/judiciary/471890-how-democrats-can-build-a-better-case-to-impeach-president-trump>.

¹⁰³ David Corn, *Obama and GOPers Worked Together to Kill Bush Torture Probe*, MOTHER JONES (Dec. 1, 2010), <https://www.motherjones.com/politics/2010/12/wikileaks-cable-obama-quashed-torture-investigation/> (discussing cables pressuring the Spanish government to shut down a judicial investigation into torture).

from the torture program.¹⁰⁴ Moreover, presidents often discuss political issues with their counterparts and make comments that are troubling or inappropriate. However, contemptible is not synonymous with impeachable. Impeachment is not a vehicle to monitor presidential communications for such transgressions. That is why making the case of a quid pro quo is so important – a case made on proof, not presumptions. While critics have insisted that there is no alternative explanation, it is willful blindness to ignore the obvious defense. Trump can argue that he believed the Obama Administration failed to investigate a corrupt contract between Burisma and Hunter Biden. He publicly called for the investigation into the Ukraine matters. Requesting an investigation is not illegal any more than a leader asking for actions from their counterparts during election years.

Trump will also be able to point to three direct conversations on the record. His call with President Zelensky does not state a quid pro quo. In his August conversation with Sen. Ron Johnson (R., WI.), President Trump reportedly denied any quid pro quo. In his September conversation with Ambassador Sondland, he also denied any quid pro quo. The House Intelligence Committee did an excellent job in undermining the strength of the final two calls by showing that President Trump was already aware of the whistleblower controversy emerging on Capitol Hill. However, that does not alter the fact that those direct accounts stand uncontradicted by countervailing statements from the President. In addition, President Zelensky himself has said that he did not discuss any quid pro quo with President Trump. Indeed, Ambassador Taylor testified that it was not until the publication of the *Politico* article on August 28th that the Ukrainians voiced concerns over possible preconditions. That was just ten days before the release of the aid. That means that the record lacks not only direct conversations with President Trump (other than the three previously mentioned) but even direct communications with the Ukrainians on a possible quid pro quo did not occur until shortly before the aid release. Yet, just yesterday, new reports filtered out on possible knowledge before that date—highlighting the premature move to drafting articles of impeachment without a full and complete record.¹⁰⁵

Voters should not be asked to assume that President Trump would have violated federal law and denied the aid without a guarantee on the investigations. The current narrative is that President Trump only did the right thing when “he was caught.” It is possible that he never intended to withhold the aid past the September 30th deadline while also continuing to push the Ukrainians on the corruption investigation. It is possible that Trump believed that the White House meeting was leverage, not the military aid, to push for investigations. It is certainly true that both criminal and impeachment cases can be

¹⁰⁴ Glenn Greenwald, *Obama's justice department grants final immunity to Bush's CIA torturers*, THE GUARDIAN (Aug. 31, 2012 12:00PM) <https://www.theguardian.com/commentisfree/2012/aug/31/obama-justice-department-immunity-bush-cia-torturer>.

¹⁰⁵ Andrew Kramer, *Ukraine Knew Of Aid Freeze in July, Says Ex-Top Official In Kyiv*, N.Y. TIMES (Dec. 3, 2019, 7:59 am), <https://www.nytimes.com/2019/12/03/world/europe/ukraine-impeachment-military-aid.html>.

based on circumstantial evidence, but that is less common when direct evidence is available but unsecured in the investigation. Proceeding to a vote on this incomplete record is a dangerous precedent to set for this country. Removing a sitting President is not supposed to be easy or fast. It is meant to be thorough and complete. This is neither.

F. The Censure Option

Finally, there is one recurring option that was also raised during the Clinton impeachment: censure. I have been a long critic of censure as a part of impeachment inquiries and I will not attempt to hide my disdain for this option. It is not a creature of impeachment and indeed is often used by members as an impeachment-lite alternative for those who do not want the full constitutional caloric load of an actual impeachment. Censure has no constitutional foundation or significance. Noting the use of censure in a couple of prior cases does not make it precedent any more than Senator Arlen Specter's invocation of the Scottish "Not Proven" in the Clinton trial means that we now have a third option in Senate voting. If the question is whether Congress can pass a resolution with censure in its title, the answer is clearly yes. However, having half of Congress express their condemnation for this president with the other half opposing such a condemnation will hardly be news to most voters. I am agnostic about such extra-constitutional options except to caution that members should be honest and not call such resolutions part of the impeachment process.

V. CONCLUSION

Allow me to be candid in my closing remarks.

I get it. You are mad. The President is mad. My Democratic friends are mad. My Republican friends are mad. My wife is mad. My kids are mad. Even my dog is mad . . . and Luna is a golden doodle and they are never mad. We are all mad and where has it taken us? Will a slipshod impeachment make us less mad or will it only give an invitation for the madness to follow in every future administration?

That is why this is wrong. It is not wrong because President Trump is right. His call was anything but "perfect" and his reference to the Bidens was highly inappropriate.

It is not wrong because the House has no legitimate reason to investigate the Ukrainian controversy. The use of military aid for a quid pro quo to investigate one's political opponent, if proven, can be an impeachable offense.

It is not wrong because we are in an election year. There is no good time for an impeachment, but this process concerns the constitutional right to hold office in this term, not the next.

No, it is wrong because this is not how an American president should be impeached. For two years, members of this Committee have declared that criminal and impeachable acts were established for everything from treason to conspiracy to obstruction. However, no action was taken to impeach. Suddenly, just a few weeks ago, the House announced it would begin an impeachment inquiry and push for a final vote in just a matter of weeks. To do so, the House Intelligence Committee declared that it would

not subpoena a host of witnesses who have direct knowledge of any quid pro quo. Instead, it will proceed on a record composed of a relatively small number of witnesses with largely second-hand knowledge of the position. The only three direct conversations with President Trump do not contain a statement of a quid pro quo and two expressly deny such a pre-condition. The House has offered compelling arguments why those two calls can be discounted by the fact that President Trump had knowledge of the underlying whistleblower complaint. However, this does not change the fact that it is moving forward based on conjecture, assuming what the evidence would show if there existed the time or inclination to establish it. The military aid was released after a delay that the witnesses described as “not uncommon” for this or prior Administrations. This is not a case of the unknowable. It is a case of the peripheral. The House testimony is replete with references to witnesses like John Bolton, Rudy Giuliani, and Mike Mulvaney who clearly hold material information. To impeach a president on such a record would be to expose every future president to the same type of inchoate impeachment.

Principle often takes us to a place where we would prefer not to be. That was the place the “Republican Recusants” found themselves in 1868 when sitting in judgment of a president they loathed and despised. However, they took an oath not to Andrew Johnson, but to the Constitution. One of the greatest among them, Lyman Trumbull (R-Ill.) explained his fateful decision to vote against Johnson’s impeachment charges even at the cost of his own career:

“Once 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 who happens to differ with the majority of the House and two-thirds of the Senate ...

I tremble for the future of my country. I cannot be an instrument to produce such a result; and at the hazard of the ties even of friendship and affection, till calmer times shall do justice to my motives, no alternative is left me...¹⁰⁶

Trumbull acted in the same type of age of rage that we have today. He knew that raising a question about the underlying crime or the supporting evidence would instantly be condemned as approving of the underlying conduct of a president. In an age of rage, there seems to be no room for nuance or reservation. Yet, that is what the Constitution expects of us. Expects of you.

For generations, the seven Republicans who defected to save President Johnson from removal have been heralded as profiles of courage. In recalling the moment he was called to vote, Senator Edmund Ross of Kansas said he “almost literally looked down into my open grave.” He jumped because the price was too great not to. Such moments are easy to celebrate from a distance of time and circumstance. However, that is precisely the moment in which you now find yourself. “When the excitement of the hour [has]

¹⁰⁶ WILLIAM H. REHNQUIST, *GRAND INQUESTS: THE HISTORIC IMPEACHMENTS OF JUSTICE SAMUEL CHASE AND PRESIDENT ANDREW JOHNSON* 243-44 (1992).

subsided” and “calmer times” prevail, I do not believe that this impeachment will be viewed as bringing credit upon this body. It is possible that a case for impeachment could be made, but it cannot be made on this record. To return to Wordsworth, the Constitution is not a call to arms for the “Happy Warriors.” The Constitution calls for circumspection, not celebration, at the prospect of the removal of an American president. It is easy to allow one’s “judgment [to be] affected by your moral approval of the lines” in an impeachment narrative. But your oath demands more, even personal and political sacrifice, in deciding whether to impeach a president for only the third time in the history of this Republic.

In this age of rage, many are appealing for us to simply put the law aside and “just do it” like this is some impulse-buy Nike sneaker. You can certainly do that. You can declare the definitions of crimes alleged are immaterial and this is an exercise of politics, not law. However, the legal definitions and standards that I have addressed in my testimony are the very thing dividing rage from reason. Listening to these calls to dispense with such legal niceties, brings to mind a famous scene with Sir Thomas More in “A Man For All Seasons.” In a critical exchange, More is accused by his son-in-law William Roper of putting the law before morality and that More would “give the Devil the benefit of law!” When More asks if Roper would instead “cut a great road through the law to get after the Devil?,” Roper proudly declares “Yes, I’d cut down every law in England to do that!” More responds by saying “And when the last law was down, and the Devil turned ‘round on you, where would you hide, Roper, the laws all being flat? This country is planted thick with laws, from coast to coast, Man’s laws, not God’s! And if you cut them down, and you’re just the man to do it, do you really think you could stand upright in the winds that would blow then? Yes, I’d give the Devil benefit of law, for my own safety’s sake!”

Both sides in this controversy have demonized the other to justify any measure in defense much like Roper. Perhaps that is the saddest part of all of this. We have forgotten the common article of faith that binds each of us to each other in our Constitution. However, before we cut down the trees so carefully planted by the Framers, I hope you consider what you will do when the wind blows again . . . perhaps for a Democratic president. Where will you stand then “the laws all being flat?”¹⁰⁷

Thank you again for the honor of testifying before you today. I am happy to answer any questions that you may have.¹⁰⁸

¹⁰⁷ R. BOLT, *A MAN FOR ALL SEASONS* 37-38 (Vintage ed. 1962).

¹⁰⁸ As discussed above, I have been asked to include some of my relevant scholarship: Jonathan Turley, *A Fox In The Hedges: Vermeule’s Optimizing Constitutionalism For A Suboptimal World*, 82 U. CHI. L. REV. 517 (2015); Jonathan Turley, *Madisonian Tectonics: How Form Follows Function in Constitutional and Architectural Interpretation*, 83 GEO. WASH. L. REV. 305 (2015); Jonathan Turley, *Recess Appointments in the Age of Regulation*, 93 B.U. L. REV. 1523 (2013); Jonathan Turley, *Constitutional Adverse Possession: Recess Appointments and the Role of Historical Practice in Constitutional Interpretation*, 2013 WIS. L. REV. 965 (2013); Jonathan Turley, *Paradise Lost: The Clinton Administration and the Erosion of*

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Presidential Privilege, 60 MD. L. REV. 205 (2000) (Symposium); Jonathan Turley, "From Pillar to Post": *The Prosecution of Sitting Presidents*, 37 AM. CRIM. L. REV. 1049 (2000); Jonathan Turley, *A Crisis of Faith: Congress and The Federal Tobacco Litigation*, 37 HARV. J. ON LEGIS. 433 (2000); Jonathan Turley, *Through a Looking Glass Darkly: National Security and Statutory Interpretation*, 53 SMU L. REV. 205 (2000) (Symposium); Jonathan Turley, *Senate Trials and Factional Disputes: Impeachment as a Madisonian Device*, 49 DUKE L.J. 1 (1999); Jonathan Turley, *The "Executive Function" Theory, the Hamilton Affair and Other Constitutional Mythologies*, 77 N.C. L. REV. 1791 (1999); Jonathan Turley, *Congress as Grand Jury: The Role of the House of Representatives in the Impeachment of an American President*, 67 GEO. WASH. L. REV. 735-790 (1999) (Symposium); Jonathan Turley, *Reflections on Murder, Misdemeanors, and Madison*, 28 HOFSTRA L. REV. 439 (1999) (Symposium); Jonathan Turley, *Dualistic Values in the Age of International Legislation*, 44 HASTINGS L.J. 145 (1992).

Ms. LOFGREN. Thank you, Mr. Chairman

You know, like President Nixon, the allegations against President Trump involve serious election-related misconduct. Nixon's associates burglarized the DNC headquarters, give them a leg up in his election. Nixon tried to cover up the crime by obstructing Federal and congressional investigations. He also abused his powers to target his political rivals, and here we're confronted with evidence suggesting that President Trump tried to leverage appropriated military assistance to resist Russia by Ukraine to convince a foreign ally to announce an investigation of his political rival.

Professor Karlan, I'd like you to tell me your view on how President Trump's conduct, meaning his request of the foreign ally to announce an investigation of his adversary, how does that compare to what President Nixon did?

Ms. KARLAN. Not favorably, because as I suggested in my opening testimony, it was a kind of doubling down, because President Nixon abused domestic law enforcement to go after his political opponents, and what President Trump has done, based on the evidence that we've seen so far, is he's asked a foreign country to do that, which means it's not—it's sort of—it's sort of like a daily double, if you will, of problems.

Ms. LOFGREN. All right. Professor Gerhardt, do you have additional comment on that?

Mr. GERHARDT. I certainly would agree with Professor Karlan, yes. I think the difficulty here is we need to remember that impeachable offenses don't have to be criminal offenses, as you well know. And so what we're talking about is an abuse of power. We're talking about an abuse of power that only the President can commit. And there was a systematic, concerted effort by the President to remove people that would somehow obstruct or block his ability to put that pressure on Ukraine, to get an announcement of an investigation. That seems to be what he cared about, just the mere announcement. And that pressure produced—was going to produce the outcome he wanted until the whistleblower put a light on it.

Ms. LOFGREN. I want to go back quickly to something Professor Turley said. As we saw in the Miers case—and I was a member of the committee when we tried to get her testimony, as well as the Fast and Furious case, which also was wrongfully withheld from the Congress—litigation to enforce congressional subpoenas can extend well beyond the terms of the Presidency itself. That happened in both of those cases.

Professor Feldman, is it, as Professor Turley seemed to suggest, an abuse of our power no to go to the courts before using our sole power of impeachment, in your judgment?

Mr. FELDMAN. Certainly not. Under the Constitution, the House is entitled to impeach. That's its power. It doesn't have to ask permission from anybody and it doesn't have to go through any judicial process involving judicial branch of government. That is your decision based on your judgment.

Ms. LOFGREN. Thank you.

I'd just like to note that this is not a proceeding that I looked forward to. It's not an occasion for joy. It's one of solemn obligation. I hope and believe that every member of this committee is listen-

ing, keeping an open mind, and hoping that we honor our obligations carefully and honestly.

And with that, I yield back, Mr. Chairman.

Chairman NADLER. The gentlelady yields back. The gentlelady yields back.

We are expecting votes on the House floor shortly. So we will recess until immediately after the conclusion of those votes.

I ask everyone in the room to please remain seated and quiet while the witnesses exit the room. I want to remind members of the audience that you may not be guaranteed your seat if you leave the hearing room at this time.

At this time, the committee will stand in recess until immediately after the votes.

[Recess.]

Chairman NADLER. The committee will come to order.

When we recessed for our break, we were under the 5-minute rule. I now recognize the gentleman from Wisconsin, Mr. Sensenbrenner. Oh, let me repeat that.

The committee will come to order. When we broke for recess, we were under the 5-minute rule. I now recognize Mr. Sensenbrenner for 5 minutes to question the witnesses.

Mr. SENSENBRENNER. Thank you very much, Mr. Chairman.

I'm a veteran of impeachments. I've been named by the House as an impeachment manager in four impeachments, Clinton and three judges. That's more than anybody else in history. And one of the things in every impeachment, whether it's the ones that I was involved in or others that have come before the committee where I was not a manager, is a debate on what is a high crime and misdemeanor and how serious does that have to be in order for it to rise to a level of an impeachable offense.

About 50 years ago, then Republican leader Gerald Ford made a comment that saying a high crime and misdemeanor is anything a majority of the House of Representatives deems it to be on any given day. I don't agree with that, you know. That sets either a very low bar or a nonexistent bar. And it certainly would make the President serve at the pleasure of the House, which was not what the Framers intended when they rejected the British form of parliamentary democracy where the Prime Minister and the government could be overthrown by a mere vote of no confidence in the House of Commons.

So I'm looking at what we're facing here. This whole inquiry was started out by a comment that President Trump made to President Zelensky in the July 25 call of, quote, do me a favor, unquote. There are some who have said it's a quid pro quo. There are some who have implied that it's a quid pro quo. But both Trump and Zelensky have said it wasn't and Zelensky has said there was no pressure on me, and the aid came through within 6 weeks after the phone call in question was made.

Now, you can contrast that to where there was no impeachment inquiry to Vice President Biden when he was giving a speech and said, you know, I held up \$1 billion worth of aid unless the prosecutor was fired within 6 hours. And son of a bleep, that's what happened.

Now, you know, it seems to me that if you're looking for a quid pro quo and looking for something that was really over the top, it was not saying, do me a favor; it was saying, son of a bleep. That's what happened in 6 hours.

Now, you know, the Republicans, who were in charge of Congress at the time Biden made that comment, we did not tie the country up for 3 months and going on 4 now, wrapping everybody in this town around the axle rod. We continued attempting to do the public's business.

That's not what's happening here. And I think the American public are getting a little bit sick and tired of impeachment, impeachment, impeachment, when they know that less than a year from now, they will be able to determine whether Donald Trump stays in office or somebody else will be elected.

And I take this responsibility extremely seriously. You know, it is an awesome and very grave responsibility, and it is not one that should be done lightly, it is not one that should be done quickly, and it is not one without examining all of the evidence, which is what was done in the Nixon impeachment and what was done largely by Kenneth Starr in the Clinton impeachment.

Now, I'd like to ask you, Professor Turley, because your mind is the only one of the four who are up there that doesn't seem to have it made up before you walked into the door. Isn't there a difference between saying, quote, do me a favor and, quote, son of a bleep, that's what happened in 6 hours' time?

MR. TURLEY. Grammatically, yes. Constitutionally, it really depends on the context. I think your point is a good one in the sense that we have to determine from the transcript and hopefully from other witnesses whether this statement was part of an actual quid pro quo.

I guess the threshold question is, if the President said, I'd like you to do these investigations—and by the way, I don't group them together in my testimony. I distinguish between the request for investigations into 2016 from the investigation into the Bidens. But if it is an issue of order, the magnitude of order constitutionally, if you ask, I'd like to see you do this as opposed to, I have a quid pro quo, you either do this or you don't get military aid.

MR. SENSENBRENNER. Thank you.

CHAIRMAN NADLER. The time of the gentleman is expired.

The gentlelady from Texas, Ms. Jackson Lee.

MS. JACKSON LEE. Thank you, Mr. Chairman, for yielding.

Professor Gerhardt said, if what we are talking about today is not impeachable, then nothing is impeachable. I'm reminded of my time on the House Judiciary Committee during the 1990s impeachment and as well a number of Federal judges. I was guided then not only by the facts, but by the Constitution and the duty to serve this Nation. I believe, as we greet you today, that we are charged with a sober and somber responsibility.

So, Professor Karlan, I'd like you to look at the intelligence volume where hundreds of documents are behind that in the Mueller report. Professor Karlan, you studied the record. Do you think it is, quote, wafer thin, and can you remark on the strength of the record before us?

Ms. KARLAN. So obviously it's not wafer thin. And the strength of the record is not just in the September—I mean, the July 25 call. I think that what you need to ask about this is, how does it fit into the pattern of behavior by the President? Because what you're really doing is you're drawing inferences here. This is about circumstantial evidence as well as direct evidence. That is, you're trying to infer did the President ask for a political favor, and I think this record supports the inference that he did.

Ms. JACKSON LEE. What comparisons, Professor Karlan, can we make between kings that the Framers were afraid of and the President's conduct today?

Ms. KARLAN. So kings could do no wrong because the king's word was law. And contrary to what President Trump has said, Article II does not give him the power to do anything he wants. And I'll just give you one example that shows you the difference between him and a king, which is, the Constitution says there can be no titles of nobility. So while the President can name his son Barron, he can't make him a baron.

Ms. JACKSON LEE. Thank you.

The Founding Father George Mason asks, Shall any man be above justice? And Alexander Hamilton wrote that high crimes and misdemeanors mean the abuse of violation of some public trust.

As we move quickly, Professor Feldman, you have previously testified that the President has abused his power. Is that correct?

Mr. FELDMAN. Yes, ma'am.

Ms. JACKSON LEE. What do you think is the most compelling evidence in this impeachment inquiry that would lead you to that?

Mr. FELDMAN. The phone call itself of July 25 is extraordinarily clear, to my mind, in that we hear the President asking for a favor that's clearly of personal benefit, rather than acting on behalf of the interest of the Nation. And then further from that, further down the road, we have more evidence which tends to give the context and to support the explanation for what happened.

Ms. JACKSON LEE. Professor Karlan, how does such abuse affect our democratic systems?

Ms. KARLAN. Having foreign interference in our election means that we are less free. It is less we the people who are determining who's the next winner than it is a foreign government.

Ms. JACKSON LEE. I think it is fair to say that the President's actions are unprecedented. But what also strikes me is how many Republicans and Democrats believe that his conduct was wrong. Let's listen to the colonel.

[Video shown.]

Ms. JACKSON LEE. Professor Feldman, in light of the fact that the President asked for an investigation and then only when he was caught released the military aid, is there still a need for impeachment?

Mr. FELDMAN. Yes, ma'am. Impeachment is complete when the President abuses his office and he abuses his office by attempting to abuse his office. There's no distinction there between trying to do it and succeeding in doing it, and that's especially true if you only stop because you got caught.

Ms. JACKSON LEE. Over 70 percent of the American people believe, as I said, what the President did was wrong. We have a sol-

emn responsibility to address that, and as well, our fidelity to our oath and our duty.

I'm reminded of the men and women who serve in the United States military, and I'm reminded of my three uncles who served in World War II. I can't imagine them being on the battlefield needing arms and food, and the general says, do me a favor. We know that general would not say, do me a favor. And so in this instance, the American people deserve unfettered leadership, and it is our duty to fairly assess the facts and the Constitution.

I yield back my time.

Chairman NADLER. The gentlelady yields back.

Mr. Chabot is recognized.

Mr. CHABOT. Thank you, Mr. Chairman.

It's pretty clear to me that no matter what questions we ask these four witnesses here today and no matter what their answers are, that most, if not all, of the Democrats on this committee, are going to vote to impeach President Trump. That's what their hard-core Trump-hating base wants, and they've wanted that since the President was elected 3 years ago.

In fact, when Democrats took over the House, one of the first things that they did was introduce Articles of Impeachment against President Trump, and that was way before President Trump and the Ukrainian President Zelensky ever had their famous phone call, whether it was perfect or not.

Now, today, we are undertaking a largely academic exercise instead of hearing from fact witnesses, like Adam Schiff or Hunter Biden, but we are not being permitted to call those witnesses. It would seem that since Schiff, for example, misled the American people on multiple occasions, common sense and basic fairness would call for Schiff to be questioned about those things, but we can't.

Mr. Chairman, back in 1998, when another President, Bill Clinton, was being considered for impeachment, you said, and I quote: "We must not overturn an election and impeach a President without an overwhelming consensus of the American people and the representatives in Congress." You also said, quote: "There must never be a narrowly voted impeachment or an impeachment substantially supported by one of the major political parties and largely opposed by the other." You said 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. That's what you said back then, Mr. Chairman.

Well, what you said should never happen, that we should never do is exactly what you're doing now, moving forward without a consensus and impeachment by one major party that's opposed by the other. And it's almost certain that it's going to result in the very divisiveness and bitterness that you so accurately warned us about back then.

Mr. Chairman, a couple more quotes from a very wise Jerry Nadler from about two decades ago. Quote: "The last thing you want, it's almost illegitimate, is to have a party-line impeachment. You shouldn't impeach the President unless it's a broad consensus of

the American people.” Those were wise words, Mr. Chairman, but you’re not following them today.

And finally, again your words back then: “The issue in a potential impeachment is whether to overturn the results of a national election, the free expression of the popular will of the American people. That is an enormous responsibility and an extraordinary power. It is not one we should exercise lightly. It is certainly not one which should be exercised in a manner which either is or would be perceived by the American people to be unfair or partisan,” unquote.

Again, Mr. Chairman, those things that you warned against then are exactly what you and your Democratic colleagues are doing now. You’re about to move forward with a totally party-line impeachment. That is clearly not a broad consensus of the American people. You’re overturning the result of a national election, and there’s no doubt that it will be perceived by at least half of the American people as an unfair and partisan effort.

You seem bound and determined to move forward with this impeachment, and the American people deserve better. I get it, Democrats on this committee don’t like this President. They don’t like his policies. They don’t like him as a person. They hate his tweets. They don’t like the fact that the Mueller investigation was a flop. So now you’re going to impeach him.

Well, I got news for you. You may be able to twist enough arms in the House to impeach the President, but that effort’s going to die in the Senate. The President’s going to serve out his term in office, and in all likelihood be reelected to a second term probably with the help of this very impeachment charade that we’re going through now.

And while you’re wasting so much of Congress’ time and the American people’s money on this impeachment, there are so many other important things that are going undone. Within this committee’s own jurisdiction, we should be addressing the opioid epidemic. We could be working together to find a solution to our immigration and asylum challenges on our southern border. We could be protecting Americans from having their intellectual property and jobs stolen by Chinese companies, and we could be enhancing election security, just to name a few things.

And Congress as a whole could be working on rebuilding our crumbling infrastructure, providing additional tax relief to the Nation’s middle-class families and providing additional security to our people here at home and abroad. Instead, here we are spinning our wheels once again on impeachment. What a waste. The American people deserve so much better.

I yield back.

Chairman NADLER. The gentleman yields back.

Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chair.

I take no pleasure in the fact that we’re here today. As a patriot who loves America, it pains me that the circumstances forced us to undertake this grave and solemn obligation. Nonetheless, based simply on the publicly available evidence, it appears that President Trump pressured a foreign government to interfere in our elections by investigating his perceived chief political opponent.

Today, we're here to uphold our oaths to defend the Constitution of the United States by furthering our understanding whether the President's conduct is impeachable. It is entirely appropriate that we're examining our Nation's history as it relates to Presidential impeachment. The Framers of the Constitution legitimately feared for an interference in our Nation's sovereignty, and they wanted to ensure that there would be a check and balance on the executive. We sit here with a duty to the Founders to fulfill their wisdom in being a check on the executive. We, the People's House, are that check.

Under our Constitution, the House can impeach a President for treason, bribery, or other high crimes and misdemeanors. Professor Feldman, you've discussed high crimes and misdemeanors and the fact that the high refers to both crimes and misdemeanors. Can you just give us a little bit of a summary of what high crimes and misdemeanors are and how they're distinct from what Professor Turley said they were?

Mr. FELDMAN. Yes, sir. High crimes and misdemeanors are actions of the President in office where he uses his office to advance his personal interests potentially for personal gain, potentially to corrupt the electoral process, and potentially as well against the national security interests of the United States.

I would add, sir, that the word "high" modifies both crimes and misdemeanors. The Framers' world knew of both high crimes and high misdemeanors. And I believe that the definition that was posted earlier of misdemeanor was not the definition of high misdemeanor, which is a specific term understood by the Framers and discussed in the constitutional convention, but only of the word "misdemeanor."

And that's an easy mistake to make, but the truth is that high misdemeanors were their own category of abuses of office, and those are the things that are impeachable.

Mr. COHEN. Thank you, Professor.

Professors Feldman, Karlan, and Gerhardt, you've all testified the President's conduct here implicates three categories of high crimes and misdemeanors: abuse of power, betrayal of the national interest, and corruption of elections. Is that right, Professor Karlan?

Ms. KARLAN. Yes, it is.

Mr. COHEN. And to Professor Feldman and Professor Gerhardt, do you agree?

Mr. GERHARDT. Yes.

Mr. FELDMAN. Yes, sir.

Mr. COHEN. Professor Karlan, you've stated that the essence of an impeachable offense is the President's decision to sacrifice the national interest for his own private ends. Professor Feldman and Gerhardt, do you all also agree with that?

Mr. FELDMAN. Yes, sir.

Mr. GERHARDT. Yes.

Mr. COHEN. Based on the evidence you've seen, Professors Feldman, Karlan, and Gerhardt, has President Trump sacrificed the country's interest in favor of his own? Professor Karlan.

Ms. KARLAN. Yes, he has.

Mr. COHEN. And is there a particular piece of evidence that most illuminates that?

Ms. KARLAN. I think what illuminates that most for me is the statement by Ambassador Sondland that he wanted simply the announcement of an investigation, and several other people said exactly the same thing. There's testimony by Ambassador Volker to this extent as well that what he wanted was simply public information to damage Joe Biden. He didn't care whether at the end of the day Joe Biden was found guilty or exonerated.

Mr. COHEN. And, Professor Feldman, do you agree and do you have a different or the same illuminating fact—

Mr. FELDMAN. My emphasis would be on the fact that the President held up aid to an ally that's fighting a war in direct contravention of the unanimous recommendation of the national security community. That to me seems to have placed his own interests in personal advantage ahead of the interests of the Nation.

Mr. COHEN. And a bill passed by Congress, bipartisan?

Mr. FELDMAN. Yes, sir.

Mr. COHEN. Professor Gerhardt.

Mr. GERHARDT. I agree with what my colleagues have said. I would add that I am very concerned about the President's obstruction of Congress, obstruction of this inquiry, refusal to comply with a number of subpoenas, ordering many high-level officials in the government not to comply with subpoenas, and asking and ordering the entire executive branch not to cooperate with Congress.

It's useful to remember, the Constitution says the House has the sole power to impeach. The Constitution only uses the word "sole" twice; once with reference to the House in this area, once with reference to the Senate with respect to impeachment trials. Sole means sole. It means only. And this is your decision.

Mr. COHEN. And let me get Professor Turley into this. Professor Turley, you're a self-described, self-anointed defender of Article I Congress guy. But you justify a position that says legally issued subpoenas by Congress enforcing its powers don't have to be complied with. It seems in this circumstance you're an Article II executive guy. And you're talking about the Johnson impeachment as not very useful. That was maladministration. This is a criminal act.

Thank you, Professors, for helping us understand high crimes and misdemeanors. We the People's Representatives in the People's House are heirs and custodians that Founders envisioned this country where the people are sovereign. We have a high responsibility and charged with the sole power to uphold our Constitution and defend our democracy, and we shall do that.

Chairman NADLER. The gentleman's time is expired.

Mr. Gohmert.

Mr. GOHMERT. Thank you.

I'm afraid this hearing is indicative of the indecency to which we've come when, instead of the committee of jurisdiction bringing in fact witnesses to get to the bottom of what happened and not even having time to review the report, which as Professor Turley indicated is wafer thin when compared to the 36 boxes of documents that were delivered to the last impeachment group, but then to start this hearing with the chairman of the committee saying that the facts are undisputed; the only thing that is disputed more

than the facts in this case is the statement that the facts are undisputed.

They are absolutely disputed, and the evidence is a bunch of hearsay on hearsay that if anybody here had tried cases before of enough magnitude, you would know you can't rely on hearsay on hearsay. But we have experts who know better than the accumulated experience of the ages.

So here we are. And I would submit we need some factual witnesses. We do not need to receive a report that we don't have a chance to read before this hearing. We need a chance to bring in actual fact witnesses, and there are a couple I can name that are critical to us getting to the bottom. They work for the National Security Council, Abigail Grace, Sean Misko. They were involved in the U.S.-Ukraine affairs, and they worked with Vice President Biden on different matters involving Ukraine. They worked with Brennan and Masters. They have absolutely critical information about certain Ukrainians' involvement in our U.S. election. Their relationships with the witnesses who went before the Intel Committee and others involved in these allegations make them the most critical witnesses in this entire investigation.

And the records, including their emails, their text messages, their flash drives, their computers, have information that will bring this effort to remove the President to a screeching halt.

So we have an article here from October 11, Kerry Picket, points out that House Intelligence Committee Chairman Adam Schiff recruited two former National Security Council aides who worked alongside the CIA whistleblower at the NSC during the Obama and Trump administrations. Abigail Grace, who worked at the NSC until 2018, was hired in February, while Sean Misko, an NSC aide until 2017, joined Schiff's committee in August, the same month the whistleblower submitted his complaint.

And it goes on to point out that Grace was hired to help Schiff's committee investigate the Trump White House. That month, Trump accused Schiff of stealing people who were working at the White House. And Chairman Schiff said, if the President's worried about our hiring any former administration people, maybe he should work on being a better employer. No, he should have fired everybody, just like Bill Clinton did, all the U.S. attorneys on the same day. That would have saved us a lot of what's gone on here.

So anyway, we need those two witnesses. They're critical. And then we also need someone who was a CIA detailee to the Ukraine NSC desk. State Department FOIA shows that he was at an Italy State luncheon. There's Italy ramifications in the last elections. He speaks Arabic and Russian, reported directly to Charles Kupchan, who is a friend of the Clinton's aide, Sid Blumenthal. He did policy work for the Ukraine corruption. Close, continuous contact with the FBI, State, Ukrainian officials, had a collateral duty to support Vice President Biden, and Biden was Obama's point man on Ukraine. He was associated with DNC operative Ally Chalupa, who we also need, met with her November 9, 2015, with Ukrainian delegation. And there is all kinds of reasons we need these three witnesses.

And I would ask, pursuant to section 4, House Resolution 660, ask our chairman to—— I mean our ranking member to submit the

request for these three witnesses, because we're not having a factual hearing until we have these people that are at the bottom of every fact of this investigation.

I yield back.

Chairman NADLER. The gentleman's time is expired.

Mr. GOHMERT. Thanks for bringing down the gavel hard. That was nice.

Chairman NADLER. The gentleman yields back.

Mr. Johnson.

Mr. JOHNSON of Georgia. Thank you, Mr. Chairman.

The President has regularly and recently solicited foreign interference in our upcoming elections. Professor Turley warns that this is an impulse buy moment and suggests that the House should pause.

Professor Karlan, do you agree with Professor Turley?

Ms. KARLAN. No. If you conclude that, as I think the evidence to this point shows, that the President is soliciting foreign involvement in our election, you need to act now to prevent foreign interference in the next election like the one we had in the past.

Mr. JOHNSON of Georgia. Thank you.

Professor Karlan, in 30 seconds or less, tell us why you believe the President's misconduct was an abuse of power so egregious that it merits the drastic remedy of impeachment.

Ms. KARLAN. Because he invited the Russians, who are our long-time adversaries, into the process, the last time around, because he has invited the Ukrainians into the process, and because he's suggested he would like the Chinese to come into the process as well.

Mr. JOHNSON of Georgia. Thank you very much.

One of the Framers of our Constitution, Edmund Randolph, who at one time was mayor of Williamsburg, Virginia, warned us that, quote, "The executive will have great opportunities of abusing his power," end quote.

Professor Feldman, people like Mayor Randolph rebelled because of the tyranny of a king. Why were the Framers so careful to avoid the potential for a President to become so tyrannical and abusive, and what did they do to protect against it?

Mr. FELDMAN. The Framers believed very strongly that the people were the king, the people were sovereign, and that meant that the President worked for somebody. He worked for the people. They knew that a President who couldn't be checked, who could not be supervised by his own Justice Department and who could not be supervised by Congress and could not be impeached would effectively be above the law and then would use his power to get himself reelected, and that's why they created the impeachment remedy.

Mr. JOHNSON of Georgia. Thank you.

Professor Feldman, I now want to discuss how the Framers' concerns about abuse of power relate to President Trump's misconduct. On July 25, President Trump said to President Zelensky, quote, I would like you to do us a favor, though.

Professor Feldman, when President Trump made use of the words "favor, though," do you believe that the President was benignly asking for a favor, and how is the answer to that question relevant to whether the President abused his power?

Mr. FELDMAN. It's relevant, sir, because there's nothing wrong with someone asking for a favor in the interest of the United States of America. The problem is for the President to use his office to solicit or demand a favor for his personal benefit.

And the evidence strongly suggests that given the power of the President and given the incentives that the President created for Ukraine to comply with his request, that the President was seeking to serve his own personal benefit and his own personal interest. That's the definition of corruption under the Constitution.

Mr. JOHNSON of Georgia. Other witnesses have also testified that it was their impression that when President Trump said, I would like you to do us a favor, though, that he was actually making a demand and not a request.

Professor Feldman, how does Lieutenant Colonel Vindman's testimony that the President's statement was a demand because of the power disparity between the two countries relate back to our Framers' concerns about the President's abuse of power?

Mr. FELDMAN. Lieutenant Colonel Vindman's observations states very clearly that you have to understand that the President of the United States has so much more power than the President of Ukraine, that when the President uses the word "favor," the reality is that he's applying tremendous pressure, the pressure of the power of the United States. And that relates to the constitutional abuse of office.

If someone other than the President of the United States asked the President of Ukraine to do a favor, the President of the Ukraine could say no. When the President of the United States uses the Office of the Presidency to ask for a favor, there's simply no way for the President of Ukraine to refuse.

Mr. JOHNSON of Georgia. Thank you.

We've also heard testimony that the President withheld a White House meeting and military aid in order to further pressure Ukraine to announce investigations of Vice President Biden and the 2016 election.

Professor Karlan, is that why your testimony concluded that the President abused his power?

Ms. KARLAN. I thought the President abused his power by asking for a criminal investigation of a United States citizen for political ends, regardless of everything else. That's just—it's not icing on the cake. It's what you would call an aggravating circumstance that there was need here.

Mr. JOHNSON of Georgia. All right. Thank you.

A President holding an American ally over a barrel to extract personal favors is deeply troubling. This is not an impulse buy moment. It's a break-the-glass moment, and impeachment is the only appropriate remedy.

And with that, I will yield back.

Chairman NADLER. The gentleman yields back.

Mr. Jordan.

Mr. JORDAN. Thank you, Mr. Chairman.

Before Speaker Pelosi announced the impeachment inquiry 10 weeks ago, on September 24th, before the call between President Trump and President Zelensky on July 25, before the Mueller hear-

ing in front of this committee on July 24, before all that, 16 of them had already voted to move forward on impeachment.

Sixteen Democrats on the Judiciary Committee had already voted to move forward on impeachment, yet today we're talking about whether the positions they've already taken are constitutional? Seems a little backward to me. I mean, we can't get agreement. I mean, we've got four Democrats—or four people who voted for Clinton, and they can't agree. Yet today we're talking about the Constitution.

Now, Professor Turley, you've been great today, but I think you were wrong on one thing: You said this is a fast impeachment. I would argue it's not a fast impeachment; it's a predetermined impeachment, predetermined impeachment done in the most unfair partisan fashion we have ever seen.

No subpoena power for Republicans. Depositions done in secret in the bunker in the basement of the Capitol. Seventeen people come in for those depositions. No one can be in there except a handful of folks that Adam Schiff allowed. In those depositions, Chairman Schiff prevented witnesses from answering Republican questions. Every Democrat question got answered, not every Republican question.

Democrats denied Republicans the witnesses we wanted in the open hearings that took place 3 weeks ago. And, of course, Democrats promised us the whistleblower would testify and then changed their mind. And they changed their mind, why? Because the whole world discovered that Adam Schiff's staff had talked to the whistleblower, coordinated with the whistleblower, the whistleblower with no firsthand knowledge, bias against the President who worked with Joe Biden, whose lawyer in January of 2017 said the impeachment process starts then.

That's the unfair process we've been through. And the reason it's been unfair—let me just cut to the chase—the reason it's been unfair is because the facts aren't on their side. The facts are on the President's side. Four key facts will not change, have not changed, will never change. We have the transcript. There was no quid pro quo in the transcript.

The two guys on the call, President Trump and President Zelensky, both said no pressure, no pushing, no quid pro quo. The Ukrainians—third—didn't know that the aid was held up at the time of the phone call; and, fourth, and most important, the Ukrainians never started, never promised to start, and never announced an investigation in the time that the aid was paused, never once.

But you know what did happen in those 55 days that the aid was paused? There were five key meetings between President Zelensky and senior officials in our government, five key meetings. We had the call on July 25th. The very next day, July 26th, we had Ambassador Volker, Taylor, and Sondland meet with President Zelensky in Kyiv.

You then had Ambassador Bolton end of August meet with President Zelensky. We then had the Vice President meet with President Zelensky on September 1st. And we had two Senators, Republican and, more importantly, Democratic Senator Murphy with Re-

publican Senator Johnson meet with President Zelensky on September 5th.

None of those five meetings—none of those five meetings—was aid ever discussed in exchange for an announcement of an investigation into anybody, not one of them. And you would think the last two, after the Ukrainians did know the aid was being held, you would think it would come up then, particularly the one where he got Senator Murphy, the Democrat, there talking about it. Never came up.

The facts are on the President's side. But we've got an unfair process because they don't have the facts. We've got an unfair process, most importantly—and this gets to something else you said, Mr. Turley, and this is scary how mad the country—that was so well said. This is scary. The Democrats have never accepted the will of the American people.

To Mr. Turley's point, 17 days ago, 17 days ago the Speaker of the United States House of Representatives called the President of the United States an imposter. The guy 63 million Americans voted for, who won an Electoral College landslide, the Speaker of the United States House of Representatives called that individual an imposter. That is not healthy for our country. This is not healthy.

The facts are the facts. They are on the President's side. That's what we need to focus on, not some constitutional hearing at the end of the process when you guys have already determined where you're going to go.

With that, I yield back.

Chairman NADLER. The gentleman yields back.

Mr. Deutch.

Mr. DEUTCH. Thank you, Mr. Chairman.

Mr. Chairman, this month, we commemorate the 75th anniversary of the Battle of the Bulge. My late father, Bernard Deutch, then Staff Sergeant Bernard Deutch, received a Purple Heart fighting in the frigid Ardennes. He gave blood among tens of thousands of Americans who suffered—who were casualties. They served under officers and a Commander in Chief who were not fighting a war for their own personal benefit.

They put country first. They made the same solemn promise that Members of Congress and the President of the United States make: to always put national interests above their own personal interest. The evidence shows the President broke that promise. The Constitution gives the President enormous power, but it also imposes a remedy—impeachment—when those powers are abused.

In July, President Trump said, and I quote, I have an Article II where I have the right to do whatever I want as President, closed quote. Professor Feldman, the President has broad powers under the Constitution, including in foreign policy. Isn't that right?

Mr. FELDMAN. Yes, sir.

Mr. DEUTCH. And do those powers mean that the President can do, as he said, whatever he wants as President? Can he abuse the powers that the Constitution gives him?

Mr. FELDMAN. He may not. If the President uses the powers that he's given for personal gain or to corrupt an election or against the national security interest of the United States, he may be impeached for a high crime and misdemeanor.

Mr. DEUTCH. Is using his power to pressure Ukraine to interfere in U.S. elections an abuse of that power?

Mr. FELDMAN. Yes, sir.

Mr. DEUTCH. Professor Gerhardt, how would the Framers of the Constitution have viewed a President asking for election interference from a foreign leader?

Mr. GERHARDT. It's always—it's, you know, practically impossible to know exactly what the Framers would think, but it's not hard to imagine how the Constitution deals with it. That's their legacy to us. And under the Constitution, it's plainly an abuse of power. It's a rather horrifying abuse of power.

Mr. DEUTCH. Professor Karlan, we've heard witnesses over the past several weeks testify about their concerns when the President used his foreign policy powers for political gain. Lieutenant Colonel Vindman was shocked. He couldn't believe what he heard on the phone call. NSC Adviser Hill realized that a political errand was diverging from efforts to protect our national security policy. And Ambassador Taylor thought it was crazy to withhold security assistance for help on a political campaign.

Professor Karlan, these concerns aren't mere differences over policy, are they?

Ms. KARLAN. No. They go to the foundation, the very foundation of our democracy.

Mr. DEUTCH. And offering to exchange a White House meeting and hundreds of millions of dollars in security assistance for help with his reelection, that can't be part of our Nation's foreign policy, can it?

Ms. KARLAN. No. It's the essence of doing something for personal reasons rather than for political reasons. And if I could just say one thing about this very briefly, which is maybe when he was first running for President—he had never been anything other than a reality TV show character, you know, that was his public life—maybe then he could think, "Russia, if you're listening" is an okay thing to do. But by the time he asked the Ukraine, "Ukraine, if you're listening, could you help me out with my reelection," he has to have known that that was not something consistent with his oath of office.

Mr. DEUTCH. Mr. Chairman, our Founders granted the President of the United States enormous powers, but at the same time, what we've been reminded of today, they worried that these powers could be abused by a corrupt President. The evidence of abuse of power in this inquiry proved that our Founders were right to be worried.

Yes, yes, the President has the power to direct America's foreign policy, but, no, he cannot use that power to cheat in our elections. Remember, and I ask all of my colleagues to remember, the Constitution grants the President his power through the American people. The President's source of power is a democratic election. It is the American people, the voters who trusted him to look out for them. We trusted him to look out for the country.

But, instead, President Trump looked out for himself and helping himself get reelected. He abused the power that we trusted him with for personal and political gain. The founders worried about just this type of abuse of power, and they provided one way, one way for Congress to respond, and that's the power of impeachment.

I yield back.

Chairman NADLER. The gentleman yields back.

Mr. BUCK.

Mr. BUCK. Thank you, Mr. Chairman.

Professor Turley, I want to direct these first few questions to you. The other three witnesses have identified this amorphous standard for impeaching a President. They've said that if a President abuses his power for personal or political gain, it's impeachable conduct. Do you agree with me?

Mr. TURLEY. Not the way it's been stated. In fact, there's so many different standards—

Mr. BUCK. I've got a long ways to go here.

Mr. TURLEY. Well, there's been so many different standards, one of them was attempting to abuse office. I'm not even sure how to recognize that, let alone define it.

Mr. BUCK. So let me go with a few examples and see if you agree with me. Lyndon Johnson directed the Central Intelligence Agency to place a spy in Barry Goldwater's campaign. That spy got advanced copies of speeches and other strategy, delivered that to the Johnson campaign. Would that be impeachable conduct according to the other panelists?

Mr. TURLEY. Well, it sweeps very broadly, so I assume so.

Mr. BUCK. How about when President Johnson put a wiretap on Goldwater's campaign plane? Would that be for political benefit?

Mr. TURLEY. Well, I can't exclude anything under that definition.

Mr. BUCK. Okay. Well, I'm going to go with a few other Presidents. We'll see where we go. Congressman Deutch just informed us that FDR put country first. Now, Franklin Delano Roosevelt when he was President directed the IRS to conduct audits of his political enemies, namely Huey Long, William Randolph Hearst, Hamilton Fish, Father Coughlin. Would that be an abuse of power for political benefit according to the other panelists? Would that be impeachable conduct?

Mr. TURLEY. I think it all would be subsumed into it.

Mr. BUCK. How about when President Kennedy directed his brother Robert Kennedy to deport one of his mistresses as an East German spy? Would that qualify as impeachable conduct?

Mr. TURLEY. Once again, I can't exclude it.

Mr. BUCK. And how about when we directed the FBI to use wiretaps on congressional staffers who opposed him politically? Would that be impeachable conduct?

Mr. TURLEY. It would seem to be falling within it.

Mr. BUCK. And let's go to Barack Obama. When Barack Obama directed or made a finding that the Senate was in recess and appointed people to the National Labor Relations Board and lost nine to zero, Ruth Bader Ginsburg voted against the President on this issue, would that be an abuse of power?

Mr. TURLEY. I'm afraid you'd have to direct it to others, but I don't see any exclusions under their definition.

Mr. BUCK. Okay. And how about when the President directed his National Security Advisor and the Secretary of State to lie to the American people about whether the Ambassador to Libya was murdered as a result of a video or was murdered as a result of a ter-

rorist act? Would that be an abuse of power for a political benefit, 17 days before the next election?

Mr. TURLEY. Well, not according to my definition, but the others will have to respond to their own.

Mr. BUCK. Well, you've heard their definition. You can apply those facts to their definition.

Mr. TURLEY. I have a hard time excluding anything out of—

Mr. BUCK. How about when Abraham Lincoln arrested legislators in Maryland so that they wouldn't convene to secede from the Union? And Virginia already had seceded, so it would place Washington, D.C., the Nation's capital, in the middle of the rebellion. Would that have been an abuse of power for political benefit?

Mr. TURLEY. Well, it could be under that definition.

Mr. BUCK. And you mentioned George Washington a little while ago as perhaps having met the standard of impeachment for your other panelists. In fact, let me ask you something, Professor Turley. Can you name a single President in the history of the United States, save President Harrison who died 32 days after his inauguration, that would not have met the standard of impeachment for our friends here?

Mr. TURLEY. I would hope to God James Madison would escape; otherwise, a lifetime of academic work would be shredded. But, once again, I can't exclude many of these acts.

Mr. BUCK. Isn't what you and I and many others are afraid of is that the standard that your friends to the right of you—and not politically but to the right of you sitting in there—that your friends have decided that the bar is so low that when we have a Democrat President in office and a Republican House and a Republican Senate, we're going to be going through this whole scenario again in a way that really puts the country at risk?

Mr. TURLEY. Well, when your graphic says in your ABCs that your B is betrayal of national interest, I would simply ask, do you really want that to be your standard?

Mr. BUCK. Now, isn't the difference, Professor Turley, that some people live in an ivory tower and some people live in a swamp? And those of us that are in the swamp are doing our very best for the American people, but it's not pretty.

Mr. TURLEY. Actually, I live in an ivory tower in a swamp, because I'm at GW, but—and it's not so bad.

Mr. BUCK. I yield back.

Chairman NADLER. The gentleman yields back.

Ms. Bass.

Ms. BASS. Thank you very much.

And I want to thank the witnesses, and I don't believe the people's House is a swamp.

President Nixon was impeached for abuse of power because his conduct was, quote, undertaken for his personal political advantage and not in furtherance of any valid national policy objective. Professor Gerhardt, why was it significant that President Nixon acted for his personal political advantage and not in furtherance of any valid national policy objective?

Mr. TURLEY. It's primarily significant because, in acting for his own personal benefit and not for the benefit of the country, he has crossed a line. The line here is very clear, and it becomes abuse of

power when somebody is using the special authorities of their office for their own personal benefit and not the benefit of the country.

Ms. BASS. So can the same be said of President Trump?

Mr. GERHARDT. It could be, yes. Yes.

Ms. BASS. Well, thank you. You know, I'm struck by the parallels because one of the things that Nixon did was he launched tax investigations of his political opponents. Here the evidence shows Trump tried to launch a criminal investigation of his political opponent by a foreign government.

We have heard evidence suggesting that President Trump did this for his own personal gain and not for any national policy interest. Although President Trump claims that he withheld the aid because of concerns about corruption, I do believe that we have example of the evidence of the truth.

[Video shown.]

Ms. BASS. Professor Feldman, what would the Framers have thought of a President who only cares about the, quote, big stuff that benefits him?

Mr. FELDMAN. The Framers were extremely worried about a President who served only his own interests or the interests of foreign powers. That was their most serious concern when they designed the remedy of impeachment.

Ms. BASS. So the evidence also suggests that President Trump didn't even care if the investigation actually happened. What he really cared about was the public announcement of the investigation.

So, Professor Karlan, how do we analyze these facts in the context of abuse of power?

Ms. KARLAN. Well, I think that to have a President ask for the investigation of his political opponents is an archetype of the abuse of power. And, you know, Mr. Buck mentioned past examples of this. And to say that those weren't impeachable, I think, is a big mistake. If a President wiretaps his opponents, that's a Federal crime now. I don't know whether, before the Wiretap Act of 1968, it was, but if a President wiretapped his opponents today, that would be impeachable conduct.

Ms. BASS. I also serve on the Foreign Affairs Committee, and I understand how significant it is to foreign leaders to meet with our Presidents. To attend a meeting in the Oval Office is very significant. President Zelensky is a newly elected head of state in a fledgling democracy. His country is at war with his neighbor. Russia invaded and is occupying his country's territory. He needed the military resources to defend his country. He needed the diplomatic recognition of the American President, and he was prepared to do whatever the President demanded.

Many years ago, I worked in the Nation's largest trauma unit as a PA, a physician assistant. I saw people at their worst in severe pain after accidents or acts of violence. Patients I took care of were desperate and afraid and had to wait 5 to 8 hours to be seen.

Can you imagine for 1 minute if I had told my patients, look, I can move you up in line and take care of your pain, but I do need a favor from you though. My patients were in pain, and they were desperate, and they would have agreed to do anything I asked. This would have been such an abuse of my position because of the

power dynamic. I had the power to relieve my patients from experiencing pain. It's fundamentally wrong and, in many cases, illegal for us to use power to take advantage of those in crisis, especially a President, especially when lives are at stake.

I yield back.

Chairman NADLER. The gentlelady yields back.

Mr. Ratcliffe.

Mr. RATCLIFFE. I thank the chairman.

Professor Turley, I'd like to start where you started because you said something that I think bears repeating. You said, I'm not a supporter of President Trump. I voted against him in 2016, and I have previously voted for Presidents Clinton and Obama. But despite your political preferences and persuasions, you reached this conclusion: The current legal case for impeachment is not just woefully inadequate but in some respects dangerous as the basis for impeachment of an American President.

So let me start by commending you for being the kind of example of what hopefully everyone on this committee will do as we approach the task that we have of determining whether or not there were any impeachable offenses here.

One of the problems that you've articulated as leading you to the conclusion of calling this the, should it proceed, the shortest impeachment proceeding with the thinnest evidentiary record and the narrowest grounds ever attempted to impeach a President, is the fact that there has been this ever changing, constantly evolving moving target of accusations, if you will.

The July 25 phone call started out as an alleged quid pro quo and briefly became an extortion scheme, a bribery scheme. I think it's back to quid pro quo. Now, besides pointing out that both Speaker Pelosi and Chairman Schiff waited until almost every witness had been deposed before they even started to use the term "bribery," I think you've clearly articulated why you think the definitions that they have used publicly are flawed if not unconstitutional both in the 18th century or in the 21st century. But would you agree with me that bribery under any valid definition requires that a specific quid pro quo be proven?

Mr. TURLEY. Yes. More importantly, the Supreme Court is focused on that issue, as well as, what is the definition of a quid pro quo?

Mr. RATCLIFFE. So, if military aid or security assistance is part of that quid pro quo, where in the July 25th transcript does President Trump ever suggest that he intends to withhold military aid for any reason?

Mr. TURLEY. He doesn't, and that's the reason we keep on hearing the words "circumstantial" and "inferential." And that is what is so concerning is those would be appropriate terms—it's not that you can't have a circumstantial case. Those would be appropriate terms if these were unknowable facts. But the problem is that you have so many witnesses that have not been subpoenaed, so many witnesses that we have not heard from.

Mr. RATCLIFFE. Right. So, if it's not in the transcript, then it has got to come from witness testimony. And I assume you've reviewed all the witness testimony, so you know that no witness has testified

that they either heard President Trump or were told by President Trump to withhold military aid for any reason, correct?

Mr. TURLEY. Correct.

Mr. RATCLIFFE. So let me turn to the issue of obstruction of justice quickly. I think you assumed, as I did, that when the Democrats have been talking about obstruction, it was specifically related to the Ukraine issue. And I know you've talked about that a lot today. You've clearly stated that you think that President Trump had no corrupt intent, on page 39 of your report.

You said something else I think that bears repeating today. You were highlighting the fact that the Democrats appear to be taking the position that if a President seeks judicial review over executive branch testimony or documents subpoenaed by Congress that, rather than letting the courts be the arbiter, Congress can simply impeach the President for obstruction based on that. Did I hear you say that if we were to proceed on that basis, that that would be an abuse of power?

Mr. TURLEY. I did. And let me be very clear about this. I don't disagree with my colleagues that nothing in the Constitution says you have to go to a court or wait for a court. That's not what I'm saying. What I'm saying is that, if you want a well based, a legitimate impeachment case to set this abbreviated schedule, demand documents, and then impeach because they haven't been turned over when they go to a court, when the President goes to a court, I think that is an abuse of power.

That's not what happened in Nixon, and, in fact, the ultimate decision in Nixon was that there are legitimate executive privilege claims that could be raised, and some of them deal with the type of aides involved in this case, like a National Security Advisor, like a White House counsel. And so with the concern here is not that there is—that you can't ever impeach a President unless you go to court, just that you shouldn't when you have time to do it.

Mr. RATCLIFFE. So, if I were to summarize your testimony, no bribery, no extortion, no obstruction of justice, no abuse of power, is that fair?

Mr. TURLEY. Not on this record.

Chairman NADLER. The gentleman's time is expired.

Mr. RATCLIFFE. I yield back.

Chairman NADLER. Mr. Richmond.

Mr. RICHMOND. Thank you, Mr. Chairman.

And let me just pick up where we left off, and I'm going to start, Mr. Turley, with your words, and it's from October 23rd, your opinion piece in The Hill. You said that: As I have said before, there is no question that the use of public office for personal gain is an impeachable offense, including the withholding of military aid in exchange for the investigation of a political opponent. You just have to prove it happened. If you can establish intent to use public office for personal gain, you have a viable impeachable offense.

We've heard today that a President abuses his power when he uses his official power for his own personal interest rather than the interest of our country.

I'd like to spend more time on that because I'm really struck by one of the things that was at stake here, \$400 million of taxpayer dollars. President Nixon leveraged the powers of his office to inves-

tigate political rivals, but here the evidence shows that President Trump also leveraged taxpayer dollars to get Ukraine to announce sham investigations of President Trump's political rivals. That taxpayer money was meant to help Ukraine defend itself and in turn defend United States interests from Russian aggression.

The money had been appropriated by Congress and certified by the Department of Defense. Multiple witnesses confirmed that there was unanimous support for the military aid to Ukraine. Can we listen to that, please?

[Video shown.]

Mr. RICHMOND. Professor Feldman, you've stated that the President's demand to the President of Ukraine constituted an abuse of power. How does the President's decision to withhold military aid affect your analysis?

Mr. FELDMAN. It means that it wasn't just an abuse of power because the President was serving his own personal interests but also an abuse of power insofar as the President was putting American national security interests behind his own personal interests, so it brought together two important aspects of the abuse of power, self-gain and undercutting our national security interests.

Mr. RICHMOND. The evidence points to President Trump using military aid for his personal benefit, not for the benefit of any official U.S. policy. Professor Karlan, how would the Framers have interpreted that?

Ms. KARLAN. Well, I can't speak for the Framers themselves, obviously. My view is that they would say that the President's authority to use foreign aid—and they probably couldn't have imagined we even were giving foreign aid because we were a tiny, poor country then, so it's a little hard to translate that.

But what they would have said is a President who doesn't think first about the security of the United States is not doing what his oath requires him to do, which was faithfully execute the laws, here a law appropriating money, and defend the Constitution of the United States.

Mr. RICHMOND. Thank you. And let's go back to a segment of Mr. Turley's quote, that if you can establish intent to use public office for personal gain, you have a viable impeachable offense.

Mr. Feldman, do we meet that criteria here?

Mr. FELDMAN. In my view, the evidence does meet that criteria, and that's the judgment that you should be making.

Mr. RICHMOND. Ms. Karlan.

Ms. KARLAN. Yes. And one question I would just have for the minority members of the committee. If you were convinced that the President held up the aid because he thought it would help his reelection, would you vote to impeach him? Because I think that's really the question that everyone on this committee should be asking. And if they conclude yes, then they should vote to impeach.

Mr. RICHMOND. Mr. Gerhardt.

Mr. GERHARDT. Yes, I agree. And one thing I would add is that much talk has been made here about the term bribery in court decisions with respect to bribery. It's your job, it's the House's job to define bribery, not the courts'. You follow your judgment on that.

Mr. RICHMOND. I want to thank the witnesses—all of the witnesses for coming in and testifying today. This is not an easy deci-

sion, it's not a comfortable decision, but it's one that's necessary. We all take an oath to protect the Constitution.

Our military, our men and women go and put their lives on the line for the Constitution, and we have an obligation to follow the Constitution whether it's convenient or easy. Thank you, and I yield back the balance.

Chairman NADLER. The gentleman yields back.

Mrs. Roby.

Mrs. ROBY. Very quickly. Professor Turley, would you like to respond?

Mr. TURLEY. Yes, I would. First of all, what was said in that column is exactly what I said in my testimony. The problem is not that abuse of power can never be an impeachable offense, you just have to prove it and you haven't.

It's not enough to say, I infer this was the purpose. I infer that this is what was intended, when you're not actually subpoenaing people with direct knowledge. And, instead, you're saying we must vote in this rocket docket of an impeachment.

Mrs. ROBY. So this leads to my statement that I'd like to make. Of course, the United States House of Representatives has initiated impeachment inquiries against the President of the United States only three times in our a Nation's history prior to this one. Those impeachment inquiries were done in this committee, the Judiciary Committee, which has jurisdiction over impeachment matters.

Here in 2019, under this inquiry, fact witnesses have been called—fact witness that had been called were in front of the Intelligence Committee. We have been given no indication that this committee will conduct substantive hearings with fact witnesses.

As a Member serving on the Judiciary Committee, I can say that the process in which we are participating is insufficient, unprecedented, and grossly inadequate.

Sitting before us is a panel of witnesses containing four distinguished law professors from some of our country's finest educational institutions. I do not doubt that each of you are extremely well-versed in the subject of the Constitutional law. And, yes, there is precedent for similar panels in the aforementioned history, but only after specific charges have been made known, and the underlying facts presented in full, due to an exhaustive investigation.

However, I don't understand why we are holding this hearing at this time with these witnesses. My colleagues on the other side of the aisle have admitted they don't know what Articles of Impeachment they will consider. How does anyone expect a panel of law professors to weigh in on the legal grounds for impeachment charges prior to even knowing what the charges brought by this committee are going to be.

Some of my Democrat colleagues have stated over and over that impeachment should be a nonpartisan process, and I agree. One of my colleagues in the Democratic party stated, and I quote: Impeachment is so divisive to the country that unless there is something so compelling and overwhelming and bipartisan, I don't think we should go down that path because it divides the country.

My Democratic colleagues have stated numerous times that they are on a truth seeking and fact finding mission. Another one of my Democratic colleagues said, and I quote: We have a responsibility

to consider the facts that emerge squarely and with the best interest of our country, not our party and our hearts. These types of historic proceedings, regardless of political beliefs, ought to be about fact finding and truth seeking, but that is not what this has turned out to be.

Again, no disrespect to these witnesses, but for all I know, this is the only hearing that we will have, and none of them are fact witnesses. My colleagues are saying one thing and doing something completely different. No Member of Congress can look their constituents in the eye and say this is a comprehensive, fact finding, truth seeking mission.

Ranking Member Collins and members of the minority on this committee have written six letters over the past month to Chairman Nadler asking for procedural fairness for all the underlying evidence to be transmitted to the Judiciary Committee. To expand the number of witnesses and have an even more bipartisan panel here today, and for clarity on today's impeachment proceedings, since we haven't received evidence to review.

The minority has yet to receive a response to these letters. Right here today is another very clear example for all Americans to truly understand the ongoing lack of transparency and openness with these proceedings. The witness list for this hearing was not released until late Monday afternoon. Opening statements from the witnesses today were not distributed until late last night. And the Intelligence Committee's finalized report has yet to be presented to this committee.

You hear from those in the majority that process is a Republican talking point, when in reality it is an American talking point. Process is essential to the institution. A thoughtful meaningful process of this magnitude with such great implications should be demanded by the American people.

With that, I yield back.

Chairman NADLER. The gentlelady yields back.

Mr. Jeffries.

Mr. JEFFRIES. I did not serve in the military, but my 81-year-old father did. He was an Air Force veteran stationed in Germany during the height of the Cold War in the late 1950s. He was a teenager from inner city Newark. A stranger in a foreign land serving on the western side of the Berlin Wall. My dad proudly wore the uniform because he swore an oath to the Constitution and believed in American democracy. I believe in American democracy. We remain the last best hope on Earth. It is in that spirit that we proceed today.

Professor Karlan, in America we believe in free and fair elections. Is that correct?

Ms. KARLAN. Yes, it is.

Mr. JEFFRIES. But authoritarian regimes do not. Is that right?

Ms. KARLAN. That's correct.

Mr. JEFFRIES. Thomas Jefferson once wrote—or John Adams once wrote to Thomas Jefferson, on December 6, 1787, and stated: You are apprehensive of foreign interference, intrigue, influence, so am I. But as often as elections happen, the danger of foreign influence recurs.

Professor Karlan, how important was the concept of free and fair elections to the Framers of the Constitution?

Ms. KARLAN. Honestly, it was less important to them than it's become in our Constitution since then. And if you'll remember, one of the things that turned me into a lawyer was seeing Barbara Jordan, who was the first female lawyer I had ever seen in practice, say, on the committee, that, we, the people didn't include people like her in 1789, but through a process of amendments we have done that. And so elections are more important to us today as a Constitutional matter than they were even to the Framers.

Mr. JEFFRIES. And it is fair to say that an election cannot be reasonably characterized as free and fair if it's manipulated by foreign interference?

Ms. KARLAN. That's correct.

Mr. JEFFRIES. And the Framers of the Constitution were generally and deeply concerned with the threat of foreign interference in the domestic affairs of the United States. True?

Ms. KARLAN. Yes.

Mr. JEFFRIES. And why were they so deeply concerned?

Ms. KARLAN. Because foreign nations don't have our interests at heart, they have their interests at heart.

Mr. JEFFRIES. And would the Framers find it acceptable for an American President to pressure a foreign government to help him win an election?

Ms. KARLAN. I think they'd find it unacceptable for a President to ask a foreign government to help him, whether they put pressure on him or not.

Mr. JEFFRIES. Direct evidence shows—direct evidence shows that on the July 25th phone call, the President uttered five words: Do us a favor though. He pressured the Ukrainian government to target an American citizen for political gain, and at the same time simultaneously withheld \$391 million in military aid.

Now, Ambassador Bill Taylor, West Point graduate, Vietnam War hero, Republican appointed diplomat, discussed this issue of military aid. Here is a clip of his testimony.

[Video shown.]

Mr. JEFFRIES. To the extent the military aid was being withheld as part of an effort to solicit foreign interference in the 2020 election, is that behavior impeachable?

Ms. KARLAN. Yes, it is. And if I could go back to one of the words you read. When the President said: Do us a favor, he was using the royal we there. It wasn't a favor for the United States. He should have said, do me a favor, because only kings say us when they mean me.

Mr. JEFFRIES. Is it correct that an abuse of power that strikes at the heart of our democracy falls squarely within the definition of a High Crime and Misdemeanor?

Ms. KARLAN. Yes, it does.

Mr. JEFFRIES. Some of my colleagues have suggested that impeachment would overturn the will of the people. The American people expressed their will in November of 2018. The will of the people elected a new majority. The will of the people elected a House that would not function as a wholly-owned subsidiary of this administration. The will of the people elected a House that under-

stands we are separate and coequal branch of government. The will of the people elected a House that understands we have a constitutional responsibility to serve as a check and balance on an out of control executive branch.

The President abused his power and must be held accountable. No one is above the law. America must remain the last best hope on Earth.

I yield back.

Chairman NADLER. The gentleman yields back.

Mr. Gaetz.

Mr. GAETZ. The will of the American people also elected Donald Trump to be the President of the United States in the 2016 election, and there's one party that can't seem to get over it. Now, we understand the fact that in 2018 you took the House of Representatives, and we haven't spent our time during your tenure and power trying to remove the Speaker of the House, trying to delegitimize your ability to govern.

Frankly, we'd love to govern with you. We'd love to pass USMCA. We'd love to put out a helping hand to our seniors and lower prescription drug prices. It's the will of the people you ignore when you continue down this terrible road of impeachment.

Professor Gerhardt, you gave money to Barack Obama, right?

Mr. GERHARDT. My family did, yes.

Mr. GAETZ. Four times?

Mr. GERHARDT. That sounds about right, yes.

Mr. GAETZ. Mr. Chairman, I have a series of unanimous consent requests relating to Professor Feldman's work. The first Noah Feldman Trump's wiretap tweets raise risk of impeachment—

Chairman NADLER. The gentleman will suspend. Have the—

Mr. GAETZ. My time.

Chairman NADLER. We'll take that time off. Has the gentleman submitted—have we seen that material?

Mr. GAETZ. We can provide it to you, as is typical for unanimous—

Chairman NADLER. And we'll consider the unanimous consent request later after we review the material.

Mr. GAETZ. Very well. Very well. Thank you.

Chairman NADLER. The gentleman may continue.

Mr. GAETZ. Thank you, Mr. Chairman. Mr. Feldman wrote articles entitled: Trump's wiretap tweets raise risk of impeachment. He then wrote: Mar-a-Lago ad belongs in impeachment file. And then Mr. Jake Flannigan wrote in courts, a Harvard law professor thinks Trump could be impeached over fake news accusations.

My question, Professor Feldman, is since you seem to believe that the basis for impeachment is even broader than the basis that my Democrat colleagues have laid forward, do you believe you're outside of the political mainstream on the question of impeachment?

Mr. FELDMAN. I believe that impeachment is warranted whenever the President abuses his power for personal benefit or to corrupt the democratic process.

Mr. GAETZ. Did you write an article entitled It's Hard to Take Impeachment Seriously Now?

Mr. FELDMAN. Yes, I did write that article back in May—

Mr. GAETZ. And in that article did you write——

Mr. FELDMAN. Back in May of 2019, I wrote that article.

Mr. GAETZ. Hold on I'm limited on time, sir. Did you write——

Mr. FELDMAN. Are you going to let me answer the question sir——

Mr. GAETZ. Since the 2018 midterm election House Democrats have made it painfully clear that discussing impeachment is primarily or even exclusively a tool to weaken President Trump's chances in 2020. Did you write those words?

Mr. FELDMAN. Until this call in July 25th, I was an impeachment skeptic. The call changed my mind, sir, and for a good reason——

Mr. GAETZ. Very well. Thank you, I appreciate your testimony. Professor Karlan, you gave \$2,000 bucks—or you gave \$1,000 bucks to Elizabeth Warren?

Ms. KARLAN. I believe so.

Mr. GAETZ. You gave \$1,200 bucks to Barack Obama.

Ms. KARLAN. I have no reason to question that.

Mr. GAETZ. And you gave \$2,000 bucks to Hillary Clinton?

Ms. KARLAN. That's correct.

Mr. GAETZ. Why so much more for Hillary than the other two?

Ms. KARLAN. Because I've been giving a lot of money to charity recently because of all of the poor people in the United States.

Mr. GAETZ. Those aren't the only folks you've been giving to. Now, have you ever been on a podcast called Versus Trump?

Ms. KARLAN. I think I was on a live panel that the people who ran the podcast called Versus Trump——

Mr. GAETZ. On that, do you remember saying the following: Liberals tend to cluster more. Conservatives, especially very conservatives people, tend to spread out more, perhaps because they don't even want to be around themselves. Did you say that?

Ms. KARLAN. Yes, I did.

Mr. GAETZ. Do you understand how that reflects contempt on people who are conservative?

Ms. KARLAN. No, what I was talking about there was the natural tendency, if put the quote in context, the natural tendency of a compactness requirement to favor a party whose voters are more spread out. And I do not have contempt for conservatives——

Mr. GAETZ. Well Professor, hold on. Again, I'm very limited on time, Professor. And so I just have to say, when you talk about how liberals want to be around each other and cluster and conservatives don't want to be around each other, and so they have spread out. It makes people, you may not see this from like, you know like, the ivory towers of your law school, but it makes people in this country——

Ms. KARLAN. When the President calls——

Mr. GAETZ. You don't get to interrupt me on this time. Now, let me also suggest that when you invoke the President's son name here, when you try to make a little joke out of referencing Barron Trump, that does not lend credibility to your argument, it makes you look mean, it makes you look like you're attacking someone's family, the minor child of the President of the United States.

So let's see if we could get into the facts. To all of the witnesses, if you have personal knowledge of a single material fact in the Schiff report, please raise your hand.

And let the record reflect, no personal knowledge of a single fact. And you know what, that continues on the tradition that we saw from Adam Schiff where Ambassador Taylor could not identify an impeachable offense. Mr. Kent never met with the President. Fiona Hill, never heard the President reference anything regarding military aid.

Mr. Hale was unaware of any nefarious activity with aid. Colonel Vindman even rejected the new Democrat talking point that bribery was invoked here. Ambassador Volker denied that there was a quid pro quo. And Mr. Morrison said there was nothing wrong on the call.

The only direct evidence came from Gordon Sondland, who spoke to the President of the United States, and the President said, I want nothing, no quid pro quo. And you know what, if wiring-tapping of political opponents is an impeachable offense, I look forward to reading that Inspector General's report because maybe it's a different President we should be impeaching.

Chairman NADLER. The gentlemen's time has expired. The gentleman's time is expired.

Mr. Cicilline.

Mr. CICILLINE. Thank you, Mr. Chairman. Professor Feldman, let me begin by stating the obvious. It is not hearsay when the President tells the President of Ukraine to investigate his political adversary, is it?

Mr. FELDMAN. It is not.

Mr. CICILLINE. It is not hearsay when the President then confesses on national television to doing that, is it?

Mr. FELDMAN. It is not.

Mr. CICILLINE. It is not hearsay when administration officials testify that they hear the President say he only cares about the investigations of his political opponent, is it?

Mr. FELDMAN. No, that is not hearsay.

Mr. CICILLINE. And there's lots of other direct evidence in this 300-page report from the Intelligence Committee, so let's dispense with that claim by my Republican colleagues.

Professor Gerhardt, Professor Turley, notwithstanding what he said today, wrote on August 1, 2014, in a piece called "Five Myths About Impeachment," one of the myths he was rejecting was that impeachment required a criminal offense, and he wrote, and I quote: An offense does not have to be indictable. Serious misconduct or violation of public trust is enough, end quote.

Was Professor Turley right when he wrote that back in 2014?

Mr. GERHARDT. Yes, I agree with that.

Mr. CICILLINE. Now, next, I would move to Professor Karlan. At the Constitutional Convention, Elbridge Gerry said, and I quote: Foreign powers will intermeddle in our affairs and spare no expense to influence them.

And in response, James Madison said, impeachment was needed because, otherwise, a President, and I quote, might betray his trust to a foreign power.

Professor Karlan, can you elaborate on why the Framers were so concerned about foreign interference, how they accounted for these concerns, and how that relates to the facts before this committee?

Ms. KARLAN. So the reason that the Framers were concerned about foreign interference, I think, is slightly different than the reason we are. They were concerned about it because we were such a weak country in 1789. We were small. We were poor. We didn't have an established Navy. We didn't have an established Army.

Today, the concern is a little different, which is that it will interfere with us making the decisions that are best for us as Americans.

Mr. CICILLINE. Thank you, Professor. There are three known instances of the President publicly asking a foreign country to interfere in our elections. First, in 2016, the President publicly hoped that Russia would hack into the email of a political opponent, which they subsequently did. Second, based on the President's own summary of his call with Ukrainian President Zelensky, we know he asked Ukraine to announce an investigation of his chief political rival and used aid appropriated by Congress as leverage in his efforts to achieve this. And, third, the President then publicly encouraged China to begin its own investigation.

Professor Feldman, how would it impact our democracy if it became standard practice for the President of the United States to ask a foreign government to interfere in our elections?

Mr. FELDMAN. It would be a disaster for the functioning of our democracy if our Presidents regularly, as this President has done, asked foreign governments to interfere in our electoral process.

Mr. CICILLINE. I'd like to end with a powerful warning from George Washington, who told Americans in his farewell address, and I quote, to be constantly awake since history and experience prove that foreign influence is one of the most baneful foes of republican government, end quote.

The conduct at issue here is egregious and warrants a commensurate response. The President has openly and repeatedly solicited foreign interference in our elections; of that there is no doubt. This matters because inviting foreign meddling into our elections robs the American people of their sacred right to elect their own political leaders.

Americans all across this country wait in long lines to exercise their right to vote and to choose their own leaders. This right does not belong to foreign government. We fought and won a revolution over this. Free and fair elections is what separate us from authoritarians all over the world. As public servants and Members of the House, we would be negligent in our duties under the Constitution if we let this blatant abuse of power go unchecked.

We've heard a lot about hating this President. It's not about hating this President. It's about a love of country. It's about honoring the oath that we took to protect and defend the Constitution of this great country.

And so my final question is to Professor Feldman and to Professor Karlan. In the face of this evidence, what are the consequences if this committee and this Congress refuses to muster the courage to respond to this gross abuse of power that undermined the national security of the United States, that undermined the integrity of our elections, and that undermined the confidence that we have to have in the President to not abuse the power of his office?

Mr. FELDMAN. If this committee and this House fail to act, then you're sending a message to this President and to future Presidents that it's no longer a problem if they abuse their power. It's no longer a problem if they invite other countries to interfere in our elections, and it's no longer a problem if they put the interests of other countries ahead of ours.

Mr. CICILLINE. Ms. Karlan.

Ms. KARLAN. I agree with Professor Feldman. And I should say just one thing, and I apologize for getting a little overheated a moment ago. But I have a constitutional right under the First Amendment to give money to candidates. At the same time, we have a constitutional duty to keep foreigners from spending money in our elections, and those two things are two sides of the same coin.

Mr. CICILLINE. With that, I yield back, Mr. Chairman.

Chairman NADLER. The gentleman yields back.

Mr. Johnson.

Mr. JOHNSON of Louisiana. Thank you. I was struck this morning by the same thing as all my friends and colleagues on this side of the room. Chairman Nadler actually began this morning with the outrageous statement that the facts before us are undisputed. Of course, everyone here knows that that's simply not true. Every person here, every person watching at home knows full well that virtually everything here is disputed, from the fraudulent process and the broken procedure to the Democrats' unfounded claims.

And the full facts are obviously not before us today. We have been allowed no fact witnesses here at all. For the first time ever, this committee, which is the one in Congress that has the actual jurisdiction over impeachment, is being given no access to the underlying evidence that Adam Schiff and his political accomplices claim supports this whole charade. This is just a shocking denial of due process.

And I want to say to our witnesses: I'm also a constitutional law attorney, and under normal circumstances, I really would greatly enjoy an academic discussion with you, a debate about the contours of Article II, section 4, but that would be an utter waste of our time today because, as has been highlighted so many times this morning, this whole production is a sham and a reckless path to a predetermined political outcome.

And I want you to know, it's an outcome that was predetermined by our Democrat colleagues a long time ago. The truth is House Democrats have been working to impeach President Donald J. Trump since the day he took his oath of office. Over the past 3 years, they've introduced four different resolutions seeking to impeach the President.

Almost exactly 2 years ago, as one of the graphics up here shows, December 6, 2017, 58 House Democrats voted to begin impeachment proceedings. Of course, that was almost 20 months before the famous July 25th phone call with Ukraine's President Zelensky. And this other graphic up here is smaller, but it's interesting, too. I think it's important to reiterate for everybody watching at home that, of our 24 Democrat colleagues and friends on the other side of the room today, 17 out of 24 have already voted for impeachment.

So, I mean, let's be honest. Let's not pretend that anybody cares anything about what's being said here today or the actual evidence or the facts. As Congresswoman Lofgren said, we come with open minds; that's not happening here. So much for an impartial jury. Several times this year, leading Democrats have frankly admitted in various interviews and correspondence that they really believe this entire strategy is necessary because why? Because they want to stop the President's reelection.

Even Speaker Pelosi said famously last month that quote: It's dangerous to allow the American people to evaluate his performance at the ballot box.

Speaker Pelosi has it exactly backwards. What is dangerous here is the precedent all this is setting for the future of our Republic.

I love what Professor Turley testified to this morning. He said: This is simply not how the impeachment of a President is done.

His rhetorical question to all of our colleagues on the other side is still echoing throughout this Chamber. He asked you to ask yourselves, where will this and where will you stand next time when this same kind of sham impeachment process is initiated against a President from your party?

The real shame here today is that everything in Washington has become bitterly partisan, and this ugly chapter is not going to help that. It's going to make things really that much worse. President Turley said earlier that we are now living in the era that was feared by our Founders, what Hamilton referred to as a period of agitated passions. I think that says it so well. This has indeed become an age of rage.

President Washington warned in his farewell address in 1796 that extreme partisanship would lead us to the ruins of public liberty. Those were his words. This hyperpartisan impeachment is probably one of the most divisive and destructive things that we could possibly do to our American family.

Let me tell you what I heard from my constituents in multiple townhalls, in meetings back in my district just 2 days ago. The people of this country are sick of this. They're sick of the politics of personal destruction. They're sick of this toxic atmosphere that is being created here, and they're deeply concerned about where all of this will lead us in the years ahead. Rightfully so.

You know what the greatest threat is? The thing that ought to keep every single one of us up at night? It's the rapidly eroding trust of the American people in their institutions. One of the critical presuppositions and foundations of a self-governing people in a constitutional republic is they will maintain a basic level of trust in their institutions, in the rule of law, in the system of justice, in the body of elected Representatives, their citizen legislators in the Congress.

The greatest danger of this fraudulent impeachment production is not what happens this afternoon or by Christmas or in the election next fall. The greatest danger is what this will do in the days ahead to our 243-year experiment in self-governance. What effect this foolish new precedent, this Pandora's box, will have upon our beleaguered Nation 6 or 7 years from now, a decade from now, in the ruins of public liberty that are being created by this terribly shortsighted exercise today. God help us.

I yield back.

Chairman NADLER. The gentleman yields back.

Mr. Swalwell.

Mr. SWALWELL. Professor Turley as a former prosecutor, I recognize a defense attorney trying to represent their client, especially one who has very little to work with in the way of facts. And today you're representing the Republicans in their defense of the President.

Mr. TURLEY. That's not my intention, sir.

Mr. SWALWELL. Professor, you've said that this case represents a dramatic turning point in Federal impeachment precedent, the impact of which will shape and determine future cases. The House, for the first time in the modern era, asked the Senate to remove someone for conduct for which he was never charged criminally and the impropriety of which has never been tested in a court of law.

But that's actually not a direct quote from what you said today. It sounds a lot like what you've argued today, but that's a quote from what you argued as a defense lawyer in a 2010 Senate impeachment trial.

Professor, did you represent Federal Judge Thomas Porteous?

Mr. TURLEY. I did indeed.

Mr. SWALWELL. Judge Porteous was charged on four Articles of Impeachment, ranging from engaging in a pattern of conduct that is incompatible with the trust and confidence placed in him as a Federal judge to engaging in a longstanding pattern of corrupt conduct that demonstrates his unfitness to serve as a United States district court judge.

On each count, Judge Porteous was convicted by at least 68 and up to 96 bipartisan Senators. Thankfully, that Senate did not buy your argument that a Federal official should not be removed if he's not charged criminally. And, respectfully, Professor, we don't buy it either.

But we're here because of this photo. It's a picture of President Zelensky in May of this year, standing on the eastern front of Ukraine as a hot war was taking place and up to 15,000 Ukrainians have died at the hands of Russians. I'd like to focus on the impact of President Trump's conduct, particularly with our allies and our standing in the world.

This isn't just a President, as Professor Karlan has pointed out, asking for another foreign leader to investigate a political opponent. It also is a President leveraging a White House visit as well as foreign aid. As the witnesses have testified, Ukraine needs our support to defend itself against Russia. I heard directly from witnesses how important the visit and aid were, particularly from Ambassador Taylor.

[Video shown.]

Mr. SWALWELL. Professor Karlan, does the President's decision to withhold from Ukraine such important official acts—a White House visit and military aid—in order to pressure President Zelensky relate to the Framers' concerns about abuse of power and entanglements with foreign nations?

Ms. KARLAN. It relates to the abuse of power. The entanglements with foreign nations is a more complicated concept for the Framers than for us.

Mr. SWALWELL. Professor Karlan, I think you'd agree, we are a Nation of immigrants?

Ms. KARLAN. Yes.

Mr. SWALWELL. Today, 50 million immigrants live in the United States. I'm moved by one who recently told me, as I was checking into a hotel, about his Romanian family. He came here from Romania and said that every time he had gone home for the last 20 years, he would always tell his family members how corrupt his country was that he had left and why he had come to the United States.

And he told me, in such humiliating fashion, that, when he has gone home recently, they now wag their finger at him, and say: You're going to lecture us about corruption?

What do you think, Professor Karlan, does the President's conduct say to the millions of Americans who left their families and livelihoods to come to a country that represents the rule of law?

Ms. KARLAN. I think it suggests that we don't believe in the rule of law. And I think it tells emerging democracies around the world not to take it seriously when we tell them that their elections are not legitimate because of foreign interference or their elections are not legitimate because of persecution of the opposing party. I mean, President Bush announced that he did not consider the elections in Belarus in 2006 to be legitimate for exactly that reason, because they went after political opponents.

Mr. SWALWELL. Thank you.

And, finally, Professor Feldman, Professor Turley pointed out that we should wait and that we should go to the courts, but you would acknowledge that we have gone to the courts; we have been in the courts for over 6 months, many times on matters that are already settled in the United States Supreme Court, particularly *U.S. v. Nixon*, where the President seems to be running out the clock. Is that right?

Mr. FELDMAN. Yes, sir.

Mr. SWALWELL. Thank you. I yield back.

Chairman NADLER. The gentleman yields back.

In a moment, we will recess for a brief 5 minutes. First, I'd ask everyone in the room to remain seated and quiet while the witnesses exit the room. I also want to remind those in the audience that you may not be guaranteed your seat if you leave the hearing room at this time.

At this time, the committee will stand in a short recess.

[Recess.]

Chairman NADLER. The committee will come to order. We are proceeding under the five-minute rule.

Mr. Biggs.

Mr. BIGGS. Thank you.

One of my colleagues wondered how this panel can opine as to the—as to whether the President committed an impeachable offense and the answer, quite, frankly, is because you came in with a preconceived notion. You already made that determination/decision and I'll give you a for instance.

Until a recent colloquy, several of you consistently said that the President said during that July 25th conversation with President Zelensky, you said, "The President said I would like to you do me

a favor"; but that is inaccurate. It was finally cleared in that colloquy, and I'm going read it to you. "I would like you to do us a favor though, because our country has been through a lot."

One of you said, well, that's because the President was using royal "we." Here the President's talking about the country. That's what he's talking about. It's audacious to say it's using the royal "we." That's royal, all right; but it ain't the royal "we."

And I'll just tell you. When you come in with a preconceived notion, it becomes obvious. One of you just said, Mr. Feldman, you, it was you who said, and I'm going to quote here, roughly. I think this is exactly what you said though. Until the call of July 25th, I was an impeachment skeptic, too.

I don't know. I'm looking at an August 23rd, 2017, publication where you said if President Donald Trump pardons Joe Arpaio, it would be an impeachable offense. He did ultimately pardon him.

In 2017, the New York book review—Review of Books, Mr. Feldman, Professor Feldman, said, Defamation by tweet is an impeachable offense.

And I think of the history of this country, and I think, if defamation or libel or slander is an impeachable offense, I can't help but reflect about John Adams, about Thomas Jefferson who routinely pilloried their political opponents. In fact, at the time, the factions or parties actually bought newspapers to attack their political opponents. So, this rather expansive and generous view you have on what constitutes impeachment is a real problem.

This morning one of you mentioned the Constitutional Convention and several of you mentioned Mr. Davies and you talked about the Constitutional Convention. It's been a while since I read the minutes. So I just briefly reviewed, because I remembered the discussion on the impeachment as being more pervasive, a little bit more expanded and on July 20, 1787—it wasn't 1789, by the way. One of you testified it was 1789. It was in 1787, July 20th, Benjamin Franklin is discussing impeachment of a Dutch leader and he talked specifically about what he would anticipate an impeachment to look like. He said it would be a regular and peaceable inquiry that would have taken place and, if guilty, then there would be a punishment. If acquitted, then the innocent would be restored to the confidence of the public. That needs to be taken into account as well.

So I look also on a May 17, 2017, BBC article which is a discussion about impeachment because President Trump had fired James Comey. Alex Whiting of Harvard said it was hard to make the obstruction of justice case with the sacking alone. The President had clear legal authority, and there was arguably proper or at least other reasons put forward for firing him.

And yet what we have here is this insistence by Mr. Gerhardt that this should be—that was impeachable. That is—that's contained in that article. I'll refer you to it, May 17, 2017, BBC.

What I'm suggesting to you today is a reckless bias coming in here. You're not fact witnesses. You're supposed to be talking about what the law is, but you came in with a preconceived notion and bias.

And I want to read one last thing here, if I can find it, from one of our witnesses here and it's dealing with something that was said

in a Maryland Law Review article in 1999. And basically, if I can get to it, he's talking about this—he's being critical of lack of self-doubt and an overwhelming arrogance on the part of law professors who come in and opine on impeachment.

That would be you, Mr. Gerhardt, who said something like that. I can't find my quote or else I'd give it to you.

And so what I'm telling you is that is what has been on display in this committee today.

And with that, I yield back.

Chairman NADLER. The gentleman yields back.

A little while ago Mr. Gaetz asked that certain material be inserted into the record by unanimous consent. I asked to have an opportunity to review it. We have reviewed it. The material will be inserted, without objection.

[The information follows:]

MR. GAETZ FOR THE OFFICIAL RECORD

QUARTZ

TRUTH AND CONSEQUENCES

A Harvard Law professor thinks Trump could be impeached over “fake news” accusations

By Jake Flanagan • April 12, 2017



REUTERS/JOSHUA ROBERTS

Is Trump abusing his presidential powers by labeling the press an “enemy of the American people”?

It’s no secret that little love is lost between US president Donald Trump and the mainstream American press. CNN, BuzzFeed, The New York Times, Vanity Fair—few big-name titles have escaped the wrath of the Donald, who, measurably more so than his predecessors, is acutely sensitive to criticism lobbed from the Fourth Estate.

“Fake news” has become the go-to dismissal of any story even vaguely inquisitive into White House operations, strategy, or motive. And although, on its face, it’s a

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transparently juvenile tactic, one legal expert thinks it could come back to bite our thin-skinned commander-in-chief.

But the rhetoric, of late, has veered into more seriously concerning waters. On Feb. 17, little less than a month after taking office, president Trump unilaterally declared the mainstream media a collective “enemy of the American people.”

Joining Slate’s Jacob Weisberg for his “Trumpcast” podcast on Apr. 11, Harvard Law School professor Noah Feldman suggested that the president could potentially face impeachment for his “subtle, careful, slow undercutting of press freedom.”

This might be mystifying to anyone familiar with how impeachment, in the US system, actually works. Under Article II, Section 4 of the Constitution, a president may be impeached for “treason, bribery and other high crimes and misdemeanors.” As of now, it is no high crime or misdemeanor (or even a low to middling crime) to complain on Twitter, however childishly, about critical press coverage of oneself.

“I’m not talking about criminalizing the president’s actions,” Feldman counters. “I’m talking about holding him accountable, and holding him accountable under the rubric of impeachment.”

And indeed, he has some legal scholarship on his side. Constitutional lawyer and historian Kevin R. C. Gutzman argues that “high crimes and misdemeanors” should be understood in the lingo of the era in which it was written, with respect to 18th century English parliamentary law.

crimes, he argues, but violation of “grave matters of state,” i.e., abuses of power, under which purposeful manipulation of the press arguably fall.

Feldman likely agrees with Gutzman’s assessment, insisting to Weisman that the true function of impeachment “at the deepest level” is for Congress to exercise its own separated power—“to express its beliefs about what the right way to be president is, with respect for democracy and rule of law.” And he believes Trump’s “fake news” stratagem is intended erode these very concepts: “to curtail press freedoms, to frighten the press, especially through corporate pressure, into ceasing to be effective critics.”

But beyond his more generous interpretation of the articles of impeachment, Feldman’s case depends on a more practical factor: Congress’s partisan makeup. Republican lawmakers have proven themselves unwilling to condemn some of Trump’s even more identifiably unconstitutional behavior. And with impeachment depending on the House to file charges and two-thirds of the Senate to convict, a Trump ouster under the current legislative regime is highly unlikely. Hopefuls, however, can look ahead to 2018. The Democrats need 24 seats to retake the House—a stretch to be sure. But a lot can happen in two years. And four and six.

View

Mar-a-Lago Ad Belongs in Impeachment File

Using a government website to promote private business is one piece of evidence in a corruption case.

By [Noah Feldman](#)

April 25, 2017, 2:04 PM EDT



A marketer's dream. Photographer: Jim Watson/AFP/Getty Images

What did the president know about the Mar-a-Lago advertisement that appeared for a time on official government websites? And when did he know it? These questions might sound trivial. They aren't. The webpage about President Donald Trump's private club, which had all the features of a marketer-drafted puff piece, is a prime example of corruption, namely the knowing use of government means to enhance the private wealth of the president. And corruption is the classic example of a high crime or misdemeanor under the impeachment clause of the Constitution.

To be very clear, it doesn't matter whether advertising Trump's for-profit, members-only club using government property is a "crime" under federal law. "High crimes and misdemeanors" aren't the same as statutory violations. That phrase refers to the misuse of government authority to contradict and undermine democracy and the rule of law.

View

Trump's Wiretap Tweets Raise Risk of Impeachment

If the president has made false claims of a crime without proof, there's only one constitutional remedy.

By [Noah Feldman](#)

March 6, 2017, 1:42 PM EST



In friendlier times. *Photographer: Mandel Ngan/AFP/Getty Images*

The sitting president has accused his predecessor of an act that could have gotten the past president impeached. That's not your ordinary exercise of free speech. If the accusation were

true, and President Barack Obama ordered a warrantless wiretap of Donald Trump during the campaign, the scandal would be of Watergate-level proportions.

But if the allegation is not true and is unsupported by evidence, that too should be a scandal on a major scale. This is the kind of accusation that, taken as part of a broader course of conduct, could get the current president impeached. We shouldn't care that the allegation was made early on a Saturday morning on Twitter.

The basic premise of the First Amendment is that truth should defeat her opposite number. "Let her and Falsehood grapple," wrote the poet and politician John Milton, "who ever knew Truth put to the worse in a free and open encounter?"

But this rather optimistic adage only accounts for speech and debate between citizens. It doesn't apply to accusations made by the government. Those are something altogether different.

In a rule of law society, government allegations of criminal activity must be followed by proof and prosecution. If not, the government is ruling by innuendo.

Shadowy dictatorships can do that because there is no need for proof. Democracies can't.

Thus, an accusation by a president isn't like an accusation leveled by one private citizen against another. It's about more than factual truth or carelessness.

The government's special responsibility has two bases. One is that you can't sue the government for false and defamatory speech. If I accused Obama of wiretapping my phone, he could sue me for libel. If my statement was knowingly false, I'd have to pay up. On the other hand, if the president makes the same statement, he can't be sued in his official capacity. And a private libel suit mostly likely wouldn't go anywhere against a sitting president -- for good reason, because the president shouldn't be encumbered by lawsuits while in office.

The second reason the government has to be careful about making unprovable allegations is that its bully pulpit is greater than any other. True, as an ex-president, Obama can defend himself publicly and has plenty of access to the news media. But even he doesn't have the audience that Trump now has. And essentially any other citizen would have far less capacity to mount a defense than Obama.

For these reasons, it's a mistake to say simply that Trump's accusation against Obama is protected by the First Amendment.

False and defamatory speech isn't protected by the First Amendment.

And an allegation of potentially criminal misconduct made without evidence is itself a form of serious misconduct by the government official who makes it.

When candidate Trump said Hillary Clinton was a criminal who belonged in prison, he was exposing himself to a libel suit. And the suit might not have succeeded, because Trump could have said he was making a political argument rather than an allegation of fact.

But when President Trump accuses Obama of an act that would have been impeachable and possibly criminal, that's something much more serious than libel. If it isn't true or provable, it's misconduct by the highest official of the executive branch.

How is such misconduct by an official to be addressed? There's a common-law tort of malicious prosecution, but that probably doesn't apply when the government official has no intention to prosecute.

The answer is that the constitutional remedy for presidential misconduct is impeachment.

That would have been the correct remedy if Obama had "ordered" a wiretap of the Republican presidential candidate's phones. The president has no such legal authority. Only a court can order a domestic wiretap, and that only after a showing of probable cause by the Department of Justice and the Federal Bureau of Investigation.

Breaking the law by tapping Trump's phones would have been an abuse of executive power that implicated the democratic process itself. Impeachment is the remedy for such a serious abuse of the executive office.

That includes abuse of office in the form of serious accusations against political opponents if they turn out to be false and made without evidence. These, too, deform the democratic process.

The Constitution speaks of impeachment for "high crimes and misdemeanors." A lot of ink has been spilled over these words, which date back at least to impeachment proceedings in the 14th century. This isn't the place for a detailed analysis.

Suffice it to say that what makes crimes "high" is that they pertain to the exercise of government office. That's exactly what accusations by the executive are: actions that take on their distinctive meaning because they are made by government officials.

What's more, government acts that distort and undercut the democratic process are especially serious and worthy of impeachment. The Watergate break-in to the Democratic National Committee headquarters was part of an effort to steal the 1972 election. A wiretap of Trump's campaign would've had political implications.

And accusing the past Democratic president of an impeachable offense is every bit as harmful to democracy, assuming it isn't true. Obama is the best-known and most popular Democrat in the country. The effect of attacking him isn't just to weaken him personally, but to weaken the political opposition to Trump's administration.

Given how great the executive's power is, accusations by the president can't be treated asymmetrically. If the alleged action would be impeachable if true, so must be the allegation if false. Anything else would give the president the power to distort democracy by calling his opponents criminals without ever having to prove it.

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Chairman NADLER. Mr. Lieu.

Mr. LIEU. Thank you, Chairman Nadler.

I first swore an oath to the Constitution when I was commissioned as an officer in the United States Air Force. An oath I took was not to a political party or to a President or to a king. It was an oath to a document that has made America the greatest Nation on earth.

I never imagined we'd now be in a situation where the President or Commander in Chief is accused of using his office for personal political gain that betrayed U.S. national security, hurt our ally, Ukraine, and helped our adversary Russia.

Now the Constitution provides a safeguard for when the President's abuse of power and betrayal of national interests are so extreme that it warrants impeachment and removal. It seems notable that, of all the offenses they could have included and enumerated in the Constitution, bribery is one of only two that are listed.

So, Professor Feldman, why would the Framers choose bribery of all the possible offenses they could have included to list?

Mr. FELDMAN. Bribery was the classic example for them of the high crime and misdemeanor of abuse of office for personal gain because if you take something of value while you're—when you're able to affect an outcome for somebody else, you're serving your own interests and not the interests of the people. And that was commonly used in impeachment offenses in England and that's one of the reasons they specified it.

Mr. LIEU. Thank you.

Now earlier in this hearing, Professor Karlan made the point that bribery as envisioned by the Framers was much broader than the narrow Federal criminal statute of bribery. I think the reason for that is obvious. We are not in a criminal proceeding. We're not deciding whether to send President Trump to prison. This is a civil action. It's an impeachment proceeding to decide whether or not we remove Donald Trump from his job.

And so, Professor Karlan, it's true, isn't it, that we don't have to meet the standards of a Federal bribery statute in order to meet the standards for impeachable offense?

Ms. KARLAN. That's correct. I'm sorry. That's correct.

Mr. LIEU. Thank you.

Yesterday Scalia law professor J.W. Verret, who is a lifelong Republican, former Republican Hill staffer, who advised the Trump pre-transition team, made the following public statement about Donald Trump's conduct.

The call wasn't perfect. He committed impeachable offenses including bribery.

So, Professor Karlan, I'm now going to show you two video clips of the witness testimony related to the President's withholding of the White House meeting in exchange for the public announcement of an investigation into his political rival.

[Video played.]

Mr. LIEU. And then I'll show you one more video clip relating to the President's decision to withhold security assistance that Congress had appropriated to Ukraine in exchange for announcement of public investigation of his political rival.

[Video played.]

Mr. LIEU. Professor Karlan, does that evidence, as well as the evidence in the record, tend to show that the President met the standards for bribery as envisioned in the Constitution?

Ms. KARLAN. Yes, it does.

Mr. LIEU. I'm also a former prosecutor. I believe the record and that evidence would also meet the standards for criminal bribery. The Supreme Court's decision in McDonnell was primarily about what constitutes an official act. The key finding was an official act must involve a formal exercise of governmental power on something specific pending before a public official.

It's pretty clear we've got that here. We have hundreds of millions of dollars of military aid that Congress specifically appropriated. The freezing and unfreezing of that aid is a formal exercise of governmental power.

But we don't even have to talk about the crime of bribery. There's another crime here which is the solicitation of Federal—of assistance of a foreign government in a Federal election campaign. That straight up violates the Federal Election Campaign Act at 52 U.S.C. 3101 and, oh, by the way, that Act is also one reason Michael Cohen is sitting in prison right now.

I yield back.

Chairman NADLER. The gentleman yields back.

Mr. McClintock.

Mr. MCCLINTOCK. Thank you, Mr. Chairman.

Could I have a show of hands? How many on the panel actually voted for Donald Trump in 2016? A show of hands.

Ms. KARLAN. I don't think we're obligated—

Mr. MCCLINTOCK. A show of hands.

Ms. KARLAN [continuing]. To say anything about how we cast our ballots.

Mr. MCCLINTOCK. Just a show of hands.

Ms. KARLAN. I will not—

Mr. MCCLINTOCK. I think you made your position, Professor Karlan, very, very clear.

Chairman NADLER. The gentleman will suspend. We'll suspend. We'll suspend the clock, too.

Ms. KARLAN. I have a right to cast a secret ballot.

Chairman NADLER. You may ask the question.

Mr. MCCLINTOCK. Let me rephrase the question. How many of you supported—

Chairman NADLER. The clock is stopped at the moment.

The gentleman may ask the question. The witnesses don't have to respond.

Mr. MCCLINTOCK. How many of you—

Chairman NADLER. The gentleman's time is restored.

Mr. MCCLINTOCK [continuing]. Supported Donald Trump in 2016? A show of hands. Thank you.

Mr. FELDMAN. Not raising our hands is not an indication of an answer, sir.

Mr. MCCLINTOCK. Professor Turley, this impeachment inquiry has been predicated on some rather disturbing legal doctrines. One Democrat asserted that hearsay can be much better evidence than direct evidence. Speaker Pelosi and others have said that the President's responsibility is to present evidence to prove his innocence.

Chairman Schiff's asserted—and we heard a discussion from some of your colleagues today—that if you invoke legal rights in defense of criminal accusations, ipso facto that's an obstruction of justice and evidence of guilt.

My question of you is: What does it mean to our American justice system if these doctrines take root in our country?

Mr. TURLEY. Well, what concerns me the most is that there are no limiting principles that I can see in some of the definitions that my colleagues have put forward and more importantly, some of these impeachable offenses I only heard about today.

I'm not too sure what "attempting to abuse office" means or how you recognize it, but I'm pretty confident that nobody on this committee truly wants the new standard of impeachment to be betrayal of the national interest. That that is going to be the basis for impeachment?

How many Republicans do you think would say that Barack Obama violated that standard? That's exactly what James Madison warned you against is that you would create effectively a vote of no confidence standard in our Constitution.

Mr. MCCLINTOCK. Well, then are we in danger of abusing our own power of doing enormous violence to our Constitution by proceeding in this manner? My Democratic colleagues have been searching for a pretext for impeachment since before the President was sworn in.

On this panel Professor Karlan called President Trump's election illegitimate in 2017. She implied impeachment was a remedy. Professor Feldman advocated impeaching the President over a tweet that he made in March of 2017. That's just seven weeks after his inauguration. Are we in danger of succumbing to the maxima of Lewis Carroll's Red Queen, sentence first, verdict afterwards?

Mr. TURLEY. Well, this is part of the problem of how your view of the President can affect your assumptions, your inferences, your view of circumstantial evidence.

I'm not suggesting that the evidence, if it was fully investigated, would come out one way or the other. What I'm saying is that we are not dealing with the realm of the unknowable. You have to ask. We've burned two months in this House, two months that you could have been in court, seeking a subpoena for these witnesses. It doesn't mean you have to wait forever, but you could have gotten an order by now. You could have allowed the President to raise an executive privilege—

Mr. MCCLINTOCK. I need to go on here.

The Constitution says that the executive authority shall be vested in a President of the United States. Does that mean some of the executive authority or all of it?

Mr. TURLEY. Well, obviously there's checks and balances on all of these but the executive authority primarily obviously rests with the President but these are all shared powers. And I don't begrudge the investigation of the Ukraine controversy. I think it was a legitimate investigation. What I begrudge is how it has been conducted.

Mr. MCCLINTOCK. Well, I tend to agree with that. I mean, the Constitution commands the President take care that the laws be

faithfully enforced. That does in effect make him the chief law enforcement officer in the Federal Government, does it not?

Mr. TURLEY. That's commonly expressed that way, yes.

Mr. MCCLINTOCK. So if probable cause exists to believe a crime's been committed, does the President have the authority to inquire into that matter?

Mr. TURLEY. He has, but I think this is where we would depart. I've been critical of the President in terms of crossing lines with the Justice Department. I think that has caused considerable problems. I also don't believe it's appropriate, but we often confuse what is inappropriate with what's impeachable. You know, many people feel that what the President has done is obnoxious, contemptible; but contemptible's not synonymous with impeachment.

Mr. MCCLINTOCK. Let me ask you a final question. The National Defense Authorization Act that authorized aid to Ukraine requires the Secretary of Defense and State certify that the Government of Ukraine has taken substantial actions to make defense institutional reforms for, among other things, for purposes of decreasing corruption.

Is the President exercising that responsibility when he inquires into a matter that could involve illegalities between American and Ukrainian officials?

Mr. TURLEY. That's what I'm referring to as unexplored defenses. Part of the bias when you look at these facts is you just ignore defenses. You say, well, those are just invalid but they're the defenses. They're the other sides' account for actions, and that's what hasn't been explored.

Chairman NADLER. The gentleman's time has expired.

Mr. Raskin.

Mr. RASKIN. Thank you, Mr. Chairman.

I want to thank the witnesses for their hard work on a long day. I want to thank them especially for invoking the American Revolution which not only overthrew a king but created the world's first antimonarchal Constitution. Your erudition makes me proud to have spent a quarter of my career as a fellow constitutional law professor before running for Congress.

Tom Paine said that in the monarchies the king is law but in the democracies the law will be king. But today the President advances an essentially monarchical argument. He said that Article 2 allows him to do whatever he wants. He not only says that but he believes it because he did something no other American President has ever done before. He used foreign military aid as a lever to coerce a foreign government to interfere in an American election, to discredit an opponent, and to advance his reelection campaign.

Professor Karlan, what does the existence of the impeachment power tell us about the President's claim that the Constitution allows him to do whatever he wants?

Ms. KARLAN. It blows it out of the water.

Mr. RASKIN. If he's right and we accept this radical claim that he can do whatever he wants, all future Presidents seeking reelection will be able to bring foreign governments into our campaigns to target their rivals and to spread propaganda. That's astounding. If we let the President get away with this conduct, every President can get away with it.

Do you agree with that, Professor Feldman?

Mr. FELDMAN. I do. Richard Nixon sent burglars to break into the Democratic National Committee headquarters, but President Trump just made a direct phone call to the President of a foreign country and sought his intervention in an American election.

Mr. RASKIN. So this is a big moment for America, isn't it? If Elijah Cummings were here, he would say, Listen up, people. Listen up.

How we respond will determine the character of our democracy for generations.

Now Professors Feldman, Karlan, and Gerhardt told us there were three dominant reasons invoked at the founding for why we needed an impeachment power. Broadly speaking, it was an instrument of popular self-defense against a President behaving like a king and trampling the rule of law, but not just in the normal royal sense of showing cruelty and vanity and treachery and greed and avarice and so on but when Presidents threaten the basic character of our Government and the Constitution, that's when impeachment was about.

And the Framers invoked three specific kinds of misconduct so serious and egregious that they thought they warranted impeachment. First, the President might abuse his power by corruptly using his office for personal, political, or financial gain.

Well, Professor Feldman, what's so wrong with that? If the President belongs to my party and I generally like him, what's so wrong with him using his office to advance his own political ambitions?

Mr. FELDMAN. Because the President of the United States works for the people and so if he seeks personal gain, he's not serving the interests of the people. He's, rather, serving the interests that are specific to him and that means he's abusing the office and he's doing things that he can only get away with because he's the President and that is necessarily subject to impeachment.

Mr. RASKIN. Well, second and third, the Founders expressed fear the President could subvert our democracy by betraying his trust to foreign influence and interference and also by corrupting the election process.

Professor Karlan, you're one of America's leading election law scholars. What role does impeachment play in protecting the integrity of our elections, especially in an international context in which Vladimir Putin and other tyrants and despots are interfering to destabilize elections around the world?

Ms. KARLAN. Well, you know, Congress has enacted a series of laws to make sure that there isn't foreign influence in our elections and allowing the President to circumvent that principle is a problem and, as I've already testified several times, America is not just the last best hope, as Mr. Jeffries said, but it's also the shining city on a hill and we can't be the shining city on a hill and promote democracy around the world if we're not promoting it here at home.

Mr. RASKIN. Now any one of these actions alone would be sufficient to impeach the President according to the Founders. But is it fair to say that all three causes for impeachment explicitly contemplated by the Founders—abuse of power, betrayal of our national security, and corruption of our elections—are present in this President's conduct, yes or no?

Professor Feldman.

Mr. FELDMAN. Yes.

Mr. RASKIN. And Professor Gerhardt.

Mr. GERHARDT. Yes sir.

Mr. RASKIN. And Professor Karlan.

Ms. KARLAN. Yes.

Mr. RASKIN. You all agree. Okay.

And are any of you aware of any other President who has essentially triggered all three concerns that animated the Founders?

Mr. FELDMAN. No.

Ms. KARLAN. No.

Mr. GERHARDT. No as well.

Mr. RASKIN. Mr. Chairman, it's hard to think of a more monarchical sentiment than I can do whatever I want as President.

And I yield back.

Chairman NADLER. The gentleman yields back.

Mrs. LESKO.

Mrs. LESKO. Thank you, Mr. Chair.

Mr. Chair, I ask unanimous consent to insert into the record a letter I wrote and sent to you, asking, calling on you to cancel any and all future impeachment hearings and outlining how the process——

Chairman NADLER. Without objection, the letter will be entered into the record.

[The information follows:]

MS. MUCARSEL-POWELL FOR THE OFFICIAL RECORD

DEBBIE LESKO
8TH DISTRICT, ARIZONA

COMMITTEE ON
HOMELAND SECURITY
RANKING MEMBER, TRANSPORTATION AND
MARITIME SECURITY

COMMITTEE ON
THE JUDICIARY

COMMITTEE ON RULES

Congress of the United States
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December 4, 2019

The Honorable Jerrold Nadler
Chairman
2138 Rayburn House Office Building
Washington, DC 20515

Chairman Nadler,

I call on you to cancel any and all upcoming Judiciary Committee hearings regarding impeachment. The process to date has failed to not only meet the basic standards of respecting minority rights for committee procedures and providing due process to the President, but has also violated your own standards for any impeachment proceeding.

During an interview on MSNBC's "Morning Joe" on November 26, 2018 you outlined a three-pronged test that you said would allow for a legitimate impeachment proceeding.

You said....

"There are really three questions, I think.

Number one, has the President committed impeachable offenses?

Number two, do those offenses rise to the gravity that's worth putting the country through the trauma of an impeachment proceeding?

And number three, because you don't want to tear the country apart...you don't want half of the country to say to the other half for the next 30 years, we won the election, you stole it from us. You have to be able to think at the beginning of the impeachment process that the evidence is so clear, of offenses so grave, that once you've laid out all the evidence a good fraction of the opposition, voters, will reluctantly admit to themselves they had to do it. Otherwise you have a partisan impeachment which will tear the country apart. If you meet those three tests, I think you do the impeachment."

Well, Chairman Nadler, your own three-pronged test for impeachment has failed on all three counts.

First, the evidence and testimony have not revealed any impeachable offenses.

Second, there is nothing that rises to the gravity that's worth putting the country through the trauma of impeachment.

And third, you and House Democrat leadership ARE tearing the country apart. You said the evidence needs to be clear. It is not. You said offenses need to be grave. They are not. You said that once the evidence is laid out that the opposition will admit "they had to do it". That has not happened, in fact polling and the lack of one single Republican vote on the impeachment inquiry resolution, reveal the opposite is true.

In fact, what you and your Democratic colleagues have done is opposite of what you said had to be done. This is a partisan impeachment and it is tearing the country apart.

As such, Mr. Chairman, I ask you to keep your word and stand up to pressures from your own leadership who want to deliver an impeachment vote by Christmas and cancel Judiciary proceedings until each of your three prongs have been achieved. These proceedings have failed to meet your own standards that you have publicly outlined. Follow your own advice and cancel these hearings. Get back to the work of the American people and focus on issues they want us to achieve like lowering health care costs, passing a new trade deal with Mexico and Canada and securing our borders. These political hearings do little to achieve progress for the country and by your own words will tear the country apart.

Respectfully,

A handwritten signature in dark ink, appearing to read "Lesko", with a stylized, flowing script.

Debbie Lesko
Member of Congress

Mrs. LESKO. Thank you.

During an interview, Mr. Chairman, on MSNBC's Morning Joe on November 26, 2018, Chairman Nadler outlined a three-prong test that he said would allow for a legitimate impeachment proceeding. Now I quote Chairman Nadler's remarks, and this is what he said.

There really are three—there really are three questions, I think. First, has the President committed impeachable offenses? Second, do those offenses rise to the gravity that's worth putting the country through the drama of impeachment? And, number 3, because you don't want to tear the country apart, you don't want half of the country to say to the other half for the next 30 years he—we won the election. You stole it from us.

You have to be able to think at the beginning of the impeachment process that the evidence is so clear of offenses so grave, that once you've laid out all of the evidence, a good fraction of the opposition, the voters, will reluctantly admit to themselves they had to do it. Otherwise, you have a partisan impeachment which will tear the country apart. If you meet these three tests, then I think you do the impeachment.

And those were the words of Chairman Nadler. Now let's see if Chairman Nadler's three-prong test has been met.

First, has the President committed an impeachable offense? No. The evidence and testimony has not revealed any impeachable offense.

Second, do those offenses rise to the gravity that's worth putting the country through the drama of impeachment? Again, the answer is, no, there's nothing here that rises to the gravity that's worth putting the country through the drama of impeachment.

And, third, have the Democrats laid out a case so clear that even the opposition has to agree? Absolutely not. You and House Democrat leadership are tearing apart the country. You said the evidence needs to be clear. It is not. You said offenses need to be grave. They are not. You said that, once the evidence is laid out, that the opposition will admit they had to do it. That has not happened. In fact, polling and the fact that not one single Republican voted on the impeachment inquiry resolution or on the Schiff report reveal the opposite is true.

In fact, what you and your Democratic colleagues have done is opposite of what you said had to be done. This is a partisan impeachment, and it is tearing the country apart.

I take this all to mean that Chairman Nadler, along with the rest of the Democratic caucus, is prepared to continue these entirely partisan, unfair proceedings and traumatize the American people all for political purpose. I think that's a shame. That's not leadership. That's a sham.

And so I ask Mr. Turley: Has Chairman Nadler satisfied his three-prong test for impeachment?

Mr. TURLEY. With all due respect to the chairman, I do not believe that those factors were satisfied.

Mrs. LESKO. Thank you.

And I want to correct something for the record as well. Repeatedly today and other days Democrats have repeated what was said in the text of the call. "Do me a favor though," and they imply it

was against President Biden, to investigate President Biden. It was not. It was not. In fact, let me read what the transcript says.

It says: President Trump, I would like to you do us a favor though because our country has been through a lot and Ukraine knows alot 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 own wealthy people.

It says nothing about the Bidens. So, please stop referencing those two together.

And I yield back.

Chairman NADLER. The gentlelady yields back.

Ms. JAYAPAL.

Ms. JAYAPAL. Thank you, Mr. Chairman.

This is a deeply grave moment that we find ourselves in and I thought the threat to our Nation was well articulated earlier today by Professor Feldman when you said, If we cannot impeach a President who abuses his office for personal advantage, we no longer live in a democracy. We live in a monarchy, or we live under a dictatorship.

My view is that if people cannot depend on the fairness of our elections, then what people are calling divisive today will be absolutely nothing compared to the shredding of our democracy.

After the events of Ukraine unfolded, the President claimed that the reason he requested an investigation into his political opponents and withheld desperately needed military aid for Ukraine was supposedly because he was worried about corruption. However, contrary to the President's statements, various witnesses including Vice President Pence's special advisor, Jennifer Williams, testified that the President's request was political. Take a listen.

[Video shown.]

Ms. JAYAPAL. Professor Karlan, is it common for someone who gets caught to deny that their behavior is impermissible?

Ms. KARLAN. Almost always.

Ms. JAYAPAL. And one of the questions before us is whether the President's claim that he cared about corruption is actually credible. Now you've argued before the Supreme Court and the Supreme Court determined that, when assessing credibility, we should look at a number of factors including impact, historical background, and whether there are departures from normal procedures, correct?

Ms. KARLAN. That is correct.

Ms. JAYAPAL. So what we're ultimately trying to do is figure out if someone's explanation fits with the facts and if it doesn't, the explanation may not be true. So let's explore that.

Lieutenant Colonel Vindman testified that he prepared talking points on anticorruption reform for President Trump's call with Ukrainian President Zelensky. However, based on the transcripts released of those calls in April and July, President Trump never mentioned these points of corruption. He actually never mentioned the word "corruption." Does that go to any of those factors? Is that significant?

Ms. KARLAN. Yes, it goes to the one about procedural irregularities and it also goes to the one that says you look at the kind of

things that led up to the decision that you're trying to figure out somebody's motive about.

Ms. JAYAPAL. So let's try another one. Ambassador Volker testified that the President never expressed any concerns to him about corruption in any country other than Ukraine. Would that be relevant to your assessment?

Ms. KARLAN. Yes, it would. It goes to the factor about substantive departures.

Ms. JAYAPAL. And, Professor Karlan, there is, in fact—and my colleague, Mr. McClintock, mentioned this earlier—a process outlined in the National Defense Authorization Act to assess whether countries that are receiving military aid have done enough to fight corruption.

In May of 2019, my Republican colleague did not say this. The Department of Defense actually wrote a letter, determining that Ukraine passed this assessment and yet President Trump set aside that assessment and withheld the congressionally approved aid to Ukraine anyway in direct contradiction to the established procedures he should have followed had he cared about corruption.

Is that relevant to your assessment?

Ms. KARLAN. Yes. That would also go to the factors the Supreme Court's discussed.

Ms. JAYAPAL. What about the fact—and I think you mentioned this earlier as one of the key things that you read in the testimony—that President Trump wanted the investigations of Burisma and the Bidens announced but that he actually didn't care whether they were conducted. That was in Ambassador Sondland's testimony.

What would you say about that?

Ms. KARLAN. That goes to whether the claim that this is about politics is a persuasive claim because that goes to the fact that it's being announced publicly, which is an odd thing. I mean, maybe Mr. Swalwell could probably answer this better than I because he was a prosecutor, but generally you don't announce the investigation in a criminal case before you conduct it because it puts the person on notice that they're under investigation.

Ms. JAYAPAL. And given all of these facts—and there are more that we don't have time to get to—how would you assess the credibility of the President's claim that he was worried about corruption?

Ms. KARLAN. Well, I think you ought to make that credibility determination because you have the sole power of impeachment. If I were a Member of the House of Representatives, I would infer from this that he was doing it for political reasons.

Ms. JAYAPAL. If we don't stand up now to a President who abuses his power, we risk sending a message to all future Presidents that they can put their own personal political interests ahead of the American people, our national security, and our elections; and that is the gravest of threats to our democracy.

I yield back.

Chairman NADLER. The gentlelady yields back.

I now recognize Mr. Gohmert for the purpose of unanimous consent request.

Mr. GOHMERT. Yes, Mr. Chairman. I would ask unanimous consent to offer an article by Daniel Huff.

Chairman NADLER. Without objection, the article will be entered into the record.

[The information follows:]

MR. GOHMERT FOR THE OFFICIAL RECORD

Mr. Comment 12/4

[wsj.com](https://www.wsj.com)

Opinion | Biden Probe, Trump Taxes Raise Similar Questions

Daniel Huff

5-6 minutes



President Trump speaks in Burnsville, Minn., April 15. Photo: Susan Walsh/Associated Press

The U.S. Supreme Court last week blocked a House committee's subpoena for eight years' worth of President Trump's tax returns. The committee will press the matter in further litigation. But the logic that supports the subpoena

undercuts House Democratic efforts to impeach Mr. Trump for asking Ukraine to investigate Joe Biden. In both cases, the use of official power to get dirt on a political rival is consistent with a broader, and valid, official purpose.

House ethics rules explicitly prohibit using official resources to oppose a presidential candidate. Yet last April the Oversight and Government Reform Committee subpoenaed an accounting firm for the Trump tax records. The demand mirrored one by the House Ways and Means Committee, seeking six years of returns from the Internal Revenue Service. Obtaining these returns was a campaign issue for Democrats in 2016.

Mr. Trump's lawyers sought to block the subpoenas as an abuse of power. They argued the claimed legislative purpose was pretextual, and the true motive was to "turn up something that Democrats can use as a political tool against the President now and in the 2020 election."

In response to the Ways and Means subpoena, the Justice Department prepared a compelling 33-page memo that argued: "No one could reasonably believe that the Committee seeks six years of President Trump's tax returns because of a newly discovered interest in legislating on the presidential-audit process." Democrats argued it doesn't matter as long as there's a fig leaf of official purpose. Chairman Richard Neal insisted the administration may not "question or second guess the motivations of the Committee . . . regarding its need for the requested . . . information."

Oversight Committee Democrats echoed the point in federal

court: "The Supreme Court has consistently noted that the motivations underlying Congressional action are not to be second-guessed, even by the courts." They cited *Barenblatt v. U.S.* (1959): "So long as Congress acts in pursuance of its constitutional power, the Judiciary lacks authority to intervene on the basis of the motives which spurred the exercise of that power." Judge Amit Mehta agreed. Given "facially valid legislative purposes," he held, "it is not for the court to question whether the committee's actions are truly motivated by political considerations."

Mr. Trump is likewise accused of using his official powers to target a political rival. His defenders also claim a valid official purpose, fighting corruption in Ukraine, which experts at the impeachment hearings acknowledge is a real problem. Fighting foreign corruption falls squarely within the president's constitutionally assigned foreign-policy and law-enforcement functions. That's why Mr. Biden was comfortable boasting in 2018 that as vice president he withheld foreign aid to fight corruption in Ukraine.

Democrats say Mr. Trump's justification is pretextual. But they've also taken the position that one may not look behind a valid official purpose, even in the face of strong evidence of political motivation. That going after Mr. Biden was about Ukrainian corruption is no less plausible than that pursuing Mr. Trump's tax returns was about legislation.

Mr. Huff is a former counsel to the House and Senate judiciary committees.

Chairman NADLER. I now recognize Mr. Reschenthaler to question the witnesses.

Mr. RESCHENTHALER. Thank you, Mr. Chairman.

I'm starting off today doing something that I don't normally do, and I'm going to quote Speaker of the House Nancy Pelosi. In March, the speaker told *The Washington Post*—I'm going to quote this.

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.

Well, on that, the speaker and I both agree. You know who else agrees? The Founding Fathers. The Founding Fathers recognized that crimes warranting impeachment must be so severe, regardless of political party, that there is an agreement that the actions are impeachable.

But let's go back to Speaker Pelosi's words just one more time. The speaker says the case for impeachment must be also compelling. Well, after last month's Schiff show, this what is we learned. There is no evidence that the President directed anyone to tell the Ukrainians that aid was conditioned on investigation. Aside from the mere presumptions by Ambassador Sondland, there is no evidence that Trump was conditioning aid on investigation and, if you doubt me, just go back to the actual transcript because never in that call was the 2020 election mentioned and never in that call was military aid mentioned.

In fact, President Trump told Senator Johnson on 31 August that aid was not conditioned on investigation. Rather, President Trump was rightfully skeptical about the Ukrainians. Their country has a history of corruption, and he merely warranted the Europeans to contribute more to a problem in their own backyard. But I think we can all agree that it's appropriate for the President as a steward of taxpayer dollars to ensure that our money isn't wasted.

I said I wasn't going to go back to Speaker Pelosi, but I do want to go back because I forgot. She also said that impeachment should be only pursued when it's quote, unquote, overwhelming. So it's probably not good for the Democrats that none of the witnesses who testified before the Intel Committee were able to provide first-hand evidence of a quid pro quo. But I forgot. We're calling it bribery now after the focus group last week, and there's no evidence of bribery either.

Instead, the two people who did have firsthand knowledge, the President and President Zelensky, both say there was no pressure on the Ukrainians; and, again, the transcript of July 25th backs this up.

And to go back to Nancy Pelosi, one more time, she said that the movement for impeachment should be quote, unquote, bipartisan, which is actually the same sentiment echoed by our chairman, Jerry Nadler, who in 1998 said, and I quote, There must never be a narrowly voted impeachment supported by one of the major political parties and opposed by another.

Well, when the House voted on the Democrat's impeachment inquiry, it was just that. It was the only bipartisan vote was the one imposing the inquiry. The partisan vote was the one to move forward with the inquiry. So we're 0 for 3.

Let's face it. This is a sham impeachment against President Trump. It's not compelling, it's not overwhelming, and it's not bipartisan. So even by the speaker's own criteria, this has failed. Rather what this is is nothing more than a partisan witch hunt which denies the fundamental fairness of our American justice system and denies due process to the President of the United States.

The Democrats's case is based on nothing more than thoughts, feelings, and conjectures and a few—the thoughts and feelings of a few unelected career bureaucrats and the American people are absolutely fed up.

Instead of wasting our time on this, we should be doing things like passing USMCA, lowering the cost of prescription drugs, and working on our failing infrastructure in this country.

With that said, Mr. Turley, I watched as your words have been twisted and mangled all day long. Is there anything you would like to clarify?

Mr. TURLEY. Only this. I think that one of the disagreements that we have and I have with my esteemed colleagues is what makes a legitimate impeachment, not what technically satisfies an impeachment. There's very few technical requirements of an impeachment. The question is what is expected of you?

And my objection is that there is a constant preference for inference over information, for presumptions over proof. That's because this record hasn't been developed.

And if you're going to remove a President, if you believe in democracy, if you're going to remove a sitting President, then you have an obligation not to rely on inference when there's still information you can gather. And that's what I'm saying. It's not that you can't do this. You just can't do it this way.

Mr. RESCHENTHALER. Thank you, Mr. Chairman.

Chairman NADLER. The gentleman yields back.

I now recognize Ms. Jackson Lee for the purpose of a unanimous consent request.

Ms. JACKSON LEE. Thank you, Mr. Chairman.

I'd like unanimous consent to place in the record a statement, news statement, from checks and balances on President Trump's abuse of office——

Chairman NADLER. Without objection, the——

Ms. JACKSON LEE [continuing]. Republican and Democratic Attorney Generals.

I ask unanimous consent.

Chairman NADLER. Without objection.

[The information follows:]

MS. JACKSON LEE FOR THE OFFICIAL RECORD

12/4/2019

New Statement from Checks and Balances on President Trump's Abuse of Office - Checks and Balances

CHECKS & BALANCES (<https://checks-and-balances.org>)



Press Release

New Statement from Checks and Balances on President Trump's Abuse of Office

October 10, 2019

Statement from co-founders and additional members of Checks & Balances:

In the past several weeks, it has become clear to any observer of current events that the president is abusing the office of the presidency for personal political objectives. Although new facts are being revealed on a daily basis, the following are undisputed, to date:

1) In a July 25, 2019, telephone call with the president of Ukraine – a summary of which has been released by the White House – the president requested “a favor” in the context of a discussion of Ukrainian security matters. Specifically, immediately after President Zelensky thanked the president “in the area of defense” and indicated a readiness to buy additional armaments consistent with a U.S. defense proposal, President Trump asked for “a favor.” The favor was to investigate a baseless theory relating to the 2016 investigation into Russian interference in the U.S. election. The U.S. president further requested that the Ukrainian president coordinate the requested investigation with both his personal attorney and the Attorney General of the United States, presenting both a blurring of lines between personal legal representation and official U.S. government business, and, the appearance of inappropriate politicization of the Office of the Attorney General. He then requested, additionally, that the

12/4/2019

New Statement from Checks and Balances on President Trump's Abuse of Office - Checks and Balances

Ukrainian government look into allegations relating to his Democratic presidential opponent, Joe Biden, saying “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.”

2) Between July and September 2019, the Acting Ambassador to Ukraine, Bill Taylor, the (former) State Department Special Envoy to Ukraine, Kurt Volker, and the Ambassador to the European Union, Gordon Sondland, exchanged a series of telephone calls and text messages revealing that U.S. diplomats were involved in negotiating an exchange involving a White House meeting and foreign aid on one hand, and a Ukrainian investigation into a meritless allegation involving former Vice President Joe Biden, on the other hand. The text messages reveal that U.S. diplomats were seeking from President Zelensky an assurance that “he will help [the] investigation” while concurrently negotiating a “visit to Washington” and “security assistance.” These circumstances led career Ambassador Taylor to communicate that in his judgment it was “crazy to withhold security assistance for help with a political campaign.” These facts are derived from text messages provided to the House of Representatives in connection with the deposition of former Special Envoy Volker and have been released publicly.

3) On October 3, 2019, the president stood in front of U.S. press cameras outside the White House and said, “China should start an investigation into the Bidens because what happened in China is just about as bad as what happened with Ukraine.” The president’s statement was broadcast widely.

A president takes the following oath of office:

I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States.

We believe the acts revealed publicly over the past several weeks are fundamentally incompatible with the president’s oath of office, his duties as commander in chief, and his constitutional obligation to “take care that the laws be faithfully executed.” These acts, based on what has been revealed to date, are

12/4/2019

New Statement from Checks and Balances on President Trump's Abuse of Office - Checks and Balances

a legitimate basis for an expeditious impeachment investigation, vote in the House of Representatives and potential trial in the Senate. Additional evidence that was detailed in the Special Counsel's Report, related matters of foreign emoluments, and persistent obstructive activities should also inform these proceedings. In addition, given that some of the critical facts under consideration by the Congress have been facilitated by a complaint presented to the Inspector General of the U.S. Intelligence Community, any efforts by U.S. government personnel to inappropriately pressure, intimidate or expose the whistleblower or future whistleblowers who follow the procedures provided by law are contrary to the norms of a society that adheres to the rule of law.

As we said in an April 2019 statement, "free and fair elections, without foreign interference, are at the heart of a healthy democracy." The Special Counsel's report revealed, among other things, that the Trump 2016 campaign was open to and enthusiastic about receiving Russian government-facilitated assistance to gain an advantage in the previous election. The report was not only an exposition, it was a warning. The present circumstances are materially worse: we have not just a political candidate open to receiving foreign assistance to better his chances at winning an election, but a current president openly and privately calling on foreign governments to actively interfere in the most sacred of U.S. democratic processes, our elections. These activities, which are factually undisputed, undermine the integrity of our elections, endanger global U.S. security and defense partnerships, and threaten our democracy.

- Jonathan H. Adler
- Donald B. Ayer
- George T. Conway III
- Carrie F. Cordero
- Charles Fried
- Stuart M. Gerson
- Peter D. Keislér
- Orin S. Kerr
- Marisa C. Maleck

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- Trevor Potter
- Alan Charles Raul
- Jonathan C. Rose
- Paul Rosenzweig
- Andrew Sagor
- Jaime D. Sneider
- J.W. Verret

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NEWS & UPDATES

Statement

Statement in Response to Attorney General Barr's Address at Federalist Society (<https://checks-and-balances.org/statement-from-co-founders-and-additional-members-of-checks-balances/>)

November 22, 2019

Media Mention

Paul Rosenzweig: I'm Proud to Be Called Human Scum (<https://checks-and-balances.org/paul-rosenzweig-im-proud-to-be-called-human-scum/>)


October 24, 2019

9782

322

12/4/2019

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 (<https://twitter.com/chkbal>) @ (<mailto:media@checks-and-balances.org>)

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CHECKS & BALANCES (<https://checks-and-balances.org>)



Mission Statement

We are a group of attorneys who would traditionally be considered conservative or libertarian. We believe in the rule of law, the power of truth, the independence of the criminal justice system, the imperative of individual rights, and the necessity of civil discourse. We believe these principles apply regardless of the party or persons in power. We believe in “a government of laws, not of men.”

We believe in the Constitution. We believe in free speech, a free press, separation of powers, and limited government. We have faith in the resiliency of the American experiment. We seek to provide a voice and a network for like-minded attorneys to discuss these ideas, and we hope that they will join with us to stand up for these principles.

WHO WE ARE

Jonathan H. Adler

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Donald B. Ayer

Deputy Attorney General, 1989-1990. Principal Deputy Solicitor General, 1986-1988. U.S. Attorney for the Eastern District of California, 1981-1986.

C. Frederick Beckner III

Deputy Assistant Attorney General, Civil Division, 2006-2009. Former Clerk to Samuel Alito, U.S. Court of Appeals, 3rd Circuit

John B. Bellinger, III

Legal Advisor to Department of State, 2005-2009. Senior Associate Counsel to the President and Legal Advisor to the National Security Council 2001-2005.

Phillip D. Brady

White House Staff Secretary, 1991-1993. White House Cabinet Secretary, 1989. Deputy Counsel to President Ronald Reagan. Deputy Assistant to Vice President George H. W. Bush, 1985-1988. Acting Assistant Attorney General, 1984-1985. Associate Attorney General, 1983-1984.

George T. Conway III

Securities and Corporate Litigation at Wachtell, Lipton. Argued successfully before the Supreme Court in *Morrison v. National Australia Bank*. Declined nomination as assistant attorney general in 2017.

Carrie F. Cordero

Robert M. Gates Senior Fellow & General Counsel, Center for a New American Security. Adjunct Professor of Law, Georgetown University Law Center. Former Counsel to the Assistant Attorney General for National Security, Senior Associate General Counsel at the Office of the Director of National Intelligence and Attorney Advisor at the U.S. Department of Justice, 2003-2010.

Charles Fried

Beneficial Professor of Law, Harvard Law School. Solicitor General, 1985-1989. Associate Justice of the Supreme Judicial Court of Massachusetts, 1995-1999.

Stuart M. Gerson

Acting Attorney General, 1993. Assistant Attorney General, 1989-1993.

Peter D. Keisler

Acting Attorney General, 2007. Assistant Attorney General, 2003-2007. Acting Associate Attorney General, 2002-2003.

Orin S. Kerr

Frances R. and John J. Duggan Distinguished Professor of Law, University of Southern California Gould School of Law. Trial Attorney, Department of Justice Criminal Division, 1998-2001.

Marisa C. Maleck

Appellate, Constitutional, and Administrative Law at King & Spalding. Former clerk to Justice Clarence Thomas.

Trevor Potter

President, Campaign Legal Center; Federal Election Commissioner (1991-1995) and Chairman (1994); Office of Legal Policy at the Department of Justice (1982-1984)

Alan Charles Raul

Former Vice Chairman of the White House Privacy and Civil Liberties Oversight Board. Former General Counsel to the Office of Management and Budget. Former General Counsel to the Department of Agriculture. Former Associate Counsel to the President.

Tom Ridge

Secretary of Homeland Security, 2003-2005. Assistant to the President for Homeland Security, 2001-2003. Governor of Pennsylvania.

Paul Rosenzweig

Deputy Assistant Secretary of Homeland Security, 2005-2009.

Ilya Somin

Professor of Law, Antonin Scalia Law School, George Mason University.

J.W. Verret

Associate Professor of Law, Antonin Scalia Law School, George Mason University. Former Chief Economist and Senior Counsel to the U.S. House Committee on Financial Services.

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Chairman NADLER. I now recognize Mrs. Demings for five minutes for questioning the witnesses.

Mrs. DEMINGS. Thank you, Mr. Chairman.

As a former law enforcement official, I know firsthand that the rule of law is the strength of our democracy and no one is above it, not our neighbors in our various communities, not our coworkers, and not the President of the United States.

Yet the President has said that he cannot be prosecuted for criminal conduct, that he need not comply with congressional requests and subpoenas. Matter of fact, the President is trying to absolve himself of any accountability.

Since the beginning of the investigation in early September, the House sent multiple letters, document requests, and subpoenas to the White House. Yet the President has refused to produce documents and has directed others not to produce documents.

He has prevented key White House officials from testifying. The President's obstruction of Congress is pervasive. Since the House began its investigation, the White House has produced zero subpoena documents.

In addition, at the President's direction, more than a dozen members of his administration have defied congressional subpoenas. The following slides show those who have refused to comply at the President's direction. We are facing a categorical blockade by a President who's desperate to prevent any investigation into his wrongdoing.

Professor Gerhardt, has a President ever refused to cooperate in an impeachment investigation?

Mr. GERHARDT. Not until now.

Mrs. DEMINGS. And any President who—I know Nixon delayed or tried to delay turning over information. When that occurred, was it at the same level that we're seeing today?

Mr. GERHARDT. President Nixon also had ordered his subordinates to cooperate and testify. He didn't shut down any of that. He produced documents and there were times—there were certainly disagreements but there was not a wholesale, broad-scale, across-the-board refusal to even recognize the legitimacy of this House doing an inquiry.

Mrs. DEMINGS. Did President Nixon's obstruction result in an Article of Impeachment?

Mr. GERHARDT. Yes, ma'am, Article III.

Mrs. DEMINGS. Professor Feldman, is it fair to say that if a President stonewalls an investigation like we are clearly seeing today into whether he has admitted an impeachable point, he risks rendering the impeachment power moot?

Mr. FELDMAN. Yes. And indeed that's the inevitable effect of a President refusing to participate. He's denying the power of Congress under the Constitution to oversee him and to exercise its capacity to impeach.

Mrs. DEMINGS. Professor Gerhardt, when a President prevents witnesses from complying with congressional subpoenas, are we entitled to make any presumptions about what they would say if they testified?

Mr. GERHARDT. Yes, ma'am, you are.

And I might just point out that one of the difficulties with asking for a more thorough investigation is that's exactly what the House has tried to conduct here, and the President has refused to comply with subpoenas and other requests for information. That's where the blockage occurs.

That's why there are documents not produced and why there are people not testifying that people here today have said they want to hear from.

Mrs. DEMINGS. In relation to what you just said, Ambassador Sondland testified, and I quote, everyone was in the loop. It was no secret.

Professor Gerhardt, how is Ambassador Sondland's testimony relevant here?

Mr. GERHARDT. His testimony's relevant. It's also rather chilling to hear him say that everybody's in the loop; and when he says that, he's talking about the people at the highest levels of our Government, all of whom are refusing to testify under oath or comply with subpoenas.

Mrs. DEMINGS. Professors, I want to thank you for your testimony.

The President used the power of his office to pressure a foreign head of state to investigate an American citizen in order to benefit his domestic political situation. After he was caught—and I do know something about that—this President proceeded to cover it up and refused to comply with valid congressional subpoenas.

The Framers included impeachment in the Constitution to ensure that no one, no one is above the law including and especially the President of the United States.

Thank you, Mr. Chair. And I yield back.

Chairman NADLER. The gentlelady yields back.

Mr. Cline is recognized.

Mr. CLINE. Thank you, Mr. Chairman.

It's just past 5 o'clock, and a lot of families are just getting home from work right now. They're turning on the TV and they're wondering what they're watching on TV. They're asking themselves, Is this a rerun, because I thought I saw this a couple of weeks ago. But no, this is not a rerun, unfortunately. This is act two of the three-part tragedy, the impeachment of President Trump.

And what we're seeing here is several very accomplished constitutional scholars attempting to divine the intent, whether it's of the President, or of the various witnesses who appeared during the Schiff hearings. And it's very frustrating to me, as a member of the Judiciary Committee, why we are where we are today.

I asked to be a member of this committee because of its storied history, because it was the defender of the Constitution, because it was one of the oldest committees in the Congress established by another Virginian, John George Jackson. It's because two of my immediate predecessors, Congressman Bob Goodlatte, who chaired this committee, and Congressman Caldwell Butler also served on this committee. But the committee that they served under—served on is dead. That committee doesn't exist anymore. That committee is gone.

Apparently, now, we don't even get to sit in the Judiciary Committee room. We're in the Ways and Means Committee room. I

don't know why. Maybe because there's more room. Maybe because the portraits of the various chairmen who would be staring down at us might just intimidate the other side as they attempt what is essentially a sham impeachment of this President.

You know, looking at where we are, the lack of the use of the Rodino rules in this process is shameful. The fact that we got witness testimony for this hearing this morning is shameful. The fact that we got the Intelligence Committee report yesterday, 300 pages of it, is shameful.

I watched the Intelligence Committee hearings from the back, although I couldn't watch them all because the Judiciary Committee actually scheduled business during the Intelligence Committee hearings, so the Judiciary Committee members weren't able to watch all of the hearings. But I didn't get to—I'd get to read the transcripts of the hearings that were held in private. I was not able to be a part of the Intelligence Committee hearings that were in the SCIF.

We haven't seen the evidence from the Intelligence Committee yet. We've asked for it. We haven't received it. We haven't heard from any fact witnesses yet before we get to hear from these constitutional scholars about whether or not the facts rise to the level of an impeachable offense.

Mr. Turley, it's not just your family and dog who are angry. Many of us on this committee are angry. Many of us watching at home across America are angry, because this show has degenerated into a farce. And, as I said, the Judiciary Committee of my predecessors is dead. And I look to a former chairman, Daniel Webster, who said: We are all agents of the same supreme power, the people.

And it's the people who elected this President in 2016, and it's the people who should have the choice as to whether or not to vote for this President in 2020, not the members of this committee, not Speaker Nancy Pelosi, and not the Members of this House of Representatives. It should be the people of the United States who get to decide who their President is in 2020.

I asked several questions about obstruction of justice to Mr. Mueller when he testified. Mr. Turley, I know that you mentioned obstruction of justice several times in your testimony. I want to yield to Mr. Ratcliffe to ask a concise question about that issue.

Mr. RATCLIFFE. I thank the gentleman for yielding.

Professor Turley, in the last few days we've been hearing that despite no questions to any witnesses during the first 2 months of the first phase of this impeachment inquiry that the Democrats may be dusting off the obstruction of justice portion of the Mueller report. It seems to me that we all remember how painful it was to listen to the special counsel's analysis of the obstruction of justice portion of that report. I'd like you to address the fatal flaws from your perspective with regard to the obstruction of justice portion of that.

Chairman NADLER. The gentleman's time is expired. The witness may answer the question, briefly.

Mr. TURLEY. Thank you, Mr. Chairman. I've been a critic of the obstruction theory behind the Russia investigation because, once again, it doesn't meet what I think are the clear standards for obstruction. There were 10 issues that Mueller addressed. The only one that I think was—that raised a serious issue, quite frankly,

was the matter with Don McGahn. There's a disagreement about that.

But also, the Department of Justice rejected the obstruction of justice claim, and it was not just the Attorney General. It was also the Deputy Attorney General, Rod Rosenstein.

Chairman NADLER. The gentleman's time is well expired. Mr. Correa.

Mr. CORREA. Thank you, Mr. Chairman.

And I'd like to thank our witnesses for being here today. I can assure you your testimony is important, not only to this body, but to America that is listening very intently on what the issues before us are, and why is it so important that all of us understand the issues before us.

Professor Feldman, as was just discussed, President Trump has ordered the executive branch to completely blockade the efforts of this House to investigate whether he committed high crimes and misdemeanors in his dealings with the Ukraine. Is that correct?

Mr. FELDMAN. Yes, it is.

Mr. CORREA. President Trump has also asserted that many officials are somehow absolutely immune from testifying in this impeachment inquiry. On the screen behind you is the opinion by Judge Jackson, a Federal judge here in D.C., that rejects President Trump's assertion.

Professor Feldman, do you agree with Judge Jackson's ruling that President Trump has invoked a nonexistent legal basis to block witnesses from testifying in this impeachment inquiry?

Mr. FELDMAN. I agree with the thrust of Judge Ketanji Brown Jackson's opinion. I think that she correctly held that there is no absolute immunity, which would protect a Presidential adviser from having to appear before the House of Representatives and testify. She did not make a ruling as to whether executive privilege would apply in any given situation, and I think that was also appropriate, because the issue had not yet arisen.

Mr. CORREA. And let me quote Judge Jackson: Open quote, "The primary takeaway from past 250 years of recorded American history is that Presidents are not kings," close quote.

Professor Feldman, in the Framers' view, does the President act more like a leader of democracy, or more like a monarch when he orders officials to defy Congress as it tries to investigate abuse of power and corruption of electeds?

Mr. FELDMAN. Sir, I don't even think the Framers could have imagined that a President would flatly refuse to participate in an impeachment inquiry, given that they gave the power of impeachment to the House of Representatives, and assumed that the structure of the Constitution would allow the House to oversee the President.

Mr. CORREA. Thank you. Professor Gerhardt, where can we look in the Constitution to understand whether the President must comply with the impeachment investigations?

Mr. GERHARDT. I think you can look throughout the entire Constitution. A good place, of course, includes the Supremacy Clause. The President also takes an oath. He takes an oath to support and defend the Constitution of the United States. That means that he's assuming office with certain constraints on what he may do, and

that there are measures for accountability for any failure to follow his duty or follow the Constitution.

Mr. CORREA. Thank you. And the President has said that he is above the law, that Article II of the Constitution allows him to, and I quote, "do whatever I want." That can't be true. Judge Jackson has said that no one is above the law.

Personally, I grew up in California in the 1960s. It was a time when we were going to beat the Russians to the moon. We were full of optimism. We believed in American democracy. We were the best in the world. And back home on Main Street, my mom and dad struggled to survive day to day. My mom worked as a maid cleaning hotel rooms for a buck 50 an hour, and my dad worked at the local paper mill, trying to survive day to day. And what got us up in the morning was the belief, the optimism that tomorrow was going to be better than today.

We're a Nation of freedom, democracy, economic opportunity, and we always know that tomorrow's going to be better. And today, I personally sit as a testament to the greatness of this Nation, me, out of the hoods, in Congress. And I sit here in this committee room also with one very important mission, which is to keep the American Dream alive, to ensure that all of us are equal, to ensure that nobody, nobody is above the law, and to ensure that our Constitution and that our congressional oversight of the Presidency is still something with meaning.

Thank you. Mr. Chair, I yield back.

Chairman NADLER. The gentleman yields back.

Mr. Armstrong.

Mr. ARMSTRONG. Thank you, Mr. Chairman.

All day long we've been sitting here and listening to my friends across the aisle and their witnesses claim that the President demanded Ukraine do us a favor by assisting in 2020 reelection campaign before he would release the military aid. This is like everything else in the sham impeachment, purposely misleading and not based on the facts.

So let's review the actual transcript of the call. They never mention the 2020 election. They never mention military aid. It does, however, clearly show that the favor the President requested was assistance with the ongoing investigation into the 2016 election. Those investigations, particularly the one done—being run by U.S. Attorney John Durham, should concern Democrats.

And the transcript of this call shows that the President was worried about the efforts of Ukraine relating to the 2016 election. We know this—and notice I'm using the word "know" and not the word "infer"—from reading the transcript and because he spoke about it ending with Mueller. We know this because he wants the Attorney General to get in touch with the Ukrainians about the issue. We have a treaty with Ukraine governing these sorts of international investigations. But like so many other things, these facts are inconvenient for Democrats. They don't fit the impeachment narrative, so they're misrepresented or ignored.

And I think it's important when we talk about this—and whatever the burden of proof, beyond a reasonable doubt, clear and convincing evidence, whether it's a judicial hearing, a quasi-judicial

hearing, or a congressional hearing, when we are talking about these issues, I think we need to start with how we look at it.

And I'm not a constitutional law professor, I'm just an old criminal defense attorney, but when I walk into a courtroom, I think of three things: What's the crime charged? What's the conduct? And who's the victim? And we've managed to make it till 5 o'clock today before we've talked about the alleged victim of the crime, and that's President Zelensky.

At three different times, President Zelensky, at least three different times, has denied being pressured by the President. The call shows laughter, pleasantries, cordiality. September 25th, President Zelensky states: No, you heard that we had a good phone call. It was normal. We spoke about many things. I think you read it and nobody pushed me. On October 10th, President Zelensky had a press conference, and I encourage everybody to watch it. Even if you don't understand it, 90 percent of communication is nonverbal. You tell me if you think he's lying. There was no blackmail. December 2nd, this Monday, I never talked to the President from the position of *quid pro quo*.

So we have the alleged victim of *quid pro quo*, bribery, extortion, whatever we're dealing with now today, repeatedly and adamantly shouting from the rooftops that he never felt pressure, that he was not the victim of anything. So in order for this whole thing to stick, we have to believe that President Zelensky is a pathological liar, or that the Ukrainian President and the country are so weak that he has no choice but to parade himself out there, demoralize himself for the good of his country.

Either of these two assertions weakens their countries and harms our efforts to help the Ukraine, and also begs the question of how on earth did President Zelensky withstand this illegal and impeachable pressure to begin with, because this fact still has not changed: The aid was released to Ukraine and did not take any action from them in order for it to flow.

And, with that, I'd yield to my friend, Mr. Jordan.

Mr. JORDAN. I thank the gentleman for yielding.

Professor Karlan, context is important, isn't it?

Ms. KARLAN. Yes, sir.

Mr. JORDAN. Yeah, because just a few minutes ago when our colleague from Florida presented a statement you made, you said, Well, you got to take that statement in context. But it seems to me you don't want to extend the same or apply the same standard to the President. Because the now famous quote, "I would like you to do us a favor," you said about an hour and a half ago that that didn't mean—"us" didn't mean us, it meant the President himself. But the clear reading of this "I would like you to do us a favor, though, because"—you know what the next two words are?

Ms. KARLAN. I don't have the document in front of me.

Mr. JORDAN. I'll tell you. Because our country. He didn't say, I would like you to do me a favor, though, because I have been through a lot. He said, I want you to do us a favor, though, because our country has been through a lot. You know what this call—when this call happened? It happened the day after Mueller was in front of this committee. Of course, our country was put through 2 years of this.

And the idea that you're now going to say, Oh, this is the royal "we," and he's talking about himself ignores the entire context of his statement. That whole paragraph, you know what he ended the paragraph with, talking about Bob Mueller. And this is the basis for this impeachment, this call? It couldn't be further from the truth. You want the standard to apply when Representative Gaetz makes one of your statements, Oh, you got to look at the context. But when the President of the United States is clear, you try to change his word. And when the context is clear, he's talking about the 2 years that this country went through because of this Mueller report, somehow that standard doesn't apply to the President.

Chairman NADLER. The gentleman's time is expired.

Mr. JORDAN. That is ridiculous.

Chairman NADLER. The gentleman's time is expired. Ms. Scanlon.

Ms. SCANLON. I want to thank our constitutional experts for walking us through the Framers' thinking on impeachment and why they decided it was a necessary part of our Constitution. I'm going to ask you to help us understand the implications of the President's obstruction of Congress' investigation into his use of the Office of the President to squeeze the Ukrainian Government to help the Trump reelection campaign. And there's certainly hundreds of pages on how one reaches that conclusion.

We know the President's obstruction did not begin with the Ukraine investigation. Instead, his conduct is part of a pattern, and I'll direct your attention to the timeline on the screen. In the left-hand column, we see the President's statement from his July call in which he pressured Ukraine, a foreign government, to meddle in our elections. Then once Congress got wind of it, the President tried to cover up his involvement by obstructing the congressional investigation and refusing to cooperate. But this isn't the first time we've seen this kind of obstruction.

In the right-hand column, we can flash back to the 2016 election, when the President welcomed and used Russia's interference in our election. And, again, when the special counsel and then this committee tried to investigate the extent of his involvement, he did everything he could to cover it up.

So it appears the President's obstruction of investigations is part of a pattern. First, he invites foreign powers to interfere in our elections, then he covers it up, and finally he obstructs lawful inquiries into his behavior, whether by Congress or law enforcement, and then he does it again.

So, Professor Gerhardt, how does the existence of such a pattern help determine whether the President's conduct is impeachable?

Mr. GERHARDT. The pattern, of course, gives us a tremendous insight into the context of his behavior when he's acting, and how do we explain those actions? By looking at the pattern. We can infer—I think a very strong inference, in fact, is that this is deviating from the usual practice, and he's been systematically heading towards a culmination where he can ask this question.

By the way, after the July 25th call, the money is not yet released. And there's ongoing conversations we learn from other testimony that, essentially, the money is being withheld because the

President wanted to make sure the deliverable was going to happen, that is the announcement of an investigation.

Ms. SCANLON. And in addition to the money not being released, there also was not the White House meeting, which was so important to Ukrainian security, right?

Mr. GERHARDT. Yes, ma'am, that's right.

Ms. SCANLON. Professor Feldman, we noted previously that a Federal District Court recently rejected the President's attempt to block witnesses from testifying to Congress, saying that Presidents are not kings. The Founders included two critical provisions in our Constitution to prevent our President from becoming a king, and our democracy from becoming a monarchy. And those protections were Presidential elections and impeachment, correct?

Mr. FELDMAN. Correct.

Ms. SCANLON. Based on the pattern of conduct that we're discussing today, the pattern of inviting foreign interference in our elections for political gain, and then obstructing lawful investigation, has the President undermined both of those protections?

Mr. FELDMAN. He has. And it's crucial to note that the victim of a high crime and misdemeanor, such as the President is alleged to have committed, is not President Zelensky and is not the Ukrainian people. The victim of the high crime and misdemeanor is the American people. Alexander Hamilton said very clearly that the nature of a high crime and misdemeanor is that they are related to injuries done to the society itself. We, the American people, are the victims of the high crime and misdemeanor.

Ms. SCANLON. And what is the appropriate remedy in such a circumstance?

Mr. FELDMAN. The Framers created one remedy to respond to high crimes and misdemeanors, and that was impeachment.

Ms. SCANLON. Thank you. You know, I've spent over 30 years working to help clients and schoolchildren understand the importance of our constitutional system, and the importance of the rule of law. So the President's behavior is deeply, deeply troubling.

The President welcomed and used election interference by Russia, publicly admitted he would do it again, and did, in fact, do it again, by soliciting election interference from Ukraine. And throughout, the President has tried to cover up his misconduct. This isn't complicated. The Founders were clear, and we must be, too. Such behavior in a President of the United States is not acceptable.

I yield back.

Chairman NADLER. The gentlelady yields back.

Mr. Cicilline, you will be recognized for a unanimous consent request.

Mr. CICILLINE. Mr. Chairman, I ask unanimous consent that a document which lists the 400 pieces of legislation passed by the House, 275 bipartisan bills, 80 percent which remain languishing in the Senate, be made a part of the record in response to Mr. Gaetz's claim that we're not getting the work done.

Chairman NADLER. Without objection, the document will be made part of the record.

[The information follows:]

MR. CICILLINE FOR THE OFFICIAL RECORD



HOUSE DEMOCRATIC POLICY & COMMUNICATIONS COMMITTEE

WORKING #FORTHETHEPEOPLE

Last Updated 11/15/19

Numbers Include Bills Only, Resolutions Not Included

The House has passed MORE THAN 275 BIPARTISAN BILLS this Congress that are stuck in the Senate, where Mitch McConnell refuses to bring them for a vote.

This includes bipartisan legislation to:

- Give American workers a long overdue raise by raising the minimum wage and making sure women are paid fairly for their work.
- Protect the retirement of Americans who worked hard all their lives.
- Enact gun safety background checks.
- Cut taxes for Gold Star families.
- Protect consumers from being ripped off by fine print contracts.
- Protect people with pre-existing conditions, reverse health care sabotage & lower drug costs.
- Support veterans.

BY THE NUMBERS

The House has passed **nearly 400 bills** this Congress. **More than 300 bills**, or **80%** of the bills the House has passed, are stuck in the Senate, where McConnell refuses to bring them for a vote. Most of the bills that are stalled in the Senate, **more than 275**, are bipartisan.

Examples of Bipartisan Bills McConnell is Refusing to Act on Include:

- ✓ H.R.5, Equality Act
- ✓ H.R.6, The American Dream and Promise Act
- ✓ H.R.7, Paycheck Fairness Act
- ✓ H.R.8, Bipartisan Background Checks Act
- ✓ H.R.9, Climate Action Now Act
- ✓ H.R.987, Protecting People With Pre-Existing Conditions/Lowering Drug Costs
- ✓ H.R.582, Raise The Wage Act
- ✓ H.R.397, Rehabilitation For Multiemployer Pensions Act (The Butch Lewis Act)
- ✓ H.R.1585, Violence Against Women Reauthorization Act
- ✓ H.R.1644, Save The Internet Act
- ✓ H.R.2722, Securing America's Federal Elections (SAFE) Act
- ✓ H.R.2513, The Corporate Transparency Act
- ✓ H.R.1112, Enhanced Background Checks
- ✓ H.R.1994, Secure Act/Gold Star Family Tax Relief Act
- ✓ H.R.205, 1146, 1941 – Banning Offshore Drilling on Atlantic, Pacific, Eastern Gulf & ANWR Coasts
- ✓ H.R.1423, Forced Arbitration Injustice Repeal (FAIR) Act
- ✓ More than 30 bills to support veterans

Other Examples of Bills McConnell is Refusing to Act on that Democrats Support:

- ✓ H.R.1, For The People Act
- ✓ H.R.4617, Stopping Harmful Interference in Elections for a Lasting Democracy (SHIELD) Act
- ✓ H.R.1500, Consumers First Act

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1	Downloaded	17:19:00 EST	
2	Search URL		
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4	Legislation	Congress	Title
5	H.R. 1	116th Congress (2019-2020)	For the People Act of 2019
6	H.R. 5	116th Congress (2019-2020)	Equality Act
7	H.R. 6	116th Congress (2019-2020)	American Dream and Promise Act of 2019
8	H.R. 7	116th Congress (2019-2020)	Paycheck Fairness Act
9	H.R. 8	116th Congress (2019-2020)	Bipartisan Background Checks Act of 2019
10	H.R. 9	116th Congress (2019-2020)	Climate Action Now Act
11	H.R. 21	116th Congress (2019-2020)	Consolidated Appropriations Act, 2019
12	H.R. 31	116th Congress (2019-2020)	Caesar Syria Civilian Protection Act of 2019
13	H.R. 34	116th Congress (2019-2020)	Energy and Water Research Integration Act of 2019
14	H.R. 36	116th Congress (2019-2020)	Combating Sexual Harassment in Science Act of 2019
15	H.R. 56	116th Congress (2019-2020)	Financial Technology Protection Act
16	H.R. 66	116th Congress (2019-2020)	Route 66 Centennial Commission Act
17	H.R. 91	116th Congress (2019-2020)	Columbia River In-Lieu and Treaty Fishing Access Sites Improvement Act
18	H.R. 95	116th Congress (2019-2020)	Homeless Veteran Families Act
19	H.R. 97	116th Congress (2019-2020)	Rescuing Animals With Rewards Act of 2019
20	H.R. 113	116th Congress (2019-2020)	All-American Flag Act
21	H.R. 115	116th Congress (2019-2020)	Protecting Diplomats from Surveillance Through Consumer Devices Act
22	H.R. 116	116th Congress (2019-2020)	Investing in Main Street Act of 2019
23	H.R. 128	116th Congress (2019-2020)	Small Business Advocacy Improvements Act of 2019
24	H.R. 133	116th Congress (2019-2020)	United States-Mexico Economic Partnership Act
25	H.R. 135	116th Congress (2019-2020)	Federal Employee Antidiscrimination Act of 2019
26	H.R. 136	116th Congress (2019-2020)	Federal Intern Protection Act of 2019
27	H.R. 150	116th Congress (2019-2020)	Grant Reporting Efficiency and Agreements Transparency Act of 2019
28	H.R. 182	116th Congress (2019-2020)	To extend the authorization for the Cape Cod National Seashore Advisory Commission.
29	H.R. 190	116th Congress (2019-2020)	Expanding Contracting Opportunities for Small Businesses Act of 2019
30	H.R. 192	116th Congress (2019-2020)	Trans-Sahara Counterterrorism Partnership Act
31	H.R. 202	116th Congress (2019-2020)	Inspector General Access Act of 2019
32	H.R. 205	116th Congress (2019-2020)	Protecting and Securing Florida's Coastline Act of 2019
33	H.R. 206	116th Congress (2019-2020)	Encouraging Small Business Innovation Act

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34	H.R. 221	116th Congress (2019-2020)	Special Envoy to Monitor and Combat Anti-Semitism Act
35	H.R. 226	116th Congress (2019-2020)	Clarity on Small Business Participation in Category Management Act of 2019
36	H.R. 227	116th Congress (2019-2020)	Incentivizing Fairness in Subcontracting Act
37	H.R. 241	116th Congress (2019-2020)	Bank Service Company Examination Coordination Act of 2019
38	H.R. 246	116th Congress (2019-2020)	Stimulating Innovation through Procurement Act of 2019
39	H.R. 247	116th Congress (2019-2020)	Federal CIO Authorization Act of 2019
40	H.R. 251	116th Congress (2019-2020)	Chemical Facility Anti-Terrorism Standards Program Extension Act
41	H.R. 255	116th Congress (2019-2020)	Big Bear Land Exchange Act
42	H.R. 259	116th Congress (2019-2020)	Medicaid Extenders Act of 2019
43	H.R. 263	116th Congress (2019-2020)	To rename the Oyster Bay National Wildlife Refuge as the Congressman Lester Wolff Oyster Bay National Wildlife Refuge Act of 2019
44	H.R. 264	116th Congress (2019-2020)	Financial Services and General Government Appropriations Act, 2019
45	H.R. 265	116th Congress (2019-2020)	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2019
46	H.R. 266	116th Congress (2019-2020)	Department of the Interior, Environment, and Related Agencies Appropriations Act, 2019
47	H.R. 267	116th Congress (2019-2020)	Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2019
48	H.R. 268	116th Congress (2019-2020)	Supplemental Appropriations Act, 2019
49	H.R. 269	116th Congress (2019-2020)	Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019
50	H.R. 276	116th Congress (2019-2020)	Recognizing Achievement in Classified School Employees Act
51	H.R. 277	116th Congress (2019-2020)	ASCEND Act of 2019
52	H.R. 281	116th Congress (2019-2020)	Ensuring Diverse Leadership Act of 2019
53	H.R. 297	116th Congress (2019-2020)	Little Shell Tribe of Chippewa Indians Restoration Act of 2019
54	H.R. 299	116th Congress (2019-2020)	Blue Water Navy Vietnam Veterans Act of 2019
55	H.R. 312	116th Congress (2019-2020)	Mashpee Wampanoag Tribe Reservation Reaffirmation Act
56	H.R. 317	116th Congress (2019-2020)	Santa Ynez Band of Chumash Indians Land Affirmation Act of 2019
57	H.R. 328	116th Congress (2019-2020)	Hack Your State Department Act
58	H.R. 335	116th Congress (2019-2020)	South Florida Clean Coastal Waters Act of 2019
59	H.R. 347	116th Congress (2019-2020)	Responsible Disposal Reauthorization Act of 2019
60	H.R. 353	116th Congress (2019-2020)	To direct the Secretary of State to develop a strategy to regain observer status for Taiwan in the World Health Organization Act of 2019
61	H.R. 375	116th Congress (2019-2020)	To amend the Act of June 18, 1934, to reaffirm the authority of the Secretary of the Interior to take land into the public domain
62	H.R. 389	116th Congress (2019-2020)	Kleptocracy Asset Recovery Rewards Act
63	H.R. 397	116th Congress (2019-2020)	Rehabilitation for Multiemployer Pensions Act of 2019
64	H.R. 424	116th Congress (2019-2020)	Department of Homeland Security Clearance Management and Administration Act
65	H.R. 425	116th Congress (2019-2020)	Supporting Veterans in STEM Careers Act
66	H.R. 428	116th Congress (2019-2020)	Homeland Security Assessment of Terrorists' Use of Virtual Currencies Act

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67	H.R. 430	116th Congress (2019-2020)	TANF Extension Act of 2019
68	H.R. 434	116th Congress (2019-2020)	Emancipation National Historic Trail Study Act
69	H.R. 439	116th Congress (2019-2020)	National FFA Organization's Federal Charter Amendments Act
70	H.R. 449	116th Congress (2019-2020)	Pathways to Improving Homeland Security at the Local Level Act
71	H.R. 450	116th Congress (2019-2020)	Preventing Crimes Against Veterans Act of 2019
72	H.R. 494	116th Congress (2019-2020)	Tiffany Joslyn Juvenile Accountability Block Grant Reauthorization and Bullying Prevention and Interv
73	H.R. 495	116th Congress (2019-2020)	FIRST State and Local Law Enforcement Act
74	H.R. 498	116th Congress (2019-2020)	Clean Up the Code Act of 2019
75	H.R. 499	116th Congress (2019-2020)	Service-Disabled Veterans Small Business Continuation Act
76	H.R. 501	116th Congress (2019-2020)	Poison Center Network Enhancement Act of 2019
77	H.R. 502	116th Congress (2019-2020)	FIND Trafficking Act
78	H.R. 504	116th Congress (2019-2020)	DHS Field Engagement Accountability Act
79	H.R. 507	116th Congress (2019-2020)	Put Trafficking Victims First Act of 2019
80	H.R. 525	116th Congress (2019-2020)	Strengthening the Health Care Fraud Prevention Task Force Act of 2019
81	H.R. 526	116th Congress (2019-2020)	Cambodia Democracy Act of 2019
82	H.R. 539	116th Congress (2019-2020)	Innovators to Entrepreneurs Act of 2019
83	H.R. 540	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 770 Ayrault Road in Fairport, Ne
84	H.R. 542	116th Congress (2019-2020)	Supporting Research and Development for First Responders Act
85	H.R. 543	116th Congress (2019-2020)	To require the Federal Railroad Administration to provide appropriate congressional notice of compre
86	H.R. 549	116th Congress (2019-2020)	Venezuela TPS Act of 2019
87	H.R. 550	116th Congress (2019-2020)	Merchant Mariners of World War II Congressional Gold Medal Act of 2019
88	H.R. 559	116th Congress (2019-2020)	Northern Mariana Islands Long-Term Legal Residents Relief Act
89	H.R. 565	116th Congress (2019-2020)	AMIGOS Act
90	H.R. 582	116th Congress (2019-2020)	Raise the Wage Act
91	H.R. 583	116th Congress (2019-2020)	Preventing Illegal Radio Abuse Through Enforcement Act
92	H.R. 596	116th Congress (2019-2020)	Crimea Annexation Non-recognition Act
93	H.R. 598	116th Congress (2019-2020)	Georgia Support Act
94	H.R. 615	116th Congress (2019-2020)	Refugee Sanitation Facility Safety Act of 2019
95	H.R. 617	116th Congress (2019-2020)	Department of Energy Veterans' Health Initiative Act
96	H.R. 624	116th Congress (2019-2020)	Promoting Transparent Standards for Corporate Insiders Act
97	H.R. 639	116th Congress (2019-2020)	To amend section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act to clarify
98	H.R. 647	116th Congress (2019-2020)	Palliative Care and Hospice Education and Training Act
99	H.R. 648	116th Congress (2019-2020)	Consolidated Appropriations Act, 2019

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100	H.R. 676	116th Congress (2019-2020)	NATO Support Act
101	H.R. 677	116th Congress (2019-2020)	21st Century President Act
102	H.R. 693	116th Congress (2019-2020)	U.S. Senator Joseph D. Tydings Memorial Prevent All Soring Tactics Act of 2019
103	H.R. 724	116th Congress (2019-2020)	Preventing Animal Cruelty and Torture Act
104	H.R. 728	116th Congress (2019-2020)	Title VIII Nursing Workforce Reauthorization Act of 2019
105	H.R. 736	116th Congress (2019-2020)	Access to Congressionally Mandated Reports Act
106	H.R. 737	116th Congress (2019-2020)	Shark Fin Sales Elimination Act of 2019
107	H.R. 748	116th Congress (2019-2020)	Middle Class Health Benefits Tax Repeal Act of 2019
108	H.R. 752	116th Congress (2019-2020)	Open Book on Equal Access to Justice Act
109	H.R. 753	116th Congress (2019-2020)	Global Electoral Exchange Act of 2019
110	H.R. 758	116th Congress (2019-2020)	Cooperate with Law Enforcement Agencies and Watch Act of 2019
111	H.R. 759	116th Congress (2019-2020)	Ysleta del Sur Pueblo and Alabama-Coushatta Tribes of Texas Equal and Fair Opportunity Settlement A
112	H.R. 762	116th Congress (2019-2020)	Streamlining Energy Efficiency for Schools Act
113	H.R. 769	116th Congress (2019-2020)	Counterterrorism Advisory Board Act of 2019
114	H.R. 776	116th Congress (2019-2020)	Emergency Medical Services for Children Program Reauthorization Act of 2019
115	H.R. 777	116th Congress (2019-2020)	Debbie Smith Reauthorization Act of 2019
116	H.R. 790	116th Congress (2019-2020)	Federal Civilian Workforce Pay Raise Fairness Act of 2019
117	H.R. 806	116th Congress (2019-2020)	Portable Fuel Container Safety Act of 2019
118	H.R. 823	116th Congress (2019-2020)	Colorado Outdoor Recreation and Economy Act
119	H.R. 828	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 25 Route 111 in Smithtown, Nev
120	H.R. 829	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 1450 Montauk Highway in Mast
121	H.R. 831	116th Congress (2019-2020)	Reviving America's Scenic Byways Act of 2019
122	H.R. 835	116th Congress (2019-2020)	Rodchenkov Anti-Doping Act of 2019
123	H.R. 840	116th Congress (2019-2020)	Veterans' Access to Child Care Act
124	H.R. 854	116th Congress (2019-2020)	Humanitarian Assistance to the Venezuelan People Act of 2019
125	H.R. 866	116th Congress (2019-2020)	Fairness For Breastfeeding Mothers Act of 2019
126	H.R. 876	116th Congress (2019-2020)	Pacific Northwest Earthquake Preparedness Act of 2019
127	H.R. 886	116th Congress (2019-2020)	Veteran Treatment Court Coordination Act of 2019
128	H.R. 887	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 877 East 1200 South in Orem, U
129	H.R. 920	116th Congress (2019-2020)	Venezuela Arms Restriction Act
130	H.R. 925	116th Congress (2019-2020)	North American Wetlands Conservation Extension Act
131	H.R. 951	116th Congress (2019-2020)	United States-Mexico Tourism Improvement Act of 2019
132	H.R. 974	116th Congress (2019-2020)	Federal Reserve Supervision Testimony Clarification Act

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133	H.R. 986	116th Congress (2019-2020)	Protecting Americans with Preexisting Conditions Act of 2019
134	H.R. 987	116th Congress (2019-2020)	Strengthening Health Care and Lowering Prescription Drug Costs Act
135	H.R. 988	116th Congress (2019-2020)	NEAR Act of 2019
136	H.R. 995	116th Congress (2019-2020)	Settlement Agreement Information Database Act of 2019
137	H.R. 1037	116th Congress (2019-2020)	Banking Transparency for Sanctioned Persons Act of 2019
138	H.R. 1044	116th Congress (2019-2020)	Fairness for High-Skilled Immigrants Act of 2019
139	H.R. 1058	116th Congress (2019-2020)	Autism Collaboration, Accountability, Research, Education, and Support Act of 2019
140	H.R. 1060	116th Congress (2019-2020)	BUILD Act
141	H.R. 1063	116th Congress (2019-2020)	Presidential Library Donation Reform Act of 2019
142	H.R. 1064	116th Congress (2019-2020)	To amend title 5, United States Code, to allow whistleblowers to disclose information to certain recipients
143	H.R. 1065	116th Congress (2019-2020)	Social Media Use in Clearance Investigations Act of 2019
144	H.R. 1079	116th Congress (2019-2020)	Creating Advanced Streamlined Electronic Services for Constituents Act of 2019
145	H.R. 1088	116th Congress (2019-2020)	FIRST Act
146	H.R. 1112	116th Congress (2019-2020)	Enhanced Background Checks Act of 2019
147	H.R. 1122	116th Congress (2019-2020)	Housing Choice Voucher Mobility Demonstration Act of 2019
148	H.R. 1123	116th Congress (2019-2020)	Divisional Realignment for the Eastern District of Arkansas Act of 2019
149	H.R. 1138	116th Congress (2019-2020)	To reauthorize the West Valley demonstration project, and for other purposes.
150	H.R. 1146	116th Congress (2019-2020)	Arctic Cultural and Coastal Plain Protection Act
151	H.R. 1158	116th Congress (2019-2020)	DHS Cyber Hunt and Incident Response Teams Act of 2019
152	H.R. 1198	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 404 South Boulder Highway in Las Vegas, Nevada, as the []
153	H.R. 1199	116th Congress (2019-2020)	VA Website Accessibility Act of 2019
154	H.R. 1200	116th Congress (2019-2020)	Veterans' Compensation Cost-of-Living Adjustment Act of 2019
155	H.R. 1222	116th Congress (2019-2020)	Target Practice and Marksmanship Training Support Act
156	H.R. 1235	116th Congress (2019-2020)	MSPB Temporary Term Extension Act
157	H.R. 1237	116th Congress (2019-2020)	COAST Research Act of 2019
158	H.R. 1250	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 11158 Highway 146 North in Hawthorne, Nevada, as the []
159	H.R. 1252	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 6531 Van Nuys Boulevard in Van Nuys, California, as the []
160	H.R. 1253	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 13507 Van Nuys Boulevard in Palmdale, California, as the []
161	H.R. 1261	116th Congress (2019-2020)	National Landslide Preparedness Act
162	H.R. 1271	116th Congress (2019-2020)	Vet HP Act
163	H.R. 1306	116th Congress (2019-2020)	Federal Disaster Assistance Coordination Act
164	H.R. 1307	116th Congress (2019-2020)	Post-Disaster Assistance Online Accountability Act
165	H.R. 1309	116th Congress (2019-2020)	Workplace Violence Prevention for Health Care and Social Service Workers Act

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166	H.R. 1313	116th Congress (2019-2020)	Transit Security Grant Program Flexibility Act
167	H.R. 1327	116th Congress (2019-2020)	Never Forget the Heroes: James Zadroga, Ray Pfeifer, and Luis Alvarez Permanent Authorization of the
168	H.R. 1328	116th Congress (2019-2020)	ACCESS BROADBAND Act
169	H.R. 1331	116th Congress (2019-2020)	Local Water Protection Act
170	H.R. 1359	116th Congress (2019-2020)	Digital GAP Act
171	H.R. 1365	116th Congress (2019-2020)	To make technical corrections to the Guam World War II Loyalty Recognition Act.
172	H.R. 1373	116th Congress (2019-2020)	Grand Canyon Centennial Protection Act
173	H.R. 1381	116th Congress (2019-2020)	Burn Pit Registry Enhancement Act
174	H.R. 1388	116th Congress (2019-2020)	Lytton Rancheria Homelands Act of 2019
175	H.R. 1396	116th Congress (2019-2020)	Hidden Figures Congressional Gold Medal Act
176	H.R. 1404	116th Congress (2019-2020)	Vladimir Putin Transparency Act
177	H.R. 1414	116th Congress (2019-2020)	FinCEN Improvement Act of 2019
178	H.R. 1420	116th Congress (2019-2020)	Energy Efficient Government Technology Act
179	H.R. 1423	116th Congress (2019-2020)	Forced Arbitration Injustice Repeal Act
180	H.R. 1424	116th Congress (2019-2020)	Fallen Warrior Battlefield Cross Memorial Act
181	H.R. 1433	116th Congress (2019-2020)	Department of Homeland Security Morale, Recognition, Learning and Engagement Act of 2019
182	H.R. 1437	116th Congress (2019-2020)	Securing Department of Homeland Security Firearms Act of 2019
183	H.R. 1446	116th Congress (2019-2020)	Multinational Species Conservation Funds Semipostal Stamp Reauthorization Act of 2019
184	H.R. 1449	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 3033 203rd Street in Olympia, Wa
185	H.R. 1472	116th Congress (2019-2020)	To rename the Homestead National Monument of America near Beatrice, Nebraska, as the Homestead
186	H.R. 1477	116th Congress (2019-2020)	Russian-Venezuelan Threat Mitigation Act
187	H.R. 1487	116th Congress (2019-2020)	Santa Monica Mountains National Recreation Area Boundary Adjustment Study Act
188	H.R. 1496	116th Congress (2019-2020)	Presidential Allowance Modernization Act of 2019
189	H.R. 1500	116th Congress (2019-2020)	Consumers First Act
190	H.R. 1503	116th Congress (2019-2020)	Orange Book Transparency Act of 2019
191	H.R. 1520	116th Congress (2019-2020)	Purple Book Continuity Act of 2019
192	H.R. 1526	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 200 Israel Road Southeast in Tur
193	H.R. 1569	116th Congress (2019-2020)	To amend title 28, United States Code, to add Flagstaff and Yuma to the list of locations in which court
194	H.R. 1582	116th Congress (2019-2020)	Electronic Message Preservation Act
195	H.R. 1585	116th Congress (2019-2020)	Violence Against Women Reauthorization Act of 2019
196	H.R. 1589	116th Congress (2019-2020)	CBRN Intelligence and Information Sharing Act of 2019
197	H.R. 1590	116th Congress (2019-2020)	Terrorist and Foreign Fighter Travel Exercise Act of 2019
198	H.R. 1593	116th Congress (2019-2020)	CLASS Act of 2019

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199	H.R. 1594	116th Congress (2019-2020)	First Responder Access to Innovative Technologies Act
200	H.R. 1595	116th Congress (2019-2020)	Secure And Fair Enforcement Banking Act of 2019
201	H.R. 1608	116th Congress (2019-2020)	Federal Advisory Committee Act Amendments of 2019
202	H.R. 1615	116th Congress (2019-2020)	Verification Alignment and Service-disabled Business Adjustment Act
203	H.R. 1616	116th Congress (2019-2020)	European Energy Security and Diversification Act of 2019
204	H.R. 1617	116th Congress (2019-2020)	KREMLIN Act
205	H.R. 1618	116th Congress (2019-2020)	Nicholas and Zachary Burt Carbon Monoxide Poisoning Prevention Act of 2019
206	H.R. 1623	116th Congress (2019-2020)	Help America Run Act
207	H.R. 1632	116th Congress (2019-2020)	Southeast Asia Strategy Act
208	H.R. 1644	116th Congress (2019-2020)	Save the Internet Act of 2019
209	H.R. 1649	116th Congress (2019-2020)	Small Business Development Center Cyber Training Act of 2019
210	H.R. 1654	116th Congress (2019-2020)	Federal Register Modernization Act
211	H.R. 1663	116th Congress (2019-2020)	Foundation of the Federal Bar Association Charter Amendments Act of 2019
212	H.R. 1665	116th Congress (2019-2020)	Building Blocks of STEM Act
213	H.R. 1690	116th Congress (2019-2020)	Carbon Monoxide Alarms Leading Every Resident To Safety Act of 2019
214	H.R. 1704	116th Congress (2019-2020)	Championing American Business Through Diplomacy Act of 2019
215	H.R. 1716	116th Congress (2019-2020)	Coastal Communities Ocean Acidification Act of 2019
216	H.R. 1759	116th Congress (2019-2020)	BRIDGE for Workers Act
217	H.R. 1760	116th Congress (2019-2020)	Advanced Nuclear Fuel Availability Act
218	H.R. 1768	116th Congress (2019-2020)	Diesel Emissions Reduction Act of 2019
219	H.R. 1773	116th Congress (2019-2020)	Rosie the Riveter Congressional Gold Medal Act of 2019
220	H.R. 1775	116th Congress (2019-2020)	Notice to Airmen Improvement Act of 2019
221	H.R. 1781	116th Congress (2019-2020)	Payment Commission Data Act of 2019
222	H.R. 1812	116th Congress (2019-2020)	Vet Center Eligibility Expansion Act
223	H.R. 1815	116th Congress (2019-2020)	SEC Disclosure Effectiveness Testing Act
224	H.R. 1830	116th Congress (2019-2020)	National Purple Heart Hall of Honor Commemorative Coin Act
225	H.R. 1833	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 35 Tulip Avenue in Floral Park, N
226	H.R. 1837	116th Congress (2019-2020)	United States-Israel Cooperation Enhancement and Regional Security Act
227	H.R. 1839	116th Congress (2019-2020)	Medicaid Services Investment and Accountability Act of 2019
228	H.R. 1844	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 66 Grove Court in Elgin, Illinois,
229	H.R. 1847	116th Congress (2019-2020)	Inspector General Protection Act
230	H.R. 1850	116th Congress (2019-2020)	Palestinian International Terrorism Support Prevention Act of 2019
231	H.R. 1865	116th Congress (2019-2020)	National Law Enforcement Museum Commemorative Coin Act

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232	H.R. 1876	116th Congress (2019-2020)	Senior Security Act of 2019
233	H.R. 1892	116th Congress (2019-2020)	Quadrennial Homeland Security Review Technical Corrections Act of 2019
234	H.R. 1912	116th Congress (2019-2020)	DHS Acquisition Documentation Integrity Act of 2019
235	H.R. 1921	116th Congress (2019-2020)	Ocean Acidification Innovation Act of 2019
236	H.R. 1941	116th Congress (2019-2020)	Coastal and Marine Economies Protection Act
237	H.R. 1947	116th Congress (2019-2020)	To amend title 38, United States Code, to exempt transfers of funds from Federal agencies to the Depa
238	H.R. 1952	116th Congress (2019-2020)	Intercountry Adoption Information Act of 2019
239	H.R. 1957	116th Congress (2019-2020)	Taxpayer First Act of 2019
240	H.R. 1972	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 1100 West Kent Avenue in Miss
241	H.R. 1984	116th Congress (2019-2020)	DISASTER Act
242	H.R. 1988	116th Congress (2019-2020)	Protecting Affordable Mortgages for Veterans Act of 2019
243	H.R. 1994	116th Congress (2019-2020)	Setting Every Community Up for Retirement Enhancement Act of 2019
244	H.R. 2002	116th Congress (2019-2020)	Taiwan Assurance Act of 2019
245	H.R. 2030	116th Congress (2019-2020)	Colorado River Drought Contingency Plan Authorization Act
246	H.R. 2035	116th Congress (2019-2020)	Lifespan Respite Care Reauthorization Act of 2019
247	H.R. 2037	116th Congress (2019-2020)	Saudi Arabia Human Rights and Accountability Act of 2019
248	H.R. 2045	116th Congress (2019-2020)	To amend title 38, United States Code, to establish in the Department the Veterans Economic Opport
249	H.R. 2066	116th Congress (2019-2020)	DHS Intelligence Rotational Assignment Program Act of 2019
250	H.R. 2083	116th Congress (2019-2020)	Homeland Procurement Reform Act
251	H.R. 2109	116th Congress (2019-2020)	BRAVE Act
252	H.R. 2114	116th Congress (2019-2020)	Enhancing State Energy Security Planning and Emergency Preparedness Act of 2019
253	H.R. 2115	116th Congress (2019-2020)	Public Disclosure of Drug Discounts and Real-Time Beneficiary Drug Cost Act
254	H.R. 2116	116th Congress (2019-2020)	Global Fragility Act
255	H.R. 2134	116th Congress (2019-2020)	Helen Keller National Center Reauthorization Act of 2019
256	H.R. 2140	116th Congress (2019-2020)	Preventing Child Marriage in Displaced Populations Act
257	H.R. 2142	116th Congress (2019-2020)	To amend the Small Business Act to require the Small Business and Agriculture Regulatory Enforcemen
258	H.R. 2151	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 7722 South Main Street in Pine
259	H.R. 2157	116th Congress (2019-2020)	Additional Supplemental Appropriations for Disaster Relief Act, 2019
260	H.R. 2162	116th Congress (2019-2020)	Housing Financial Literacy Act of 2019
261	H.R. 2181	116th Congress (2019-2020)	Chaco Cultural Heritage Area Protection Act of 2019
262	H.R. 2196	116th Congress (2019-2020)	To amend title 38, United States Code, to reduce the credit hour requirement for the Edith Nourse Ro
263	H.R. 2203	116th Congress (2019-2020)	Homeland Security Improvement Act
264	H.R. 2211	116th Congress (2019-2020)	STURDY Act

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265	H.R. 2229	116th Congress (2019-2020)	First Responders Passport Act of 2019
266	H.R. 2290	116th Congress (2019-2020)	Shutdown Guidance for Financial Institutions Act
267	H.R. 2325	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 100 Calle Alondra in San Juan, P
268	H.R. 2326	116th Congress (2019-2020)	Navy SEAL Chief Petty Officer William "Bill" Mulder (Ret.) Transition Improvement Act of 2019
269	H.R. 2327	116th Congress (2019-2020)	Burma Political Prisoners Assistance Act
270	H.R. 2331	116th Congress (2019-2020)	SBA Cyber Awareness Act
271	H.R. 2333	116th Congress (2019-2020)	Support for Suicide Prevention Coordinators Act
272	H.R. 2334	116th Congress (2019-2020)	To designate the Department of Veterans Affairs community-based outpatient clinic in Odessa, Texas,
273	H.R. 2336	116th Congress (2019-2020)	Family Farmer Relief Act of 2019
274	H.R. 2340	116th Congress (2019-2020)	FIGHT Veteran Suicides Act
275	H.R. 2345	116th Congress (2019-2020)	Clarifying the Small Business Runway Extension Act
276	H.R. 2359	116th Congress (2019-2020)	Whole Veteran Act
277	H.R. 2372	116th Congress (2019-2020)	Veterans' Care Quality Transparency Act
278	H.R. 2379	116th Congress (2019-2020)	To reauthorize the Bulletproof Vest Partnership Grant Program.
279	H.R. 2385	116th Congress (2019-2020)	To permit the Secretary of Veterans Affairs to establish a grant program to conduct cemetery research
280	H.R. 2397	116th Congress (2019-2020)	American Manufacturing Leadership Act
281	H.R. 2409	116th Congress (2019-2020)	Expanding Access to Capital for Rural Job Creators Act
282	H.R. 2423	116th Congress (2019-2020)	Women's Suffrage Centennial Commemorative Coin Act
283	H.R. 2426	116th Congress (2019-2020)	Copyright Alternative in Small-Claims Enforcement Act of 2019
284	H.R. 2440	116th Congress (2019-2020)	Full Utilization of the Harbor Maintenance Trust Fund Act
285	H.R. 2451	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 575 Dexter Street in Central Fall
286	H.R. 2476	116th Congress (2019-2020)	Securing American Nonprofit Organizations Against Terrorism Act of 2019
287	H.R. 2480	116th Congress (2019-2020)	Stronger Child Abuse Prevention and Treatment Act
288	H.R. 2486	116th Congress (2019-2020)	FUTURE Act
289	H.R. 2500	116th Congress (2019-2020)	National Defense Authorization Act for Fiscal Year 2020
290	H.R. 2502	116th Congress (2019-2020)	Transparency in Federal Buildings Projects Act of 2019
291	H.R. 2507	116th Congress (2019-2020)	Newborn Screening Saves Lives Reauthorization Act of 2019
292	H.R. 2513	116th Congress (2019-2020)	Corporate Transparency Act of 2019
293	H.R. 2514	116th Congress (2019-2020)	Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019
294	H.R. 2515	116th Congress (2019-2020)	Whistleblower Protection Reform Act of 2019
295	H.R. 2528	116th Congress (2019-2020)	STEM Opportunities Act of 2019
296	H.R. 2539	116th Congress (2019-2020)	Strengthening Local Transportation Security Capabilities Act of 2019
297	H.R. 2578	116th Congress (2019-2020)	National Flood Insurance Program Extension Act of 2019

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298	H.R. 2589	116th Congress (2019-2020)	Unifying DHS Intelligence Enterprise Act
299	H.R. 2590	116th Congress (2019-2020)	DHS Overseas Personnel Enhancement Act of 2019
300	H.R. 2609	116th Congress (2019-2020)	DHS Acquisition Review Board Act of 2019
301	H.R. 2613	116th Congress (2019-2020)	Advancing Innovation to Assist Law Enforcement Act
302	H.R. 2615	116th Congress (2019-2020)	United States-Northern Triangle Enhanced Engagement Act
303	H.R. 2695	116th Congress (2019-2020)	To rename the Success Dam in Tulare County, California, as the Richard L. Schafer Dam.
304	H.R. 2722	116th Congress (2019-2020)	SAFE Act
305	H.R. 2740	116th Congress (2019-2020)	Labor, Health and Human Services, Education, Defense, State, Foreign Operations, and Energy and Wa
306	H.R. 2744	116th Congress (2019-2020)	USAID Branding Modernization Act
307	H.R. 2781	116th Congress (2019-2020)	Educating Medical Professionals and Optimizing Workforce Efficiency and Readiness for Health Act of
308	H.R. 2852	116th Congress (2019-2020)	Homebuyer Assistance Act of 2019
309	H.R. 2919	116th Congress (2019-2020)	Improving Investment Research for Small and Emerging Issuers Act
310	H.R. 2938	116th Congress (2019-2020)	HAVEN Act
311	H.R. 2940	116th Congress (2019-2020)	To extend the program of block grants to States for temporary assistance for needy families and relate
312	H.R. 2942	116th Congress (2019-2020)	HEALTH Act
313	H.R. 2943	116th Congress (2019-2020)	Providing Benefits Information in Spanish and Tagalog for Veterans and Families Act
314	H.R. 3050	116th Congress (2019-2020)	Expanding Investment in Small Businesses Act of 2019
315	H.R. 3055	116th Congress (2019-2020)	Further Continuing Appropriations Act, 2020, and Further Health Extenders Act of 2019
316	H.R. 3106	116th Congress (2019-2020)	Domestic and International Terrorism DATA Act
317	H.R. 3144	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 8520 Michigan Avenue in Whitt
318	H.R. 3151	116th Congress (2019-2020)	Taxpayer First Act
319	H.R. 3152	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 456 North Meridian Street in Ind
320	H.R. 3153	116th Congress (2019-2020)	EFFORT Act
321	H.R. 3190	116th Congress (2019-2020)	Burma Unified through Rigorous Military Accountability Act of 2019
322	H.R. 3196	116th Congress (2019-2020)	Vera C. Rubin Observatory Designation Act
323	H.R. 3207	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 114 Mill Street in Hookstown, P
324	H.R. 3224	116th Congress (2019-2020)	Deborah Sampson Act
325	H.R. 3239	116th Congress (2019-2020)	Humanitarian Standards for Individuals in Customs and Border Protection Custody Act
326	H.R. 3245	116th Congress (2019-2020)	Restore the Harmony Way Bridge Act
327	H.R. 3246	116th Congress (2019-2020)	Traveling Parents Screening Consistency Act of 2019
328	H.R. 3253	116th Congress (2019-2020)	Sustaining Excellence in Medicaid Act of 2019
329	H.R. 3289	116th Congress (2019-2020)	Hong Kong Human Rights and Democracy Act of 2019
330	H.R. 3299	116th Congress (2019-2020)	Promoting Respect for Individuals' Dignity and Equality Act of 2019

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331	H.R. 3304	116th Congress (2019-2020)	National Guard and Reservists Debt Relief Extension Act of 2019
332	H.R. 3305	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 2509 George Mason Drive in Vir
333	H.R. 3311	116th Congress (2019-2020)	Small Business Reorganization Act of 2019
334	H.R. 3314	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 1750 McCulloch Boulevard Nort
335	H.R. 3329	116th Congress (2019-2020)	To designate the facility of the United States Postal Service located at 5186 Benito Street in Montclair
336	H.R. 3351	116th Congress (2019-2020)	Financial Services and General
337	H.R. 3352	116th Congress (2019-2020)	Department of State Authorization Act of 2019
338	H.R. 3375	116th Congress (2019-2020)	Stopping Bad Robocalls Act
339	H.R. 3401	116th Congress (2019-2020)	Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Bo
340	H.R. 3409	116th Congress (2019-2020)	Coast Guard Authorization Act of 2019
341	H.R. 3460	116th Congress (2019-2020)	End Neglected Tropical Diseases Act
342	H.R. 3494	116th Congress (2019-2020)	Damon Paul Nelson and Matthew Young Pollard Intelligence Authorization Act for Fiscal Years 2018, 2
343	H.R. 3504	116th Congress (2019-2020)	Ryan Kules Specially Adaptive Housing Improvement Act of 2019
344	H.R. 3525	116th Congress (2019-2020)	U.S. Border Patrol Medical Screening Standards Act
345	H.R. 3526	116th Congress (2019-2020)	Counter Terrorist Network Act
346	H.R. 3537	116th Congress (2019-2020)	Veteran Entrepreneurship Training Act of 2019
347	H.R. 3589	116th Congress (2019-2020)	Greg LeMond Congressional Gold Medal Act
348	H.R. 3619	116th Congress (2019-2020)	Appraisal Fee Transparency Act of 2019
349	H.R. 3620	116th Congress (2019-2020)	Strategy and Investment in Rural Housing Preservation Act of 2019
350	H.R. 3624	116th Congress (2019-2020)	Outsourcing Accountability Act of 2019
351	H.R. 3625	116th Congress (2019-2020)	PCAOB Whistleblower Protection Act of 2019
352	H.R. 3661	116th Congress (2019-2020)	Patriotic Employer Protection Act of 2019
353	H.R. 3670	116th Congress (2019-2020)	Short-Term Detention Standards Act
354	H.R. 3675	116th Congress (2019-2020)	Trusted Traveler Reconsideration and Restoration Act of 2019
355	H.R. 3691	116th Congress (2019-2020)	TRANSLATE Act
356	H.R. 3694	116th Congress (2019-2020)	Helping Families Fly Act of 2019
357	H.R. 3702	116th Congress (2019-2020)	Reforming Disaster Recovery Act of 2019
358	H.R. 3710	116th Congress (2019-2020)	Cybersecurity Vulnerability Remediation Act
359	H.R. 3722	116th Congress (2019-2020)	Joint Task Force to Combat Opioid Trafficking Act of 2019
360	H.R. 3734	116th Congress (2019-2020)	Successful Entrepreneurship for Reservists and Veterans Act
361	H.R. 3877	116th Congress (2019-2020)	Bipartisan Budget Act of 2019
362	H.R. 3889	116th Congress (2019-2020)	ONDOP Technical Corrections Act of 2019
363	H.R. 3942	116th Congress (2019-2020)	Preventing Online Sales of E-Cigarettes to Children Act

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364	H.R. 3996	116th Congress (2019-2020)	VA Design-Build Construction Enhancement Act of 2019
365	H.R. 4018	116th Congress (2019-2020)	To provide that the amount of time that an elderly offender must serve before being eligible for place
366	H.R. 4029	116th Congress (2019-2020)	Tribal Access to Homeless Assistance Act
367	H.R. 4067	116th Congress (2019-2020)	Financial Inclusion in Banking Act of 2019
368	H.R. 4162	116th Congress (2019-2020)	GI Bill Planning Act of 2019
369	H.R. 4258	116th Congress (2019-2020)	Reauthorizing Security for Supreme Court Justices Act of 2019
370	H.R. 4270	116th Congress (2019-2020)	Placing Restrictions on Teargas Exports and Crowd Control Technology to Hong Kong Act
371	H.R. 4285	116th Congress (2019-2020)	Department of Veterans Affairs Expiring Authorities Act of 2019
372	H.R. 4300	116th Congress (2019-2020)	Fostering Stable Housing Opportunities Act of 2019
373	H.R. 4334	116th Congress (2019-2020)	Dignity in Aging Act of 2019
374	H.R. 4344	116th Congress (2019-2020)	Investor Protection and Capital Markets Fairness Act
375	H.R. 4356	116th Congress (2019-2020)	Protecting Families of Fallen Servicemembers Act
376	H.R. 4360	116th Congress (2019-2020)	VA Overpayment Accountability Act
377	H.R. 4378	116th Congress (2019-2020)	Continuing Appropriations Act, 2020, and Health Extenders Act of 2019
378	H.R. 4387	116th Congress (2019-2020)	To establish Growth Accelerator Fund Competition within the Small Business Administration, and for c
379	H.R. 4405	116th Congress (2019-2020)	Women's Business Centers Improvements Act of 2019
380	H.R. 4406	116th Congress (2019-2020)	Small Business Development Centers Improvement Act of 2019
381	H.R. 4407	116th Congress (2019-2020)	SCORE for Small Business Act of 2019
382	H.R. 4477	116th Congress (2019-2020)	Reducing High Risk to Veterans and Veterans Services Act
383	H.R. 4617	116th Congress (2019-2020)	SHIELD Act
384	H.R. 4625	116th Congress (2019-2020)	Protect the GI Bill Act
385	H.R. 4634	116th Congress (2019-2020)	Terrorism Risk Insurance Program Reauthorization Act of 2019
386	H.R. 4695	116th Congress (2019-2020)	Protect Against Conflict by Turkey Act
387	H.R. 4771	116th Congress (2019-2020)	VA Tele-Hearing Modernization Act
388	H.R. 4803	116th Congress (2019-2020)	Citizenship for Children of Military Members and Civil Servants Act
389	H.R. 4842	116th Congress (2019-2020)	Expositions Provide Opportunities Act of 2019
390	H.R. 4860	116th Congress (2019-2020)	Crowdfunding Amendments Act
391	H.R. 4863	116th Congress (2019-2020)	United States Export Finance Agency Act of 2019
392	H.R. 5084	116th Congress (2019-2020)	Improving Corporate Governance Through Diversity Act of 2019
393	H.R. 5277	116th Congress (2019-2020)	To amend section 442 of title 18, United States Code, to exempt certain interests in mutual funds, uni
394	H.J.Res. 1	116th Congress (2019-2020)	Making further continuing appropriations for the Department of Homeland Security for fiscal year 201
395	H.J.Res. 28	116th Congress (2019-2020)	Further Additional Continuing Appropriations Act, 2019
396	H.J.Res. 30	116th Congress (2019-2020)	Disapproving the President's proposal to take an action relating to the application of certain sanctions

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397	H.J.Res. 31	116th Congress (2019-2020)	Consolidated Appropriations Act, 2019
398	H.J.Res. 37	116th Congress (2019-2020)	Directing the removal of United States Armed Forces from hostilities in the Republic of Yemen that ha
399	H.J.Res. 46	116th Congress (2019-2020)	Relating to a national emergency declared by the President on February 15, 2019.
400	H.J.Res. 60	116th Congress (2019-2020)	Requesting the Secretary of the Interior to authorize unique and one-time arrangements for displays o
401	H.J.Res. 77	116th Congress (2019-2020)	Opposing the decision to end certain United States efforts to prevent Turkish military operations again
402	H.Con.Res. 116th Congress (2019-2020)		Regarding consent to assemble outside the seat of government.
403	H.Con.Res. 116th Congress (2019-2020)		Providing for a joint session of Congress to receive a message from the President.
404	H.Con.Res. 116th Congress (2019-2020)		Authorizing the use of the Capitol Grounds for the National Peace Officers Memorial Service and the N
405	H.Con.Res. 116th Congress (2019-2020)		Authorizing the use of the Capitol Grounds for the Greater Washington Soap Box Derby.
406	H.Con.Res. 116th Congress (2019-2020)		Directing the Secretary of the Senate to make a correction in the enrollment of the bill S. 47.
407	H.Con.Res. 116th Congress (2019-2020)		Expressing the sense of Congress that the report of Special Counsel Mueller should be made available
408	H.Con.Res. 116th Congress (2019-2020)		Authorizing the use of Emancipation Hall for a ceremony as part of the commemoration of the days of
409	H.Con.Res. 116th Congress (2019-2020)		Expressing the sense of Congress regarding the execution-style murders of United States citizens Yili, A
410	H.Con.Res. 116th Congress (2019-2020)		Directing the Clerk of the House to make a correction in the enrollment of H.R. 2157.
411	H.Con.Res. 116th Congress (2019-2020)		Authorizing the use of Emancipation Hall for an event to commemorate the 400th anniversary of the a
412	H.Con.Res. 116th Congress (2019-2020)		Authorizing the use of Emancipation Hall for an event to commemorate the 400th anniversary of the a
413	H.Con.Res. 116th Congress (2019-2020)		Directing the Clerk of the House to make a correction in the enrollment of H.R. 2423.
414	H.Con.Res. 116th Congress (2019-2020)		Directing the Clerk of the House of Representatives to make a correction in the enrollment of H.R. 305
415	H.Res. 1	116th Congress (2019-2020)	Electing officers of the House of Representatives.
416	H.Res. 2	116th Congress (2019-2020)	To inform the Senate that a quorum of the House has assembled and of the election of the Speaker an
417	H.Res. 3	116th Congress (2019-2020)	Authorizing the Speaker to appoint a committee to notify the President of the assembly of the Congre
418	H.Res. 4	116th Congress (2019-2020)	Authorizing the Clerk to inform the President of the election of the Speaker and the Clerk.
419	H.Res. 5	116th Congress (2019-2020)	Providing for consideration of the resolution (H. Res. 6) adopting the Rules of the House of Representa
420	H.Res. 6	116th Congress (2019-2020)	Adopting the Rules of the House of Representatives for the One Hundred Sixteenth Congress, and for
421	H.Res. 7	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
422	H.Res. 8	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
423	H.Res. 9	116th Congress (2019-2020)	Providing for the designation of certain minority employees.
424	H.Res. 10	116th Congress (2019-2020)	Fixing the daily hour of meeting of the First Session of the One Hundred Sixteenth Congress.
425	H.Res. 22	116th Congress (2019-2020)	Authorizing the Speaker to administer the oath of office.
426	H.Res. 24	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
427	H.Res. 25	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
428	H.Res. 26	116th Congress (2019-2020)	Electing Members to a certain standing committee of the House of Representatives.
429	H.Res. 28	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 264) making appropriations for financial services and gene

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430	H. Res. 30	116th Congress (2019-2020)	Requiring each Member, officer, and employee of the House of Representatives to complete a program
431	H. Res. 31	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
432	H. Res. 32	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
433	H. Res. 41	116th Congress (2019-2020)	Rejecting White nationalism and White supremacy.
434	H. Res. 42	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
435	H. Res. 43	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 268) making supplemental appropriations for the fiscal year
436	H. Res. 46	116th Congress (2019-2020)	Electing Members to a certain standing committee of the House of Representatives.
437	H. Res. 52	116th Congress (2019-2020)	Providing for consideration of the joint resolution (H.J. Res. 28) making further continuing appropriati
438	H. Res. 57	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
439	H. Res. 61	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 648) making appropriations for the fiscal year ending Septe
440	H. Res. 67	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
441	H. Res. 68	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
442	H. Res. 73	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
443	H. Res. 74	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
444	H. Res. 77	116th Congress (2019-2020)	Expressing the sense of Congress that financial institutions and other entities should work proactively
445	H. Res. 80	116th Congress (2019-2020)	Ranking certain Members of certain standing committees of the House of Representatives.
446	H. Res. 85	116th Congress (2019-2020)	Electing Members to a certain standing committee of the House of Representatives and ranking Memb
447	H. Res. 86	116th Congress (2019-2020)	Providing amounts for the expenses of the Select Committee on the Climate Crisis and the Select Com
448	H. Res. 87	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 790) to provide for a pay increase in 2019 for certain civilia
449	H. Res. 103	116th Congress (2019-2020)	Electing Members to a certain standing committee of the House of Representatives.
450	H. Res. 105	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 840) to amend title 38, United States Code, to direct the Se
451	H. Res. 106	116th Congress (2019-2020)	Denouncing female genital mutilation/cutting as a violation of the human rights of women and girls an
452	H. Res. 107	116th Congress (2019-2020)	SFC Sean Cooley and SPC Christopher Horton Congressional Gold Star Family Fellowship Program Act
453	H. Res. 113	116th Congress (2019-2020)	Electing Members to a certain standing committee of the House of Representatives.
454	H. Res. 120	116th Congress (2019-2020)	Honoring the life, achievements, and distinguished public service of John David Dingell, Jr., and expres
455	H. Res. 121	116th Congress (2019-2020)	Expressing the profound sorrow of the House of Representatives on the death of the Honorable Walte
456	H. Res. 122	116th Congress (2019-2020)	Providing for consideration of the joint resolution (H.J. Res. 37) directing the removal of United States
457	H. Res. 124	116th Congress (2019-2020)	Expressing opposition to banning service in the Armed Forces by openly transgender individuals.
458	H. Res. 125	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives and ranking Memb
459	H. Res. 127	116th Congress (2019-2020)	Expressing the sense of the House of Representatives on the importance and vitality of the United Sta
460	H. Res. 129	116th Congress (2019-2020)	Condemning the Government of Saudi Arabia's continued detention and alleged abuse of women's rig
461	H. Res. 131	116th Congress (2019-2020)	Providing for consideration of the conference report to accompany the joint resolution (H.J. Res. 31) n
462	H. Res. 143	116th Congress (2019-2020)	Electing the Clerk of the House of Representatives.

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463	H.Res. 144	116th Congress (2019-2020)	Providing for consideration of the joint resolution (H.J. Res. 46) relating to a national emergency decla
464	H.Res. 145	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 8) to require a background check for every firearm sale, an
465	H.Res. 148	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
466	H.Res. 156	116th Congress (2019-2020)	Calling for accountability and justice for the assassination of Boris Nemtsov.
467	H.Res. 172	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 1) to expand Americans' access to the ballot box, reduce th
468	H.Res. 183	116th Congress (2019-2020)	Condemning anti-Semitism as hateful expressions of intolerance that are contradictory to the values a
469	H.Res. 206	116th Congress (2019-2020)	Acknowledging that the lack of sunlight and transparency in financial transactions poses a threat to ou
470	H.Res. 208	116th Congress (2019-2020)	Providing for consideration of the concurrent resolution (H. Con. Res. 24) expressing the sense of Cong
471	H.Res. 226	116th Congress (2019-2020)	Electing Members to the Joint Committee of Congress on the Library and the Joint Committee on Print
472	H.Res. 245	116th Congress (2019-2020)	Providing for the expenses of certain committees of the House of Representatives in the One Hundred
473	H.Res. 246	116th Congress (2019-2020)	Opposing efforts to delegitimize the State of Israel and the Global Boycott, Divestment, and Sanctions
474	H.Res. 252	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 7) to amend the Fair Labor Standards Act of 1938 to provid
475	H.Res. 264	116th Congress (2019-2020)	Electing Members to a certain standing committee of the House of Representatives.
476	H.Res. 271	116th Congress (2019-2020)	Condemning the Trump Administration's Legal Campaign to Take Away Americans' Health Care.
477	H.Res. 273	116th Congress (2019-2020)	Reaffirming the United States commitment to Taiwan and to the implementation of the Taiwan Relati
478	H.Res. 274	116th Congress (2019-2020)	Providing for consideration of the joint resolution (S.J. Res. 7) to direct the removal of United States A
479	H.Res. 281	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 1585) to reauthorize the Violence Against Women Act of 1
480	H.Res. 293	116th Congress (2019-2020)	Providing for budget enforcement for fiscal year 2020.
481	H.Res. 294	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 1644) to restore the open internet order of the Federal Co
482	H.Res. 296	116th Congress (2019-2020)	Affirming the United States record on the Armenian Genocide.
483	H.Res. 327	116th Congress (2019-2020)	Encouraging greater public-private sector collaboration to promote financial literacy for students and
484	H.Res. 328	116th Congress (2019-2020)	Supporting the protection of elders through financial literacy.
485	H.Res. 329	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 9) to direct the President to develop a plan for the United S
486	H.Res. 345	116th Congress (2019-2020)	Responding to widening threats to freedoms of the press and expression around the world, reaffirming
487	H.Res. 354	116th Congress (2019-2020)	Celebrating the 100th anniversary of the passage and ratification of the 19th Amendment, providing fo
488	H.Res. 357	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 986) to provide that certain guidance related to waivers fo
489	H.Res. 358	116th Congress (2019-2020)	Calling on the Government of Cameroon and armed groups to respect the human rights of all Camero
490	H.Res. 372	116th Congress (2019-2020)	Expressing concern for the United States-Turkey alliance.
491	H.Res. 377	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 5) to prohibit discrimination on the basis of sex, gender ide
492	H.Res. 389	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 1500) to require the Consumer Financial Protection Bureau
493	H.Res. 393	116th Congress (2019-2020)	Remembering the victims of the violent suppression of democracy protests in Tiananmen Square and
494	H.Res. 413	116th Congress (2019-2020)	Expressing the immense gratitude of the House of Representatives for the acts of heroism, valor, and
495	H.Res. 415	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 6) to authorize the cancellation of removal and adjustment

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496	H.Res. 420	116th Congress (2019-2020)	Permitting official photographs of the House of Representatives to be taken while the House is in act
497	H.Res. 430	116th Congress (2019-2020)	Authorizing the Committee on the Judiciary to initiate or intervene in judicial proceedings to enforce c
498	H.Res. 431	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 2740) making appropriations for the Departments of Labor
499	H.Res. 432	116th Congress (2019-2020)	Condemning the attacks on peaceful protesters and supporting an immediate peaceful transition to a
500	H.Res. 436	116th Congress (2019-2020)	Providing for further consideration of the bill (H.R. 2740) making appropriations for the Departments o
501	H.Res. 441	116th Congress (2019-2020)	A resolution condemning the attack on the AMIA Jewish Community Center in Buenos Aires, Argentina
502	H.Res. 444	116th Congress (2019-2020)	Reaffirming the importance of the United States to promote the safety, health, and well-being of refug
503	H.Res. 445	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 3055) making appropriations for the Departments of Comm
504	H.Res. 456	116th Congress (2019-2020)	Emphasizing the importance of grassroots investor protection and the investor education missions of t
505	H.Res. 460	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 2722) to protect elections for public office by providing fina
506	H.Res. 462	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 3401) making emergency supplemental appropriations for
507	H.Res. 466	116th Congress (2019-2020)	Providing for consideration of the Senate amendment to the bill (H.R. 3401) making emergency suppl
508	H.Res. 476	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 2500) to authorize appropriations for fiscal year 2020 for n
509	H.Res. 481	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
510	H.Res. 489	116th Congress (2019-2020)	Condemning President Trump's racist comments directed at Members of Congress.
511	H.Res. 491	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 3494) to authorize appropriations for fiscal year 2020 for in
512	H.Res. 492	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 582) to provide for increases in the Federal minimum wage
513	H.Res. 497	116th Congress (2019-2020)	Recommending that the House of Representatives find William P. Barr, Attorney General of the United
514	H.Res. 507	116th Congress (2019-2020)	Affirming the validity of subpoenas duly issued and investigations undertaken by any standing or perm
515	H.Res. 509	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 397) to amend the Internal Revenue Code of 1986 to creat
516	H.Res. 516	116th Congress (2019-2020)	Electing a Member to a certain standing committee of the House of Representatives.
517	H.Res. 517	116th Congress (2019-2020)	Supporting the Global Fund to fight AIDS, tuberculosis (TB), malaria, and its Sixth Replenishment.
518	H.Res. 519	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 3877) to amend the Balanced Budget and Emergency Defic
519	H.Res. 521	116th Congress (2019-2020)	Commending the Government of Canada for upholding the rule of law and expressing concern over ac
520	H.Res. 543	116th Congress (2019-2020)	Stand with Hong Kong Resolution
521	H.Res. 546	116th Congress (2019-2020)	Disapproving the Russian Federation's inclusion in future Group of Seven summits until it respects the
522	H.Res. 548	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 205) to amend the Gulf of Mexico Energy Security Act of 20
523	H.Res. 552	116th Congress (2019-2020)	Calling on the Government of the Russian Federation to provide evidence of wrongdoing or to release
524	H.Res. 553	116th Congress (2019-2020)	Directing the Clerk of the House of Representatives to provide a copy of the on-the-record portions of
525	H.Res. 558	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 1423) to amend title 9 of the United States Code with resp
526	H.Res. 564	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 4378) making continuing appropriations for fiscal year 202
527	H.Res. 576	116th Congress (2019-2020)	Expressing the sense of the House of Representatives with respect to the whistleblower complaint of
528	H.Res. 577	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 2203) to increase transparency, accountability, and commu

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529	H.Res. 585	116th Congress (2019-2020)	Reaffirming support for the Good Friday Agreement and other agreements to ensure a lasting peace in
530	H.Res. 591	116th Congress (2019-2020)	Providing for consideration of the joint resolution (S.J. Res. 54) relating to a national emergency declar
531	H.Res. 596	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives.
532	H.Res. 629	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 1815) to require the Securities and Exchange Commission,
533	H.Res. 635	116th Congress (2019-2020)	Expressing the profound sorrow of the House of Representatives on the death of the Honorable Elijah
534	H.Res. 646	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 2513) to ensure that persons who form corporations or lim
535	H.Res. 650	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 4617) to amend the Federal Election Campaign Act of 1971
536	H.Res. 655	116th Congress (2019-2020)	Providing for consideration of the resolution (H. Res. 296) affirming the United States record on the Ar
537	H.Res. 656	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 823) to provide for the designation of certain wilderness ar
538	H.Res. 660	116th Congress (2019-2020)	Directing certain committees to continue their ongoing investigations as part of the existing House of
539	H.Res. 661	116th Congress (2019-2020)	Authorizing the Office of General Counsel of the House of Representatives to retain private counsel, et
540	H.Res. 693	116th Congress (2019-2020)	Authorizing the Director of the Office of Diversity and Inclusion and the Director of the Office of the W
541	H.Res. 695	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 4863) to promote the competitiveness of the United States
542	H.Res. 708	116th Congress (2019-2020)	Providing for consideration of the Senate amendment to the bill (H.R. 3055) making appropriations for
543	H.Res. 712	116th Congress (2019-2020)	Electing Members to certain standing committees of the House of Representatives and ranking Memb
544	H.Res. 713	116th Congress (2019-2020)	Providing for consideration of the bill (H.R. 1309) to direct the Secretary of Labor to issue an occupati
545	H.Res. 725	116th Congress (2019-2020)	Electing a certain Member to a certain standing committee of the House of Representatives.
546	S. 24	116th Congress (2019-2020)	Government Employee Fair Treatment Act of 2019
547	S. 47	116th Congress (2019-2020)	John D. Dingell, Jr. Conservation, Management, and Recreation Act
548	S. 49	116th Congress (2019-2020)	A bill to designate the outstation of the Department of Veterans Affairs in North Ogden, Utah, as the N
549	S. 163	116th Congress (2019-2020)	Alaska Remote Generator Reliability and Protection Act
550	S. 178	116th Congress (2019-2020)	Uyghur Human Rights Policy Act of 2019
551	S. 239	116th Congress (2019-2020)	Christa McAuliffe Commemorative Coin Act of 2019
552	S. 252	116th Congress (2019-2020)	A bill to authorize the honorary appointment of Robert J. Dole to the grade of colonel in the regular Ar
553	S. 483	116th Congress (2019-2020)	Pesticide Registration Improvement Extension Act of 2018
554	S. 504	116th Congress (2019-2020)	Let Everyone Get Involved in Opportunities for National Service Act
555	S. 693	116th Congress (2019-2020)	National POW/MIA Flag Act
556	S. 725	116th Congress (2019-2020)	A bill to change the address of the postal facility designated in honor of Captain Humayun Khan.
557	S. 744	116th Congress (2019-2020)	Effective Prosecution of Possession of Biological Toxins and Agents Act of 2019
558	S. 862	116th Congress (2019-2020)	Rebuilding Small Businesses After Disasters Act
559	S. 863	116th Congress (2019-2020)	A bill to amend title 38, United States Code, to clarify the grade and pay of podiatrists of the Departme
560	S. 998	116th Congress (2019-2020)	Supporting and Treating Officers in Crisis Act of 2019
561	S. 1196	116th Congress (2019-2020)	A bill to designate the facility of the United States Postal Service located at 1715 Linnerud Drive in Sun

	A	C	E
562	S. 1379	116th Congress (2019-2020)	Pandemic and All-Hazards Preparedness and Advancing Innovation Act of 2019
563	S. 1436	116th Congress (2019-2020)	A bill to make technical corrections to the computation of average pay under Public Law 110-279.
564	S. 1689	116th Congress (2019-2020)	A bill to permit States to transfer certain funds from the clean water revolving fund of a State to the d
565	S. 1693	116th Congress (2019-2020)	National Flood Insurance Program Extension Act of 2019
566	S. 1749	116th Congress (2019-2020)	Protecting Affordable Mortgages for Veterans Act of 2019
567	S. 1790	116th Congress (2019-2020)	National Defense Authorization Act for Fiscal Year 2020
568	S. 1838	116th Congress (2019-2020)	Hong Kong Human Rights and Democracy Act of 2019
569	S. 2047	116th Congress (2019-2020)	A bill to provide for a 2-week extension of the Medicaid community mental health services demonstra
570	S. 2249	116th Congress (2019-2020)	A bill to allow the Deputy Administrator of the Federal Aviation Administration on the date of enactme
571	S. 2710	116th Congress (2019-2020)	A bill to prohibit the commercial export of covered munitions items to the Hong Kong Police Force.
572	S.J.Res. 7	116th Congress (2019-2020)	A joint resolution to direct the removal of United States Armed Forces from hostilities in the Republic
573	S.J.Res. 36	116th Congress (2019-2020)	A joint resolution providing for congressional disapproval of the proposed transfer to the Kingdom of S
574	S.J.Res. 37	116th Congress (2019-2020)	A joint resolution providing for congressional disapproval of the proposed export to the United Arab E
575	S.J.Res. 38	116th Congress (2019-2020)	A joint resolution providing for congressional disapproval of the proposed export to the Kingdom of Sa
576	S.J.Res. 54	116th Congress (2019-2020)	A joint resolution relating to a national emergency declared by the President on February 15, 2019.
577	S.Con.Res.	116th Congress (2019-2020)	A concurrent resolution providing for a correction in the enrollment of H.J. Res. 31.
578	S.Con.Res.	116th Congress (2019-2020)	A concurrent resolution authorizing the printing of a commemorative document in memory of the late
579	S.Con.Res.	116th Congress (2019-2020)	A concurrent resolution authorizing the printing of the 26th edition of the pocket version of the Const
580	S.Con.Res.	116th Congress (2019-2020)	A concurrent resolution authorizing the use of Emancipation Hall in the Capitol Visitor Center for an ev
581	S.Con.Res.	116th Congress (2019-2020)	A concurrent resolution providing for the use of the catafalque situated in the Exhibition Hall of the Ca

Chairman NADLER. Mr. Biggs is recognized for a unanimous consent request.

Mr. BIGGS. Yes, Mr. Chairman, I seek unanimous consent for a packet of 54 documents and items which have previously been submitted.

Chairman NADLER. Without objection, the documents will be entered into the record.

[The information follows:]

MR. BIGGS FOR THE OFFICIAL RECORD

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PRESIDENTIAL TRANSITION

Ukrainian efforts to sabotage Trump backfire

Kiev officials are scrambling to make amends with the president-elect after quietly working to boost Clinton.

By KENNETH P. VOGEL and DAVID STERN | 01/11/2017 05:05 AM EST



President Petro Poroshenko's administration, along with the Ukrainian Embassy in Washington, insists that Ukraine stayed neutral in the American presidential race. | Getty

Donald Trump wasn't the only presidential candidate whose campaign was boosted by officials of a former Soviet bloc country.

Ukrainian government officials tried to help Hillary Clinton and undermine Trump by publicly questioning his fitness for office. They also disseminated documents implicating a

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top Trump aide in corruption and suggested they were investigating the matter, only to back away after the election. And they helped Clinton's allies research damaging information on Trump and his advisers, a Politico investigation found.

A Ukrainian-American operative who was consulting for the Democratic National Committee met with top officials in the Ukrainian Embassy in Washington in an effort to expose ties between Trump, top campaign aide Paul Manafort and Russia, according to people with direct knowledge of the situation.

The Ukrainian efforts had an impact in the race, helping to force Manafort's resignation and advancing the narrative that Trump's campaign was deeply connected to Ukraine's foe to the east, Russia. But they were far less concerted or centrally directed than Russia's alleged hacking and dissemination of Democratic emails.

Russia's effort was personally directed by Russian President Vladimir Putin, involved the country's military and foreign intelligence services, according to U.S. intelligence officials. They reportedly briefed Trump last week on the possibility that Russian operatives might have compromising information on the president-elect. And at a Senate hearing last week on the hacking, Director of National Intelligence James Clapper said "I don't think we've ever encountered a more aggressive or direct campaign to interfere in our election process than we've seen in this case."

There's little evidence of such a top-down effort by Ukraine. Longtime observers suggest that the rampant corruption, factionalism and economic struggles plaguing the country — not to mention its ongoing strife with Russia — would render it unable to pull off an ambitious covert interference campaign in another country's election. And President Petro Poroshenko's administration, along with the Ukrainian Embassy in Washington, insists that Ukraine stayed neutral in the race.

CONGRESS

Lawmakers broach possible Trump campaign coordination with Russia

By AUSTIN WRIGHT and MARTIN MATISHAK

Yet Politico's investigation found evidence of Ukrainian government involvement in the race that appears to strain diplomatic protocol dictating that governments refrain from engaging in one another's elections.

Russia's meddling has sparked outrage from the American body politic. The U.S. intelligence community undertook the rare move of publicizing its findings on the matter, and President Barack Obama took several steps to officially retaliate, while members of Congress continue pushing for more investigations into the hacking and a harder line against Russia, which was already viewed in Washington as America's leading foreign adversary.

Ukraine, on the other hand, has traditionally enjoyed strong relations with U.S. administrations. Its officials worry that could change under Trump, whose team has privately expressed sentiments ranging from ambivalence to deep skepticism about Poroshenko's regime, while sounding unusually friendly notes about Putin's regime.

Poroshenko is scrambling to alter that dynamic, recently signing a \$50,000-a-month contract with a well-connected GOP-linked Washington lobbying firm to set up meetings with U.S. government officials "to strengthen U.S.-Ukrainian relations."

Revelations about Ukraine's anti-Trump efforts could further set back those efforts.

"Things seem to be going from bad to worse for Ukraine," said David A. Merkel, a senior fellow at the Atlantic Council who helped oversee U.S. relations with Russia and Ukraine while working in George W. Bush's State Department and National Security Council.

Merkel, who has served as an election observer in Ukrainian presidential elections dating back to 1993, noted there's some irony in Ukraine and Russia taking opposite sides in the 2016 presidential race, given that past Ukrainian elections were widely viewed in Washington's foreign policy community as proxy wars between the U.S. and Russia.

"Now, it seems that a U.S. election may have been seen as a surrogate battle by those in Kiev and Moscow," Merkel said.

...

The Ukrainian antipathy for Trump's team — and alignment with Clinton's — can be traced back to late 2013. That's when the country's president, Viktor Yanukovych, whom Manafort had been advising, abruptly backed out of a European Union pact linked to anti-corruption reforms. Instead, Yanukovych entered into a multibillion-dollar bailout agreement with Russia, sparking protests across Ukraine and prompting Yanukovych to flee the country to Russia under Putin's protection.

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In the ensuing crisis, Russian troops moved into the Ukrainian territory of Crimea, and Manafort dropped off the radar.

Manafort's work for Yanukovych caught the attention of a veteran Democratic operative named Alexandra Chalupa, who had worked in the White House Office of Public Liaison during the Clinton administration. Chalupa went on to work as a staffer, then as a consultant, for Democratic National Committee. The DNC paid her \$412,000 from 2004 to June 2016, according to Federal Election Commission records, though she also was paid by other clients during that time, including Democratic campaigns and the DNC's arm for engaging expatriate Democrats around the world.

A daughter of Ukrainian immigrants who maintains strong ties to the Ukrainian-American diaspora and the U.S. Embassy in Ukraine, Chalupa, a lawyer by training, in 2014 was doing pro bono work for another client interested in the Ukrainian crisis and began researching Manafort's role in Yanukovych's rise, as well as his ties to the pro-Russian oligarchs who funded Yanukovych's political party.

In an interview this month, Chalupa told Politico she had developed a network of sources in Kiev and Washington, including investigative journalists, government officials and private intelligence operatives. While her consulting work at the DNC this past election cycle centered on mobilizing ethnic communities — including Ukrainian-Americans — she said that, when Trump's unlikely presidential campaign began surging in late 2015, she began focusing more on the research, and expanded it to include Trump's ties to Russia, as well.

She occasionally shared her findings with officials from the DNC and Clinton's campaign, Chalupa said. In January 2016 — months before Manafort had taken any role in Trump's campaign — Chalupa told a senior DNC official that, when it came to Trump's campaign, "I felt there was a Russia connection," Chalupa recalled. "And that, if there was, that we can expect Paul Manafort to be involved in this election," said Chalupa, who at the time also was warning leaders in the Ukrainian-American community that Manafort was "Putin's political brain for manipulating U.S. foreign policy and elections."

PRESIDENTIAL TRANSITION

Trump confronts firestorm over Russia allegations

By ELI STOKOLS, SHANE GOLDMACHER, JOSH DAWSEY and MICHAEL CROWLEY

She said she shared her concern with Ukraine's ambassador to the U.S., Valeriy Chaly, and one of his top aides, Oksana Shulyar, during a March 2016 meeting at the Ukrainian

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Embassy. According to someone briefed on the meeting, Chaly said that Manafort was very much on his radar, but that he wasn't particularly concerned about the operative's ties to Trump since he didn't believe Trump stood much of a chance of winning the GOP nomination, let alone the presidency.

That was not an uncommon view at the time, and, perhaps as a result, Trump's ties to Russia — let alone Manafort's — were not the subject of much attention.

That all started to change just four days after Chalupa's meeting at the embassy, when it was reported that Trump had in fact hired Manafort, suggesting that Chalupa may have been on to something. She quickly found herself in high demand. The day after Manafort's hiring was revealed, she briefed the DNC's communications staff on Manafort, Trump and their ties to Russia, according to an operative familiar with the situation.

A former DNC staffer described the exchange as an "informal conversation," saying "briefing" makes it sound way too formal," and adding, "We were not directing or driving her work on this." Yet, the former DNC staffer and the operative familiar with the situation agreed that with the DNC's encouragement, Chalupa asked embassy staff to try to arrange an interview in which Poroshenko might discuss Manafort's ties to Yanukovich.

While the embassy declined that request, officials there became "helpful" in Chalupa's efforts, she said, explaining that she traded information and leads with them. "If I asked a question, they would provide guidance, or if there was someone I needed to follow up with." But she stressed, "There were no documents given, nothing like that."

Chalupa said the embassy also worked directly with reporters researching Trump, Manafort and Russia to point them in the right directions. She added, though, "they were being very protective and not speaking to the press as much as they should have. I think they were being careful because their situation was that they had to be very, very careful because they could not pick sides. It's a political issue, and they didn't want to get involved politically because they couldn't."

Shulyar vehemently denied working with reporters or with Chalupa on anything related to Trump or Manafort, explaining "we were stormed by many reporters to comment on this subject, but our clear and adamant position was not to give any comment [and] not to interfere into the campaign affairs."

Both Shulyar and Chalupa said the purpose of their initial meeting was to organize a June reception at the embassy to promote Ukraine. According to the embassy's website, the event highlighted female Ukrainian leaders, featuring speeches by Ukrainian

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parliamentarian Hanna Hopko, who discussed "Ukraine's fight against the Russian aggression in Donbas," and longtime Hillary Clinton confidante Melanne Vermeer, who worked for Clinton in the State Department and was a vocal surrogate during the presidential campaign.

Shulyar said her work with Chalupa "didn't involve the campaign," and she specifically stressed that "We have never worked to research and disseminate damaging information about Donald Trump and Paul Manafort."

But Andrii Telizhenko, who worked as a political officer in the Ukrainian Embassy under Shulyar, said she instructed him to help Chalupa research connections between Trump, Manafort and Russia. "Oksana said that if I had any information, or knew other people who did, then I should contact Chalupa," recalled Telizhenko, who is now a political consultant in Kiev. "They were coordinating an investigation with the Hillary team on Paul Manafort with Alexandra Chalupa," he said, adding "Oksana was keeping it all quiet," but "the embassy worked very closely with" Chalupa.

In fact, sources familiar with the effort say that Shulyar specifically called Telizhenko into a meeting with Chalupa to provide an update on an American media outlet's ongoing investigation into Manafort.

Telizhenko recalled that Chalupa told him and Shulyar that, "If we can get enough information on Paul [Manafort] or Trump's involvement with Russia, she can get a hearing in Congress by September."

Chalupa confirmed that, a week after Manafort's hiring was announced, she discussed the possibility of a congressional investigation with a foreign policy legislative assistant in the office of Rep. Marcy Kaptur (D-Ohio), who co-chairs the Congressional Ukrainian Caucus. But, Chalupa said, "It didn't go anywhere."

Asked about the effort, the Kaptur legislative assistant called it a "touchy subject" in an internal email to colleagues that was accidentally forwarded to Politico.

Kaptur's office later emailed an official statement explaining that the lawmaker is backing a bill to create an independent commission to investigate "possible outside interference in our elections." The office added "at this time, the evidence related to this matter points to Russia, but Congresswoman Kaptur is concerned with any evidence of foreign entities interfering in our elections."

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Almost as quickly as Chalupa's efforts attracted the attention of the Ukrainian Embassy and Democrats, she also found herself the subject of some unwanted attention from overseas.

Within a few weeks of her initial meeting at the embassy with Shulyar and Chaly, Chalupa on April 20 received the first of what became a series of messages from the administrators of her private Yahoo email account, warning her that "state-sponsored actors" were trying to hack into her emails.

She kept up her crusade, appearing on a panel a week after the initial hacking message to discuss her research on Manafort with a group of Ukrainian investigative journalists gathered at the Library of Congress for a program sponsored by a U.S. congressional agency called the Open World Leadership Center.

Center spokeswoman Maura Shelden stressed that her group is nonpartisan and ensures "that our delegations hear from both sides of the aisle, receiving bipartisan information." She said the Ukrainian journalists in subsequent days met with Republican officials in North Carolina and elsewhere. And she said that, before the Library of Congress event, "Open World's program manager for Ukraine did contact Chalupa to advise her that Open World is a nonpartisan agency of the Congress."

Chalupa, though, indicated in an email that was later hacked and released by WikiLeaks that the Open World Leadership Center "put me on the program to speak specifically about Paul Manafort."

Republicans pile on Russia for hacking, get details on GOP targets

By MARTIN MATISHAK and AUSTIN WRIGHT

In the email, which was sent in early May to then-DNC communications director Luis Miranda, Chalupa noted that she had extended an invitation to the Library of Congress forum to veteran Washington investigative reporter Michael Isikoff. Two days before the event, he had published a story for Yahoo News revealing the unraveling of a \$26 million deal between Manafort and a Russian oligarch related to a telecommunications venture in Ukraine. And Chalupa wrote in the email she'd been "working with for the past few weeks" with Isikoff "and connected him to the Ukrainians" at the event.

Isikoff, who accompanied Chalupa to a reception at the Ukrainian Embassy immediately after the Library of Congress event, declined to comment.

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Chalupa further indicated in her hacked May email to the DNC that she had additional sensitive information about Manafort that she intended to share "offline" with Miranda and DNC research director Lauren Dillon, including "a big Trump component you and Lauren need to be aware of that will hit in next few weeks and something I'm working on you should be aware of." Explaining that she didn't feel comfortable sharing the intel over email, Chalupa attached a screenshot of a warning from Yahoo administrators about "state-sponsored" hacking on her account, explaining, "Since I started digging into Manafort these messages have been a daily occurrence on my yahoo account despite changing my password often."

Dillon and Miranda declined to comment.

A DNC official stressed that Chalupa was a consultant paid to do outreach for the party's political department, not a researcher. She undertook her investigations into Trump, Manafort and Russia on her own, and the party did not incorporate her findings in its dossiers on the subjects, the official said, stressing that the DNC had been building robust research books on Trump and his ties to Russia long before Chalupa began sounding alarms.

Nonetheless, Chalupa's hacked email reportedly escalated concerns among top party officials, hardening their conclusion that Russia likely was behind the cyber intrusions with which the party was only then beginning to grapple.

Chalupa left the DNC after the Democratic convention in late July to focus fulltime on her research into Manafort, Trump and Russia. She said she provided off-the-record information and guidance to "a lot of journalists" working on stories related to Manafort and Trump's Russia connections, despite what she described as escalating harassment.

About a month-and-a-half after Chalupa first started receiving hacking alerts, someone broke into her car outside the Northwest Washington home where she lives with her husband and three young daughters, she said. They "rampaged it, basically, but didn't take anything valuable — left money, sunglasses, \$1,200 worth of golf clubs," she said, explaining she didn't file a police report after that incident because she didn't connect it to her research and the hacking.

But by the time a similar vehicle break-in occurred involving two family cars, she was convinced that it was a Russia-linked intimidation campaign. The police report on the latter break-in noted that "both vehicles were unlocked by an unknown person and the

interior was ransacked, with papers and the garage openers scattered throughout the cars. Nothing was taken from the vehicles.”

Then, early in the morning on another day, a woman “wearing white flowers in her hair” tried to break into her family’s home at 1:30 a.m., Chalupa said. Shulyar told Chalupa that the mysterious incident bore some of the hallmarks of intimidation campaigns used against foreigners in Russia, according to Chalupa.

“This is something that they do to U.S. diplomats, they do it to Ukrainians. Like, this is how they operate. They break into people’s homes. They harass people. They’re theatrical about it,” Chalupa said. “They must have seen when I was writing to the DNC staff, outlining who Manafort was, pulling articles, saying why it was significant, and painting the bigger picture.”

In a Yahoo News story naming Chalupa as one of 16 “ordinary people” who “shaped the 2016 election,” Isikoff wrote that after Chalupa left the DNC, FBI agents investigating the hacking questioned her and examined her laptop and smartphone.

Chalupa this month told Politico that, as her research and role in the election started becoming more public, she began receiving death threats, along with continued alerts of state-sponsored hacking. But she said, “None of this has scared me off.”

...

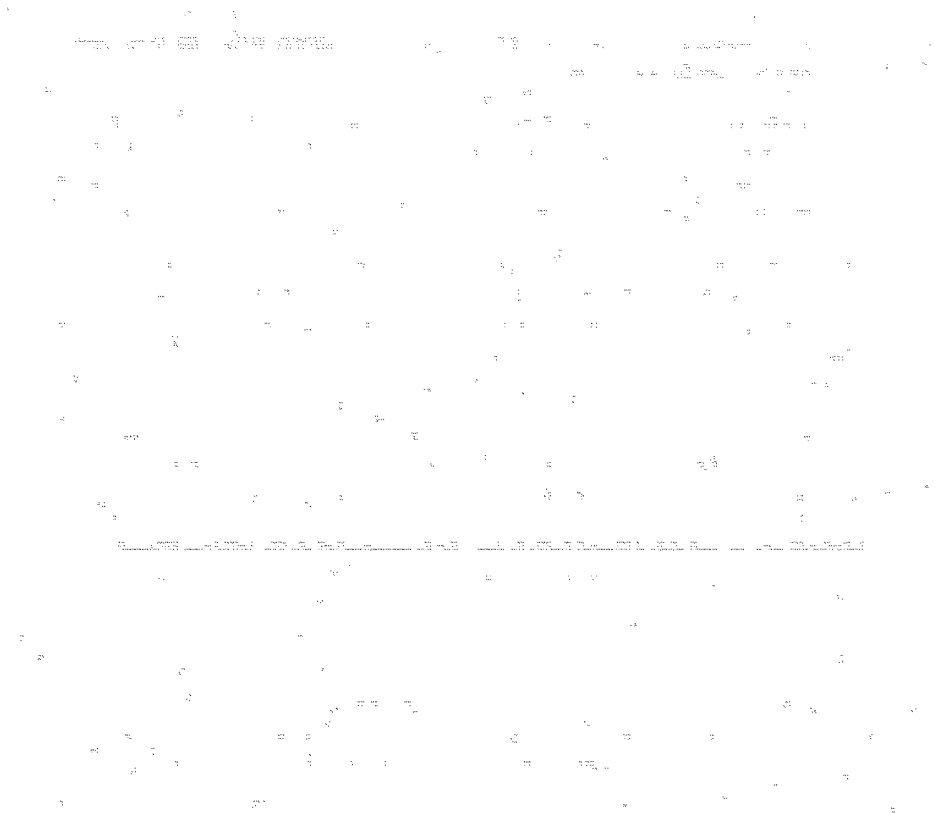
While it’s not uncommon for outside operatives to serve as intermediaries between governments and reporters, one of the more damaging Russia-related stories for the Trump campaign — and certainly for Manafort — can be traced more directly to the Ukrainian government.

Documents released by an independent Ukrainian government agency — and publicized by a parliamentarian — appeared to show \$12.7 million in cash payments that were earmarked for Manafort by the Russia-aligned party of the deposed former president, Yanukovich.

The New York Times, in the August story revealing the ledgers’ existence, reported that the payments earmarked for Manafort were “a focus” of an investigation by Ukrainian anti-corruption officials, while CNN reported days later that the FBI was pursuing an overlapping inquiry.

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One of the most damaging Russia-related stories during Donald Trump's campaign can be traced to the Ukrainian government. | AP Photo

Clinton's campaign seized on the story to advance Democrats' argument that Trump's campaign was closely linked to Russia. The ledger represented "more troubling connections between Donald Trump's team and pro-Kremlin elements in Ukraine," Robby Mook, Clinton's campaign manager, said in a statement. He demanded that Trump "disclose campaign chair Paul Manafort's and all other campaign employees' and advisers' ties to Russian or pro-Kremlin entities, including whether any of Trump's employees or advisers are currently representing and or being paid by them."

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A former Ukrainian investigative journalist and current parliamentarian named Serhiy Leshchenko, who was elected in 2014 as part of Poroshenko's party, held a news conference to highlight the ledgers, and to urge Ukrainian and American law enforcement to aggressively investigate Manafort.

"I believe and understand the basis of these payments are totally against the law — we have the proof from these books," Leshchenko said during the news conference, which attracted international media coverage. "If Mr. Manafort denies any allegations, I think he has to be interrogated into this case and prove his position that he was not involved in any misconduct on the territory of Ukraine," Leshchenko added.

Manafort denied receiving any off-books cash from Yanukovych's Party of Regions, and said that he had never been contacted about the ledger by Ukrainian or American investigators, later telling POLITICO "I was just caught in the crossfire."

According to a series of memos reportedly compiled for Trump's opponents by a former British intelligence agent, Yanukovych, in a secret meeting with Putin on the day after the *Times* published its report, admitted that he had authorized "substantial kickback payments to Manafort." But according to the report, which was published Tuesday by BuzzFeed but remains unverified, Yanukovych assured Putin "that there was no documentary trail left behind which could provide clear evidence of this" — an alleged statement that seemed to implicitly question the authenticity of the ledger.

2016

Inside the fall of Paul Manafort

By KENNETH P. VOGEL and MARC CAPUTO

The scrutiny around the ledgers — combined with that from other stories about his Ukraine work — proved too much, and he stepped down from the Trump campaign less than a week after the *Times* story.

At the time, Leshchenko suggested that his motivation was partly to undermine Trump. "For me, it was important to show not only the corruption aspect, but that he is [a] pro-Russian candidate who can break the geopolitical balance in the world," Leshchenko told the *Financial Times* about two weeks after his news conference. The newspaper noted that Trump's candidacy had spurred "Kiev's wider political leadership to do something they would never have attempted before: intervene, however indirectly, in a U.S. election," and the story quoted Leshchenko asserting that the majority of Ukraine's politicians are "on Hillary Clinton's side."

But by this month, Leshchenko was seeking to recast his motivation, telling Politico, “I didn’t care who won the U.S. elections. This was a decision for the American voters to decide.” His goal in highlighting the ledgers, he said was “to raise these issues on a political level and emphasize the importance of the investigation.”

In a series of answers provided to Politico, a spokesman for Poroshenko distanced his administration from both Leshchenko’s efforts and those of the agency that reLeshchenko Leshchenko leased the ledgers, The National Anti-Corruption Bureau of Ukraine. It was created in 2014 as a condition for Ukraine to receive aid from the U.S. and the European Union, and it signed an evidence-sharing agreement with the FBI in late June — less than a month and a half before it released the ledgers.

The bureau is “fully independent,” the Poroshenko spokesman said, adding that when it came to the presidential administration there was “no targeted action against Manafort.” He added “as to Serhiy Leshchenko, he positions himself as a representative of internal opposition in the Bloc of Petro Poroshenko’s faction, despite [the fact that] he belongs to the faction,” the spokesman said, adding, “it was about him personally who pushed [the anti-corruption bureau] to proceed with investigation on Manafort.”

But an operative who has worked extensively in Ukraine, including as an adviser to Poroshenko, said it was highly unlikely that either Leshchenko or the anti-corruption bureau would have pushed the issue without at least tacit approval from Poroshenko or his closest allies.

“It was something that Poroshenko was probably aware of and could have stopped if he wanted to,” said the operative.

And, almost immediately after Trump’s stunning victory over Clinton, questions began mounting about the investigations into the ledgers — and the ledgers themselves.

An official with the anti-corruption bureau told a Ukrainian newspaper, “Mr. Manafort does not have a role in this case.”

And, while the anti-corruption bureau told Politico late last month that a “general investigation [is] still ongoing” of the ledger, it said Manafort is not a target of the investigation. “As he is not the Ukrainian citizen, [the anti-corruption bureau] by the law couldn’t investigate him personally,” the bureau said in a statement.

Some Poroshenko critics have gone further, suggesting that the bureau is backing away from investigating because the ledgers might have been doctored or even forged.

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Valentyn Nalyvaichenko, a Ukrainian former diplomat who served as the country's head of security under Poroshenko but is now affiliated with a leading opponent of Poroshenko, said it was fishy that "only one part of the black ledger appeared." He asked, "Where is the handwriting analysis?" and said it was "crazy" to announce an investigation based on the ledgers. He met last month in Washington with Trump allies, and said, "of course they all recognize that our [anti-corruption bureau] intervened in the presidential campaign."

And in an interview this week, Manafort, who re-emerged as an informal advisor to Trump after Election Day, suggested that the ledgers were inauthentic and called their publication "a politically motivated false attack on me. My role as a paid consultant was public. There was nothing off the books, but the way that this was presented tried to make it look shady."

He added that he felt particularly wronged by efforts to cast his work in Ukraine as pro-Russian, arguing "all my efforts were focused on helping Ukraine move into Europe and the West." He specifically cited his work on denuclearizing the country and on the European Union trade and political pact that Yanukovich spurned before fleeing to Russia. "In no case was I ever involved in anything that would be contrary to U.S. interests," Manafort said.

Yet Russia seemed to come to the defense of Manafort and Trump last month, when a spokeswoman for Russia's Foreign Ministry charged that the Ukrainian government used the ledgers as a political weapon.

"Ukraine seriously complicated the work of Trump's election campaign headquarters by planting information according to which Paul Manafort, Trump's campaign chairman, allegedly accepted money from Ukrainian oligarchs," Maria Zakharova said at a news briefing, according to a transcript of her remarks posted on the Foreign Ministry's website. "All of you have heard this remarkable story," she told assembled reporters.

...

Beyond any efforts to sabotage Trump, Ukrainian officials didn't exactly extend a hand of friendship to the GOP nominee during the campaign.

The ambassador, Chaly, penned an op-ed for The Hill, in which he chastised Trump for a confusing series of statements in which the GOP candidate at one point expressed a willingness to consider recognizing Russia's annexation of the Ukrainian territory of Crimea as legitimate. The op-ed made some in the embassy uneasy, sources said.

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"That was like too close for comfort, even for them," said Chalupa. "That was something that was as risky as they were going to be."

Former Ukrainian Prime Minister Arseny Yatseniuk warned on Facebook that Trump had "challenged the very values of the free world."

Ukraine's minister of internal affairs, Arsen Avakov, piled on, trashing Trump on Twitter in July as a "clown" and asserting that Trump is "an even bigger danger to the US than terrorism."

Avakov, in a Facebook post, lashed out at Trump for his confusing Crimea comments, calling the assessment the "diagnosis of a dangerous misfit," according to a translated screenshot featured in one media report, though he later deleted the post. He called Trump "dangerous for Ukraine and the US" and noted that Manafort worked with Yanukovych when the former Ukrainian leader "fled to Russia through Crimea. Where would Manafort lead Trump?"

INVESTIGATIONS

Manafort's man in Kiev

By KENNETH P. VOGEL

The Trump-Ukraine relationship grew even more fraught in September with reports that the GOP nominee had snubbed Poroshenko on the sidelines of the United Nations General Assembly in New York, where the Ukrainian president tried to meet both major party candidates, but scored only a meeting with Clinton.

Telizhenko, the former embassy staffer, said that, during the primaries, Chaly, the country's ambassador in Washington, had actually instructed the embassy not to reach out to Trump's campaign, even as it was engaging with those of Clinton and Trump's leading GOP rival, Ted Cruz.

"We had an order not to talk to the Trump team, because he was critical of Ukraine and the government and his critical position on Crimea and the conflict," said Telizhenko. "I was yelled at when I proposed to talk to Trump," he said, adding, "The ambassador said not to get involved — Hillary is going to win."

This account was confirmed by Nalyvaichenko, the former diplomat and security chief now affiliated with a Poroshenko opponent, who said, "The Ukrainian authorities closed all doors and windows — this is from the Ukrainian side." He called the strategy "bad and short-sighted."

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Ukrainian efforts to sabotage Trump backfire - POLITICO

Andriy Artemenko, a Ukrainian parliamentarian associated with a conservative opposition party, did meet with Trump's team during the campaign and said he personally offered to set up similar meetings for Chaly but was rebuffed.

"It was clear that they were supporting Hillary Clinton's candidacy," Artemenko said. "They did everything from organizing meetings with the Clinton team, to publicly supporting her, to criticizing Trump. ... I think that they simply didn't meet because they thought that Hillary would win."

Shulyar rejected the characterizations that the embassy had a ban on interacting with Trump, instead explaining that it "had different diplomats assigned for dealing with different teams tailoring the content and messaging. So it was not an instruction to abstain from the engagement but rather an internal discipline for diplomats not to get involved into a field she or he was not assigned to, but where another colleague was involved."

And she pointed out that Chaly traveled to the GOP convention in Cleveland in late July and met with members of Trump's foreign policy team "to highlight the importance of Ukraine and the support of it by the U.S."

Despite the outreach, Trump's campaign in Cleveland gutted a proposed amendment to the Republican Party platform that called for the U.S. to provide "lethal defensive weapons" for Ukraine to defend itself against Russian incursion, backers of the measure charged.

The outreach ramped up after Trump's victory. Shulyar pointed out that Poroshenko was among the first foreign leaders to call to congratulate Trump. And she said that, since Election Day, Chaly has met with close Trump allies, including Sens. Jeff Sessions, Trump's nominee for attorney general, and Bob Corker, the chairman of the Senate Foreign Relations Committee, while the ambassador accompanied Ivanna Klympush-Tsintsadze, Ukraine's vice prime minister for European and Euro-Atlantic integration, to a round of Washington meetings with Rep. Tom Marino (R-Pa.), an early Trump backer, and Jim DeMint, president of The Heritage Foundation, which played a prominent role in Trump's transition.

Many Ukrainian officials and operatives and their American allies see Trump's inauguration this month as an existential threat to the country, made worse, they admit, by the dissemination of the secret ledger, the antagonistic social media posts and the perception that the embassy meddled against — or at least shut out — Trump.

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"It's really bad. The [Poroshenko] administration right now is trying to re-coordinate communications," said Telizhenko, adding, "The Trump organization doesn't want to talk to our administration at all."

During Nalyvaichenko's trip to Washington last month, he detected lingering ill will toward Ukraine from some, and lack of interest from others, he recalled. "Ukraine is not on the top of the list, not even the middle," he said.

Poroshenko's allies are scrambling to figure out how to build a relationship with Trump, who is known for harboring and prosecuting grudges for years.

A delegation of Ukrainian parliamentarians allied with Poroshenko last month traveled to Washington partly to try to make inroads with the Trump transition team, but they were unable to secure a meeting, according to a Washington foreign policy operative familiar with the trip. And operatives in Washington and Kiev say that after the election, Poroshenko met in Kiev with top executives from the Washington lobbying firm BGR — including Ed Rogers and Lester Munson — about how to navigate the Trump regime.

Ukrainians fall out of love with Europe

By DAVID STERN

Weeks later, BGR reported to the Department of Justice that the government of Ukraine would pay the firm \$50,000 a month to "provide strategic public relations and government affairs counsel," including "outreach to U.S. government officials, non-government organizations, members of the media and other individuals."

Firm spokesman Jeffrey Birnbaum suggested that "pro-Putin oligarchs" were already trying to sow doubts about BGR's work with Poroshenko. While the firm maintains close relationships with GOP congressional leaders, several of its principals were dismissive or sharply critical of Trump during the GOP primary, which could limit their effectiveness lobbying the new administration.

The Poroshenko regime's standing with Trump is considered so dire that the president's allies after the election actually reached out to make amends with — and even seek assistance from — Manafort, according to two operatives familiar with Ukraine's efforts to make inroads with Trump.

Meanwhile, Poroshenko's rivals are seeking to capitalize on his dicey relationship with Trump's team. Some are pressuring him to replace Chaly, a close ally of Poroshenko's who

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is being blamed by critics in Kiev and Washington for implementing — if not engineering — the country's anti-Trump efforts, according to Ukrainian and U.S. politicians and operatives interviewed for this story. They say that several potential Poroshenko opponents have been through Washington since the election seeking audiences of their own with Trump allies, though most have failed to do so.

“None of the Ukrainians have any access to Trump — they are all desperate to get it, and are willing to pay big for it,” said one American consultant whose company recently met in Washington with Yuriy Boyko, a former vice prime minister under Yanukovich. Boyko, who like Yanukovich has a pro-Russian worldview, is considering a presidential campaign of his own, and his representatives offered “to pay a shit-ton of money” to get access to Trump and his inaugural events, according to the consultant.

The consultant turned down the work, explaining, “It sounded shady, and we don't want to get in the middle of that kind of stuff.”

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Pro-Russia separatist soldiers celebrate in Lugansk, Ukraine, in 2014. | Spencer Platt/Getty Images

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Trump holds up Ukraine military aid meant to confront Russia - POLITICO

BUDGET & APPROPRIATIONS**Trump holds up Ukraine military aid meant to confront Russia**

By CAITLIN EMMA and CONNOR O'BRIEN | 08/28/2019 06:11 PM EDT | Updated 08/29/2019 03:40 PM EDT

The Trump administration is slow-walking \$250 million in military assistance to Ukraine, annoying lawmakers and advocates who argue the funding is critical to keeping Russia at bay.

President Donald Trump asked his national security team to review the funding program, known as the Ukraine Security Assistance Initiative, in order to ensure the money is being used in the best interest of the United States, a senior administration official told POLITICO on Wednesday.

But the delays come amid questions over Trump's approach to Russia, after a weekend in which the president repeatedly seemed to downplay Moscow's military intervention in Ukraine and pushed for Russia to be reinstated into the Group of Seven, an annual gathering of the world's largest advanced economies. The review is also occurring amid a broader internal debate over whether to halt or cut billions of dollars in foreign aid.

United States military aid to Ukraine has long been seen as a litmus test for how strongly the American government is pushing back against Moscow.

The Trump administration in 2017 approved lethal arms sales to Ukraine, taking a step the Obama administration had never done. The move was seen as a sign that Trump's government was taking a hard-line approach to a revanchist Vladimir Putin despite the president's public rhetoric flattering the Russian leader. Scaling back that assistance could expose Trump to allegations that his policies are favoring Moscow.

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For the 2019 fiscal year, lawmakers allocated \$250 million in security aid to Ukraine, including money for weapons, training, equipment and intelligence support. Specifically, Congress set aside \$50 million for weaponry.

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Now, that funding is being called into question. The senior administration official, who asked to remain anonymous in order to discuss internal matters, said the president wants to ensure U.S. interests are being prioritized when it comes to foreign assistance, and is seeking assurances that other countries are “paying their fair share.”

Defense Secretary Mark Esper and national security adviser John Bolton are among the officials who were asked to review the Ukraine security funding.

A senior Defense Department official told POLITICO that “the department has reviewed the foreign assistance package and supports it.”

But the White House explanation that Trump wants to ensure the money is being spent properly isn’t sitting well with lawmakers on Capitol Hill, where members of both parties have pushed to increase military assistance to Ukraine and U.S. military efforts to deter Russia in Eastern Europe.

There is “an at least temporary effect,” said Rep. Tom Malinowski, a New Jersey Democrat who sits on the House Foreign Affairs Committee. “The bigger problem is that Trump is once again showing himself to be an asset to Russia.”

Sen. Bob Menendez (D-N.J.), the ranking Democrat on the Senate Foreign Relations Committee, vowed that the administration’s move “will be met with fierce opposition in Congress.”

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"Enough is enough," he said in a statement. "President Trump should stop worrying about disappointing Vladimir Putin and stand up for U.S. national security priorities."

The funds for Ukraine can't be spent while they're under review and the money expires at the Sept. 30 end of the fiscal year. The account was originally created by defense policy legislation enacted in late 2015 to help Ukraine battle pro-Russian separatists in Crimea after Moscow annexed the region in 2014.

"We are aware of an [Office of Management and Budget] hold on funding for the Ukraine Security Assistance Initiative," House Appropriations Committee spokesperson Evan Hollander said in a statement. "We have serious concerns about a freeze on these important appropriated funds, and we are urgently inquiring with the administration about why they are holding up these resources."

The House Armed Services Committee "is aware of the restriction, but have requested additional information about what it means and is applied to," an aide told POLITICO.

In a POLITICO op-ed in April, Senate Armed Services Chairman Jim Inhofe (R-Okla.) called for boosting funding for the Ukraine Security Assistance Initiative and argued that a bigger portion of the money "should go to support defensive lethal aid that will make Ukraine a more difficult target for Putin's aggression."

Trump is scheduled to meet this weekend in Warsaw, Poland, with Ukrainian President Volodymyr Zelensky.

The Trump administration's broader push to freeze or slash foreign aid that White House officials contend is wasteful has sparked intense bipartisan backlash, with lawmakers warning of a deteriorating relationship with the White House when it comes to the use of appropriated funds.

The administration dropped a plan last week amid congressional fury that would have cut more than \$4 billion across 10 areas of foreign assistance, including funds for international peacekeeping operations, narcotics control and global health efforts. The administration also backed off a similar plan last year.

Rep. Hal Rogers (R-Ky.), ranking member of the House Committee that oversees funding for the State Department, and Sen. Lindsey Graham (R-S.C.), a member of the Senate Foreign Relations and Appropriations committees, both warned Trump against the package of funding cuts.

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Top Republicans and Democrats on the House Foreign Affairs Committee and Senate Foreign Relations Committee also sounded the alarm.

Daniel Fried, a career diplomat who has served in both Republican and Democratic administrations and was most recently the State Department coordinator for sanctions policy, said the review sends the wrong message to a Democratic ally under intense pressure from Moscow's aggressive behavior.

"If the Administration has a good reason for a sudden cut to security assistance to Ukraine, they should share it," Fried told POLITICO. "Ukraine's new leaders, in office through free and fair elections, have earned and deserve America's support, not mixed signals."

Trump has also withheld hundreds of millions of dollars in aid to Central America and sought to shuffle around federal funds in order to bolster Trump's immigration enforcement priorities.

For example, the administration plans to divert \$271 million from various Department of Homeland Security accounts — including \$155 million in federal disaster aid — to beef up funding for its immigration enforcement effort.

"It is of great concern that during the course of this administration, there has been a growing disconnect between the will of Congress ... and the department's immigration enforcement proceedings, which often lack justification," Rep. Lucille Roybal-Allard (D-Calif.), who chairs the House subcommittee that funds DHS, said in a recent letter to acting Homeland Security Secretary Kevin McAleenan.

In a statement on Wednesday, a FEMA spokesperson said the move won't affect long-term recovery efforts underway in states and territories ravaged by hurricanes, wildfires and flooding.

Natasha Bertrand contributed to this report.

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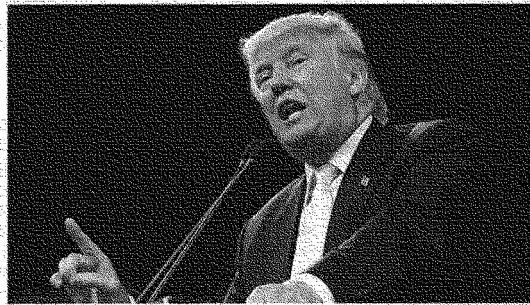
**Trump knocks DACA
recipients, Obama as**

Ukraine's ambassador: Trump's comments send wrong message to world

BY AMS, VALERIY CHALY, CONTRIBUTOR - 08/04/16 01:30 PM EDT

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The U.S. presidential race has captured attention of the world, sometimes posing serious challenges for foreign diplomats when they find their country in the campaign's spotlight. Ukraine, which came to the world's attention two years with its Revolution of Dignity and then worked to remain on the world's radar after Russian aggression, has found itself in the spotlight once again.

Recent comments by Republican nominee Donald Trump about the Ukrainian peninsula of Crimea — occupied by Russia since March 2014 — have raised serious concerns in Kyiv and beyond Ukraine. Many in Ukraine are unsure what to think, since Trump's comments stand in sharp contrast to the Republican party platform. Since the Russian aggression, there has been bipartisan support for U.S. sanctions against Russia, and for such sanctions to remain in place until the territorial integrity of Ukraine is restored. Efforts to enhance Ukraine's defense capacity are supported across the aisle, as well, to ensure that Ukraine becomes strong enough to deter Russia's aggression.

Even if Trump's comments are only speculative, and do not really reflect a future foreign policy, they call for appeasement of an aggressor and support the violation of a sovereign country's territorial integrity and another's breach of international law. In the eyes of the world, such comments seem alien to a country seen by partners as a strong defender of democracy and international order. The United States was among the

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ADMINISTRATION -- 1H 7M AGO

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100 nations which supported the U.N. resolution "Territorial integrity of Ukraine" not recognizing Russia's attempt to annex Crimea.

A candidate for the presidency in any country ought to realize the challenges he or she will face to ensure consistency in foreign policy and uphold his or her country's international commitments. Ukraine — a strategic partner of the United States — entered the 1994 Budapest multilateral commitment, giving away the world's third largest nuclear arsenal in return for security assurances to its territorial integrity from three nuclear powers: the United States, the United Kingdom and Russia.

This commitment has been broken by one signatory country, which attempted to annex Crimea and invaded Ukraine's Donbas region. While Ukraine was recovering from the bloodshed in Maidan orchestrated by then-President Viktor Yanukovich, Russia seized control over Crimea's Supreme Council and its security infrastructure. The sham referendum carried out at a gunpoint had nothing to do with a free and fair expression of the people's will and ignored the choice of the indigenous people of Crimea, the Crimean Tatars.

Russia has unleashed its repressive machine against those who protest against the occupation. Censorship, arrests, assassinations, abductions, the banning of the Crimean Tatars' representative body — the Mejlis — all threaten another tragedy and ethnic cleansing.

The attempted annexation of Crimea has also posed new threats to nuclear safety. International institutions like the U.N. and the International Atomic Energy Agency (IAEA) do not recognize the annexation and, from a jurisdictional standpoint, cannot control nuclear facilities and radiation security in those areas. Moreover, Russia has already threatened to deploy nuclear weapons in Crimea in direct vicinity of NATO and EU states. Russia is restoring Soviet-era nuclear storage facilities and has already deployed the means for carrying the weapons, including warships and combat aircrafts.

Russia did enter Ukraine in 2014 and would undoubtedly keep on invading should the position of the most important global actors be favorable or neutral, or one of appeasement, and should Ukraine not continue enhancing its defense potential. Right now, Russia is flexing its muscles, building military capacity and testing state-of-the-art weapons in the Ukrainian Donbas. In numbers, Russia's presence in Ukraine means on average 400 shells a week.

Last week, Ukraine's Ministry of Defense identified and reported 22 flights of unmanned aerial vehicles (UAV) operated by Russia-backed militants. Russia continues to pour its weapons and military equipment to Donbas: For instance, from July 22 to July 28, nearly 6,000 tons of fuel, 80 tons of ammunition and 120 tons of military cargo (including repair parts for military vehicles) were delivered through an uncontrolled part of the Ukrainian-Russian border. The Organization for Security and Cooperation in Europe's monitoring mission has reported that Russian-backed militants have used a wide array of heavy weapons, including mortars, high-caliber artillery and tanks.

This bloody war, which has already taken more than 10,000 Ukrainian lives and internally displaced almost 2 million, is a fight of a young democracy for independence and its choice to be part of the West and embrace Western values. Neglecting or trading the cause of a nation inspired by those values — cemented by Americans in their fight for independence and civil rights — would send a wrong message to the people of Ukraine

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and many others in the world who look to the U.S. as to a beacon of freedom and democracy.

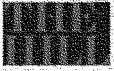
Chaly is Ukraine's ambassador to the United States.

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Russia accuses Ukraine of sabotaging Trump - POLITICO

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FOREIGN POLICY

Russia accuses Ukraine of sabotaging Trump

A Foreign Ministry official says Ukrainian officials intentionally damaged Trump by targeting Manafort.

By KENNETH P. VOGEL and JULIA IOFFE | 12/01/2016 02:40 PM EST | Updated 12/02/2016 02:39 PM EST



"Ukraine seriously complicated the work of Trump's election campaign headquarters," said a top Russian official. | Getty

A top Russian official is accusing the Ukrainian government of undermining Donald Trump's presidential campaign by trashing him on social media and disseminating dirt on one of his close associates.

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Russia accuses Ukraine of sabotaging Trump - POLITICO

A spokeswoman for Russia's Foreign Ministry on Thursday contended that the Ukrainian government over the summer damaged Trump's campaign by implicating his then-campaign chief Paul Manafort in a corruption scandal involving a pro-Russian Ukrainian political party funded by oligarchs.

"Ukraine seriously complicated the work of Trump's election campaign headquarters by planting information according to which Paul Manafort, Trump's campaign chairman, allegedly accepted money from Ukrainian oligarchs," Maria Zakharova said at a press briefing, according to a transcript of her remarks posted on the Foreign Ministry's website. "All of you have heard this remarkable story," she told assembled reporters.

In a follow-up exchange with POLITICO, Zakharova went further, suggesting that the Ukrainian government was intentionally trying to undermine Trump's campaign by releasing records from the oligarch-backed party naming Manafort.

"That's exactly what it looks like," she wrote.

The renewed scrutiny of Manafort's dealings in Ukraine comes at an awkward time for the veteran operative and for Trump. As the president-elect works to assemble his foreign policy team, his stance toward Russia and its neighbors is being closely watched by the international community.

Manafort, who had been pushed out of Trump's campaign in late August because of growing press scrutiny of his work in Ukraine in recent weeks has re-emerged as an informal adviser as President-elect Trump has assembled his administration, according to a handful of people around the transition team.

And Thursday's allegation from Moscow also seems at least mildly ironic, coming amid calls from Washington Democrats for an investigation into Russian meddling in the presidential election in a manner that damaged Trump's Democratic rival Hillary Clinton. The U.S. intelligence community during the campaign accused Russia of directing hacks of the Democratic National Committee and of Clinton campaign chairman John Podesta, yielding emails that raised questions about Clinton's connections to Wall Street and her family's foundation and financial interests.



DEFENSE

Trump picks General 'Mad Dog' Mattis as defense secretary

By BRYAN BENDER and ANDREW HANNA

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Russia accuses Ukraine of sabotaging Trump - POLITICO

The hacking elevated Russia as a major issue in the presidential race. Clinton and her allies cast Trump as the preferred candidate of Russia, one of the U.S.'s top geopolitical foes, citing the hacking, as well as Trump's ties to Russia and his laissez-faire stance on Russian aggression toward Ukraine, not to mention Manafort's connections to pro-Russian Ukrainian politicians.

Manafort's work in Ukraine started becoming a more serious liability for Trump's campaign when the New York Times in August reported that The National Anti-Corruption Bureau of Ukraine was investigating a "secret ledger" that listed \$12.7 million in cash payments earmarked for Manafort by the party of the deposed former Ukrainian President Viktor Yanukovich.

While the anti-corruption agency stressed that Manafort's inclusion on the ledger "does not mean that he actually got the money" (and Manafort denied that he had received any cash payments) its officials did not challenge characterizations that Manafort was among the targets of their investigation into Yanukovich's party.

But, after Trump's stunning victory over Clinton in last month's presidential election, officials with the corruption bureau appeared to backpedal. One was quoted in the Russian tabloid Komsomolskaya Pravda saying, "Mr. Manafort does not have a role in this case."

The National Anti-Corruption Bureau earlier this week didn't respond to questions from POLITICO about its investigation into the Party of Regions ledger, or whether the bureau was investigating Manafort.

On Thursday, Manafort told POLITICO that the bureau had never contacted him.

"I never understood why I was the target," he said. "I wasn't the candidate. I was just caught in the crossfire."



2016

Clinton and Trump strategists still throwing punches

By SHANE GOLDMACHER and GABRIEL DEBENEDETTI

Manafort wouldn't comment on his role in Trump's transition.

But he was spotted at Trump Tower last week, and a handful of sources around the transition team told POLITICO that Manafort has spoken to Trump periodically since the election. They said that Manafort, who spent the last three decades collecting huge paydays

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Russia accuses Ukraine of sabotaging Trump - POLITICO

from businesses and politicians all over the world, has acted as a sort of informal matchmaker, advising foreign policy operatives on how to join the transition.

Additionally, close Manafort associates have worked for Trump's transition, as well as his inaugural committee.

Hope Hicks, a Trump spokeswoman, rejected the suggestion that Manafort was playing even an informal role. "Paul Manafort has absolutely no involvement with the transition team or communication with the president-elect," she said.

Trump's team did not respond to questions about Zakharova's comments at Thursday's briefing, nor did representatives from the Ukrainian and Russian embassies in Washington.

Zakharova contended during the briefing that Ukrainian officials were desperate to protect their favorable relationship with the U.S. after having run afoul of Trump — and Manafort — during the campaign.

"It appears that keeping this sponsorship is a big challenge for the Kiev authorities, who were uncivilized and rude toward President-elect Donald Trump when he was a presidential candidate," Zakharova said, according to the transcript.

In her follow-up exchange with POLITICO, Zakharova accused Ukrainian President Petro Poroshenko of not making the time to meet with Trump on the sidelines of the United Nations meeting in New York in September, though multiple media outlets reported that Trump's team didn't respond to a meeting request from the Ukrainians.

Trump and Poroshenko did connect after the election, when the Ukrainian leader called to congratulate the president-elect and the two agreed to a bilateral meeting.

But Zakharova suggested during her Thursday briefing that there was cause for lingering bad blood between Trump and the Ukrainian government.

"You probably remember that Ukrainian officials and diplomatic representatives abroad did not express their views or political assessments but openly insulted the person whom the American people elected their president. You may remember that they later tried to delete these statements from their social networks accounts and their sites, saying that they had been wrong and had rushed to conclusions," she said.

That appears at least in part to be a reference to since-deleted July social media posts by a recently retired Ukrainian diplomat and Ukraine's minister of internal affairs, Arsen

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Avakov.

In a tweet, the retired diplomat had called Trump a “clown” and asserted that he was “an even bigger danger to the U.S. than terrorism.”

And Avakov, in a Facebook post, lashed Trump for saying that Putin would not invade Ukraine, despite the fact that the Russian strongman already presided over the 2014 annexation of Crimea, which is internationally recognized as Ukrainian territory.

Trump’s assessment was “a diagnosis of a dangerous misfit,” Avakov wrote, according to one account. He called Trump “dangerous for Ukraine and the U.S.” and noted that Manafort worked with Yanukovich when the former Ukrainian leader “fled to Russia through Crimea. Where would Manafort lead Trump?”

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A Conversation with Former Vice President Joe Biden and Michael Carpenter

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Richard N. Haass

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Foreign Affairs Issue Launch

Coauthors Joe Biden and Michael Carpenter discuss the article, "How to Stand Up to the Kremlin: Defending Democracy Against Its Enemies," which appears in the January/February issue of Foreign Affairs.

HAASS: Well, good afternoon.

I want to welcome one and all to today's Council on Foreign Relations meeting which, among other things, is here to launch the January-February issue of Foreign Affairs magazine. And I really do urge you all to read it. What a—like all of our issues, it begins with a cluster, and there is a cluster of about a half-dozen articles on a subject that doesn't really get the attention it deserves, which is how countries have either dealt with or failed to have dealt with the legacy of their own pasts, something I know intimately from my time trying to negotiate in Northern Ireland. But this deals with countries like South Africa, but also the United States, given our own complicated

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A Conversation with Former Vice President Joe Biden and Michael Carpenter

The subject, though, today is another article in the—in the magazine. I probably should introduce myself. Should be familiar to everybody. My name is Richard Haass, by the way. I work here at the Council on Foreign Relations. (Laughter.)

CARPENTER (?): And I work for Richard.

HAASS: And we're joined today by the gentleman on my right, Joe Biden, who of course served as the 47th vice president of these United States and who now leads the Penn Biden Center for Diplomacy and Global Engagement. And let me say something about this center which is based here in our nation's capital. It officially opened its doors February 8th, and the mission of the center is to develop and advance smart policy and influence the national debate about how American can continue to lead in this century, and it's, quote, "founded on the principle that a democratic, open, secure, tolerant and interconnected world benefits all Americans." Close quote.

Full disclosure: the former vice president and I go back more than four decades. He was a newly minted senator, I was a wet-behind-the-ears young staffer on the Senate side of the Hill, and over the last 40-plus years we've had a continuing conversation about the world and our country's place in it, and the only thing I'd put as a caveat is I'm not sure we distributed the time equally in that conversation. (Laughter.)

BIDEN: This may be the only audience who will think it was you. (Laughter, applause.)

HAASS: Never go up against a pro, that's what I should have—should have known.

Sitting to the vice president's right is Michael Carpenter—your left—he's going to be

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Let me just say that their piece addresses many of the same issues as a just-published special report by our own Bob Blackwill and Phil Gordon on how to respond to Russia's intervention in the 2016 presidential election, and more broadly how to respond to the geopolitical challenge that Russia poses to the U.S. interests around the world.

And let me say, I returned from Moscow a few days ago, and I was struck by how limited this relationship is, our bilateral relationship. It's actually less so right now substantively than it was during most of the four decades of Cold War.

I'm struck, too, by how different our views of the world are, but also—and it comes out in their article—by the case for at least exploring the possibility of limited cooperation in meeting the challenges posed, say, by North Korea's nuclear-missile program, on trying to reduce conflict in eastern Ukraine, or in Syria.

But with that, let me thank both of you for being with us today. Thank you for writing for our magazine.

And let's start. And again, I'll ask questions for a few minutes. Then we'll open it up to you, our members.

So let me start with a basic question, a scene-setter. Is it accurate or useful, either or both, to describe where we are with Russia as a second or new cold war?

BIDEN: I think that'd be a little bit of an exaggeration. I think, look, what we—the Cold War was based on a conflict of two profoundly different ideological notions of how the world should function. This is just basically about a kleptocracy protecting itself. That's

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And there's an overwhelming—I think a basic judgment has been reached that in order for Russia, with all its profound structural difficulties that it has, to be able to sustain itself and for this kleptocracy to continue, there's—it's much easier if you're dealing with 28 different nations not in union with one another, not a Western economy that is coordinated. And it gives them more room to wander and engage in the activities that they've engaged in, which is essentially when the wall came down, everything that was part owned by, quote, the Soviet government was now owned by apparatchiks personally.

And so I'm vastly oversimplifying, but I think there's a basic decision that they cannot compete against a unified West. I think that is Putin's judgment. And so everything he can do to dismantle the post-World War II liberal world order, including NATO and the EU, I think, is viewed as in their immediate self-interest.

HAASS: Michael, let me ask you a variant of the same question. And it picks up on what the vice president just ended with. If you had to describe, in an elevator, what you think the essence of Russian national-security strategy is, how they—how they would define success for themselves, what do you think it would be?

CARPENTER: So I think Russia has three principal goals. One is to weaken Western democracies internally. Another one, as the vice president said, is to divide the countries of NATO and the EU internally, to deal individually with those nations, as opposed to with a united front. And then third is to undermine the rules-based international order, which, from Moscow's perspective, is slanted in favor of the United States because it promotes norms of democracy, because it promotes certain other

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And so what Russia has essentially done is it's taken the fight from what was originally just contained to the post-Soviet space and taken that fight now to Europe, to the United States, by subverting our institutions internally, by using sometimes hard power, but more often corruption, energy, information, and cyber to be able to undermine these democratic institutions, as I said, internally.

HAASS: However one might describe U.S.-Russian ties, they are not good. And looking backwards over the last quarter of a century, in some ways it's anticipating what history will grapple with. Was this inevitable? Was there something about the nature of America, America's definition of what world order consisted of, something about Russian political culture that essentially—despite the optimism 25 years ago when President Bush 41, my boss at the time, talked about a new world order—was it inevitable? Or to some extent, does Western policy bear some of the responsibility for the current state of affairs? Obviously higher on the list of certain people would be NATO enlargement. Did we have to get to where we are, or could it have been avoided?

BIDEN: I think it's hard to say if it could have been avoided, but it's more easily able to identify why it didn't happen. And it wasn't, in my view, because of the expansion of NATO. As you may remember, that was my primary responsibility on the floor of the Senate with Michael Haltzel. And the only time I had a real serious and elongated disagreement and debate with Pat Moynihan was on the expansion of NATO. And his argument was, to vastly oversimplify it—it was much more articulate than I'm about to state—but was that this is not the time to worry the new leadership in Russia that they're about to be surrounded and overtaken, et cetera.

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Matter of fact, I would argue that you would very much likely see more use of military power and force. And one of the things we talked about, and I'll not go any further, is that as all these Eastern and Central European countries were, quote, "freed," they all had their own agenda, their own historical fears, their own concerns. And they're all engaging independently in activities and actions that could have been very destabilizing—destabilizing to the whole region.

And so part of what we did was to stabilize and give some assurance to each of those countries that they should yield toward what would be more considered to be basic democratic instincts and policies, than to go the route some of them were considering going. And so I don't think—I don't think that the expansion of NATO, history will—it will be a debate that will continue—was the reason why the instability to the extent that it—that it was inevitable that Russia would take the role that it took. But I do think there were a number of things, when you think about it, as you've written about—and many of you have—there is—

HAASS: You're not going to mention the name of the book? (Laughter.)

BIDEN: You just made me forget the name of the book right then. (Laughter.) But it's a very good book. I strongly urge you to buy—urge you to buy two copies. (Laughter.)

But think about it. I mean, look at all the countries in the world, including in this hemisphere, that are coming out from under what has essentially been somewhere either decades if not an entire history of corruption and dictatorships or oligarchs running those countries. And it's really—and I've spent a lot of time. I mean, I've spent

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So I think there were some—you know, there was at least 100 years of history and beyond in Russia that made it difficult to actually set up these institutions in the first instance.

HAASS: Michael, as you and just about everyone in this room, I know, knows, last month this administration published its first National Security Strategy. And among other things, it called for the United States to rethink the policies of the past two decades when it came to several countries, China and Russia—so let's focus on Russia, given our subject today—and it described those policies as being based on the assumption that engagement with Russia and its inclusion in international institutions and global governance would turn it into a benign actor and a trustworthy party. And the National Security Strategy goes on to say that this premise has turned out to be false. Do you agree with the National Security Strategy, then?

CARPENTER: So I don't think the premise that engagement with Russia is destined to fail, especially if one steps back and looks over the long run. Certainly, what we've seen is an increasingly revanchist and aggressive Russia acting out both on its periphery, in Europe, here in the United States.

You know, looking back, I think we can also see that there were some missed opportunities. But, you know, the goal of integrating Russia into both international economic institutions, the WTO, the IMF, and the World Bank, after the fall of the—collapse of the Soviet Union, but then also more sort of norms-based institutions, like the Council of Europe, I think that was the right choice to make then.

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administration. You saw it in Georgia in 2008, with the cyberattack on Estonia in 2007. And yet, there were still sort of contingent events that shaped the flow of Russia's leadership and how it responded.

And one of those, by the way, was the mass protests in Russian cities in the winter of 2011, 2012 where all of a sudden you had the Putin regime, which seemed so stable, had been riding these high oil prices for years, starting to look fragile. I mean, there was one event where Putin shows up at a mixed martial arts competition amongst a crowd that's basically his base and they're jeering and booing him. And so that had a profound impact, followed up, as it was, on the Arab Spring in terms of internal calculus about how to interact with the West.

And we saw that the result of that ended up being confrontation. I don't think it was inevitable. I don't think that having tried to integrate Russia into those institutions was a mistake because there's still history ahead of us and we need to have that play out.

HAASS: So even if it might have been—or either failed or might have been a mistake in the past, it doesn't—you're both basically saying we shouldn't give up on the possibility.

CARPENTER: We need to—we need to look—

BIDEN: But I don't think we can give up on the possibility. I don't think we can give up on the possibility. I don't think we should be naïve about it. I think we have to do a number of things in the meantime to make it clear to Russia that they are going to pay a price for many of the things they have done, in addition to making sure that we just, in effect, advertise to the Russian population and to all of Western Europe what they're

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I mean, here we are, we're talking about Russian interference in the United States, whether there was collusion between the Trump administration and Russia. That's obscured a much larger discussion that should be taking place about whether or not what Russia is doing in the rest of the world right now and what Russia is doing in Europe right now. And part of it is just pulling the—pulling the Band-Aid off.

And for example, we recommend in here an international commission. Immediately, we got response from a number—I got response from a number of European leaders wanting to set up an international commission, an independent commission made up of all parties, the mainstream parties in Europe, to actually spend time and do what we haven't done here, look at what Russia is doing in Europe right now that their publics do not know. Because when they do know it, their influence diminishes precipitously, like it did in France in this election, like it has in—but part of this is that there is not much discussion. And our leadership has been abdicated.

Your point is there's three ways you lose power. One is just, you know, abdicate. Well, that's what we're doing. And part of it is just going out and telling—it sounds almost sophomoric—tell the truth, lay out what's happening out there and get the international community to join in in terms of providing the hard data after some serious looks as to what is going on.

And the second thing is, if you're sitting here—and when my grandchildren are writing their senior thesis to some great university about what happened to Russia, in 2018 what was the consensus in America about what Russia was going to look like in 2030? Well, you know, I wouldn't want to have to be in a position—I often say to classes I

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advantages geographically, where they're engaged. They have a nuclear arsenal that is—can blow up the whole world. But in terms of their efficacy, their capacity is de minimis compared to ours. They're in a situation where they're an oil-based economy. You have Gazprom going from a market value of something like \$350 billion to \$50 billion in the last 10 years.

What do you do if you are a democratic leader of Russia? What do you do? How do you provide jobs for your people? Where do you go? How do you build that country, unless you engage the West? I don't know how that happens.

And so I haven't given up hope. I'm not naïve about it. As you've noticed, I've been a very strident voice in my—the last administration about Putin and Russia, as I am now. But that doesn't mean that this is a fait accompli that this is the way things are going to be.

Now, the last point I'll make is—you all know it better than I do—that, you know, when nation—my dad had an expression, never back a man in a corner whose only way out is over top of you. Well, you know, take a look at Russia now. Where do they go? They're incredibly dangerous as they continue to engage in this precipitous decline. Their life expectancy is changing. They're expected to be a 20 percent smaller population by 2050. I can go on. And so the—it's going to be a really tough, tough time to get them to the place where their citizens think they have any future.

And he's—and the last point. This new, phony nationalism and populism that is being used by charlatans all across the world right now, the only thing keeping Putin where

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HAASS: In the piece, the two of you say that there's no truth that the United States—unlike what Putin seems to believe or say, that the U.S. is seeking regime change in Russia. So the question I have is, should we be? And if not, if we shouldn't be seeking regime change, what should we be seeking in the way of political change inside Russia? What's an appropriate agenda for the United States vis-à-vis Russia, internally?

BIDEN: Well, first of all, there's a lot of brilliant minds sitting in front of me, and for me to presume to tell you what the answer to that question is. But I have an opinion, as you might guess. (Laughter.)

HAASS: Plus, you're sitting here and they're not, yeah.

BIDEN: That's right. (Laughs.) Look, folks, we can't make this about a conflict between Russia and the United States. We've got to make this about a conflict between the Russian kleptocracy and oligarchy and the Russian people.

There is no country in the world that, in fact, is comfortable with wholesale corruption—wholesale corruption, not based on any ideological rationale why the concentration of wealth has occurred the way it has. And the fact of the matter is that I think that there's a lot of things we can do and should be doing to make it clear that Russia has violated these norms, and still be willing on strategic matters to talk to them and cooperate with them.

HAASS: Would one of them be, for example, publishing what we think is Putin's net worth?

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paper was it's probable no man has ever assumed the office of vice president with fewer assets than Joe Biden. (Laughter.) I assume they weren't speaking intellectual assets. (Laughter.)

But, look, all kidding aside, I think to expose the truth. And we should be the friends of what is left of and the underground portion of civil society in Russia. We should not be silent. And part of that is laying out in stark relief what Russia is doing, how they have turned corruption into a foreign-policy tool and a weapon. It's being used extremely well in Western Europe and other parts of the world. And I think we—it's a matter of us speaking up and speaking the truth. We don't have to make any of this up.

HAASS: In the article, I'll quote—

BIDEN: If you disagree, jump in, man.

CARPENTER: No—100 percent.

HAASS: That'll be the last time, though, you'll do that. (Laughter.)

BIDEN: Former vice presidents have no power.

CARPENTER: I know where I get my salary.

HAASS: In the article—I'm going to quote from the article: "Washington needs to spell out clear consequences for interfering in the U.S. democratic process or tampering with critical U.S. infrastructure," closed quote.

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like in terms of a retaliatory dimension to U.S. policy? And what if it were to happen again?

BIDEN: We had long talks about this.

Go ahead.

CARPENTER: Yeah. So, I mean, my sense is that we need to look at this more broadly than just within the narrow scope of election meddling. And so this gets to a broader strategy of strengthening our alliances, helping our partners in Europe, by investing in energy security, reducing vulnerabilities at home. I think this is key, which you alluded to, looking at both, not just in terms of election infrastructure, but in terms of financial transactions, money laundering, real-estate deals, campaign finance, all of this. We need to make ourselves a harder target for Russia.

We need to impose costs when we have evidence, as we do now, of their interference in our election. They need to be able to look back on what they're doing now, say, in five or 10 years, and realize that the costs have outweighed the benefits, because otherwise they won't stop.

HAASS: In terms of—

CARPENTER: They will stop if they see that that cost-benefit ratio is different.

HAASS: Should we—moving forward, what's wrong with the notion essentially of telling them what the cost will be? If we pick up evidence that they're going to do this

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unacceptable from our perspective in terms of an attack on our democracy and our institutions, and telegraph very clearly—actually, as the last administration did during the campaign—that this is unacceptable and there will be consequences. And that dialogue needs to be—right now it's very thin, as you alluded to at the very start, and it needs to be expanded.

BIDEN: We should be very clear about it, but just not compare buttons in public, you know. (Laughter.) This is about—I'm serious. This is about communicating specifically, specific actions we're willing to take relative to their interests if, in fact, they continue to behave the way they have. That's not something you're going to—the president should walk out and call a press conference and say what's going to happen. It should be made very clear to Russia and Russian authorities what it means.

HAASS: In private, though—

BIDEN: And I think it should be initially in private. And then, in fact, if it continues to occur, then pull the trigger. I mean, look—look at what the Republican-controlled Congress did. They overwhelmingly supported giving the president this very broad authority to censure and to take action against Russia for their behavior. We haven't said a thing.

And, I mean, look, we haven't even put—can you imagine if any—I'm not being facetious—if any of you were heading up the State Department or the CIA or president or vice president—you had a major position in this administration—can you imagine not having called together all the major agencies that have something to do with our

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playing major roles in this administration.

And the—when I'm told—I keep asking, well, you must have picked up—they must be having some conversations. There must be a discussion going on as to how you could better coordinate law enforcement and intelligence efforts to deal with some of these things. There must be some discussion. To the best of my knowledge, unless you all know—and you may very well; you're extremely well connected—I don't know of any systemwide analysis being—going on within this administration.

So what the hell are we doing? It's like, well, yeah, they're doing something out there, but let's keep moving. I don't—I really don't get it.

HAASS: Picking up on that, and looking with hindsight, should the Obama administration have done more? Once it was learned that the Russians were put to no good and interfering in our politics, either before the election or during the transition, should the Obama—if the Obama administration had a multigian, should it have done more?

BIDEN: Well, the answer to that question is I'm not sure. I think we made the right decision. Let me explain what I mean. This was a moving target. What we were originally told at, I guess, around August, September, we knew they were up to, engaging in trying to delegitimize their electoral process. But the hard data we had was not very detailed, and it did not—and then we—we had—the next point, we went to the—it's the only engagement with the House and Senate that I wasn't asked to lead, and because—anyway. I always was being sent to the Hill to try to settle things. But the

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And we asked, so that we wouldn't be in position—the president and I would sit there, literally, after the PDB, and everybody's walk out of the room, and say: What the hell are we going to do? Now, Mr. President, you go out and you unilaterally say this is what's happening, you're going to be accused of—in this environment—of trying to tip the election. And unless you can give harder data than we have now, you're going to be in a terrible position and it's going to play into the delegitimizing of our electoral process, which was initially what the intelligence community—correct me if I'm wrong here—the intelligence community thought was what this was all about.

And then as we got further—and so we went up. And Mitch McConnell—who I get on with well and who's a smart guy—Mitch McConnell wanted no part of having a bipartisan commitment that we would say essentially Russia's doing this, stop—bipartisan, so it couldn't be used as a weapon against the democratic nominee of a president trying to use the intelligence community, which—now, at the time, people would say no. When we were internally having these discussions say, no one would do that. Well, look what the hell they've done. (Laughter.) The constant attack is on the intelligence community as a political organization run by, you know, Barack Obama for—to take on his political enemies.

Now, you know, as a friend of mine in Scranton would say, who would have thunk it? But it was done. And so there was this constant tightrope that was being walked here as to what would we do. So the second big play was we went and said, OK, look, here's all the data. And Brennan and company came up and said: Here's what we know. Why don't we put out a bipartisan warning to Russia—hands off, man, or there's going to be a problem? Democrat, Republican. Well, they would have no party—they would have

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And so the moment the president at that time would come out and say: By the way, the Russians are doing this and hacking the DNC and so on, would have been turned into the president's trying to make this play. Then we learned more. And we learned more immediately after the election was over. But we did have a conclusion—I'll stop—there was a consensus in the intelligence community that when the president gave a face-to-face warning to Putin overseas at a conference, that we saw no evidence—which really worried me in particular, but I think everybody—of actually going into the voting roles, going into the voting itself, impacting on using cyber to go into and strip the roles of Democrats or Republicans. We had no evidence of that.

And it seemed when that demarche was made that there was no more—it didn't move any further. But I'm sure I'm leaving stuff out. So the bottom line was it was tricky as hell. It's easy now to say, well, maybe we should have said more. But I'll ask you a rhetorical question: Could you imagine if the president of the United States called a press conference in October with this fellow, and Bannon and company, and said: Tell you what. The Russians are trying to interfere in our elections and we have to do something about it. What do you think would have happened? I imagine—I mean, I—I have a view, but I genuinely mean it. Ask yourselves, what do you think would have happened? Would things have gotten better, or would it further look like we were attempting to delegitimize the electoral process because of our opponent?

That was the constant battle. Had we known what we knew three weeks later, we may have done something more, but we—

CARPENTER: I would just say one other thing in addition to that, which is that,

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infrastructure, and we were very focused, precisely as the vice president said, on not allowing the Russians to be able to go in and physically change votes or flip people's, for example, addresses to suppress voter registration. That was the preoccupation.

We are only learning now—in fact, the last 12 months we've learned so much in terms of the propaganda campaign, the disinformation, the stuff on Twitter and Facebook. You know, I think we both feel that, you know, that warrants an additional response and that CAATSA—the Countering America's Adversaries Act—provides the right authorities now to be able to amp up the costs even further.

HAASS: That's really, I think, helpful in getting that on the record.

OK, I will show uncharacteristic restraint and—time for our members to ask questions. Wait for the microphone, introduce yourself, please keep it short. And I know you are all dying to hear about the latest challenges facing Amtrak—

BIDEN: You're going—(laughter)—

HAASS: But our goal here is—to the best we can is to keep the focus on the issue du jour and the article on Russia and U.S.-Russia relations.

Margaret Warner, I see you with the microphone.

Q: Thank you.

Hello, Mr. Vice President.

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My question is should we actually be going on offense in the information war, in the cyber war in terms of delegitimizing—not just exposing the corruption, but really playing offense the way they are playing offense.

BIDEN: The answer is yes, but not necessarily in the cyber space where we go in, and most of what happens in the cyber space is altering information or preventing information from being able to come forward. I think we should be on the offensive in making it clear exactly what we know Russia and/or Putin, in particular, is doing, and I think we should be working much more closely with our European and allies around the world and exposing and getting them to stand up and acknowledge with us that this is what's happening here—that message gets through.

I mean, to go back, when I got here, the last vestige of that Cold War was Radio Free Europe and Radio Liberty and all—it was an attempt to broadcast truth into Russia. And I think somehow we have to have, as a—as the democracies of the world have to be better coordinated in—at every level and every place doing just that: broadcasting to the Russian people what is happening and making clear this is all designed to protect vast amounts of wealth and vast amounts of corruption.

HAASS: I saw a hand this way—I'm all the way in the back.

Just to remind everybody, by the way, this meeting continues to be on the record, so you've just been read your Miranda rights.

Yes, ma'am. (Laughter.)

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Vice President Biden, there—to be a little bit more specific, there is bipartisan legislation in the Senate right now from Senators Rubio and Van Hollen that would put in place sanctions that would snap in place on Russia if in the future any determination is made that foreign election interference has happened, and you may be familiar with the legislation.

BIDEN: I am.

Q: These are sweeping sanctions, including on the financial sector. Do you think this is an appropriate step and that the potential unintended consequences have been adequately thought through?

BIDEN: I think it is an appropriate step. I'm sure there are consequences that could flow that are ones we did not anticipate, but I cannot—I do not believe the failure—doing that equals the failure to take these steps in terms of our interests. And so I would—were I in the Senate, I'd be supporting that legislation.

HAASS: OK, Barbara Slavin, right here on the front row. I'll try to get as many as I can.

Q: Thanks.

BIDEN: I'll try to be as short as I can.

Q: Thanks, Richard.

Vice President Biden—is this on? Yeah. Pleasure to see you.

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And the Middle East is the one area where Russia seems to be doing quite well. It has excellent relations with all the parties in the region, unlike the United States. So I'd like your advice on how we deal with Russia in the Middle East, particularly Syria.

HAASS: But on the historical part, let me just tack onto that because you had the 2003 Iraq war under the previous administration, under 43, but under your administration you also had Libya, which from Russia was bitterly resented as what they quite honestly thought was something of a bait-and-switch as the war reins. They thought they were signing onto something more limited, a humanitarian intervention, and obviously it grew beyond that. So looking back there, those two cases, Iraq and Libya, and then if you want to get into the question of how do we deal with Russia in the Middle East now.

BIDEN: Well, I'll try to be brief. That's an essay question, two of them.

HAASS: Yeah, sorry.

BIDEN: No, no, it's totally legitimate. There will be a lot written about Libya and why some—one of us thought it was a tragic mistake, a policy we undertook. No, I'm serious. It's not public, but it was—I think it—I think—I don't think that's the total cause, but it added to the perception on the part of Moscow as to what our intentions were. Number one.

Number two, I do think that our—I do think Russia concluded two things: one, that there was a danger in them not engaging and an opportunity if they did, but very limited. If you take a look, I predict to you you're going to see Moscow reducing its

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Initially, their notion was to get back some physical control of the Eastern Mediterranean with the ports and airports, et cetera. That made sense from their perspective. What doesn't make sense from their perspective is somehow, how do they rebuild a country that is so fundamentally fractured? How do—how does that happen? Where do they get the help to do that? I think—I think they've got—I think they've got a real problem.

But we have a problem as well, because I don't think we're paying—the one thing that I look at, and we talk about this a lot, my team at Penn, is that the one place the administration essentially maintained the policy we had begun with the same people that we had doing it was the anti-ISIS campaign. And that has been successful. But there is not the day-to-day handholding and badgering that is required on a daily basis. I mean, I literally—not a joke—I would spend—there wasn't a week that went by I wasn't on the phone with Barzani or Abadi or any—I mean, literally, both cajoling, threatening, negotiating among them and between them, et cetera. And it is really, really, really a difficult circumstance to think about being able to establish a stable Iraq in the absence of al-Qaida, the absence of ISIS.

It's still incredibly—we're talking about multibillion-dollar investments that are going to be needed to rebuild these cities, et cetera. And one of the things that we're not doing much about, we're not—we've lost, and there's some real experts in this room, we've lost the notion among our European friends that we know what we're doing, that we have a plan. No, I'm not—that sounds like I'm just deliberately trying to be critical. I'm not. But there was—we were building an overarching consensus—whether they would have ponied up is a different question—that unless you want ISIS 3, you better

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And I think we took the lid off with our Saudi friends when we basically said, OK, anything you want, man, we're with you, and our Israeli friends. And so there's not much of a coherent plan right now. But the idea that this is of some great benefit to—I think the biggest beneficiary short term is not Russia, but Iran. And that's another story. But I—I wish I could say it more succinctly.

But you want anything of that?

CARPENTER: I think that's—I agree completely.

HAASS: Sir—in the middle here.

Q: Hi. Thank you. Scott Moore from the World Bank.

HAASS: Kill the microphone closer. We're not picking it up very well.

Q: Sorry. Scott Moore from the World Bank.

You mentioned that you believe that Russia's interests kind of eventually lie more in terms of engagement with the West. But I'd just be curious in your relationship—or, I'm sorry, your assessment of the relationship between Russia and China and the direction that that might head.

BIDEN: I don't think it goes anywhere good for Russia or for China. I've spent a lot of time—apparently, I was told by the folks at State—I've spent more time in private meetings with Xi Jinping than any world leader. I have 25 hours of private dinners with him, just he and I, and one interpreter. And I don't think Xi Jinping, in my view, looks

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So I'm not worried. It kind of reminds me of when I got here as a kid. I was 29 years old, running for the Senate, and at the time there was this great thing of this—you know, this connection from—running from Moscow to Beijing that was going to overtake the world. And looking back on it, I remember saying I don't get that. It's one of the most guarded borders in the world. It's not—I don't see—I don't understand where the mutual interest lies. I don't see it here either.

Now, I do see there's places where each will use the other for their benefit relative to us. And I can see that happening. But the idea of there being a long-term partnership, alliance, between Moscow and Beijing in the near term, I don't—I don't think it's in the stars at all.

HAASS: All

Q: Allan Gerson, AG International Law.

Mr. Vice President, I wonder if you might expand on the earlier question about Syria. Russia is certainly touting this as a great foreign-policy success. And the inverse of that is that it's a great foreign-policy failure for the United States. But looking forward, especially with the delicate balance between all the players, and especially Iran in the region, is there a way forward for U.S.-Russian cooperation? And how does that play vis-à-vis Iran? Can Russia be looked at as an agent that can curb their ambitions, or is it the reverse?

BIDEN: Look, I—let me organize my thoughts here. I do think that the idea—I used to always—as Mike Froman would be in these meetings sometimes—I'd say to the

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And what you have in Syria is a classic example of the biggest conundrum that we have to deal with. Now, the nonstarter is, for Russia, the idea that Assad stays in power and continues to control means there's a guarantee that there will never be peace or security in that country, because so many—so many, you know, bottles have been broken here, man. I mean, there's no way he can put that together.

And there seems to be no willingness on the part of the Russians at this moment to work out—and we've tried 15 different ways—a modus vivendi to figure out how we have a transition of power and so on.

So I think—but there are ways in which we could, in fact, work with Russia to essentially take parts of the country—that's going to be a divided country a long time.

You think you had a problem—we have a problem in Iraq. There is no uniting principle in Syria, in my view. There is none. And so I could see where you could work out a place where there was essentially safe harbor for certain parts of that country, and you could drastically reduce the number of people being displaced and killed. We tried that as well, and they didn't play fair there.

Now, with regard to whether or not they're going to be able—they can influence Iran or Iran influences them, I think that Iran, if you notice, got a little upset recently with some of the actions that Russia was taking in Syria. Made it pretty clear they were. And Russia sort of went, OK, well, I'm not so sure where we're going to be. I just don't know enough now—I'll conclude it this way. People ask me: What was the hardest part of leaving the vice presidency? There were two things. Losing Air Force Two. (Laughter.) And not getting up every morning and having a detailed national security brief on what

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But in light of what Turkey just did in their northwestern province and what they're attempting to do, light of the distance that is being even further—distance being created between the United States and Turkey relative to the Kurds and people of the YPG we've supported—I don't have enough granular data to be able to give you a better answer than I have now, which is I don't think Russia can in fact dictate to Iran what happens in Syria. And I don't think Russia has the capacity—the capacity to do the things almost everyone would agree, even if it is—the continued leadership stays in place, to make the kind of multibillion-dollar investment needed to stabilize that country.

HAASS: So I can't help you with the airplane, but CFR.org. (Laughter.)

BIDEN: No, I get it.

HAASS: Go to—

BIDEN: But I don't want to acknowledge you guys are spying on the intelligence agencies. (Laughter.)

HAASS: Before I call—I just want to put one other issue on the floor before I get another question or two, which is Ukraine. This administration, unlike the administration you worked in, decided to provide limited defense articles to Ukraine. Do you think that was a wise decision? And more broadly, do you see any scope for any sort of a deal on eastern Ukraine?

BIDEN: The answer is yes, I think it was a wise decision. But then again, I was pushing

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the rest of Russia is that no Russian soldiers are engaged. They're not dying. No body bags are coming home, et cetera. Because there's overwhelming opposition on the part of the body politic in Russia for engagement in Ukraine in a military sense.

Do I think they're—I think the Donbas has potential to be able to be solved, but it takes two things. One of those things is missing now. And that is I'm desperately concerned about the backsliding on the part of Kiev in terms of corruption. They made—I mean, I'll give you one concrete example. I was—not I, but it just happened to be that was the assignment I got. I got all the good ones. And so I got Ukraine. And I remember going over, convincing our team, our leaders to—convincing that we should be providing for loan guarantees. And I went over, I guess, the 12th, 13th time to Kiev. And I was supposed to announce that there was another billion-dollar loan guarantee. And I had gotten a commitment from Poroshenko and from Yatsenyuk that they would take action against the state prosecutor. And they didn't.

So they said they had—they were walking out to a press conference. I said, nah, I'm not going to—or, 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. (Laughter.) 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 about six 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.

Well, there's still—so they made some genuine substantial changes institutionally and

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BIDEN: They're—and the—yes. And they had made that commitment that they wouldn't do that.

And so, when we left, the first thing I spent a lot of time—as did Mike because this was his territory as well, and people like Charlie Kupchan and Victoria, and anyway there were a lot of good people we had working on this—we spent a lot of time with Vice President Pence because I was worried that they would make a mistake as a—it would be a sin of omission rather than commission, failing to do certain things or say certain things. And that was at a time when there was an alleged or there was a grave concern among the foreign policy elite that maybe a deal was made to lift sanctions. Whether that was true or not, but that was the atmosphere right after the election.

And so what happened was they did some good things. And they've now—what's his name, the guy they have over there—

HAASS: Kurt Volker.

BIDEN: —Kurt Volker, solid, solid guy—but Kurt, to the best of my knowledge, does not have the authority or the ability to go in and say you don't straighten this up you're out of here. Because look, it all gets down to a simple proposition. We spent so much time—as you know, because I came, Mike, to you for advice—we spent so much time on the phone making sure that everyone from, at the time, Hollande to Renzi wouldn't walk away. They wanted no part of these sanctions on Russia. It had an impact on them. It was basically you've got to do this. And thank God Merkel was strong enough at the time to reluctantly—she didn't like it either—to stand with us, but always worked in

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over the rest of the country with their tanks. What they're going to do is they're going to take your economy down, you're going to be absolutely buried, and you're going to be done. And that's when it all goes to hell.

But to the best of my knowledge, even—and I have—it's a very difficult spot to be in now when foreign leaders call me, and they do, because I never, ever, ever would say anything negative to a foreign leader, and I mean it sincerely, about a sitting president, no matter how fundamentally I disagree with him. And it is not my role—not my role—to make foreign policy. But the questions across the board range from, what the hell is going on, Joe, to, what advice do you have for me? And my advice always is—I give them names of individuals in the administration who I think to be knowledgeable and committed. And I say you should talk to so-and-so.

You should—and what I do at every one of those times, I first call the vice president and tell him I received the call. Tell him—ask him whether he has any objection to my returning the call, and then what is the administration's position, if any, they want me to communicate to that country. But the point is there is no pressure that I'm aware of—correct me if I'm wrong—no pressure I'm aware of on the present leadership in Ukraine to hold them together to be able to continue what looked like was a real possibility of turning Minsk into something that was doable by being much tougher than Germany wanted us to be. But we were moving in that direction. But now it looks like the pressure's off. And this requires this day to day to day.

CARPENTER: Can I jump in? This may be my only chance. (Laughter.) But just on—

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CARPENTER: OK. Well, just on—so on the Donbas—and I completely agree with everything the vice president said because I think that's actually the major issue right now, is helping Ukraine succeed. And if they don't succeed internally in terms of fighting corruption and establishing rule of law, then it's a lost cause.

But on Donbas, I truly believe Putin's play here is to turn the—he would be happy with a negotiated resolution to the Donbas, but as long as the Donbas is turned into something akin to Republika Srpska in Bosnia. If he doesn't get that, we're going to see the low boil, we're going to see the fighting continue, and we're going to see, more importantly, dirty money flowing into Kyiv to affect their politics. And they've got elections coming up in 2019.

HAASS: Yeah, I was just, as you know, in Russia. And one of the things that constantly came up was a refrain very much along those lines, that in order for Russia to leave the one thing Putin could never countenance would be on Russian TV reprisals against ethnic Russians on the Ukrainian side. That would politically put him in an extremely difficult situation. This is not to defend Russian policy, but to explain it.

Michael—

BIDEN: By the way, I think there's a way that we could have insisted that that not happen, with serious sanctions on our part against Ukraine if that occurred. I think that's—I don't think that's real.

HAASS: I want to thank—do you—

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HAASS: Well, I want to thank you, Michael Carpenter.

I want to thank the vice president for three things. I want to thank him for doing this article in Foreign Affairs. I want to thank him for being with us today. And I want to thank him for, what, four-and-a-half decades of extraordinary service to this country of ours. (Applause.)

(END)

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Schiff's false claim his committee had not spoken to the whistleblower - The Washington Post

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Schiff's false claim his committee had not spoken to the whistleblower

By **Glenn Kessler**

Oct. 4, 2019 at 3:00 a.m. EDT

"We have not spoken directly with the whistleblower. We would like to."

— **Rep. Adam B. Schiff (D-Calif.)**, in an interview with MSNBC's "Morning Joe," Sept. 17

We recently took Secretary of State Mike Pompeo to task for misleading reporters about the fact that he was a participant in the call between President Trump and Ukrainian President Volodymyr Zelensky that was the subject of a whistleblower complaint and now an impeachment inquiry in Congress. He earned Four Pinocchios for being disingenuous in his remarks to reporters to obscure his firsthand knowledge of what took place.

But politicians spin all across Washington, often to deflect uncomfortable facts. Now let's look at comments by Schiff, who is heading the impeachment inquiry, as reporters probed about the whistleblower before the details of the allegation were revealed.

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Schiff's answers are especially interesting in the wake of reports in the New York Times and The Washington Post that the whistleblower approached a House Intelligence Committee staff member for guidance before filing a complaint with the Intelligence Community inspector general. The staff member learned the "very bare contours" of the allegation that Trump has abused the powers of his office, The Post said.

When the Fact Checker asked what "bare contours" meant, a committee spokesman pointed to an exchange of letters. In a Sept. 13 letter to the committee, the general counsel of the director of national intelligence said that "complaint involves confidential and potentially privileged communications by persons outside the Intelligence Community." In his own letter that day, Schiff wrote that because of that language, and because the DNI refused to affirm or deny that White House officials were involved in the decision not to forward the complaint, the committee can conclude only that "the serious misconduct involves the president of the United States and/or other senior White House or administration officials."

Our suspicion is that the unidentified staff member learned the potential complaint involved "privileged" communication, which is code for something having to do with the president.

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So, with this new information, let's look back at how Schiff handled questions about his knowledge of the whistleblower complaint.

The Facts



Sept. 16, interview with Anderson Cooper on CNN

Cooper: "Just to be clear, you don't know who this alleged whistleblower is or what they are alleging?"

Schiff: "I don't know the identity of the whistleblower."

Cooper: "And they haven't contacted you or their legal representation hasn't contacted you?"

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Schiff: "I don't want to get into any particulars. I want to make sure that there's nothing that I do that jeopardizes the whistleblower in any way."

This is a classic dodge — "don't want to get into any particulars" — and Cooper failed to follow up. Notice how Schiff quickly answered whether he knew the identity of the whistleblower — "I don't know" — but then sidestepped the questions about whether the committee had been contacted. But in doing so, he managed not to mislead; he just simply did not answer the question.

Rep. Schiff: We Would Love To Talk Directly With ...



Sept. 17, interview on "Morning Joe"

Sam Stein: "Have you heard from the whistleblower? Do you want to hear from the whistleblower? What protections could you provide to the whistleblower?" ...

Schiff: "We have not spoken directly with the whistleblower. We would like to. But I am sure the whistleblower has concerns that he has not been advised, as the law requires, by the inspector general or the director of national Intelligence just how he is supposed to communicate with Congress, and so the risk to the whistleblower is retaliation."

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Schiff's false claim his committee had not spoken to the whistleblower - The Washington Post

This is flat-out false. Unlike the quick two-step dance he performed with Anderson Cooper, Schiff simply says the committee had not spoken to the whistleblower. Now we know that's not true.

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"Regarding Chairman Schiff's comments on 'Morning Joe,' in the context, he intended to answer the question of whether the Committee had heard testimony from the whistleblower, which they had not," a committee spokesman told The Fact Checker. "As he said in his answer, the whistleblower was then awaiting instructions from the Acting DNI as to how the whistleblower could contact the Committee. Nonetheless he acknowledges that his statement should have been more carefully phrased to make that distinction clear."

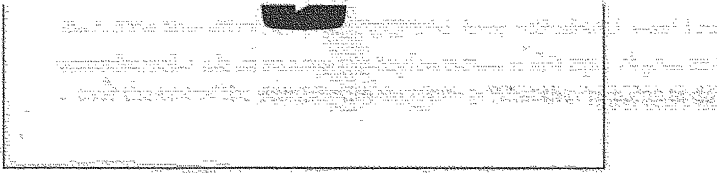
The spokesman pointed to an interview with Schiff by the Daily Beast, in which he said that he "did not know definitively at the time if the complaint had been authored by the same whistleblower who had approached his staff." But he added that he "should have been much more clear."

WATCH: Rep. Adam Schiff addresses reported w...



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Sept. 19, meeting with reporters at the Capitol

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Schiff: "In the absence of the actions, and I want to thank the inspector general, in the absence of his actions in coming to our committee, we might not have even known there was a whistleblower complaint alleging an urgent concern."

Here's some more dissembling. Schiff says that if not for the IG, the committee might never have known about the complaint. But his committee knew that something explosive was going to be filed with the IG. As the New York Times put it, the initial inquiry received by the committee "also explains how Mr. Schiff knew to press for the complaint when the Trump administration initially blocked lawmakers from seeing it."

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Schiff, however, does qualify that this was a complaint alleging “an urgent concern,” and it’s not clear whether the initial inquiry had tipped off the committee staff that it would rise to that level. Still, Schiff’s phrasing was misleading because he gives no hint that the committee was aware a potentially significant (“privileged”) complaint might have been filed.

“As Chairman Schiff has made clear, he does not know the identity of the whistleblower, has had no communication with them or their attorney, and did not view the whistleblower’s complaint until the day prior to the hearing with the DNI when the ODNI finally provided it to the Committee,” the spokesman said. “Whistleblowers frequently come to the committee. Some whistleblowers approach the IG without notice to the Committee, and some who do go to the IG do not necessarily file a complaint. However, this was the first whistleblower complaint provided to the Committee this year that the IC IG determined to be of ‘urgent concern’ and ‘credible,’ and Chairman Schiff would have raised the alarm regardless when it was illegally withheld.”

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The spokesman added: "The focus should not be on the whistleblower, but rather the complaint which the IC IG determined was credible and urgent and which has been thus far confirmed by the call record released by the White House and statements by the President and his personal attorney."

The Pinocchio Test

There are right ways and wrong ways to answer reporters' questions if a politician wants to maintain his or her credibility. There's nothing wrong with dodging a question, as long as you don't try to mislead (as Pompeo did).

But Schiff on "Morning Joe" clearly made a statement that was false. He now says he was answering the wrong question, but if that was the case, he should have quickly corrected the record. He compounded his falsehood by telling reporters a few days later that if not for the IC's office, the committee would not have known about the complaint. That again suggested there had been no prior communication.

The explanation that Schiff was not sure it was the same whistleblower especially strains credulity.

Schiff earns Four Pinocchios.

Four Pinocchios

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US presidential election

Ukraine's leaders campaign against 'pro-Putin' Trump

Fears over effect Republican's victory would have on US policy towards Kiev



Serhiy Leshchenko holds papers allegedly showing payments made to Donald Trump aide Paul Manafort © AFP

Roman Olearchyk in Kiev AUGUST 28 2016

For years, Serhiy Leshchenko, a top Ukrainian anti-corruption campaigner, worked to expose kleptocracy under former president Viktor Yanukovich. Now, he is focusing on a new perceived pro-Russian threat to Ukraine: US presidential candidate Donald Trump.

The prospect of Mr Trump, who has praised Ukraine's arch-enemy Vladimir Putin, becoming leader of the country's biggest ally has spurred not just Mr Leshchenko but Kiev's wider political leadership to do something they would never have attempted before: intervene, however indirectly, in a US election.

Mr Leshchenko and Ukraine's anti-corruption bureau published a secret ledger this month that authorities claim show millions of dollars of off-the-book cash payments to Paul Manafort, Mr Trump's campaign director, while he was advising Mr Yanukovich's Regions party from 2005.

Mr Manafort, who vigorously denies wrongdoing, subsequently resigned from his campaign role. But Mr Leshchenko and other political actors in Kiev say they will continue their efforts to prevent a candidate — who recently suggested Russia might keep Crimea, which it annexed two years ago — from reaching the summit of American political power.

"A Trump presidency would change the pro-Ukrainian agenda in American foreign policy," Mr Leshchenko, an investigative journalist turned MP, told the Financial Times. "For me it was

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Ukraine's leaders campaign against 'pro-Putin' Trump | Financial Times

important to show not only the corruption aspect, but that he is [a] pro-Russian candidate who can break the geopolitical balance in the world."

Mr Trump's rise has led to a new cleavage in Ukraine's political establishment. Hillary Clinton, the Democratic nominee, is backed by the pro-western government that took power after Mr Yanukovich was ousted by street protests in 2014. The former Yanukovich camp, its public support sharply diminished, leans towards Mr Trump.

If the Republican candidate loses in November, some observers suggest Kiev's actions may have played at least a small role.

It was important to show not only the corruption aspect, but that [Trump] is [a] pro-Russian candidate who can break the geopolitical balance in the world

Serhiy Leshchenko

"Ukraine's anti-corruption activists have probably saved the Western world," Anton Shekhovtsov, a western-based academic specialising in Russia and Ukraine, tweeted after Mr Manafort resigned.

Concerns about Mr Trump rocketed in Kiev when he hinted some weeks ago he might recognise Russia's claim to Crimea, suggesting "the people of Crimea, from what I've heard, would rather be with Russia than where they were".

Natalie Jaresko, a US-born Ukrainian and former State Department official who served for a year as Ukraine's finance minister, fired off a volley of tweets to US officials. In one, she challenged former Republican presidential candidate John McCain: "Please assure us you disagree with statement on Crimea/Ukraine. Trump's lies not position of free world, inc Rep party."

On Facebook, Arseniy Yatseniuk, the former prime minister, warned that Mr Trump had "challenged the very values of the free world". Arsen Avakov, interior minister, called the candidate's statement the "diagnosis of a dangerous marginal".

Ukrainian politicians were also angered by the Trump team's alleged role in removing a reference to providing arms to Kiev from the Republican party platform at its July convention.

Adrian Karatnycky, a senior fellow at Washington's Atlantic Council think-tank, said it was "no wonder that some key Ukrainian political figures are getting involved to an unprecedented degree in trying to weaken the Trump bandwagon".

Kiev moved beyond verbal criticism when Ukraine's national anti-corruption bureau and Mr Leshchenko — who has a reputation for being close to the bureau — published the ledger showing alleged payments to Mr Manafort last week.

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The revelations provoked fury among former Regions party backers. Asked by telephone about Mr Manafort's activities in Ukraine, a former Yanukovich loyalist now playing a lead role in the Regions party's successor, called Opposition Bloc, let loose a string of expletives. He accused western media of "working in the interests of Hillary Clinton by trying to bring down Trump".

Though most Ukrainians are disillusioned with the country's current leadership for stalled reforms and lacklustre anti-corruption efforts, Mr Leshchenko said events of the past two years had locked Ukraine on to a pro-western course. The majority of Ukraine's politicians, he added, are "on Hillary Clinton's side".

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Declassified by order of the President

September 24, 2019

~~EYES ONLY~~~~DO NOT COPY~~**MEMORANDUM OF TELEPHONE CONVERSATION****SUBJECT:** ~~(C)~~ Telephone Conversation with President Zelenskyy of Ukraine**PARTICIPANTS:** President Zelenskyy of Ukraine
Notetakers: The White House Situation Room**DATE, TIME:** July 25, 2019, 9:03 - 9:33 a.m. EDT
AND PLACE: Residence

~~(S//NF)~~ The President: Congratulations on a great victory. We all watched from the United States and you did a terrific job. The way you came from behind, somebody who wasn't given much of a chance, and you ended up winning easily. It's a fantastic achievement. Congratulations.

~~(S//NF)~~ President Zelenskyy: You are absolutely right Mr. President. We did win big and we worked hard for this. We worked a lot but I would like to confess to you that I had an opportunity to learn from you. We used quite a few of your skills and knowledge and were able to use it as an example for our elections and yes it is true that these were unique elections. We were in a unique situation that we were able to

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achieve a unique success. I'm able to tell you the following; the first time, you called me to congratulate me when I won my presidential election, and the second time you are now calling me when my party won the parliamentary election. I think I should run more often so you can call me more often and we can talk over the phone more often.

~~(S//NF)~~ The President: [laughter] That's a very good idea. I think your country is very happy about that.

~~(S//NF)~~ President Zelenskyy: Well yes, to tell you the truth, we are trying to work hard because we wanted to drain the swamp here in our country. 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. You are a great teacher for us and in that.

~~(S//NF)~~ The President: Well it's very nice of you to say that. I will say that we do a lot for Ukraine. We spend a lot of effort and a lot of time. Much more than the 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 the 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. 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.

~~(S//NF)~~ President Zelenskyy: Yes you are absolutely right. Not only 100%, but actually 1000% 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. 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.

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~~(S//NF)~~ The President: 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. There are a lot of things that went on, the whole situation. I think you're surrounding yourself with some of the same people. 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, 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.

~~(S//NF)~~ President Zelenskyy: Yes it is very important for me and everything that you just mentioned earlier. For me as a President, it is very important and we are open for any future cooperation. We are ready to open a new page on cooperation in relations between the United States and Ukraine. For that purpose, I just recalled our ambassador from United States and he will be replaced by a very competent and very experienced ambassador who will work hard on making sure that our two nations are getting closer. I would also like and hope to see him having your trust and your confidence and have personal relations with you so we can cooperate even more so. 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. I just wanted to assure you once again that you have nobody but friends around us. I will make sure that I surround myself with the best and most experienced people. I also wanted to tell you that we are friends. We are great friends and you Mr. President have friends in our country so we can continue our strategic partnership. 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..

~~(S//NF)~~ The President: Good because 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. Mr. Giuliani is a highly respected man. He was the mayor of New York City, a great mayor, and I would like him to

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call you. 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. The former ambassador from the United States, 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. 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.

~~(S//NF)~~ President Zelenskyy: I wanted to tell you about the prosecutor. First of all I understand and I'm knowledgeable about the situation. Since we have won the absolute majority in our Parliament, the next prosecutor general will be 100% my person, my candidate, who will be approved by the parliament and will start as a new prosecutor in September. He or she will look into the situation, specifically to the company that you mentioned in this issue. 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 will work on the investigation of the case. On top of that, I would kindly ask you if you have any additional information that you can provide to us, it would be very helpful for the investigation to make sure that we administer justice in our country with regard to the Ambassador to the United States from Ukraine as far as I recall her name was Ivanovich. It was great that you were the first one who told me that she was a bad ambassador because I agree with you 100%. Her attitude towards me was far from the best as she admired the previous President and she was on his side. She would not accept me as a new President well enough.

~~(S//NF)~~ The President: Well, she's going to go through some things. 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'm sure you will figure it out. I heard the prosecutor was treated very badly and he was a very fair prosecutor so good luck with everything. Your economy is going to get better and better I predict. You have a lot of assets. It's a great country. I have many Ukrainian friends, their incredible people.

~~(S//NF)~~ President Zelenskyy: I would like to tell you that I also have quite a few Ukrainian friends that live in the United States. Actually last time I traveled to the United States, I stayed in New York near Central Park and I stayed at the Trump

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Tower. I will talk to them and I hope to see them again in the future. 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 ensure you that we will be very serious about the case and will work on the investigation. As to the economy, there is much potential for our two countries and one of the issues that is very important for Ukraine is energy independence. I believe we can be very successful and cooperating on energy independence with United States. We are already working on cooperation. We are buying American oil but I am very hopeful for a future meeting. We will have more time and more opportunities to discuss these opportunities and get to know each other better. I would like to thank you very much for your support

~~(S//NF)~~ The President: Good. Well, thank you very much and I appreciate that. 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. Give us a date and we'll work that out. I look forward to seeing you.

~~(S//NF)~~ President Zelenskyy: 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. On the other hand, I believe that on September 1 we will be in Poland and we can meet in Poland hopefully. After that, it might be a very good idea for you to travel to Ukraine. We can either take my plane and go to Ukraine or we can take your plane, which is probably much better than mine.

~~(S//NF)~~ The President: Okay, we can work that out. I look forward to seeing you in Washington and maybe in Poland because I think we are going to be there at that time.

~~(S//NF)~~ President Zelenskyy: Thank you very much Mr. President.

~~(S//NF)~~ The President: Congratulations on a fantastic job you've done. The whole world was watching. I'm not sure it was so much of an upset but congratulations.

~~(S//NF)~~ President Zelenskyy: Thank you Mr. President bye-bye.

-- End of Conversation --

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ANALYSIS: Democrats have a Colonel Vindman problem

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by Byron York | November 11, 2019 08:29 PM

House Democrats conducted their impeachment interviews in secret, but Lt. Col. Alexander Vindman still emerged as star of the show. Appearing at his Oct. 29 deposition in full dress uniform, the decorated Army officer, now a White House National Security Council Ukraine expert, was the first witness who had actually listened to the phone call between President Trump and Ukrainian President Volodymyr Zelensky that is at the heart of the Democratic impeachment campaign. Even though lawmakers were forbidden to discuss his testimony in public, Vindman's leaked opening statement that "I did not think it was proper [for Trump] to demand that a foreign government investigate a U.S. citizen" exploded on news reports.

Vindman has not yet been scheduled to appear before the Democrats' public impeachment hearings. When that happens, he will undoubtedly again play a prominent role. But there will be a difference. The public now has a transcript of Vindman's deposition. And those who have taken the trouble to read the 340-page document will have a different picture of Vindman's testimony than the one presented in early media reports.

Yes, Vindman testified repeatedly that he "thought it was wrong" for Trump, speaking with Zelensky, to bring up the 2016 election and allegations of Ukraine-related corruption on the part of former Vice President Joe Biden and his son Hunter Biden. But the Vindman transcript also showed a witness whose testimony was filled with opinion, with impressions, who had little new to offer, who withheld important information from the committee, who was steeped in a bureaucracy that has often been hostile to the president, and whose lawyer, presumably with Vindman's approval, expressed unmistakable disdain, verging on contempt, for members of Congress who asked inconvenient questions. In short, Vindman's testimony was not the slam-dunk hit Democrats portrayed it to be. And that raises questions about how it will play when Vindman goes before the world in a public impeachment hearing.

Here are four problems with the Vindman testimony:

1) Beyond his opinions, he had few new facts to offer. Vindman seemed to be an important fact witness, the first who had actually been on the July 25 call when Trump talked to Zelensky. But the White House weeks ago released the rough transcript of that call, which meant everyone in the secure room in which Vindman testified, and everyone on the planet, or that matter, already knew what had been said.

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Indeed, Vindman attested to the overall accuracy of the rough transcript, contrary to some impeachment supporters who have suggested the White House is hiding an exact transcript that would reveal everything Trump said to the Ukrainian president. As one of a half-dozen White House note-takers listening to the call, Vindman testified that he tried unsuccessfully to make a few edits to the rough transcript as it was being prepared. In particular, Vindman believed that Zelensky specifically said the word "Burisma," the corrupt Ukrainian energy company that hired Hunter Biden, when the rough transcript referred only to "the company." But beyond that, Vindman had no problems with the transcript, and he specifically said he did not believe any changes were made with ill intent.

"You don't think there was any malicious intent to specifically not add those edits?" asked Republican counsel Steve Castor.

"I don't think so."

"So otherwise, this record is complete and I think you used the term 'very accurate'?"

"Yes," said Vindman.

Once Vindman had vouched for the rough transcript, his testimony mostly concerned his own interpretation of Trump's words. And that interpretation, as Vindman discovered during questioning, was itself open to interpretation.

Vindman said he was "concerned" about Trump's statements to Zelensky, so concerned that he reported it to top National Security Council lawyer John Eisenberg. (Vindman had also reported concerns to Eisenberg two weeks before the Trump-Zelensky call, after a Ukraine-related meeting that included Gordon Sondland, the U.S. ambassador to the European Union.) Vindman said several times that he was not a lawyer and did not know if Trump's words amounted to a crime but that he felt they were "wrong." That was when Republican Rep. John Ratcliffe, a former U.S. attorney, tried to get to the root of Vindman's concerns. What was really bothering him?

"I'm trying to find out if you were reporting it because you thought there was something wrong with respect to policy or there was something wrong with respect to the law," Ratcliffe said to Vindman. "And what I understand you to say is that you weren't certain that there was anything improper with respect to the law, but you had concerns about U.S. policy. Is that a fair characterization?"

"So I would recharacterize it as I thought it was wrong and I was sharing those views," Vindman answered. "And I was deeply concerned about the implications for bilateral relations, U.S. national security interests, in that if this was exposed, it would be seen as a partisan play by Ukraine. It loses the bipartisan support. And then for —"

"I understand that," Ratcliffe said, "but that sounds like a policy reason, not a legal reason."

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Indeed it did. Elsewhere in Vindman's testimony, he repeated that his greatest worry was that if the Trump-Zelensky conversation were made public, then Ukraine might lose the bipartisan support it currently has in Congress. That, to Ratcliffe and other Republicans, did not seem a sufficient reason to report the call to the NSC's top lawyer, nor did it seem the basis to begin a process leading to impeachment and a charge of presidential high crimes or misdemeanors.

At another point, Castor asked Vindman whether he was interpreting Trump's words in an overly alarmist way, especially when Vindman contended that Trump issued a "demand" to Zelensky.

"The president in the transcript uses some, you know, words of hedging from time to time," Castor said. "You know, on page 3, he says 'whatever you can do.' He ends the first paragraph on page 3, 'if that's possible.' At the top of page 4, 'if you could speak to him, that would be great.' 'So whatever you can do.' Again, at the top of page 4, 'if you can look into it.' Is it reasonable to conclude that those words hedging for some might, you know, lead people to conclude that the president wasn't trying to be demanding here?"

"I think people want to hear, you know, what they have as already preconceived notions," Vindman answered, in what may have been one of the more revealing moments of the deposition. "I'd also point your attention to 'whatever you can do, it's very important to do it if that's possible.'"

"If that's possible," Castor stressed.

"Yeah," said Vindman. "So I guess you can interpret it in different ways."

2) Vindman withheld important information from investigators. Vindman ended his opening statement in the standard way, by saying, "Now, I would be happy to answer your questions." As it turned out, that cooperation did not extend to both parties.

The only news in Vindman's testimony was the fact that he had twice taken his concerns to Eisenberg. He also told his twin brother, Yevgeny Vindman, who is also an Army lieutenant colonel and serves as a National Security Council lawyer. He also told another NSC official, John Erath, and he gave what he characterized as a partial readout of the call to George Kent, a career State Department official who dealt with Ukraine. That led to an obvious question: Did Vindman take his concerns to anyone else? Did he discuss the Trump-Zelensky call with anyone else? It was a reasonable question and an important one. Republicans asked it time and time again. Vindman refused to answer, with his lawyer, Michael Volkov, sometimes belligerently joining in. Through it all, House Intelligence Committee Chairman Adam Schiff stood firm in favor of keeping his committee in the dark.

Vindman openly conceded that he told other people about the call. The obvious suspicion from Republicans was that Vindman told the person who became the whistleblower, who reported the call to the Intelligence Community inspector general, and who, in a carefully

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crafted legal document, framed the issue in a way that Democrats have adopted in their drive to remove the president from office.

Vindman addressed the suspicion before anyone raised it. In his opening statement, he said, "I am not the whistleblower ... I do not know who the whistleblower is and I would not feel comfortable to speculate as to the identity of the whistleblower."

Fine, said Republicans. We won't ask you who the whistleblower is. But if your story is that you were so concerned by the Trump-Zelensky issue that you reported it to Eisenberg, and also to others, well, who all did you tell? That is when the GOP hit a brick wall from Vindman, his lawyer Volkov, and, most importantly, Schiff. As chairman of the Intelligence Committee, charged with overseeing the intelligence community, Schiff might normally want to know about any intelligence community involvement in the matter under investigation. But in the Vindman deposition, Schiff strictly forbade any questions about it. "Can I just caution again," he said at one point, "not to go into names of people affiliated with the IC in any way." The purpose of it all was to protect the identity of the whistleblower, who Schiff incorrectly claimed has "a statutory right to anonymity."

That left Republicans struggling to figure out what happened. "I'm just trying to better understand who the universe of people the concerns were expressed to," said Castor.

"Look, the reason we're objecting is not — we don't want — my client does not want to be in the position of being used to identifying the whistleblower, okay?" said Volkov. "And based on the chair's ruling, as I understand it, [Vindman] is not required to answer any question that would tend to identify an intelligence officer."

"Okay," Castor said to Vindman. "Did you express concerns to anybody, you know, that doesn't fall under this category of someone who might be the whistleblower, or is Eisenberg the only

"No," said Vindman. "In my coordination role, as I actually said in the statement, in my opening ... in performing my coordination role as director on the National Security Council, I provide readouts of relevant meetings and communications to [redacted] properly cleared counterparts with a relevant need to know."

What did that mean, exactly? Vindman didn't tell anybody else, he just provided readouts? On a need-to-know basis? Republicans tried on several occasions to figure it out. "Some of the other people that you raised concerns to, did you ask any of those folks to do anything with the concerns?" asked Castor.

That only prompted more bureaucratese from the witness. "I don't think that's an accurate characterization, counsel," Vindman said. "I think what I did was I fulfilled my coordination role and spoke to other national security professionals about relevant substance in the call so that

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they could take appropriate action. And frankly, it's hard to — you know, without getting into, you know, sources and methods, it's hard to kind of talk about some of these things."

So, Vindman's basic answer was: I won't tell you because that's a secret. After several such exchanges, Volkov got tough with lawmakers, suggesting further inquiries might hurt Vindman's feelings.

"Look, he came here," Volkov said. "He came here. He tells you he's not the whistleblower, okay? He says he feels uncomfortable about it. Try to respect his feelings at this point."

An unidentified voice spoke up. "We're uncomfortable impeaching the president," it said.

"Excuse me. Excuse me," Volkov responded. "If you want to debate it, we can debate it, but what I'm telling you right now is you have to protect the identity of the whistleblower. I get that there may be political overtones. You guys go do what you got to do, but do not put this man in the middle of it."

Castor spoke up. "So how does it out anyone by saying that he had one other conversation other than the one he had with George Kent?"

"Okay," said Volkov. "What I'm telling you right now is we're not going to answer that question. If the chair wants to hold him in contempt for protecting the whistleblower, God be with you. ... You don't need this. You don't need to go down this. And look, you guys can — if you want to ask, you can ask — you can ask questions about his conversation with Mr. Kent. That's it. We're not answering any others."

"The only conversation that we can speak to Col. Vindman about is his conversation with Ambassador Kent?" asked Republican Rep. Lee Zeldin.

"Correct," said Volkov, "and you've already asked him questions about it."

"And any other conversation that he had with absolutely anyone else is off limits?"

"No," said Volkov. "He's told you about his conversations with people in the National Security Council. What you're asking him to do is talk about conversations outside the National Security Council. And he's not going to do that. I know where you're going."

"No, actually, you don't," said Zeldin.

"Oh, yes, sir," said Volkov.

"No, you really don't," said Zeldin.

"You know what?" said Volkov. "I know what you're going to say. I already know what you're going to do, okay? And I don't want to hear the FOX News questions, okay?"

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Zeldin, perhaps seeking to cool Volkov down, said, "Listen, this transcript is going to be out at some point, okay?"

"I hope so," said Volkov.

Finally, Schiff stepped in to stop things. "The gentleman will suspend," he said. "Let's suspend. Counsel has made his position clear. I think his client has made his position clear. Let's move on."

It should be noted that Volkov was a lawyer, and members of Congress were members of Congress. The lawyer should not be treating the lawmakers as Volkov did. Volkov was able to tell Republicans to buzz off only because he had Schiff's full support. And Republicans never found out who else Vindman discussed the Trump-Zelensky call with.

3) There were notable gaps in Vindman's knowledge. Vindman portrayed himself as the man to see on the National Security Council when it came to issues involving Ukraine. "I'm the director for Ukraine," he testified. "I'm responsible for Ukraine. I'm the most knowledgeable. I'm the authority for Ukraine for the National Security Council and the White House." Yet at times there were striking gaps in Vindman's knowledge of the subject matter. He seemed, for instance, distinctly incurious about the corruption issues in Ukraine that touched on Joe and Hunter Biden.

Vindman agreed with everyone that Ukraine has a serious corruption problem. But he knew little specifically about Burisma, the nation's second-largest privately owned energy company, and even less about Mykola Zlochevsky, the oligarch who runs the firm.

"What do you know about Zlochevsky, the oligarch that controls Burisma?" asked Castor.

"I frankly don't know a huge amount," Vindman said.

"Are you aware that he's a former Minister of Ecology"? Castor asked, referring to a position Zlochevsky allegedly used to steer valuable government licenses to Burisma.

"I'm not," said Vindman.

"Are you aware of any of the investigations the company has been involved with over the last several years?"

"I am aware that Burisma does have questionable business dealings," Vindman said. "That's part of the track record, yes."

"Okay. And what questionable business dealings are you aware of?" asked Castor. Vindman said he did not know beyond generalities. "The general answer is I think they have had questionable business dealings," Vindman said.

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Castor then noted that in 2014 Burisma "undertook an initiative to bring in some additional folks for their board, are you aware of some of the folks they added to their board in 2014?"

The only individual I'm aware of, again, after, you know, as it's been reported in the press is Mr. Hunter Biden," Vindman said.

"Okay," said Castor. "And did you check with any of your authoritative sources in government to learn a little bit more about these issues?"

"I did not," said Vindman. "I didn't think it was appropriate. He was a U.S. citizen, and I wasn't going to ask questions."

A short time later, Castor asked, "And do you have any knowledge as to why Hunter Biden was asked to join the board?"

"I do not."

"Did you check with any of your authoritative sources whether he was a corporate governance expert or —"

"Like I said, I didn't," Vindman answered. "He's an American citizen. Certainly there are domestic political overtones. I did not think that was appropriate for me to start looking into this particular ... I drew my conclusions on Burisma and I moved on."

Vindman had other blind spots, as well. One important example concerned U.S. provision of so-called lethal aid to Ukraine, specifically anti-tank missiles known as Javelins. The Obama administration famously refused to provide Javelins or other lethal aid to Ukraine, while the Trump administration reversed that policy, sending a shipment of missiles in 2018. On the Trump-Zelenskyy call, the two leaders discussed another shipment in the future.

"Both those parts of the call, the request for investigation of Crowd Strike and those issues, and the request for investigation of the Bidens, both of those discussions followed the Ukraine president saying they were ready to buy more Javelins. Is that right?" asked Schiff.

"Yes," said Vindman.

"There was a prior shipment of Javelins to Ukraine, wasn't there?" said Schiff.

"So that was, I believe — I apologize if the timing is incorrect — under the previous administration, there was a — I'm aware of the transfer of a fairly significant number of Javelins, yes," Vindman said.

Vindman's timing was incorrect. Part of the entire Trump-Ukraine story is the fact that Trump sent the missiles while Obama did not. The top Ukraine expert on the National Security Council did not seem to know that.

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4) Vindman was a creature of a bureaucracy that has often opposed Trump. In his testimony, Vindman's perspective could be mind-numbingly bureaucratic. One of his favorite words is "interagency," by which he means the National Security Council's role in coordinating policy among the State Department, Defense Department, the Intelligence Community, the Treasury Department, and the White House. His bible is something known as NSPM-4, or National Security Presidential Memorandum 4. He says things such as, "So I hold at my level sub-PCCs, Deputy Assistant Secretary level. PCCs are my boss, senior director with Assistant Secretaries. DCs are with the deputy of the National Security Council with his deputy counterparts within the interagency." He believes the interagency has set a clear U.S. policy toward Ukraine.

"You said in your opening statement, or you indicated at least, that there's a fairly consensus policy within the interagency towards Ukraine," Democratic counsel Daniel Goldman said to Vindman. "Could you just explain what that consensus policy is, in your own words?"

"What I can tell you is, over the course of certainly my tenure there, since July 2018, the interagency, as per normal procedures, assembles under the NSPM-4, the National Security Policy [sic] Memorandum 4, process to coordinate U.S. government policy," Vindman said. "We, over the course of this past year, probably assembled easily a dozen times, certainly at my level, which is called a subpolicy coordinating committee — and that's myself and my counterparts at the Deputy Assistant Secretary level — to discuss our views on Ukraine."

That is a classic bureaucrat's view of government and the world. Needless to say, Trump does not do that sort of thing. The president is remarkably freewheeling, unbureaucratic, and certainly not always consistent when it comes to making policy. But he generally has a big goal in mind, and in any event, he is the president of the United States. He, not the interagency, sets U.S. foreign policy.

Still, Vindman was deeply upset when Trump, relying on Rudy Giuliani and others, turned his attention to Ukraine. "In the spring of 2019, I became aware of outside influencers promoting a false narrative of Ukraine inconsistent with the consensus views of the interagency," Vindman said in his opening statement. The outside influencers, he suggested, were undermining the work of his "interagency colleagues." In the words of the *Washington Post*, Vindman was "deeply troubled by what he interpreted as an attempt by the president to subvert U.S. foreign policy."

Vindman's discussion of the interagency, while dry as dust, might contain the key to his role in the Trump-Ukraine affair. In the last few years, the bureaucracy with which he so clearly identified has often been at odds, sometimes privately and sometimes publicly, with the president. Former U.N. Ambassador Nikki Haley, writing in a new book, said two top officials, Secretary of State Rex Tillerson and White House chief of staff John Kelly, sought to undermine Trump to "save the country."

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"It was *their* decisions, not the president's, that were in the best interest of America, they said," Haley wrote. "The president didn't know what he was doing."

That view extended deep into some areas of the government. Now, parts of the foreign policy bureaucracy are in open war with the president, channeling their grievances through the House Democrats' drive toward impeachment. When he testifies in public, Vindman will be the living embodiment of that bureaucratic war.



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Joint Statement from Committee Chairs on Release of Ukraine Call Record

Washington, September 25, 2019

WASHINGTON, D.C. – Today, Rep. Adam Schiff, the Chairman of the House Permanent Select Committee on Intelligence, Rep. Jerrold Nadler, the Chairman of the House Judiciary Committee, Rep. Elijah E. Cummings, the Chairman of the Committee on Oversight and Reform, and Rep. Eliot L. Engel, the Chairman of the Committee on Foreign Affairs, issued the following statement.

"The transcript is an unambiguous, damning, and shocking abuse of the Office of the Presidency for personal political gain. This is a clear breach of trust placed in the President to faithfully execute the laws and to preserve, protect, and defend the Constitution.

"The record of the call released by the White House confirms our worst fears: that the President abused his office by directly and repeatedly asking a foreign country to investigate his political rival and open investigations meant to help the President politically. Not once, not twice, but more than half a dozen times during one telephone call. This was a shakedown. The President of the United States asked for a 'favor' after the Ukrainian President expressed his country's need for weapons to defend against Russian aggression. The transcript also shows that the President promised follow-up by Attorney General William Barr or the President's personal attorney Rudy Giuliani at least nine times.

"Let's be clear: *no quid pro quo is required to betray our country. Trump asked a foreign government to interfere in our elections—that is betrayal enough.* The corruption exists whether or not Trump threatened—explicitly or implicitly—that a lack of cooperation could result in withholding military aid.

"Ukraine depends on the U.S. for economic, military, and diplomatic support—especially in its attempts to push back against Russian aggression—and is particularly vulnerable to pressure from any U.S. president. For a country so reliant on the United States, nothing more was needed.

"The call reportedly was preceded by a decision by Trump to withhold vital security assistance, and it was followed in quick succession by his personal lawyer, Rudy Giuliani, meeting with a top aide to the new Ukrainian president at Trump's direction. According to reports, the Ukrainians eventually became aware that the aid was being withheld and expressed concern to U.S. officials.

"Congress needs the full and unredacted whistleblower complaint. We need to speak with the whistleblower. We need records of the communications. We need to speak with those knowledgeable about efforts by the President, the Attorney General, and the President's personal attorney to secure political help from Ukraine, the decision to freeze security assistance, and the attempt to cover it up.

"We also need the records that our Committees requested from the State Department and the White House—by tomorrow's deadline—or we will subpoena them.

"These requirements are especially urgent now that the Department of Justice apparently has chosen to stand down, whitewash this investigation, and block Congress from obtaining this information.

"Congress is now exercising its constitutional responsibility to investigate under the umbrella of impeachment, and we need cooperation immediately. Nothing less than full transparency will do when our national security is at risk."

Background:

It is also clear from the transcript that the President meant to tie this request to Ukraine's defense capability. Following the Ukrainian president's reference to defense spending, President Trump immediately asks him to open investigations. Trump says:

"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.... 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, 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."

The transcript also makes clear that President Trump asked the Ukrainian president to investigate issues related to his political opponent, former Vice President Joe Biden, and directly intervened to have his own Ambassador to Ukraine recalled.

The Ukrainian President said to President Trump: "I guarantee as the President of Ukraine that all the investigations will be done openly and candidly. That I can assure you." The President then directly requested an investigation of his political opponent, stating:

"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."

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The New York Times



OP-ED CONTRIBUTORS

Investing in Ukraine's Future

By John E. Herbst, Steven Pifer and William B. Taylor Jr.

Dec. 29, 2015

Just over a year ago, President Obama signed into law the Ukraine Freedom Support Act, which provided congressional backing to sanctions on Russia following the Kremlin's illegal annexation of Crimea and invasion of eastern Ukraine. Since then, sanctions have hurt Russia's economy and prevented individuals in President Vladimir V. Putin's inner circle from traveling to the West. The Obama administration should be commended for sustaining a successful sanctions regime.

But Washington must do more than just punish Russia. It must bolster Ukrainians as they struggle to build a new, reform-minded government while continuing to fight to maintain their country's territorial integrity.

As winter sets in, the continuing war in Ukraine's east has devolved into an economic siege as Russia leverages gas supplies, coal shipments and debt repayment to attempt to extract concessions from a Ukrainian government that is still battling Russian proxies violating the Minsk II cease-fire. With Ukraine's economic output having shrunk by a quarter, the currency sharply devalued and a population fearful of an uncertain future, Ukraine is teetering on the brink.

Appropriately funding efforts to improve Ukraine's stability is a down payment on Europe's collective security. Russia's land grab in Crimea violates the very security architecture — including the Helsinki Final Act responsible for establishing the inviolability of Europe's national borders — that has kept

Europe secure since World War II. But the durability of this system depends on the West's willingness to defend it. Failing to do so signals to both adversaries and allies that agreements among nations simply do not matter.

Support for Ukraine's democratic aspirations in the face of Russian aggression is one of the few areas where both Democrats and Republicans agree. But the gap between rhetoric and resources pledged is shockingly wide. Next year, Ukraine can expect approximately \$3 billion to \$4 billion in conditional support from the United States and the European Union, combined. This sum is insufficient. Lawrence Summers, the former United States Treasury secretary, called on Europeans to deliver on promises to support Ukraine's reform efforts with increased funding of \$5 billion to \$10 billion, calling it an important "security investment." He's right.

Congress and the Obama administration should work together to provide an additional \$2 billion to \$5 billion in economic support. At the same time, Washington should seek to persuade the European Union to make a similar commitment for a total of \$10 billion, the optimal amount of support to allow Ukraine's government room to maneuver. If budget concerns prevent that, it is essential that together the United States and European Union find at least \$5 billion in assistance, the minimum threshold to ensure the viability of an independent Ukraine that can sustain its nascent reform effort and withstand a persistent campaign of economic sabotage by Russia.

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This grand aid package could include loan guarantees, direct budget support grants and debt swaps, as well as assistance to support reforms in key sectors, like banking, energy and the judiciary. It could also be used to encourage investment in Ukraine. Loan guarantees, which have been the preferred method of support approved by Congress to date, should only constitute part of the package. There is a limit to how much debt Ukraine can take on before default. Loans could be paired with direct budgetary support

to assist with balance of payments and with debt swaps, which have a proven track record of helping sustain young democracies: The United States granted them to Poland in the 1990s.

As former American ambassadors to Kiev, we recognize one of the main challenges in providing economic support to Ukraine: corruption. This is why any future assistance package must be made conditional on the Ukrainian government's commitment to accelerate reform and root out corruption. The current Ukrainian leadership is far from perfect, but the seeds of accountability have been planted, and Ukraine's robust civil society ensures a steady supply of nurturing sunlight. The recent resignation of a notoriously corrupt parliamentary kingmaker and the appointment of a new top anti-corruption prosecutor are signs of Ukraine's progress.

Longtime observers of Ukraine who are impatient for change have criticized the pace of reform. But the move toward market pricing in the gas sector, cleaning up the banking sector by closing insolvent banks and introducing transparency checks into banks' ownership structures are commendable. So is the creation of the National Reform Council, the development of an official anti-corruption strategy and the gradual adoption of e-government and other transparent-governance tools.

A new Ukraine was born in the Maidan, but the United States and Europe have thus far failed to make an adequate commitment to its success. That must change. The West must now provide support commensurate with the military and economic threat Kiev faces, while also pushing the Ukrainian government to reform. A global order based on rule of law is at stake. Defending it cannot be done on the cheap. For the West, a Ukraine impoverished by Kremlin aggression will be far more costly.

John E. Herbst, director of the Dinu Patriciu Eurasia Center at the Atlantic Council, was American ambassador to Ukraine from 2003-6. Steven Pifer, a senior fellow at the Brookings Institution, was ambassador to Ukraine from 1998-2000. William B. Taylor, Jr., executive vice president at the United States Institute of Peace, was ambassador to Ukraine from 2006-9.

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11/13/2019

Report: Schiff Engaged With Russian Prank Callers
(<https://www.rollcall.com>)

**Politics**

Report: Schiff Engaged With Russian Prank Callers

Comedians were offering ranking Democrat on House Intelligence Committee naked photos of Trump



Rep. Adam Schiff, D-Calif., was pranked by a pair of Russian comedians and is heard on their audio asking a number of questions about the photos they offered. (Tom Williams/CQ Roll Call file photo)

11/13/2019

Report: Schiff Engaged With Russian Prank Callers

(https://www.rollcall.com)

Eric Garcia (/author/ericgarcia/rollcall-com)**@EricMGarcia (/www.twitter.com/EricMGarcia)**

Posted Feb 7, 2018 8:24 AM

Audio of Russian radio comedians prank-calling Rep. Adam Schiff (https://media.cq.com/members/7266?rel=memberLink) shows the ranking Democrat on the House Intelligence Committee asking for details about naked photos of President Donald Trump they were offering.

The audio from last year was posted (http://www.dailymail.co.uk/news/article-5355713/Adam-Schiff-spoofed-Russian-claim-nude-Trump-pic.html) by U.K. outlet The Daily Mail. The audio's existence was first reported by the Atlantic (https://www.theatlantic.com/magazine/archive/2018/01/putins-game/546548/).

On the recording, the comedians, nicknamed "Vovan" and "Lexus," pretend to be Andriy Parubiy, speaker of the Ukrainian Parliament. The two have duped a number of celebrities and politicians, including U.N. Ambassador Nikki Haley, with their calls.

The two tell the California Democrat they have evidence that the Russian government has naked photos of Trump.

11/13/2019

Report: Schiff Engaged With Russian Prank Callers

The photos stemmed from an affair Trump supposedly had with Russian model Olga Buzova, the two comedians say.



Watch: One Dramatic Week: Congress, Trump Spar Over Shutdown, Then Another

Memo



Vovan and Lexus say the affair was set up in 2013 during a trip to Moscow and was arranged through Ksenia Sobchak, Russian President Vladimir Putin's goddaughter, who passed the photos to Putin.

In the recording, Schiff can be heard repeatedly asking for specifics about the nature of the meetings.

"I'll be in touch with the FBI about this. And we'll make arrangements with your staff. I think it probably would be best to provide these materials both to our committee and to the FBI," Schiff says.

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11/13/2019

Report: Schiff Engaged With Russian Prank Callers

The duo tell Schiff they have a recording of a conversation between a Russian singer who is a spy and Michael Flynn, formerly a Trump campaign adviser and national security adviser.

Flynn resigned less than a month into the Trump administration after failing to fully disclose the nature of phone calls to Russian Ambassador Sergey Kislyak.

Late last year, Flynn pleaded guilty to lying to the FBI and is now cooperating with Special Counsel Robert S. Mueller III's investigation into Russian interference in the 2016 election.

But a spokesperson for Schiff said the California Democrat had a feeling the call was possibly bogus.

"Obviously, it was bogus — which became even more evident during the call — but as with any investigation that is global in scale, we have to chase any number of leads, many of which turn out to be duds," the spokesperson told The Daily Mail.

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U.S. Embassy in Ukraine

Remarks by Ambassador Yovanovitch on the Occasion of the 5th Anniversary of the Ukraine Crisis Media Center's Founding

March 5, 2019

Hi, everybody. Natalia, thank you, and it's really an honor and a pleasure to be here to celebrate UCMC's fifth anniversary.

I think that's an important milestone, and you noted the many friends — and there are many more — American friends of Ukraine — who have spoken here at UCMC, and I'm honored to be in that number also, as a friend of Ukraine during what is a really important period.

Because it's been an important five years, I think, in the history of Ukraine, and I think we all know, if we didn't know before, that no democracy can thrive without independent media organizations — like UCMC serving the public with integrity and with professionalism.

And we have — the United States has — been proud to partner with UCMC since its beginning.

Today, I think UCMC sets an example for many other media organizations in Ukraine in its objectivity and steadfast commitment to the truth.

That role, and that example, I think, is especially critical today. Because as we have marked the fifth anniversary — not just of UCMC but also of the Euromaidan — it's clear that Ukraine is still working — and in some cases struggling — to live up to the aspirations of the Revolution of Dignity.

Let there be no doubt — and I think everyone in the room would come up with their own examples — of the many important areas where Ukraine has progressed over the last five years. So, I'll give you my list, but it's certainly not an exclusive list.

There's the new anti-corruption institutions, stabilizing the banking system, encouraging the growth of civil society, building a new police force based on western standards, implementing decentralization, and the list goes on.

None of these reforms is complete. It's always a process, I think in life as well as the history of countries, but progress has been made, and it's been important progress. And I think it shows what Ukraine is capable of when the government, all of Ukraine's institutions, and the Ukrainian people work together.

And I think media has an especially important role to play in Ukraine's progress and also in exposing corruption.

We were just reminded last week, and even last night, when reporters informed the public about the Constitutional Court's decision to eliminate the illicit enrichment offense from the criminal code. And investigative journalists, last week and last night, revealed allegations of corruption in the defense sector.

The Constitutional Court's decision is, we believe, a serious setback in the fight against corruption in Ukraine. It weakens Ukraine's anti-corruption architecture, including the soon-to-be established High Anti-Corruption Court and the National Anti-Corruption Bureau of Ukraine.

And that news from the Constitutional Court broke in parallel with other concerning developments in the judicial reform process.

We understand that the High Qualifications Commission is poised to approve as many as 31 candidates with questionable integrity to move one step closer to becoming Supreme Court justices.

This could result in a Supreme Court in which 30 percent of the justices have demonstrated flawed professional ethics, which we believe is unsuited to the highest court in the land.

Judicial integrity, I think everybody has recognized, is crucial to transforming Ukraine into a modern, prosperous European democracy. But instead of building that future, what we're seeing are some actions by the courts — or the courts being used in a way — to block the reforms and some of the progress that Ukraine has made.

In many cases, courts have reversed successful efforts to clean up the banking system, and most worrying, a new lawsuit was recently filed seeking to reverse the nationalization of PrivatBank and put it back in the hands of those who plundered it.

In the energy sector, where venal interests have long profited, hard-won achievements to fight those interests by establishing a real energy market are now under attack in the courts.

It is increasingly clear that Ukraine's once-in-a-generation opportunity for change, for which such a high price was paid five years ago on the Maidan, has not yet resulted in the anti-corruption or rule of law reforms that Ukrainians expect or deserve.

But, you know, the fight is not over, even after the tangible progress since the Revolution of Dignity.

As observers of Ukraine during this election year, we've noticed that since the Ukrainian people want change in their lives and in their government, everyone styles themselves as a reformer. So what are some of the things that are being discussed in Ukraine today, initiatives that could move and help institutionalize the transformation that Ukrainians seek.

I think one thing, coming after last week's decision, would be passing – actually passing, not just proposing – a new and better amendment to the criminal code that not only restores illicit enrichment as an anti-corruption tool but reinstates the dozens of cases that were undermined by the court decision.

Instead of annulling anti-corruption laws, there are some that believe that the Constitutional Court could focus its attention on revoking the law that requires civil society to file electronic asset declarations, which was clearly intended to undermine the effectiveness of those – like media representatives – who expose corruption and hold elected representatives accountable.

To ensure the integrity of anticorruption institutions, the Special Anticorruption Prosecutor must be replaced. Nobody who has been recorded coaching suspects on how to avoid corruption charges can be trusted to prosecute those very same cases.

Those responsible for corruption should be investigated, prosecuted, and if guilty, go to jail. And in order for that to happen, all of the elements of the anti-corruption architecture must be in place and must be working effectively.

The High Qualifications Commission, we believe, should consider seriously questions about the integrity of judicial candidates.

We don't understand what the reason would be to appoint demonstrably flawed candidates to the country's highest court, especially when there are other qualified candidates without such concerns available.

And the Public Integrity Council must be given more power to prevent bad apples from continuing to corrupt the judiciary.

As has been so long discussed in Ukraine – I mean, for decades, really – MPs, who continue to enjoy immunity from prosecution, a situation that everyone recognizes is ripe for abuse, should vote to end that immunity for the next Rada.

The government of Ukraine should also immediately fund a complete audit of Ukroboronprom and declassify the State Defense Order to the maximum extent possible. This will promote transparency and fight corruption in the defense sector.

Turning a blind eye to corruption in the defense sector is taking food, medical treatment, and weapons out of the hands of Ukraine's brave soldiers. And the government should investigate and prosecute cases of corruption at Ukroboronprom and elsewhere.

Ukraine has made great strides implementing corporate governance reforms, especially in the energy sector. But independent corporate governance teams, especially at state owned enterprises – whether it is Ukroboronprom, Naftogaz, or any other state-owned enterprise – should be able to continue their reform work with full autonomy and integrity.

And during an electoral year with both presidential and parliamentary elections coming up, I can't think of any greater priority than ensuring that Ukraine's elections are free and fair. It is important that the will of the Ukrainian people be respected, no matter what the outcome.

What does this mean in practice? Only the independent Central Election Commission should administer the election and count the votes.

Civil society observers and campaign staff should not be intimidated or harassed. Official, apolitical security should ensure that titushki or other armed groups do not stop voters from expressing their will.

People who buy votes should be punished. But so should the people who are paying them for their vote. Campaigns that try to falsify vote records should be prosecuted. And government resources should never be used to target political opponents.

In short, a country seeking integration with the European Union and NATO should ensure its actions meet western standards.

So I'm often asked, why do we encourage these principles? Because the U.S. stands with the Ukrainian people in expecting free and fair, democratic presidential and parliamentary elections later this year.

The U.S. stands firmly alongside the Ukrainian people in demanding that individuals be held accountable for their actions, for corruption, and that the court systems be independent, transparent, and serve the Ukrainian people's interests.

We stand with the Ukrainian people in supporting the successful end to the conflict in eastern Ukraine, and we also stand with the Ukrainian people in promoting a prosperous economy, a government that works for Ukrainians, respects their rights, and treats all citizens equally under the law.

And so, why do we support all of that? Because a prosperous, stable Ukraine that is at peace, that is democratic – that makes a great partner for the United States. So we think that it works for Ukrainians but it also works for us and we will have a stronger partnership as a result of Ukraine's development.

I think the people in this room know that none of these goals can be fully achieved without a robust, independent media informing the public and policymakers.

That's why we have been concerned by reports of pressure on independent journalists. Intimidation and harassment have no place in a modern democracy.

Threats to independent journalism undermine the Ukrainian people's fight against corruption

And they undermine Ukraine's security – because the more vulnerable an individual or institution is to corruption, the weaker that society, the weaker that democracy.

So, those who support a stable, economically strong, democratic and inclusive Ukraine must be the independent media's strongest supporters.

So in closing, I just want to thank you again, Natalia, and to everyone at UCMC, for the opportunity to be here today – we've got our whole team here, I think, from the Public Affairs side, who are proud of our partnership with UCMC. We are grateful to be celebrating five years of great work with all of you, and grateful to be able to express U.S. support for an independent and strong Ukrainian media.

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JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, July 5, 2018

Credit Suisse's Investment Bank in Hong Kong Agrees to Pay \$47 Million Criminal Penalty for Corrupt Hiring Scheme that Violated the FCPA

Credit Suisse (Hong Kong) Limited (CSHK), a Hong Kong-based subsidiary of Credit Suisse Group AG (CSAG), a Swiss-based issuer of publicly traded securities in the United States, reached a resolution with the Department of Justice and agreed to pay a \$47 million criminal penalty for its role in a scheme to corruptly win banking business by awarding employment to friends and family of Chinese officials.

Acting Assistant Attorney General John P. Cronan of the Justice Department's Criminal Division, U.S. Attorney Richard P. Donoghue of the Eastern District of New York and Assistant Director-in-Charge William F. Sweeney Jr. of the FBI's New York Field Office made the announcement.

"Credit Suisse (Hong Kong) Limited engaged in a corrupt scheme to win business with Chinese state-owned entities by hiring friends and family of Chinese government officials, generating the bank at least \$46 million in profits," said Acting Assistant Attorney General Cronan. "These 'relationship hires' often lacked necessary technical skills, and offered fewer qualifications and significantly less relevant banking experience than other candidates for the jobs. The Department of Justice remains steadfast in our commitment to combatting bribery and corruption in all its many forms, including where companies engage in corrupt hiring practices to gain the favor of foreign officials to generate improper business advantages and increase profits."

"Credit Suisse Hong Kong's practice of employing friends and family members of Chinese government officials as a quid pro quo for lucrative business opportunities was both profitable and corrupt and now the company will pay the price for that corruption," said U.S. Attorney Donoghue. "This Office is committed to holding companies that conduct business in the United States accountable when they or their subsidiaries corruptly influence foreign government officials for financial gain."

"In the banking industry, not every undertaking is fair game," said Assistant Director-in-Charge Sweeney. "Trading employment opportunities for less-than-qualified individuals in exchange for lucrative business deals is an example of nepotism at its finest. The criminal penalty imposed today provides explicit insight into the level of corruption that took place at the hands of Credit Suisse Group AG's Hong Kong-based subsidiary."

According to CSHK's admissions, between 2007 and 2013, several senior CSHK managers in the Asia Pacific (APAC) region engaged in a practice to hire, promote and retain candidates referred by or related to government officials and executives of clients that were state-owned entities (SOEs). The employment of these "relationship hires" or "referral hires" was part of a quid pro quo with the officials who referred the candidates for employment, whereby CSHK bankers sought to and did win business from the referral sources. Employees of other subsidiaries of CSAG were aware of the referral hires and facilitated the conduct.

According to admissions made in connection with the resolution, CSHK bankers discussed and approved the hiring of close friends and family of Chinese officials in order to secure business for CSHK. For example, one SOE executive emailed a senior CSHK banker to refer a candidate who had a "very good and close relationship" with senior management at the SOE, and wrote that hiring the referral hire would "bring [CSHK] the big surprise in the near future if [CSHK] could ... arrange a position in CS team in Beijing." The senior CSHK banker later told a colleague about an impending deal that the SOE was pursuing and explained that the referring SOE official "was focused on having us make a relationship hire and said it was very important for us to win future business with [the SOE]." In another email to colleagues, a CSHK employee explained that "[r]elationship hires have to translate to \$" or "the relationship is worthless to our organization."

CSHK further admitted that referral hires were less qualified than other employees hired at the same level, they were less stringently vetted and they were given benefits throughout the course of their employment due to the provision of business to CSHK by their referral sources. For example, in relation to the interview process for one referral hire, a senior CSHK banker cautioned colleagues "not too many interviews," as this referral hire was "a princess [who was] not used to too many rounds of interview." CSHK employees also noted that they had to "be a bit 'creative' in filling" in this referral hire's resume, before sending it to other CSHK employees. In another example, when a CSHK banker asked a high-ranking executive of a client SOE to "push for [CSHK's] incentive," the high-ranking executive "reminded [the CSHK banker] that [CSHK] need[ed] to pay [the SOE's] relationship hire ... well at the year-end bonus."

The corrupt scheme netted CSHK at least \$46 million in profits from business mandates with Chinese SOEs, CSHK admitted.

The Department and CSHK entered into a non-prosecution agreement, and CSHK agreed to pay a criminal penalty of \$47,029,916 to resolve the matter. As part of the agreement, CSHK and its parent company Credit Suisse AG also agreed to continue to cooperate with the Department in any ongoing investigations and prosecutions relating to the conduct, to enhance their compliance programs and to report to the Department on the implementation of their enhanced compliance programs. The Department reached this resolution based on a number of factors, including that CSHK did not voluntarily and timely disclose the conduct at issue. CSHK received partial credit for its and its parent company's cooperation with the criminal investigation, including making foreign-based employees available for interviews in the United States and producing documents to the government from foreign countries in ways that did not implicate foreign data privacy laws. However, CSHK did not receive additional cooperation credit because its cooperation was reactive and not proactive. Additionally, CSHK did not receive full credit for remediation because it failed to sufficiently discipline employees who were involved in the misconduct. Based on these considerations, the company received a non-prosecution agreement and an aggregate discount of 15 percent off the bottom of the U.S. Sentencing Guidelines fine range.

In related proceedings, Credit Suisse Group AG also settled with the U.S. Securities and Exchange Commission (SEC). Under the terms of its resolution with the SEC, Credit Suisse Group AG agreed to pay a total of \$24,989,843 in disgorgement of profits and \$4,833,961 in prejudgment interest.

The FBI's New York Field Office investigated the case. Trial Attorney Katherine Nielsen and former Trial Attorney Allison Westfahl-Kong of the Criminal Division's Fraud Section and Assistant U.S. Attorneys Alicyn Cooley, Alixandra Smith and James P. McDonald of the Eastern District of New York's Business and Securities Fraud Section prosecuted the case. The Fraud Section and U.S. Attorney's Office appreciate the significant cooperation and assistance provided by the SEC in this matter.

The Criminal Division's Fraud Section is responsible for investigating and prosecuting all FCPA matters. Additional information about the Justice Department's FCPA enforcement efforts can be found at www.justice.gov/criminal/fraud/fcpa.

Attachment(s):

[Download Credit Suisse NPA with Statement of Facts](#)

Topic(s):

Securities, Commodities, & Investment Fraud
Foreign Corruption

Component(s):

[Criminal Division](#)

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Press Release Number:

18-888

Updated March 27, 2019

Press Release

Automaker to Pay \$40 Million for Misleading Investors

FOR IMMEDIATE RELEASE

2019-196

Washington D.C., Sept. 27, 2019 — The Securities and Exchange Commission today charged Michigan-based automaker FCA US LLC, and its parent company, Fiat Chrysler Automobiles N.V., for misleading investors about the number of new vehicles sold each month to customers in the United States. FCA US and Fiat Chrysler Automobiles have agreed to pay \$40 million to settle the charges.

According to the SEC's order, between 2012 and 2016, FCA US issued monthly press releases falsely reporting new vehicle sales and falsely touting a "streak" of uninterrupted monthly year-over-year sales growth, when in fact, the growth streak had been broken in September 2013. FCA US and Fiat Chrysler Automobiles included the press releases in their SEC filings. New vehicle sales and the growth streak were key performance indicators that illustrated the company's competitive position and demand for its vehicles. The SEC's order finds that FCA US inflated new vehicle sales results by paying dealers to report fake vehicle sales and maintaining a database of actual but unreported sales, which employees often referred to as a "cookie jar." In months when the growth streak would have ended or when FCA US fell short of other targets, FCA US dipped into the "cookie jar" and reported old sales as if they had just occurred.

"New vehicle sales figures provide investors insight into the demand for an automaker's products, a key factor in assessing the company's performance," said Antonia Chion, Associate Director in the Division of Enforcement. "This case underscores the need for companies to truthfully disclose their key performance indicators."

The SEC's order finds that FCA US and Fiat Chrysler Automobiles violated the antifraud provisions of the Securities Act of 1933 and the Securities Exchange Act of 1934, as well as the reporting, books and records, and internal accounting controls provisions of the Exchange Act. Without admitting or denying the Commission's findings, the two companies have agreed to cease and desist from committing or causing any future violations of these provisions and to pay a civil penalty of \$40 million on a joint and several basis.

The SEC's investigation was conducted by Gosia Spangenberg, Andrea Fox, Daniel Maher, and Nicholas Margida, under the supervision of Lisa Deitch, Peter Rosario, and Ms. Chion.

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Related Materials

- SEC Order

JUSTICE NEWS

Department of Justice

Office of Public Affairs

FOR IMMEDIATE RELEASE

Thursday, November 17, 2016

JPMorgan's Investment Bank in Hong Kong Agrees to Pay \$72 Million Penalty for Corrupt Hiring Scheme in China

JPMorgan Securities (Asia Pacific) Limited (JPMorgan APAC), a Hong Kong-based subsidiary of multinational bank JPMorgan Chase & Co. (JPMC), agreed to pay a \$72 million penalty for its role in a scheme to corruptly gain advantages in winning banking deals by awarding prestigious jobs to relatives and friends of Chinese government officials.

Assistant Attorney General Leslie R. Caldwell of the Criminal Division, U.S. Attorney Robert L. Capers of the Eastern District of New York and Assistant Director in Charge William F. Sweeney Jr. of the FBI's New York Field Office made the announcement.

"The so-called Sons and Daughters Program was nothing more than bribery by another name," said Assistant Attorney General Caldwell. "Awarding prestigious employment opportunities to unqualified individuals in order to influence government officials is corruption, plain and simple. This case demonstrates the Criminal Division's commitment to uncovering corruption no matter the form of the scheme."

"U.S. businesses cannot lawfully seek to gain a business advantage by corruptly influencing foreign government officials," said U.S. Attorney Capers. "The common refrain that this is simply how business is done overseas is no defense. In this case, JPMorgan employees designed a program to hire otherwise unqualified candidates for prestigious investment banking jobs solely because these candidates were referred to the bank by officials in positions to award business to the bank. In certain instances, referred candidates were hired with the understanding that the hiring was linked to the award of specific business. This is no longer business as usual; it is corruption."

"Creating a barter system in which jobs are awarded to applicants in exchange for lucrative business deals is a corrupt scheme in and of itself," said Assistant Director in Charge Sweeney. "But when foreign officials are among those involved in the bribe, the international free market system and our national security are among the major threats we face. Those engaging in these illegal acts abroad may think they're out of sight and out of mind, but they're wrong. The FBI has recently established three dedicated international corruption squads to combat this type of *quid pro quo*, and we'll use all resources at our disposal to uncover and put an end to these crimes."

According to JPMorgan APAC's admissions, beginning in 2006, senior Hong Kong-based investment bankers set up and used a "client referral program," also referred to as the "Sons and Daughters Program," to hire candidates referred by clients and government officials. The Sons and

Daughters Program was used as a means to influence those same officials to award investment deals to JPMorgan APAC. By late 2009, JPMorgan APAC executives and senior bankers revamped the client referral program to improve its efficacy by prioritizing those hires linked to upcoming client transactions. In order to be hired, a referred candidate had to have a "directly attributable linkage to business opportunity."

According to admissions made in connection with the resolution, these *quid pro quo* arrangements were discussed internally among JPMorgan APAC bankers. For example, in late 2009, a Chinese government official communicated to a senior JPMorgan APAC banker that hiring a referred candidate would significantly influence the role JPMorgan APAC would receive in an upcoming initial public offering (IPO) for a Chinese state-owned company. The banker communicated this message to several senior colleagues, who then spent several months trying to place the referred candidate in an investment banking position in New York. Despite learning from personnel in New York that this referred candidate was not qualified for an investment banking position, senior JPMorgan APAC bankers created a new position for the candidate in New York, and JPMorgan APAC thereafter obtained a leading role in the IPO. Further, JPMorgan APAC employees misused compliance questionnaires to justify and paper over corrupt business arrangements. Employees also used a template with pre-filled answers, including that there was "no expected benefit" from the hire, and compliance personnel drafted and modified questionnaires that failed to state the true purpose of the hire.

JPMorgan APAC further admitted that candidates hired during the scheme were typically given the same titles and paid the same amount as entry-level investment bankers, despite the fact that many of these hires performed ancillary work such as proofreading and provided little real value to any deliverable product.

The corrupt scheme netted JPMorgan APAC at least \$35 million in profits from business mandates with Chinese state-owned companies.

JPMorgan APAC entered into a non-prosecution agreement and agreed to pay a criminal penalty of \$72 million to resolve the matter. As part of the agreement, JPMorgan APAC has agreed to continue to cooperate with the department in any ongoing investigations and prosecutions relating to the conduct, including of individuals, to enhance its compliance program, and to report to the department on the implementation of its enhanced compliance program.

The department reached this resolution based on a number of factors, including that JPMorgan APAC did not voluntarily and timely disclose the conduct at issue. However, JPMorgan APAC did receive full credit for its and JPMC's cooperation with the criminal investigation, including conducting a thorough internal investigation, making foreign-based employees available for interviews in the United States and producing documents to the government from foreign countries in ways that did not implicate foreign data privacy laws. JPMorgan APAC also took significant employment action against six employees who participated in the misconduct resulting in their departure from the bank, and it disciplined an additional 23 employees who, although not involved in the misconduct, failed to effectively detect the misconduct or supervise those engaged in it. JPMorgan APAC imposed more than \$18.3 million in financial sanctions on former or current employees in connection with the remediation efforts. Based on these actions and other considerations, the company received a non-prosecution agreement and an aggregate discount of 25 percent off of the bottom of the U.S. Sentencing Guidelines fine range.

In related proceedings, the U.S. Securities and Exchange Commission (SEC) filed a cease and desist order against JPMC, whereby JPMC agreed to pay \$130.5 million in disgorgement to the SEC, including prejudgment interest. The Federal Reserve System's Board of Governors also issued a consent cease-and-desist order and assessed a \$61.9 million civil penalty. Thus, the combined U.S. criminal and regulatory penalties paid by JPMC and its Hong Kong subsidiary are approximately \$264.4 million.

The FBI's New York Field Office investigated the case. The department appreciates the significant cooperation and assistance provided by the SEC and the Federal Reserve Bank of New York in this matter. Assistant Deputy Chief Leo Tsao and Trial Attorneys James P. McDonald and Derek J. Ettinger of the Criminal Division's Fraud Section and Assistant U.S. Attorney James P. Loonam of the Eastern District of New York's Business and Securities Fraud Section prosecuted the case.

The Criminal Division's Fraud Section is responsible for investigating and prosecuting all FCPA matters. Additional information about the Justice Department's FCPA enforcement efforts can be found at www.justice.gov/criminal/fraud/fcpa.

Attachment(s):

Download JPMorgan Securities Asia Pacific NPA

Topic(s):

Financial Fraud
Foreign Corruption

Component(s):

Criminal Division
Criminal - Criminal Fraud Section
USAO - New York, Eastern

Press Release Number:

16-1343

Updated October 3, 2017

Press Release

JPMorgan Chase Paying \$264 Million to Settle FCPA Charges

FOR IMMEDIATE RELEASE

2016-241

Washington D.C., Nov. 17, 2016 — The Securities and Exchange Commission today announced that JPMorgan Chase & Co. has agreed to pay more than \$130 million to settle SEC charges that it won business from clients and corruptly influenced government officials in the Asia-Pacific region by giving jobs and internships to their relatives and friends in violation of the Foreign Corrupt Practices Act (FCPA).

JPMorgan also is expected to pay \$72 million to the Justice Department and \$61.9 million to the Federal Reserve Board of Governors for a total of more than \$264 million in sanctions resulting from the firm's referral hiring practices.

According to an SEC order issued today, investment bankers at JPMorgan's subsidiary in Asia created a client referral hiring program that bypassed the firm's normal hiring process and rewarded job candidates referred by client executives and influential government officials with well-paying, career-building JPMorgan employment. During a seven-year period, JPMorgan hired approximately 100 interns and full-time employees at the request of foreign government officials, enabling the firm to win or retain business resulting in more than \$100 million in revenues to JPMorgan.

"JPMorgan engaged in a systematic bribery scheme by hiring children of government officials and other favored referrals who were typically unqualified for the positions on their own merit," said Andrew J. Ceresney, Director of the SEC Enforcement Division. "JPMorgan employees knew the firm was potentially violating the FCPA yet persisted with the improper hiring program because the business rewards and new deals were deemed too lucrative."

Kara Brockmeyer, Chief of the SEC Enforcement Division's FCPA Unit, added, "The misconduct was so blatant that JPMorgan investment bankers created 'Referral Hires vs Revenue' spreadsheets to track the money flow from clients whose referrals were rewarded with jobs. The firm's internal controls were so weak that not a single referral hire request was denied."

The SEC's order finds that JPMorgan violated the anti-bribery, books and records, and internal controls provisions of the Securities Exchange Act of 1934. JPMorgan agreed to pay \$105,507,668 in disgorgement plus \$25,083,737 in interest to settle the SEC's case. The SEC

Press Release

SEC Charges Credit Suisse With FCPA Violations

FOR IMMEDIATE RELEASE

2018-128

Washington D.C., July 5, 2018 — The Securities and Exchange Commission today announced that Credit Suisse Group AG will pay approximately \$30 million to resolve SEC charges that it obtained investment banking business in the Asia-Pacific region by corruptly influencing foreign officials in violation of Foreign Corrupt Practices Act (FCPA).

Credit Suisse also agreed to pay a \$47 million criminal penalty to the U.S. Department of Justice.

According to the SEC's order, several senior Credit Suisse managers in the Asia-Pacific region sought to win business by hiring and promoting individuals connected to government officials as part of a quid pro quo arrangement. While the practice of hiring client referrals bypassed the firm's normal hiring process, employees in other Credit Suisse subsidiaries and affiliates were aware of it and in some instances approved these "relationship hires" or "referral hires."

The SEC's order found that in a six-year period, Credit Suisse offered to hire more than 100 individuals referred by or connected to foreign government officials, resulting in millions of dollars of business revenue.

"Bribery can take many forms, including granting employment to friends and relatives of government officials. Credit Suisse's practice of engaging in these hiring practices violated the law, and it is now being held to account for having done so," said Charles Cain, Chief of the SEC Enforcement Division's FCPA Unit.

The SEC's order finds that Credit Suisse violated the anti-bribery and internal accounting controls provisions of the Securities Exchange Act of 1934. Credit Suisse agreed to pay disgorgement of \$24.9 million plus \$4.8 million in interest to settle the SEC's case.

The SEC's investigation was conducted by Eric Heining and Paul G. Block of the FCPA Unit and Rory Alex and Alfred Day of the Boston Regional Office. The SEC appreciates the assistance of the Fraud Section of the Department of Justice, the U.S. Attorney's Office for the Eastern District of New York, and the Federal Bureau of Investigation.

This version of the press release contains corrections to errors in the prior version.

###

DECLARATION OF AMBASSADOR GORDON D. SONDLAND

I, Gordon Sondland, do hereby swear and affirm as follows:

1. I have reviewed the October 22, 2019, opening statement of Ambassador William Taylor. I have also reviewed the October 31, 2019, opening statement of Tim Morrison. These two opening statements have refreshed my recollection about certain conversations in early September 2019.

2. Ambassador Taylor recalls that I told Mr. Morrison in early September 2019 that the resumption of U.S. aid to Ukraine had become tied to a public statement to be issued by Ukraine agreeing to investigate Burisma. Ambassador Taylor recalls that Mr. Morrison told Ambassador Taylor that I told Mr. Morrison that I had conveyed this message to Mr. Yermak on September 1, 2019, in connection with Vice President Pence's visit to Warsaw and a meeting with President Zelensky. Mr. Morrison recalls that I said to him in early September that resumption of U.S. aid to Ukraine might be conditioned on a public statement reopening the Burisma investigation.

3. In my October 17, 2019 prepared testimony and in my deposition, I made clear that I had understood sometime after our May 23, 2019, White House debriefing that scheduling a White House visit for President Zelensky was conditioned upon President Zelensky's agreement to make a public anti-corruption statement. This condition had been communicated by Rudy Giuliani, with whom President Trump directed Ambassador Volker, Secretary Perry, and me, on May 23, 2019, to discuss issues related to the President's concerns about Ukraine. Ambassador Volker, Secretary Perry, and I understood that satisfying Mr. Giuliani was a condition for scheduling the White House visit, which we all strongly believed to be in the mutual interest of the United States and Ukraine.

4. With respect to the September 1, 2019, Warsaw meeting, the conversations described in Ambassador Taylor's and Mr. Morrison's opening statements have refreshed my recollection about conversations involving the suspension of U.S. aid, which had become public only days earlier. I always believed that suspending aid to Ukraine was ill-advised, although I did not know (and still do not know) when, why, or by whom the aid was suspended. However, by the beginning of September 2019, and in the absence of any credible explanation for the suspension of aid, I presumed that the aid suspension had become linked to the proposed anti-corruption statement. As I said in my prepared testimony, security aid to Ukraine was in our vital national interest and should not have been delayed for any reason. And it would have been natural for me to have voiced what I had presumed to Ambassador Taylor, Senator Johnson, the Ukrainians, and Mr. Morrison.

5. Also, I now do recall a conversation on September 1, 2019, in Warsaw with Mr. Yermak. This brief pull-aside conversation followed the larger meeting involving Vice President Pence and President Zelensky, in which President Zelensky had raised the issue of the suspension of U.S. aid to Ukraine directly with Vice President Pence. After that large meeting, I now recall speaking individually with Mr. Yermak, where I said that resumption of U.S. aid would likely not occur until Ukraine provided the public anti-corruption statement that we had been discussing for many weeks. I also recall some question as to whether the public statement could come from the newly appointed Ukrainian Prosecutor General, rather than from President Zelensky directly.

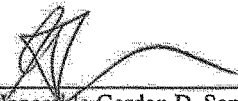
6. Soon thereafter, I came to understand that, in fact, the public statement would need to come directly from President Zelensky himself. I do not specifically recall how I learned this, but I believe that the information may have come either from Mr. Giuliani or from

Ambassador Volker, who may have discussed this with Mr. Giuliani. In a later conversation with Ambassador Taylor, I told him that I had been mistaken about whether a public statement could come from the Prosecutor General; I had come to understand that the public statement would have to come from President Zelensky himself.

7. 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 of the phone records, and I would like to review those phone records, along with any notes and other documents that may exist, to determine if I can provide more complete testimony to assist Congress. However, although I have no specific recollection of phone calls during this period with Ambassador Taylor or Mr. Morrison, I have no reason to question the substance of their recollection about my September 1 conversation with Mr. Yermak.

I declare under penalty of perjury that the aforementioned is true.

Executed on November 4, 2019.



The Honorable Gordon D. Sondland
United States Ambassador to the European Union

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Whistleblower Is Expected to Testify Soon, House Intelligence Chairman Schiff Says - WSJ

THE WALL STREET JOURNAL.

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<https://www.wsj.com/articles/whistleblower-is-expected-to-testify-soon-house-intelligence-committee-chairman-says-11569768797>

NATIONAL SECURITY

Whistleblower Is Expected to Testify Soon, House Intelligence Chairman Schiff Says

Adam Schiff says precautions are being taken to protect person's identity



House Intelligence Committee Chairman Adam Schiff (D, Calif.) said he hasn't set a timetable for concluding the investigation into President Trump. PHOTO: ANDREW HARNIK/ASSOCIATED PRESS

By Josh Mitchell

Updated Sept. 29, 2019 9:50 pm ET

WASHINGTON—The whistleblower at the center of the impeachment investigation of President Trump will testify in the House “very soon,” though in a way that will protect his identity, the Democrat leading the probe said Sunday.

The whistleblower, whose identity hasn't been made public, is a man who works for the Central Intelligence Agency, The Wall Street Journal confirmed last week. The House is waiting for the whistleblower's attorneys to receive security clearances, said Rep. Adam Schiff of California, the House Intelligence Committee chairman.

“e'll get the unfiltered testimony of that whistleblower,” Mr. Schiff said on ABC. “We are taking all the precautions” to protect his identity, he added.

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Whistleblower Is Expected to Testify Soon, House Intelligence Chairman Schiff Says - WSJ

The chairman said he hasn't set a timetable for concluding the investigation into Mr. Trump, a Republican up for re-election next year.

A lawyer for the whistleblower said talks with lawmakers are ongoing. "We continue to work w/both parties in House & Senate and we understand all agree that protecting whistleblower's identity is paramount," the lawyer, Mark S. Zaid, wrote on Twitter. "Discussions continue to occur to coordinate & finalize logistics but no date/time has yet been set."

It isn't clear how the whistleblower would testify without risking exposure of his identity. Any meeting with lawmakers would likely need to take place in a secure room—known as a Sensitive Compartmented Information Facility, or SCIF—given the sensitivity of the information at issue, according to national security lawyers.

While those rooms are available on Capitol Hill, appearing there likely would pose additional challenges to protect the whistleblower's anonymity given the number of people, especially reporters, in the halls of Congress. One alternative that the whistleblower's legal team and lawmakers may pursue would be to arrange a meeting in a SCIF at an executive branch agency, people familiar with the matter said.

Stephen Ryan, a lawyer at McDermott, Will & Emery LLP who specializes in congressional investigations, said there are two main hurdles: physically getting the whistleblower into Congress, and then limiting the number of people who hear him testify and read full transcripts.

"You literally have to sneak them into the building—you have to have a cordon that takes them in, perhaps through the House side, under the Capitol, coming out on the Senate side," he said. "We know how to get people in and out of buildings without being identified. But when you share their identity with a group of people the chances of their exposure increases exponentially."

Mr. Ryan added, "All you need is one [person] who wants to call a pal in the reporting world or who says something to their spouse or something to their boyfriend."

The whistleblower's complaint, released last week, focuses on a July 25 phone call between Mr. Trump and the Ukrainian president, Volodymyr Zelensky. The complaint alleges that Mr. Trump sought to use the powers of his office to push Ukraine to investigate Democratic rival Joe Biden, and that White House officials acted to conceal evidence of the president's actions.

Mr. Trump struck out at Mr. Schiff on Twitter Sunday evening, saying the chairman falsely attributed words to him during Mr. Schiff's opening remarks at the Intelligence Committee's Thursday hearing with acting Director of National Intelligence Joseph Maguire.

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Whistleblower Is Expected to Testify Soon, House Intelligence Chairman Schiff Says - WSJ

RELATED

- Whistleblower Alleges White House Effort to Conceal Details of Trump Call With Ukraine (Sept. 26)
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- More 2020 Democrats Get Behind Impeaching Trump (Sept. 25)
- Pelosi Announces Impeachment Inquiry of President Trump (Sept. 25)

"His lies were made in perhaps the most blatant and sinister manner ever seen in the great Chamber. He wrote down and read

terrible things, then said it was from the mouth of the President of the United States. I want Schiff questioned at the highest level for Fraud & Treason," Mr. Trump wrote.

Mr. Trump also said he deserved to confront not only the whistleblower, who didn't have firsthand knowledge of the telephone call with Mr. Zelensky, "but also the person who illegally gave this information, which was largely incorrect, to the 'Whistleblower.' Was this person SPYING on the U.S. President? Big Consequences!"

SHARE YOUR THOUGHTS

What measures should be placed, if any, to protect the whistleblower's identity during his testimony? Why? Join the conversation below.

The whistleblower complaint's description of the call with Mr. Zelensky aligned closely with the content of the reconstructed transcript released by the White House. The complaint said it drew from testimonials of more than a half-dozen unidentified U.S. officials who expressed concern about Mr. Trump's conduct.

Mr. Schiff has said his comments at the committee hearing were "at least in part,

parody."

"I think the whistleblower did the right thing," Mr. Maguire said during the hearing. "I think he followed the law every step of the way."

Mr. Trump's former homeland security adviser Tom Bossert on Sunday denounced the president for bringing up a debunked conspiracy theory during the call. Mr. Trump asked the Ukrainian leader to do another favor for the U.S. related to the U.S.-based cybersecurity firm CrowdStrike, which conducted forensic analysis of the Democratic National Committee's computer network after it was hacked in 2016.

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Whistleblower is Expected to Testify Soon, House Intelligence Chairman Schiff Says - WSJ

CrowdStrike concluded the hack was carried out by Russian intelligence officers, a finding corroborated by U.S. intelligence agencies and special counsel Robert Mueller's investigation into Russian interference into the 2016 election. But Mr. Trump has repeatedly cast doubt on the conclusion of Russian involvement in the Democratic hacks, and said in an April 2017 interview that CrowdStrike's findings may not be credible because the company is "Ukrainian-based," which is false.

"The DNC server and that conspiracy theory has got to go, they have to stop with that," Mr. Bossert, the former Trump adviser, said on ABC. "It cannot be repeated in our discourse."



Rudy Giuliani's Ukrainian Connections



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Mr. Bossert was forced out of his job in April 2018 after months of internal frustration with his leadership and as the new national security adviser moved to establish power in the White House, the Journal reported last year.

Separately, Mr. Schiff said Sunday on NBC that he and

other Democrats have yet to decide whether to push for the president's personal attorney, former New York Mayor Rudy Giuliani, to testify in the investigation.

Mr. Giuliani initially said Sunday on ABC that he wouldn't cooperate with Mr. Schiff's probe, accusing the congressman of lacking fairness. But he quickly changed his position, saying he would consider testifying.

"I have to be guided by my client," Mr. Giuliani said. "Frankly, it's his privilege, not mine. If he decides he wants me to testify I will testify."

Mr. Schiff said in an interview on "60 Minutes" Sunday night that the committee planned to issue a subpoena to Mr. Giuliani for evidence. "It's our intention as soon as first thing next week to subpoena him for documents," he said. "And there may very well come a time where we want to hear from him directly."

Mr. Giuliani is a key figure in the impeachment probe and is depicted in the whistleblower complaint released Thursday as eager to thrust himself into U.S. foreign policy. As the president's personal attorney, Mr. Giuliani pressed Ukraine to pursue an investigation of Mr. Biden and his son Hunter, according to the whistleblower's complaint.

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Whistleblower Is Expected to Testify Soon, House Intelligence Chairman Schiff Says - WSJ

Progressive advocacy group MoveOn.org on Sunday solicited donations to help the whistleblower, seeking \$3 contributions it said would be split with Whistleblower Aid, a nonprofit, nonpartisan legal organization that offers assistance to government employees who pose illegal activity.

Whistleblower Aid operates a separate GoFundMe site seeking donations to assist the whistleblower. By Sunday night the site had raised about \$162,000.

A person familiar with the matter said the whistleblower's attorneys aren't involved in the fundraising and have never communicated with MoveOn. The person said the attorneys are working for the client pro bono, but Whistleblower Aid will be helping them financially.

MoveOn and Whistleblower Aid didn't immediately respond to requests for comment Sunday.

—Dustin Volz and Alex Leary contributed to this article.

Write to Josh Mitchell at joshua.mitchell@wsj.com

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Schiff: Trump-Ukraine whistleblower agrees to testify before Congress



POLITICS

Whistleblower reaches agreement to testify, will appear 'very soon,' Rep. Adam Schiff says

Christal Hayes USA TODAY

Published 11:57 a.m. ET Sep. 29, 2019 | Updated 4:42 p.m. ET Sep. 29, 2019

WASHINGTON – The whistleblower who filed an anonymous complaint about President Donald Trump asking Ukraine to investigate a political rival has reached an agreement to testify before Congress, Rep. Adam Schiff announced Sunday.

Talking with ABC News' "This Week," Schiff, the Democrat who chairs the House Intelligence Committee, said the whistleblower would testify "very soon" and the only thing holding in the way was getting security clearances for the attorneys representing the whistleblower so they could attend the testimony.

The whistleblower, whose identity has not been made public, revealed deep concern that Trump "used the power of his office" to solicit Ukraine's help to discredit one of his main political rivals, former Vice President Joe Biden.

The complaint went on to detail efforts by senior White House officials to later "lock down" access to all records of the July 25 call with Ukrainian President Volodymyr Zelensky in which Trump urged his counterpart to investigate Democratic presidential candidate Biden and his son Hunter Biden.

The whistleblower's concerns were the tipping point for House Democrats, who formally launched an impeachment inquiry into Trump this week after months of investigating the administration and conduct of the president.

Schiff did not outline a date for testimony and the whistleblower's attorneys said in a statement that they continue to work with the House and Senate about finalizing logistics, adding no date has been set.

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Schiff: Trump-Ukraine whistleblower agrees to testify before Congress

Congress is on a two-week recess, but the impeachment inquiry doesn't appear to be slowing down. On Friday, Schiff announced a number of depositions scheduled with State Department officials and a private hearing with the intelligence community's inspector general, the official who received the whistleblower complaint and found it credible and urgent. Schiff also announced Secretary of State Mike Pompeo was being subpoenaed for documents related to the Trump-Ukraine episode.

Schiff said Sunday that the biggest concern with having the whistleblower appear before Congress was protecting the person's identity, noting comments made by Trump at a private event where he suggested the whistleblower had committed treason and should be punished.

'Almost a spy': Donald Trump suggests whistleblower source committed treason as Ukraine firestorm builds

More: 'It doesn't matter': Pelosi not concerned if Democrats lose majority over impeachment

"You know what we used to do in the old days when we were smart with spies and treason, right?" Trump said, according to published reports. "We used to handle it a little differently than we do now."

Schiff said there were a number of "security concerns" that were being worked out to protect the person.

"We are taking all the precautions we can," he said, so that the congressional panel allows the "testimony to go forward in a way that protects the whistleblower's identity."

Throughout the week, a series of developments have deepened this controversy, including the public release of the complaint and a summary of the call Trump had with Ukraine's president.

More: Nancy Pelosi has put the Trump impeachment inquiry on a fast track. Here's the plan, timeline and key players

More: Whistleblower says Trump used 'the power of his office' to solicit foreign help to discredit Joe Biden

Some Republicans have signaled concern as the details have continued to mount, though congressional Republicans have come out in support of ousting Trump from office.

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Schiff: Trump-Ukraine whistleblower agrees to testify before Congress

Trump's former homeland security adviser Tom Bossert on Sunday acknowledged the reports were not good news for the president.

"It is a bad day and a bad week for the president and for this country if he is asking for political dirt on an opponent," he told "This Week" anchor George Stephanopoulos.

But, Bossert, who left the administration in April, noted that the allegations lodged against Trump were "far from proven," especially when it comes to whether military aid was being kept from Ukraine in exchange for an investigation into Biden. He urged caution and a refrain from rushing to judgment.

More: What's going on with Trump and Ukraine? And how does it involve Biden and a whistleblower complaint?

More: Read the summary of President Trump's call with Ukraine president about Biden

Bossert voiced frustration, specifically, for Trump's personal attorney Rudy Giuliani, who went to Ukraine multiple times to investigate Biden and a theory that Ukraine meddled in the 2016 elections. Bossert said he explained to Trump multiple times that this theory was "not only a conspiracy theory, it is completely debunked."

"I am deeply frustrated with what (Giuliani) and the legal team is doing and repeating that debunked theory to the president," Bossert said. "It sticks in his mind when he hears it over and over again."

More: Whistleblower says Trump used 'the power of his office' to solicit foreign help to discredit Joe Biden

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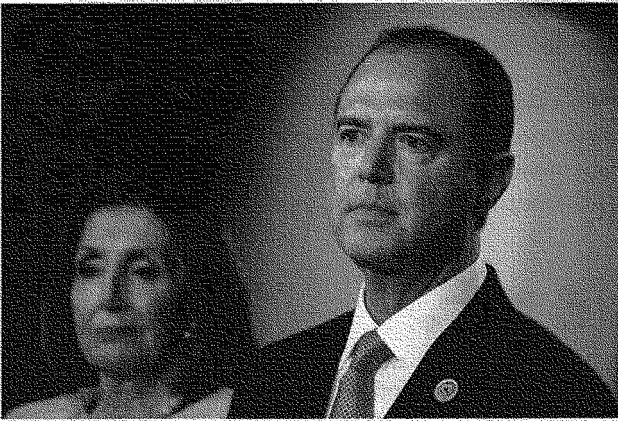
Trump whistleblower will testify before the House Intelligence Committee "very soon" - Vox

Vox

Trump whistleblower will testify before the House Intelligence Committee "very soon"

Rep. Adam Schiff said "unfiltered testimony" from the whistleblower will soon be given in a private hearing.

By Sean Collins | Sep 29, 2019, 2:28pm EDT



House Speaker Nancy Pelosi and House Intelligence Committee Chairman Adam Schiff. | AFP/Getty Images

Rep. Adam Schiff said Sunday the whistleblower at the center of a growing scandal surrounding President Donald Trump will testify before the House Intelligence Committee "very soon."

That **whistleblower filed a formal complaint** alleging Trump attempted to use "the power of his office to solicit interference from a foreign country in the 2020 US election." Reporting identified that country as Ukraine and the solicitation to be a request to investigate former **Vice President Joe Biden**, who is currently a Democratic candidate for president.

Trump has acknowledged asking Ukrainian leaders to investigate Biden, arguing — without evidence — the former vice president worked to shield his son, Hunter Biden, from corruption investigations in that country. The White House has released a rough transcript

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Trump whistleblower will testify before the House Intelligence Committee "very soon" - Vox

of a conversation between Trump and Ukraine's president that contains the request, but Trump maintains he has not done anything wrong. Nevertheless, the whistleblower's allegations have spawned an **impeachment inquiry in the House of Representatives**.

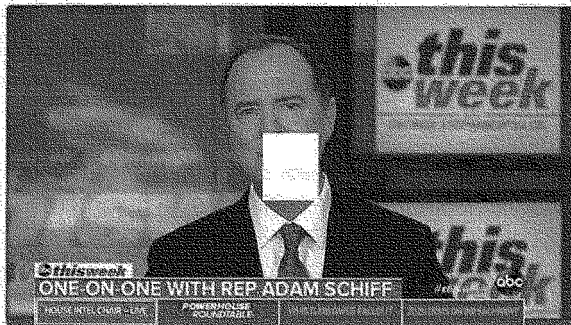
The whistleblower's testimony could shed light on a number of questions that still surround the complaint, including: who gave him information about the alleged solicitation (the complaint states the whistleblower learned of the matter from officials with direct knowledge of the president's conversations but that he did not witness the ask first-hand); what knowledge the whistleblower has of follow-up conversations between the US and Ukraine; and if he can add nuance to the allegation that the Trump administration worked to suppress potentially problematic presidential conversations a number of times.

Schiff said on ABC's *This Week* that he expects the whistleblower to share information helpful to the committee's ongoing investigation. "That whistleblower will be allowed to come in without a minder from the Justice Department or from the White House to tell the whistleblower what they can and cannot say; we'll get the unfiltered testimony."



This Week
@ThisWeekABC

NEW: Adam Schiff has reached agreement with whistleblower to come before House Intelligence Committee, he tells @ThisWeekABC, and says he expects to hear from the whistleblower "very soon." abcn.ws/2okN3qu



245 9:07 AM - Sep 29, 2019

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Trump whistleblower will testify before the House Intelligence Committee "very soon" - Vox

The whistleblower — whose identity remains largely hidden — has signaled that he is open to testifying before both the House and Senate Intelligence Committees; Schiff said that while he and his colleagues are working to ensure the testimony happens "very soon," they are doing so at a cautious pace to protect the whistleblower's confidentiality, particularly in light of comments Trump made to staffers while at the UN on Thursday that were interpreted by some as a suggestion the whistleblower and those that contributed information to the complaint **ought to be executed**. Schiff also said the committee must wait for the acting director of national intelligence to issue security clearances to the whistleblower's lawyers.

The whistleblower's testimony could answer lingering questions raised by the complaint

A **September letter** from the intelligence community's inspector general to Rep. Adam Schiff, chair of the House Intelligence Committee, said the whistleblower's complaint "relates to one of the most significant and important of the [director of national intelligence's] responsibilities to the American people."

It has since been released, first to members of Congress and then in redacted form to the public. Many congresspeople called it troubling, with Rep. Mike Quigley (D-IL) saying it **"reinforces our concerns"** and is **"deeply disturbing."** After reviewing the document, **Sen. Ben Sasse (R-NE)** said, "Republicans ought not to be rushing to circle the wagons to say there's no there there when there's obviously lots that's very troubling there." A number of the complaint's allegations — including its central claim that Trump asked a foreign government to investigate a rival — seemed to be corroborated by a memo the White House released of a call between Trump and Ukrainian President Volodymyr Zelensky.

Democrats were concerned after reading reports of the complaint's contents that Trump attempted to coerce Zelensky into investigating Biden by withholding military aid the country needs to fight Russian aggressors. Despite having been approved by Congress, that aid was repeatedly frozen ahead of Trump's call with Zelensky and only finally released in September.

The whistleblower's complaint did not say definitely whether its author had evidence Trump froze the aid for quid pro quo purposes; the president has strongly denied doing so, but the timing of the delay and the fact that, in the rough transcript provided by the White House, Trump asks Zelensky to do him a "favor" — right after the Ukrainian president brings

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Trump whistleblower will testify before the House Intelligence Committee "very soon" - Vox

up weapons — has led Trump's critics to question his motives. When the whistleblower testifies, Democrats on Schiff's committee will likely try to gain information about this element of the scandal and work to extract leads from the whistleblower that might allow them to confirm or refute allegations of quid pro quo.

Both Democrats and Republicans on the committee will also be interested in hearing about the sources the whistleblower used to compile their report. The complaint cites "White House officials" as being the actual source of the information the whistleblower used to support his allegations. In **television appearances and in statements to the press**, many Republicans have argued the fact the whistleblower did not personally witness any of the wrongdoing outlined in the complaint invalidates the entire document.

For example, **Sen. Chuck Grassley (R-IA) told Vox**, "What's concerning to me is it's based upon secondhand and third-hand reports ... so you got to get more facts behind it;" Sunday, Sen. Lindsey Graham (R-SC) called the allegations **"hearsay."**

Questions have also been raised about the whistleblower's political affiliation, with Republicans arguing the individual is biased; on **CNN's *State of the Union*** Sunday, Rep. Jim Jordan (R-OH) referred to the whistleblower as "a bureaucrat who didn't like the president" in reference to a **letter the intelligence community's inspector general sent** to the acting director of national intelligence that read: "Although the [inspector general of the intelligence community's] preliminary review identified some indicia of an arguable political bias on the part of the Complainant in favor of a rival candidate, such evidence did not change my determination that the complaint relating to the urgent concern 'appears credible.'"

The second part of that statement has largely been ignored by the president's defenders, and it is not clear what the inspector general meant by rival candidate — whether that referred to a Republican rival in the 2016 primary like Sen. Marco Rubio or whether it refers to support for a Democrat like Joe Biden.

The testimony will be private; this will allow the whistleblower to remain anonymous but also give the committee an opportunity to question him or her about the sections of the complaint that remain classified. A closed-door, wide-ranging testimony from the whistleblower could serve as a helpful roadmap for Democrats as they move forward with their impeachment inquiry, something party leaders have signaled is a priority, with the

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Trump whistleblower will testify before the House Intelligence Committee "very soon" - Vox

House Intelligence Committee staying in Washington to work on whistleblower-related concerns during a congressional recess.

The chairs of the House Intelligence, Oversight, and Foreign Affairs Committees have already **begun scheduling hearings with key officials**, including former US Special Representative to Ukraine Kurt Volker and the inspector general of the intelligence community, Michael Atkinson. The committees also subpoenaed documents from Secretary of State Mike Pompeo on Friday. Schiff has promised "more subpoenas and investigatory steps" will be announced in the days to come, the whistleblower's testimony being perhaps chief among these.

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Schiff confirms tentative agreement for whistleblower to testify before House Intelligence Committee - CNNPolitics



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Schiff confirms tentative agreement for whistleblower to testify before House Intelligence Committee

By Pamela Brown and Kevin Bohn, CNN

Updated 4:44 PM ET, Sun September 29, 2019

Washington (CNN) — There is a tentative agreement for the anonymous whistleblower who filed a complaint containing allegations about President Donald Trump's conduct to testify before the House Intelligence Committee, Chairman Adam Schiff said Sunday, confirming CNN's previous reporting.

CNN reported on Wednesday that the potential testimony is dependent on the whistleblower's attorneys getting security clearance.

Asked on ABC's "This Week" whether he had reached an agreement with the whistleblower and his attorneys to come before the committee, Schiff said: "Yes, we have."

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"And as (acting Director of National Intelligence Joseph) Maguire promised during the hearing, that whistleblower will be allowed to come in and come in without ... a minder from the Justice Department or from the White House to tell the whistleblower what they can and cannot say. We will get the unfiltered testimony of that whistleblower," he said.

The California Democrat added that his committee is currently "taking all the precautions we can to make sure that we do so ... we allow that testimony to go forward in a way that protects the whistleblower's identity, because as you can imagine, when the President is showing threats like, 'We ought to treat these people who expose my wrongdoing as we used to treat traitors and spies,' and we used to execute traitors and spies. You can imagine the security concerns here."

The whistleblower is at the center of a fast-moving scandal in Washington surrounding a complaint made about Trump's communications with Ukrainian President Volodymyr Zelensky. According to their complaint, Trump pressured

Ukraine to investigate former Vice President Joe Biden -- his potential 2020 political rival -- and his son, Hunter Biden, though there is no evidence of wrongdoing by either Biden. The complaint also alleges a coverup by the White House of the July 25 phone conversation.

Democratic House leaders opened an impeachment inquiry into Trump in the wake of the complaint.

Schiff said Sunday on ABC, as well as NBC's "Meet the Press," that he expects the whistleblower to testify "very soon," adding that the committee is now focused on the security clearances for the whistleblower's attorneys as well as the whistleblower's protection.

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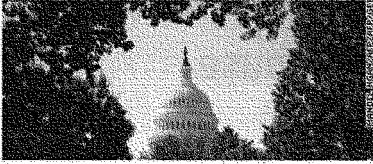
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Related Article: Whistleblower tentatively agrees to testify, attorneys say, as long as they get appropriate clearances to attend hearing

lawyers for the whistleblower and House and Senate officials about testimony by the person.

Zaid said "protecting whistleblower's identity is paramount" and that "discussions continue to occur to coordinate & finalize logistics but no date/time has yet been set."

During his interview with ABC, Schiff said, "We will keep, obviously, riding shotgun to make sure that the acting director doesn't delay that clearance process."

Schiff wrote a letter to Maguire making the clearance request on Wednesday, after the whistleblower's lawyers agreed to meet with lawmakers if the security clearance condition is met and requested assistance from the acting DNI.

The process is already underway to ensure the lawyers have access to any relevant classified information, a source familiar with the situation previously told CNN.

CNN's Greg Clary, Zach Cohen, Gloria Cat and Devan Cole contributed this report.

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Intelligence panel has deal to hear whistleblower's testimony

By

Felicia Sonmez and Mike DeBonis

September 29, 2019 at 9:17 p.m. EDT

House Intelligence Committee Chairman Adam B. Schiff said Sunday that his panel has reached an agreement to secure testimony from the anonymous whistleblower whose detailed complaint launched an impeachment investigation into President Trump.

The announcement from Schiff came on the same day that Tom Bossert, a former Trump homeland security adviser, delivered a rebuke of the president, saying in an interview on ABC's "This Week" that he was "deeply disturbed" by the implications of Trump's recently reported actions.

Those comments come as members of Congress return to their districts for a two-week recess, during which they will either have to make the case for Trump's impeachment or defend him to voters amid mounting questions about his conduct.

In appearances over the weekend, House Speaker Nancy Pelosi (D-Calif.) offered a preview of the Democratic message, casting the impeachment inquiry as a somber task that she chose to endorse only as a last resort.

"I have handled this with great care, with great moderation, with great attention to what we knew was a fact or what was an allegation," Pelosi said Saturday at the Texas Tribune Festival in Austin. "This is very bad news for our country, because if it is as it seems to be, our president engaged in something that is so far beyond what our founders had in mind."

While privately favoring a rapid probe confined to the Ukraine allegations, Pelosi said Saturday that the investigation would last "as long as the Intelligence Committee follows the facts."

On a conference call with House Democrats on Sunday afternoon, Pelosi told her colleagues that public sentiment — something she had frequently cited as an obstacle to pursuing impeachment — had begun to swing around.

"The polls have changed drastically about this," she said, urging a careful approach, according to notes taken by a person on the call: "Our tone must be prayerful, respectful, solemn, worthy of the Constitution."

In an interview broadcast Sunday on CBS's "60 Minutes," Pelosi summarized her message to Trump and his aides: "Speak the truth, and let us work together to have this be a unifying experience, not a dividing one for our country. Don't make this any worse than it already is."

In an appearance on ABC News's "This Week," Schiff (D-Calif.) echoed Pelosi's message. He also said he expected the Intelligence Committee to hear from the whistleblower "very soon" pending a security clearance from acting director of national intelligence Joseph Maguire.

"We'll get the unfiltered testimony of that whistleblower," Schiff said, noting that Maguire said in a hearing Thursday that he would allow the whistleblower to testify privately without constraints.

One of the whistleblower's attorneys, Mark Zaid, said in a statement that bipartisan negotiations in both chambers are ongoing "and we understand and agree that protecting the whistleblower's identity is paramount." He added that no date or time for the testimony has been set.

Andrew P. Bakaj, another lawyer representing the whistleblower, sent a letter Saturday to Maguire expressing fears for his client's safety, citing remarks Trump made Wednesday calling the whistleblower "close to a spy" and alluding to the death penalty.

"Unfortunately, we expect this situation to worsen, and to become even more dangerous for our client and any other whistleblowers, as Congress seeks to investigate this matter," Bakaj wrote.

In a separate letter, Bakaj urged the leaders of the congressional intelligence committees to "speak out in favor of whistleblower protection and reiterate that this is a protected system where retaliation is not permitted, whether direct or implied."

Most Republican lawmakers and White House aides, meanwhile, continued to voice support for the president, even as they faced particularly tough grilling by hosts on the morning news shows over their efforts to discredit the unidentified whistleblower and keep the focus on former vice president Joe Biden and his son Hunter Biden.

Rep. Jim Jordan (R-Ohio) pointed to an initial finding by the intelligence community inspector general, stating that while the complaint was credible, the whistleblower had an "arguable political bias."

"He had no firsthand knowledge. . . . And, second, he has a political bias," Jordan said on CNN's "State of the Union." "That should tell us something about this guy who came forward with this claim."

Host Jake Tapper repeatedly pushed back against Jordan's assertions. "There is no evidence of that," he said in response to Jordan's claim of political bias, noting that the language used by the inspector general in describing the whistleblower "could mean that he interned for John McCain 20 years ago. We have no idea what it means."

White House senior adviser Stephen Miller went even further in an at-times heated interview on "Fox News Sunday."

Miller dodged several questions from host Chris Wallace about allegations surrounding the president's actions, such as Trump's decision to use not the federal government but rather his personal attorney, Rudolph W. Giuliani, to obtain information on the Bidens' activities in Ukraine.

He also declined to answer when asked by Wallace to outline how, in his view, the Bidens broke any laws. And he disputed the use of the word "whistleblower" to describe the person who sounded the alarm about Trump's actions, arguing that the complaint was a "partisan hit job" by a "deep-state operative" — even though Maguire said in congressional testimony last week that he thinks the whistleblower "is operating in good faith and has followed the law."

As both sides sparred, Trump largely stayed out of public view. The president spent the weekend playing golf at his club in Sterling, Va., and occasionally attacking Democrats and the news media online. On Sunday morning, he sent more than 20 tweets and retweets slamming Fox News Channel host Ed Henry's performance during a segment with conservative commentator Mark Levin.

Later Sunday, Trump tweeted that he wants Schiff "questioned at the highest level for Fraud & Treason" for his remarks at last week's hearing where Maguire testified. And Trump demanded to meet the whistleblower as well as the person's sources.

"In addition, I want to meet not only my accuser, who presented SECOND & THIRD HAND INFORMATION, but also the person who illegally gave this information, which was largely incorrect, to the 'Whistleblower,'" Trump tweeted. "Was this person SPYING on the U.S. President? Big Consequences!"

House Democrats last week began an impeachment inquiry into Trump's actions after the release of the whistleblower complaint as well as a rough transcript of a July phone call in which Trump repeatedly urged Ukrainian President Volodymyr Zelensky to investigate Biden, who is leading in polls for the 2020 Democratic presidential nomination.

Hunter Biden served for nearly five years on the board of Burisma, Ukraine's largest private gas company, whose owner came under scrutiny by Ukrainian prosecutors for possible abuse of power and unlawful enrichment. The former vice president's son was not accused of any wrongdoing in the investigation.

As vice president, Biden pressured Ukraine to fire the top prosecutor, Viktor Shokin, who Biden and other Western officials said was not sufficiently pursuing corruption cases. At the time, the investigation into Burisma was dormant, according to former Ukrainian and U.S. officials.

Trump's handling of the matter appears to have alarmed voters. An ABC News-Ipsos poll released Sunday showed that 63 percent of adults say it is a serious problem that Trump pushed Zelensky to look at Hunter Biden.

However, less than half of the public, 43 percent, said Trump's action was "very serious." And just about half of Americans said they are "not surprised at all" to hear of Trump's actions.

Among those expressing concern Sunday was Bossert, a rare official with ties to Trump to take on the president.

Bossert said he was "deeply disturbed" by the implications of Trump's call to Zelensky and strongly criticized the president for seemingly furthering an unfounded theory that cybersecurity firm CrowdStrike played a role in shielding emails sent by Trump's 2016 Democratic opponent, Hillary Clinton, and circulating allegations of Russian hacking.

The U.S. intelligence community has concluded that the Russians did hack Democratic sources in an effort to swing the election to Trump.

"That conspiracy theory has got to go," Bossert said on ABC News's "This Week," explaining that Trump was motivated to spread the "completely debunked" theory because he had "not gotten his pound of

flesh yet" over accusations that he had Russian help in winning the 2016 election. "They have to stop with that. It cannot continue to be repeated in our discourse. . . . If he continues to focus on that white whale, it's going to bring him down."

But Bossert said he was not convinced that Trump had leveraged U.S. aid to Ukraine for political dirt, noting that the president had other potential legitimate reasons to withhold the aid.

Both sides continued to dig in as scrutiny of Trump intensified.

Democrats argued that the documents the Trump administration released last week reveal that the president was misusing his office.

Rep. Hakeem Jeffries (D-N.Y.) said the president's call clearly showed an abuse of power that justified impeachment proceedings. In an appearance on "State of the Union," he referred to "The Godfather," saying Trump used a "high-pressure tactic" by asking for an investigation of the Bidens.

"It was an offer that the Ukrainian president could not refuse," Jeffries said.

Republicans, meanwhile, escalated their attacks on the whistleblower and dismissed the individual's claims as invalid.

"You can't get a parking ticket conviction based on hearsay," Sen. Lindsey O. Graham (R-S.C.) said Sunday in an interview on CBS's "Face the Nation." "Donald Trump is still an American. Every American deserves to confront their accuser. So this is a sham as far as I'm concerned."

In a combative appearance on "This Week," Giuliani was asked at one point whether he would cooperate with the House Intelligence Committee's probe. Giuliani initially said he would not unless its leadership changed, calling Schiff "illegitimate" and accusing him of having "prejudged the case."

But Giuliani then backtracked and said he would "consider it," based on the direction of Trump. "If he decides that he wants me to testify, of course I'll testify," he said.

Schiff disputed Giuliani's characterization of his role, telling host George Stephanopoulos: "My role here is to do the investigation, to make sure the facts come out. What we have seen already is damning."

Giuliani was somewhat more subdued in a separate appearance on Fox News Channel's "Sunday Morning Futures," during which host Maria Bartiromo pressed him on criticism from some Republicans that his frequent television appearances were not helping the president.

"What am I supposed to do, keep silent?" Giuliani asked.

Shane Harris contributed to this report.

Whistleblower Reportedly Agrees To Testify Before House Intelligence Committee

Rep. Adam Schiff (D-Calif.), the committee's chairman, said he expects the author of the whistleblower complaint to testify "very soon."



By Hayley Miller

The U.S. intelligence official who filed the whistleblower complaint about President Donald Trump's dealings with Ukraine has agreed to testify before the House Intelligence Committee, according to committee Chairman Adam Schiff (D-Calif.).

Schiff told ABC's "This Week" that he expects the whistleblower to appear before his committee "very soon." The date of the hearing has not yet been set and is dependent on how quickly acting Director of National Intelligence Joseph Maguire can complete the security clearance process for the whistleblower's attorneys, he said.

"We're ready to hear from the whistleblower as soon as that is done," Schiff said. "And we'll keep obviously running shotgun to make sure that [Maguire] doesn't delay in that clearance process."

Maguire, who testified before the House Intelligence Committee about the complaint on Thursday, told the panel that he believes the whistleblower "acted in good faith" and "followed the law."

But Trump has questioned the whistleblower's patriotism and reportedly suggested Thursday that the complaint, which also alleges a White House cover-up of Trump's July call with Ukrainian President Volodymyr Zelensky, amounts to "treason."

"Who's the person who gave the whistleblower the information? Because that's close to a spy," Trump reportedly told U.S. diplomats in New York City. "You know what we used to do in the old days when we were smart with spies and treason, right? We used to handle it a little differently than we do now."

The whistleblower has not been publicly identified, though The New York Times and The Wall Street Journal reported he is a CIA officer previously detailed to the White House.

Schiff condemned Trump's "threats" against the whistleblower on Sunday and said his committee would pay close attention to the security risks involved in his testimony.

"As Director Maguire promised during the hearing, that whistleblower will be allowed to come in and come in without a minder from the Justice Department or from the White House to tell the whistleblower what they can and cannot say," Schiff said. "We'll get the unfiltered testimony of that whistleblower."

"We are taking all the precautions we can to ... allow that testimony to go forward in a way that protects the whistleblower's identity," he added. "With the president issuing threats ... you can imagine the security concerns here."

Schiff: Panel will hear from whistleblower

Deserve to meet accuser, his sources, Trump tweets

by Compiled by Democrat-Gazette staff from wire reports | September 30, 2019 at 7:15 a.m.

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WASHINGTON -- House Intelligence Committee Chairman Adam Schiff said Sunday that he expects the whistleblower at the heart of impeachment proceedings against President Donald Trump to testify "very soon."

"All that needs to be done, at this point, is to make sure that the attorneys that represent the whistleblower get the clearances that they need to be able to accompany the whistleblower to testimony," said Schiff, D-Calif., "and that we figure out the logistics to make sure that we protect the identity of the whistleblower."

As Democrats and the director of national intelligence worked out key arrangements, Trump's allies took part in a surge of second-guessing and conspiracy theorizing across the Sunday talk shows. One former adviser urged Trump to confront the crisis at hand and get past his anger over the probe of Russian election interference.

"I honestly believe this president has not gotten his pound of flesh yet from past grievances on the 2016 investigation," said Tom Bossert, Trump's former homeland security adviser. "If he continues to focus on that white whale," Bossert added, "it's going to bring him down."

The investigation in Ukraine produced what the Russian probe did not: formal House impeachment proceedings based on the president's own words and actions.

The White House last week released a nonverbatim memorandum of Trump's July 25 call with Ukrainian President Volodymyr Zelenskiy, as well as the whistleblower's complaint alleging the U.S. president pressured his counterpart to investigate the family of former Vice President Joe Biden, who is seeking the Democratic nomination to challenge Trump's re-election next year.

In a series of tweets Sunday night, Trump said he deserved to meet "my accuser" as well as whoever provided the whistleblower with what the president called "largely incorrect" information. He also accused Democrats of "doing great harm to our Country" in an effort to destabilize the nation and the 2020 election.

Trump has sought to implicate Biden and his son Hunter Biden in the kind of corruption that has long plagued Ukraine. Hunter Biden served on the board of a Ukrainian gas company at the same time his father was leading the Obama administration's diplomatic dealings with Kiev. There has been no evidence of wrongdoing by either of the Bidens.

The House forged ahead, with Schiff's committee leading the investigation. Democrats are planning a rapid start to their push for impeachment, with hearings and depositions starting this week. Many Democrats are pushing for a vote on articles of impeachment before the end of the year, mindful of the looming 2020 elections.

'COULD NOT REFUSE'

On a conference call later Sunday, House Speaker Nancy Pelosi D-Calif., who was traveling in Texas, urged Democrats to proceed "not with negative attitudes towards [Trump], but a positive attitude towards our responsibility," according to an aide on the call who requested anonymity to share the private conversation. She also urged the caucus to be "somber" and noted that polling on impeachment has changed "drastically."

On the call, Democratic Caucus Chairman Hakeem Jeffries of New York urged the caucus to talk about impeachment by repeating the words "betrayal, abuse of power, national security." At the same time, the Democrats' campaign arm was mobilizing to support the candidates, according to a person on the call who spoke on condition of anonymity to discuss the details.

In an appearance on CNN's State of the Union, Jeffries invoked a line from The Godfather, saying Trump used a "high-pressure tactic" by asking for an investigation of the Bidens.

"It was an offer that the Ukrainian president could not refuse," Jeffries said

In an interview Sunday on CBS' 60 Minutes, Pelosi summarized her message to Trump and his aides: "Speak the truth, and let us work together to have this be a unifying experience, not a dividing one for our country. Don't make this any worse than it already is."

In an appearance on ABC News's This Week, Schiff echoed Pelosi's message. He also said he expected the Intelligence Committee to hear from the whistleblower "very soon," pending a security clearance from acting Director of National Intelligence Joseph Maguire.

"We'll get the unfiltered testimony of that whistleblower," Schiff said, noting that Maguire said in a hearing Thursday that he would allow the whistleblower to testify privately without constraints.

GOP DEFENDERS

Republicans offered a televised array of strategies to a president who spent the day at his golf club in Virginia and prefers to handle his own communications.

Stephen Miller, the president's senior policy adviser, called the whole inquiry a "partisan hit job" orchestrated by "a deep state operative" who is also "a saboteur."

"The president of the United States is the whistleblower," Miller said.

And House Republican leader Kevin McCarthy of California said Trump had done nothing impeachable.

"Why would we move forward with impeachment? There's not something that you have to defend here," McCarthy said.

Rep. Steve Scalise of Louisiana, the No. 2 Republican in the House, repeatedly changed the subject Sunday when Chuck Todd, the moderator of NBC's Meet the Press, pressed him on whether he believed a memo of the Ukraine call merited further investigation.

"Well, they've been investigating President Trump for two years, making way for baseless allegations," Scalise finally said. "They're investigating everything."

Sen. Lindsey Graham, R-S.C., suggested that Trump appoint a special prosecutor to look into Biden's role in the firing of a former prosecutor in Ukraine, and said he had no problem with the president's call.

"I'm openly telling everybody in the country I have the president's back because I think this is a setup," he said on CBS' Face the Nation.

Rep. Jim Jordan, R-Ohio, pointed to an initial finding by the intelligence community inspector general stating that while the complaint was credible, the whistleblower had an "arguable political bias."

"He had no firsthand knowledge. ... And, second, he has a political bias," Jordan said on State of the Union. "That should tell us something about this guy who came forward with this claim."

State of the Union host Jake Tapper repeatedly pushed back against Jordan's assertions. "There is no evidence of that," he said in response to Jordan's claim of political bias, noting that the language used by the inspector general in describing the whistleblower "could mean that he interned for John McCain 20 years ago. We have no idea what it means."

Miller went even further in an at-times heated interview on Fox News Sunday.

He dodged several questions from host Chris Wallace about allegations surrounding the president's actions, such as Trump's decision to use not the federal government but rather his personal attorney Rudy Giuliani to obtain information on the Bidens' activities in Ukraine.

Giuliani, who has been encouraging Ukraine to investigate both Biden and former Secretary of State Hillary Clinton, promoted a debunked conspiracy theory, insisting that Ukraine had spread disinformation during the 2016 election.

Bossert advised that Trump drop that defense

"I am deeply frustrated with what he and the legal team is doing and repeating that debunked theory to the president. It sticks in his mind when he hears it over and over again," said Bossert, who also was an adviser to President George W. Bush. "That conspiracy theory has got to go, they have to stop with that, it cannot continue to be repeated."

Giuliani not only repeated it but also brandished what he said were affidavits that support them and claimed that Trump "was framed by the Democrats."

Schiff said in one interview that his committee intends to subpoena Giuliani for documents and may eventually want to hear from Giuliani directly. In a separate TV appearance, Giuliani said he would not cooperate with Schiff, but then acknowledged he would do what Trump tells him. The White House did not provide an official response on whether the president would allow Giuliani to cooperate.

"If they're going to obstruct," Schiff warned, "then they're going to increase the likelihood that Congress may feel it necessary to move forward with an article on obstruction."

Two advisers to the Biden campaign sent a letter Sunday urging major news networks to stop booking Giuliani on their shows, accusing Trump's personal attorney of spreading "false, debunked conspiracy

theories" on behalf of the president. The letter added: "By giving him your air time, you are allowing him to introduce increasingly unhinged, unfounded and desperate lies into the national conversation."

Biden advisers Anita Dunn and Kate Bedingfield sent the letter to the presidents of ABC News, NBC News, CBS News, MSNBC, CNN and Fox News as well as executive producers and anchors of their news shows. The advisers also asked that if Giuliani continues to appear, the networks give equivalent time to a Biden campaign surrogate and admonished the networks for giving Giuliani time in the first place, calling it "a disservice to your audience and a disservice to journalism."

Information for this article was contributed by Laurie Kellman, Kevin Freking, Eric Tucker, Mary Clare Jalonick, Bill Barrow and Emily Swanson of The Associated Press; by Sheryl Gay Stolberg of The New York Times; and by Felicia Sonmez, Mike DeBonis, Scott Clement and Christopher Rowland of The Washington Post.

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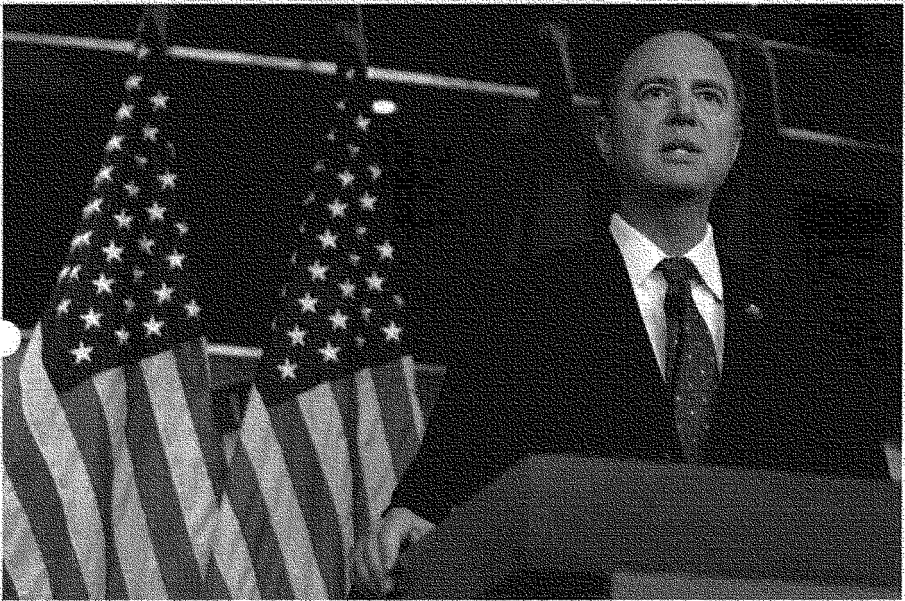
Schiff says whistleblower will appear before House panel

TRUMP UKRAINE PROBE

Schiff says whistleblower will appear before House panel

By Nikki Schwartz

September 29, 2019 1:12:54pm



Adam Schiff
Getty Images

WASHINGTON — The whistleblower at the center of the Ukraine scandal will testify before the House Intelligence Committee, Chairman Adam Schiff confirmed Sunday.

"Yes we have," the California Democrat answered when asked by ABC News' George Stephanopoulos if the committee and the whistleblower had come to an agreement.

"And as [acting Director of National Intelligence Joseph Maguire] promised during the hearing, that whistleblower will be allowed to come in and come in without a minder from the Justice Department or from the White House to tell the whistleblower what they can or cannot say," Schiff said.

"We'll get the unfiltered testimony of that whistleblower," he told "This Week."

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Schiff says whistleblower will appear before House panel

The whistleblower — who hasn't been publicly identified, except for a New York Times report that said the individual is a male CIA officer who was, at one point, detailed to the White House — submitted a complaint to the intelligence community's inspector general alleging that President Trump asked the new president of Ukraine to work with his lawyer Rudy Giuliani to investigate Joe and Hunter Biden.

Biden, the former vice president, is a top 2020 Democratic contender.

The whistleblower wasn't on the call first-hand, but a number of officials told the individual about the content of the call.

The complaint also said the White House moved a transcript of the call to a more secure server, designed to hold classified information, to avoid embarrassment.

Both the transcript of the call and the whistleblower complaint have since been released to the public.

Schiff said the committee would take "all the precautions" to ensure that the whistleblower's identity wasn't compromised.

"Because, as you can imagine with the president issuing threats like we ought to treat these people who expose my wrongdoing as we used to treat traitors and spies — and we used to execute traitors and spies — you can imagine the security concerns here."

On Thursday, Trump got nostalgic with a crowd at a closed press event in New York, pointing out that in the "old days" with spies "we used to handle them a little differently than we do now."

He was likely referencing executions.

Trump's ire was focused at the officials who told the whistleblower the information about the call included in the report, according to a recording obtained by The New York Times.

Schiff said he anticipated the testimony would come "very soon."

"It will depend probably more on how quickly the director of national intelligence can complete the security clearance process for the whistleblower's lawyers but we are ready to hear from the whistleblower as soon as that is done," Schiff said.

"And we'll keep obviously riding shotgun to make sure the acting director does not delay in that clearance process."

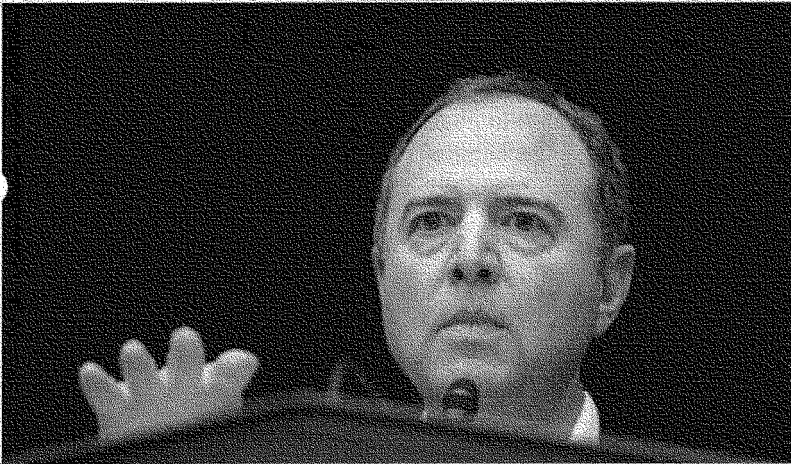
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Rep. Adam Schiff, House intel panel to hear from whistleblower 'very soon'



House Intelligence Committee Chairman Rep. Adam Schiff, D-Calif., questions Acting Director of National Intelligence Joseph Maguire, as he testifies before the House Intelligence Committee on Capitol Hill in Washington, Thursday, Sept. 26, 2019. (AP Photo/Pablo Martinez Monsivais) [more >](#)

By Alex Swoyer - *The Washington Times* - Sunday, September 29, 2019

House Intelligence Committee Chairman Adam Schiff said Sunday the committee is moving forward with its impeachment inquiry into President

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Rep. Adam Schiff, House intel panel to hear from whistleblower 'very soon' - Washington Times

He also said he is negotiating with the whistleblower's attorneys so the committee can hear directly from the analyst who accused the president of pressuring a foreign government to probe his potential 2020 rival, Joseph R. Biden.

"That whistleblower will be allowed to come in," Mr. Schiff told ABC's "This Week."

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"We will get the unfiltered testimony of that whistleblower," the California Democrat added.

The comments come after the inspector general met with lawmakers in a session last week to discuss the whistleblower's complaint.



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Rep. Adam Schiff, House intel panel to hear from whistleblower 'very soon' - Washington Times



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"We are moving forward with all speed," Mr. Schiff said.

He said the committee has requested depositions from five State Department officials for this week, including from former U.S. Ambassador to Ukraine Marie L. Yovanovitch.

The whistleblower complaint led to the publication of the transcript of Mr. Trump's phone call in July with the Ukrainian president.

It's been the subject of an impeachment inquiry into Mr. Trump, formally launched last week by House Speaker Nancy Pelosi. House Democrats assert that the Mr. Trump was pressuring a foreign government to investigate his political rival.

Rep. Hakeem Jeffries, New York Democrat, told CNN that the House is pursuing an impeachment inquiry because the president allegedly withheld more than \$300 million in financial aid from Ukraine and asked that country's president to look into Mr. Biden and his son over a \$50,000-per-month payment in connection with a Ukrainian energy company.

"The president has abused his power," Mr. Jeffries said of Mr. Trump.

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Rep. Adam Schiff, House intel panel to hear from whistleblower 'very soon' - Washington Times

The White House, though, made public the conversation between Mr. Trump and Ukrainian President Volodymyr Zelensky, arguing that the aid was not used to pressure the foreign leader.

Rep. Jim Jordan, Ohio Republican, said the transcript doesn't show a quid pro quo.

"The transcript gives you no reason to impeach this president," Mr. Jordan told CNN's "State of the Union."

Instead, Republicans have asserted there was wrongdoing on behalf of the Bidens — not Mr. Trump.

Mr. Jordan charged that Mr. Biden tried to stop an investigation into his son and the energy company by demanding a Ukrainian prosecutor be fired.

The president's personal attorney Rudolph W. Giuliani told ABC that he discovered the Bidens' actions with Ukraine while he was probing former Democratic nominee Hillary Clinton's campaign and its contacts with foreign governments during the 2016 election.

"The Washington press will not accept the fact that Joe Biden may have done something like this," Mr. Jordan said.

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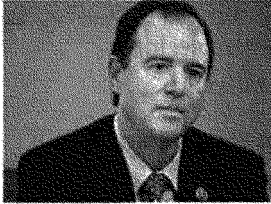
Rep. Adam Schiff, House intel panel to hear from whistleblower 'very soon' - Washington Times

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Schiff: Panel to Hear 'Very Soon' From Trump Whistleblower



Sunday, 29 September 2019 11:28 AM

Congress expects to hear “very soon” from a whistleblower whose complaint spurred an impeachment inquiry against President Donald Trump, the chairman of the House Intelligence Committee said.

The process is proceeding even with Congress on recess, with an inspector general returning for a closed-door session this week to discuss other potential witnesses; said Democratic Representative Adam Schiff.

The timing of the whistle-blower’s appearance will depend on how quickly the security-clearance process for his or her lawyers can be completed, and notices of depositions were sent this week for five current or former State Department officials, Schiff said in an interview on ABC’s “This Week” on Sunday.

“We’re moving forward with all speed,” he added.

House Speaker Nancy Pelosi has said the impeachment process “should move with purpose and expeditiously” but hasn’t laid out a specific timetable.

Pelosi launched a formal impeachment inquiry of Trump last week amid a series of damaging revelations, including that the president withheld military aid to Ukraine before asking Ukrainian President Volodymyr Zelenskiy to investigate top Democratic presidential candidate Joe Biden during a July phone call.

The whistleblower's complaint also detailed alleged efforts by the White House to "lock down" records of the exchange.

On Friday, Secretary of State Michael Pompeo was subpoenaed for documents related to the complaint by three House committees as part of Democrats' impeachment investigation. The same day, Kurt Volker, Trump's special envoy to Ukraine, stepped down after he was named in a whistle-blower's complaint, people familiar with the matter said. The committees are also seeking testimony from Volker and four other State Department officials.

Rudy Giuliani, Trump's personal lawyer, said on ABC that Schiff should be removed because he "has already prejudged the case" and is an "illegitimate chairman."

"If we want fairness here, we've got to put somebody in charge of that committee who has an open mind, not someone who wants to hang the president," Giuliani said.

Schiff said Giuliani "seems to think that I'm the judge and jury here." The Republican-controlled Senate will hear any impeachment that the House may bring, Schiff said.

"I intend to hold president accountable, and I intend to do a thorough investigation," Schiff said. "What we've seen already is damning."

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Talking Points Memo: Schiff Says Whistleblower's 'Unfiltered Testimony' Will Be Held 'Very Soon'



House Intelligence Committee chair Adam Schiff (D-CA) speaks to a reporter in the Capitol on Friday, Jan. 4, 2019. (Photo By Bill Clark/CQ Roll Call)

By **Cristina Cabrera**

September 29, 2019 5:53 p.m.

House Intelligence Committee chair Adam Schiff confirmed on Sunday that his committee had made an agreement with the whistleblower at the heart of President Donald Trump's Ukraine scandal to hold a hearing.

"Have you reached an agreement yet with the whistleblower and his or her attorneys about coming before the committee and providing the information firsthand?" asked "This Week" host George Stephanopoulos.

"Yes, we have," Schiff responded. "And as [Director of National Intelligence] Maguire promised during the hearing, that whistleblower will be allowed to come in and come in without a minder from the Justice Department or from the White

House to tell the whistleblower what they can and cannot say. We'll get the unfiltered testimony of that whistleblower."

The Democratic lawmaker told Stephanopoulos that his committee plans hold the whistleblower's hearing "very soon."

"You know, it will depend probably more on how quickly the director of National Intelligence can complete the security clearance process for the whistleblower's lawyers, but we're ready to hear from the whistleblower as soon as that is done," Schiff said. "And we'll keep obviously riding shotgun to make sure the acting director doesn't delay in that clearance process."

Adam Schiff expects whistleblower to testify 'very soon'

Aldous J Pennyfarthing

Community (This content is not subject to review by Daily Kos staff prior to publication.)
Sunday September 29, 2019 · 11:22 AM EDT



PUBLISHED TO

Aldous J Pennyfarthing

If my obnoxious next-door neighbor ever improperly solicits help from Vladimir Putin or the president of Ukraine, I want Adam Schiff to bring the hammer down on him. As it is, he just uses power tools at 8 a.m. on a Saturday. But maybe Schiff can look into that as well, when he's done with the hairy creamsicle?

One can dream.

Okay, so Schiff was on *This Week* with George Stephanopoulos this morning and said the following about the man/woman everyone wants to hear from:

STEPHANOPOULOS: Have you reached an agreement yet with the whistleblower and his or her attorneys about coming before the [House Intelligence] Committee and providing the information firsthand?

SCHIFF: Yes, we have, and as Director Maguire promised during the hearing, that whistleblower will be allowed to come in and come in without a minder from the

Justice Department or from the White House to tell the whistleblower what they can and cannot say. We'll get the unfiltered testimony of that whistleblower. Now, we are taking all the precautions we can to make sure that we do so. We allow the testimony to go forward in a way that protects the whistleblower's identity, because as you can imagine, with the president issuing threats like "we ought to treat these people who expose my wrongdoing as we used to treat traitors and spies, as we used to execute traitors and spies," you can imagine the security concerns here.

STEPH: So when do you expect to hear from the whistleblower?

SCHIFF: Very soon. ... It will depend probably more on how quickly the director of national intelligence can complete the security clearance process for the whistleblower's lawyers, but we're ready to hear from the whistleblower as soon as that is done, and we'll keep obviously riding shotgun to make sure that the acting director doesn't delay in that clearance process.

Tick tock, Donny.

Whistleblower Unfiltered sounds like pure spring water from a mountain stream to this forlorn soul.

11/14/2019

Schiff says agreement reached with whistleblower to testify before House committee | Fox News

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ADAM SCHIFF • Published September 29

Schiff says agreement reached with whistleblower to testify before House committee



By Andrew O'Reilly | Fox News

Rep. Adam Schiff presses acting DNI Joseph Maguire over whether whistleblower's claims should be investigated

Acting DNI Joseph Maguire testifies before the House Intelligence Committee on whistleblower complaint.

House Intelligence Committee Chairman Adam Schiff, D-Calif., said Sunday that House lawmakers have reached an agreement with the whistleblower who filed a complaint about President Trump's July call with Ukrainian President Volodymyr Zelensky to testify before a congressional committee.

11/14/2019

Schiff says agreement reached with whistleblower to testify before House committee | Fox News

Speaking on ABC News' "This Week," Schiff said that the agreement with the whistleblower and his or her lawyers has been settled and that there are precautions being taken to protect the identity of the person amid the criticism from Trump and his allies.

"As with [acting Director of National Intelligence Joseph] Mcguire, that whistleblower will be allowed to come in without White House or DOJ lawyers to tell him or her what they can or can't say," Schiff said.

"We are taking all the precautions we can to protect the whistleblower's identity," Schiff added. "With President Trump's threats, you can imagine the security concerns here."

INTEL CHIEF DEFENDS HANDLING OF TRUMP CALL COMPLAINT, SPARS WITH SCHIFF IN TENSE HEARING

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Schiff says agreement reached with whistleblower to testify before House committee | Fox News



The whistleblower's complaint, with its detail and clear narrative, is likely to accelerate the impeachment process and put more pressure on Trump to rebut its core contentions and on his fellow Republicans to defend him or not. It also provides a road map for Democrats to seek corroborating witnesses and evidence, which will complicate the president's efforts to characterize the findings as those of a lone partisan out to undermine him.

In response, Trump threatened "the person" who he said gave information to the whistleblower as he spoke at a private event in New York with staff from the U.S. mission to the United Nations.

"Who's the person who gave the whistleblower the information? Because that's close to a spy," Trump said in audio posted by The Los Angeles Times. "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."

Speaking on Sunday also on NBC News' "Meet The Press," Schiff said that the president's behavior was so "egregious" that House lawmakers were forced to open an impeachment inquiry relating to his call with the Ukrainian leader.

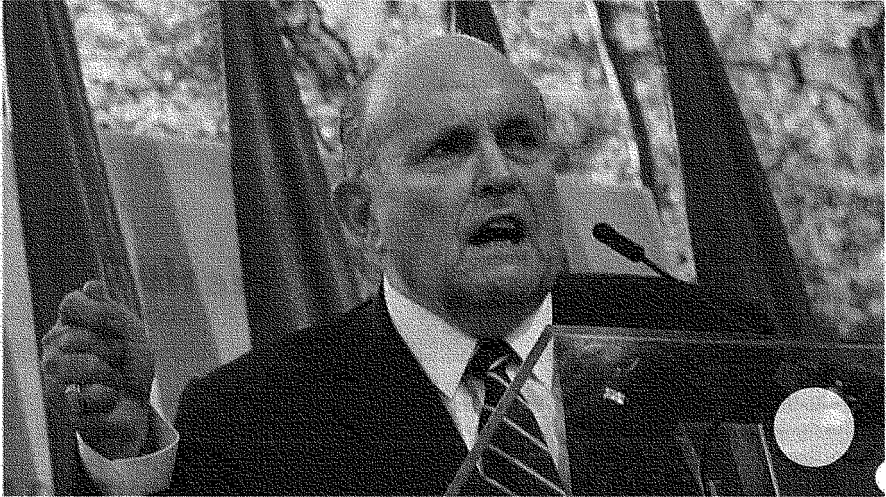
"The gravamen of the offense here is the president using the power of his office to coerce a foreign nation into helping his presidential campaign to once again interfere in our election, and at the same time withholding foreign aid that country so desperately needs to fight off who? The Russians," Schiff said.

He added: "The situation demands that we move forward with the inquiry."

11/14/2019

Schiff says agreement reached with whistleblower to testify before House committee | Fox News

On Tuesday, House Speaker Nancy Pelosi formally announced an impeachment inquiry into Trump over his July 25 phone call with Zelensky. Democrats have claimed the president threatened to withhold \$400 million in military aid unless Ukraine investigated former Vice President Joe Biden, his son Hunter, and their business dealings in the country.



The probe was prompted by a complaint from an intelligence community whistleblower who accused Trump of "using the power of his office to solicit interference from a foreign country in the 2020 U.S. election."

Pelosi specifically charged that the administration had violated the law by not turning over a whistleblower complaint concerning Trump's July call with Zelensky. Citing testimony that the director of national intelligence was blocking the release of that complaint, she said: "This is a violation of law. The law is unequivocal."

Trump had urged Zelensky to investigate former Vice President Joe Biden and his son Hunter. Joe Biden has acknowledged on camera that, when he was vice president, he successfully pressured Ukraine to fire its top prosecutor, Viktor Shokin, who was investigating the natural gas firm Burisma Holdings — where Hunter Biden was on the board. Shokin himself had been separately and widely accused of corruption.

11/14/2019

Schiff says agreement reached with whistleblower to testify before House committee | Fox News



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Schiff on Sunday said that while he expects the White House to push back on the House's attempts to ascertain information regarding the president's actions, any attempts to thwart the investigation would be viewed as obstruction.

"The president can't have it both ways — he can't both prevent us from getting evidence on these serious underlying crimes, or potential crimes, this serious breach of his oath of office, and at the same time obstruct our investigation," he said. "Even as he tries to weaken our ability to get facts on one, he's going to strengthen the facts on the other."

The Associated Press contributed to this report.

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House intel committee has reached an agreement for Trump-Ukraine whistleblower to testify 'very soon,' Schiff says

PUBLISHED SUN, SEP 29 2019 12:01 PM EDT UPDATED MON, SEP 30 2019 8:10 AM EDT

[Spencer Kimball@SPENCEKIMBALL](mailto:Spencer.Kimball@SPENCEKIMBALL)

KEY POINTS

House Intelligence Committee Chairman Adam Schiff said the exact timing of the testimony depends on when the director of national intelligence completes the security clearance process for the whistleblower's lawyers.

He said the inquiry will focus on "the fundamental breach of the president's oath of office."

President Trump, in a flurry of posts on Twitter over the weekend, slammed the impeachment inquiry as a "scam" and a "witch hunt" and called on Schiff to resign.



U.S. House Intelligence Committee Chairman Adam Schiff (D-CA) speaks during a news conference about impeachment proceedings at the U.S. Capitol in Washington, U.S., September 25, 2019. REUTERS/AI Drago
AI Drago | Reuters

House Intelligence Committee Chairman Adam Schiff said Sunday that an agreement has been reached for the whistleblower at the center of the impeachment inquiry into President Donald Trump to testify before Congress.

In an interview on the ABC program "This Week," Schiff, D-Calif., said he expects the whistleblower to testify "very soon," but timing depends on when the director of national intelligence completes the security clearance process for the individual's lawyers.

"We'll get the unfiltered testimony of that whistleblower," Schiff said.

The whistleblower's lawyer, Mark Zaid, said Sunday that they are working with both parties in the House and the Senate, but no date or time has been set yet for testimony. Protecting the whistleblower's identity is paramount, Zaid said.

The whistleblower filed a complaint expressing concern that Trump was "using the power of his office to solicit interference from a foreign country in the 2020 U.S. election."

The redacted complaint, released by the House Intelligence Committee on Thursday, details a July 25 call in which Trump asked Ukraine's president to "do us a favor" and investigate Democratic presidential candidate Joe Biden and his son Hunter for corruption.

It's illegal under campaign finance law to solicit help from foreign nationals, foreign governments, foreign businesses or foreign political parties.

Trump froze nearly \$400 million in military aid to Ukraine before the July 25 call, raising concerns that he was seeking a quid pro quo with Kyiv, an allegation that the president and his supporters deny.

Trump said he halted the aid, which was later released, because European nations were not contributing enough to Ukraine, which is fighting a war with Russian-backed separatists in its eastern region. The European Union and European financial institutions have contributed more than \$16 billion in assistance to Ukraine since 2014, according to The Associated Press.



Ukraine's President Volodymyr Zelenskyy speaks as he and U.S. President Donald Trump hold a bilateral meeting on the sidelines of the 74th session of the United Nations General Assembly (UNGA) in New York City, New York, U.S., September 25, 2019.

Jonathan Ernst | Reuters

House Speaker Nancy Pelosi announced an official impeachment inquiry into Trump on Tuesday in response to the revelations about Trump's call with Ukraine's president, accusing Trump of betraying his oath of office. The nature of the call was reported by the media before the complaint was publicly released.

Schiff said Sunday that the inquiry will focus on "the fundamental breach of the president's oath of office." His committee, one of six conducting investigations, is taking the lead in the probe.

The whistleblower, a CIA employee who was posted to the White House, said in the complaint that administration officials were "deeply disturbed" by Trump's call and intervened to "lock down" records of the conversation by moving them to a server normally used to store classified information.

The White House has reportedly also sought to limit access to Trump's phone calls with Russian President Vladimir Putin and Saudi Crown Prince Mohammed bin Salman. Schiff said his committee would seek access to records for those conversations as well if they were stored on the same

classified server as the records of the Ukraine call.

"If those conversations with Putin or with other world leaders are sequestered in that same electronic file that is meant for covert action, not meant for this, if there's an effort to hide those and cover those up -- yes, we're determined to find out," Schiff said.



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Ukraine's leader thrust into spotlight amid Trump impeachment probe

Trump, in a flurry of posts on Twitter over the weekend, slammed the impeachment inquiry as a "scam" and a "witch hunt" and called on Schiff to resign from Congress. In a video message Saturday, the president told his supporters that Democrats were trying remove him from office to take away their guns and their health care.

"It's all very simple -- they're trying to stop me, because I'm fighting for you," Trump said.

Sen. Lindsey Graham, a close confidant of Trump, dismissed the whistleblower's complaint as hearsay.

"Every American deserves to confront their accuser, so this is a sham as far as I'm concerned," Graham, R-S.C., told the CBS program "Face the Nation" on Sunday. "We're not going to try the president of the United States based on hearsay."

Public support for the impeachment inquiry, however, appears to be growing. A CBS News poll released Sunday found that 55% of Americans support the inquiry while 45% are opposed to it. Democrats are overwhelmingly in favor of it; Republicans are overwhelmingly opposed; and independents are divided about equally, the poll found.

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Whistleblower to testify before Schiff committee - MarketWatch

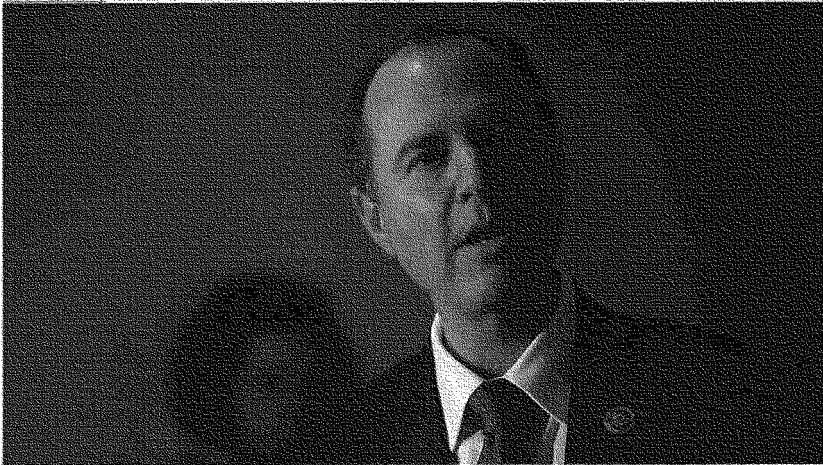
MarketWatch

Whistleblower to testify before Schiff committee

By Tim Rostan

Published: Sept 29, 2019 10:44 a.m. ET

House Intelligence Committee Chairman Adam Schiff said Sunday that an agreement has been reached under which the whistleblower will testify before the committee "very soon." The California Democrat was appearing on the ABC DIS, -1.06% Sunday-morning news program "This Week." Schiff said testimony from the whistleblower, whose complaint alleged President Trump sought to leverage the power of his office and U.S. foreign policy to solicit foreign interference in the 2020 election, would be heard without a "minder" from the Justice Department or White House on hand.

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Trump whistleblower expected to testify "very soon," with identity concealed
The whistleblower at the center of the impeachment probe of President Donald Trump will testify in the House "very soon," though in a way that will protect his identity, the Democrat leading the probe said Sunday.

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Whistleblower to testify before Schiff committee - MarketWatch

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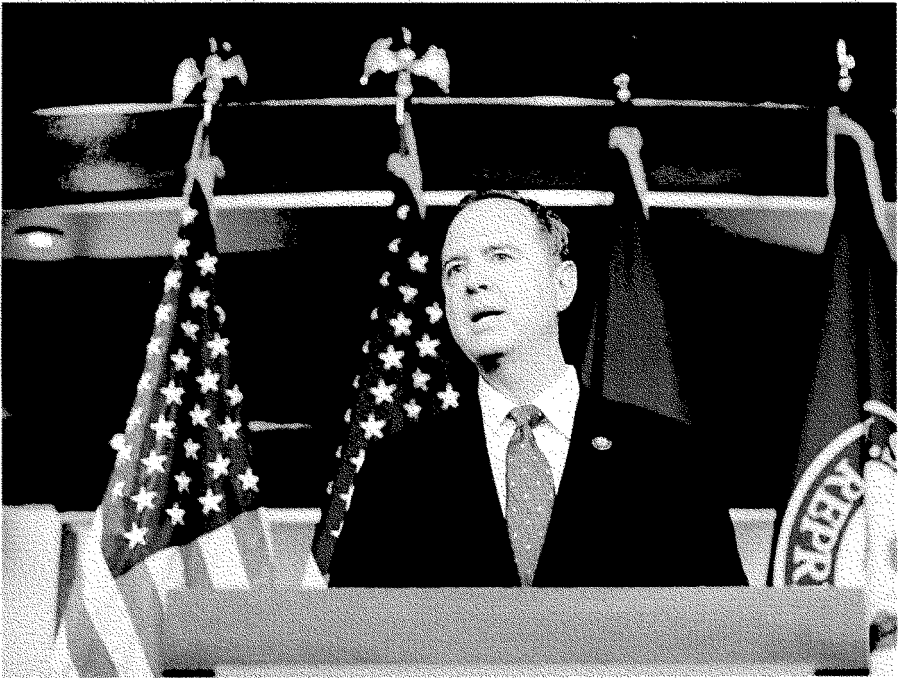
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The whistleblower at the center of the Trump impeachment inquiry has agreed to testify before Congress, says Rep. Adam Schiff



US House Intelligence Committee Chairman Adam Schiff (D-CA) speaks during a news conference at the U.S. Capitol Reuters

- The whistleblower at the center of the impeachment inquiry into US President Donald Trump has agreed to testify before US Congress, US House Intelligence Committee Chairman Adam Schiff said.
- Schiff told ABC's "This Week," in an interview, that he expects the whistleblower to testify "very soon."
- The hearing is expected to take place as soon as measures are completed to protect the whistleblower's identity.
- "We'll get the unfiltered testimony of that whistleblower," Schiff said.

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The whistleblower whose complaint laid the foundation for an impeachment inquiry into US President Donald Trump has agreed to testify before US Congress, according to US House Intelligence Committee Chairman Adam Schiff.

The Committee reached an agreement with the whistleblower to testify before Congress "very soon," Schiff, a representative from California, said in an interview with George Stephanopoulos during ABC's "This Week" on Sunday.

"We'll get the unfiltered testimony of that whistleblower," Schiff said.

Schiff expects the testimony to take place as soon as measures can be completed to protect the whistleblower's identity. The Office of the Director of National Intelligence is working through the security clearance process for the whistleblower's lawyers.

"As you can imagine with the President issuing threats like we ought to treat these people who expose my wrongdoing as we used to treat traitors and spies and we used to execute traitors and spies, you can imagine the security concerns here," Schiff said.

A spokesperson for the Committee could not be reached by phone or email on Sunday.

The whistleblower — reportedly a CIA officer who was once assigned to work with the White House — filed in August a complaint that alleged, among other things, that White House officials believed they saw Trump "abuse his office for personal gain" in a July phone call with Volodymyr Zelensky, president of Ukraine.

The complaint, which was declassified last week, alleges that Trump pressured Ukraine to investigate former Vice President Joe Biden, who is competing for the Democratic nomination to run against Trump for president, and help discredit the Russia investigation.

In light of the revelations, US House Speaker Nancy Pelosi announced last week a formal impeachment inquiry into Trump.

11/14/2019

Schiff: Ukraine whistleblower will testify before House Intelligence Committee

Schiff: Ukraine whistleblower will testify before House Intelligence Committee

by Mike Brest | September 29, 2019 11:07 AM

House Intelligence Committee Chairman Adam Schiff revealed the whistleblower who filed a complaint about President Trump's communications with Ukrainian President Volodymyr Zelensky has reached an agreement to testify in front of the committee.

Schiff told ABC's *This Week* with George Stephanopoulos that the whistleblower would likely testify "very soon" but added that it hinged upon acting Director of National Intelligence Joseph Maguire clearing "the security clearance process." Maguire testified in front of Schiff's committee last Thursday.

Schiff: Whistleblower has reached agreement to t...



The whistleblower complaint filed last month regarded a July 25 phone call in which Trump urged Zelensky to open an investigation into former Vice President Joe Biden and his son, Hunter Biden, for potential corruption. The younger Biden worked for Burisma, a leading energy company in Ukraine that had been the target of previous investigations.

11/14/2019 Schiff: Ukraine whistleblower will testify before House Intelligence Committee

While the complaint focused entirely on second- or third-hand accounts, one of its major allegations has already been confirmed. It alleged that White House officials "had intervened to 'lock down' all records of the phone call, especially the word-for-word transcript of the call," and the White House has confirmed the validity of that claim.

Axios: Schiff says House Intel has reached agreement for whistleblower testimony



Zachary Basu

Sep 29, 2019

House Intelligence Chairman Adam Schiff (D-Calif.) said on ABC's "This Week" that he's reached an agreement with the Trump-Ukraine whistleblower to come before the committee as soon as the acting director of national intelligence completes the security clearance process for the whistleblower's attorneys.

"As Director Maguire promised during the hearing, that whistleblower will be allowed to come in and come in without a minder from the Justice Department or from the White House to tell the whistleblower what they can and cannot say. We'll get the unfiltered testimony of that whistleblower."

The big picture: The House Intelligence Committee has subpoenaed Secretary of State Mike Pompeo and scheduled a series of hearings and depositions for this week, as Democrats move full steam ahead with a formal impeachment inquiry. Schiff also told NBC's "Meet the Press" that House Democrats will push for memos from Trump's calls with other world leaders besides the president of Ukraine, including Vladimir Putin.

11/14/2019

Rep. Adam Schiff: Whistleblower Has Agreed To Testify | The Daily Caller

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SHELBY TALCOTT
REPORTER

September 29, 2019

1:20 PM ET

House Intelligence Committee Chairman Adam Schiff announced Sunday that the whistleblower who filed a complaint regarding President Donald Trump's call with

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Rep. Adam Schiff: Whistleblower Has Agreed To Testify | The Daily Caller

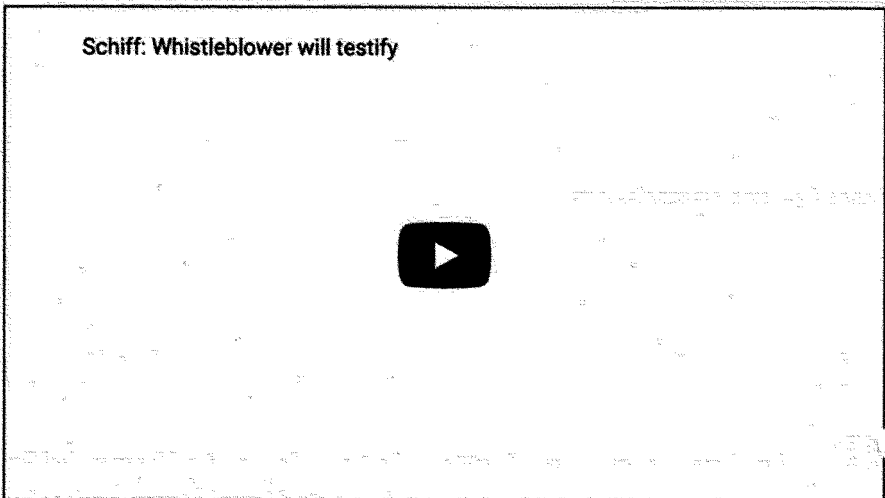
Ukraine's president has agreed to testify before the committee, adding that it will likely happen "very soon."

A whistleblower complaint filed in August accused Trump of pressuring Ukrainian President Volodymyr Zelensky to dig up dirt on former Vice President Joe Biden and his son, Hunter Biden, during a July 25 phone call. Following the news, the House of Representatives opened up an impeachment inquiry into Trump. **(RELATED: Here's A Transcript Of Trump's Call With Ukraine's President)**

Schiff said on ABC's "This Week with George Stephanopoulos" that the whistleblower will likely testify "very soon," confirming that an agreement has been reached. How soon the whistleblower can testify depends on how quickly Acting Director of National Intelligence Joseph Maguire clears "the security clearance process" for the whistleblower's lawyers, Schiff said.

Maguire testified Thursday in front of the House Intelligence Committee.

WATCH:



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Rep. Adam Schiff: Whistleblower Has Agreed To Testify | The Daily Caller

"And, as Director Maguire promised during the hearing, that whistleblower will be allowed to come in and come in without a 'minder' from the Justice Department or from the White House to tell the whistleblower what they can and cannot say," Schiff said. "We will get the unfiltered testimony of that whistleblower."

Schiff added that they will be taking precautions to ensure that the whistleblower can provide full testimony while keeping his identity a secret.

"As you can imagine, with the president issuing threats like 'we ought to teach these people who exposed my wrong-doing as we used to treat traitors and spies, we used to execute traitors and spies,' you can imagine the security concerns here," he said.

"We're ready to hear from the whistleblower as soon as that is done."

The complaint includes allegations that White House officials "intervened to 'lock down' all records of the phone call." Although the complaint notes that the whistleblower never heard any of the allegations first-hand, the White House has reportedly confirmed that this specific claim happened.

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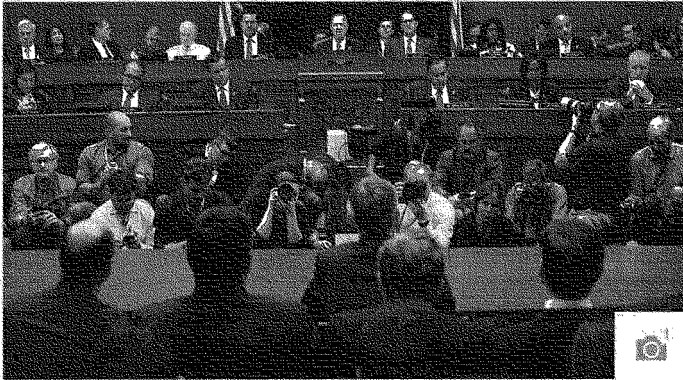
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Deal reached for testimony on Ukraine | Toledo Blade

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Deal reached for testimony on Ukraine



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The Blade

SEP 29, 2019

10:42 PM

WASHINGTON — House Intelligence Committee Chairman Adam Schiff said Sunday that his panel has reached an agreement to secure testimony from the anonymous whistleblower whose detailed complaint triggered an impeachment investigation into President Trump.

Mr. Schiff (D., Calif.) said on ABC News' *This Week* that he expects the Intelligence Committee to hear from the whistleblower "very soon," pending a security clearance from acting Director of National Intelligence Joseph Maguire.

"We'll get the unfiltered testimony of that whistleblower," Mr.

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Deal reached for testimony on Ukraine | Toledo Blade



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One of the whistleblower's attorneys, Mark Zaid, said bipartisan talks in both chambers are ongoing "and we understand all agree that protecting whistleblower's identity is paramount."

He said no date or time for the testimony has been set.

Late Sunday, Mr. Trump wrote on Twitter that he wants Mr. Schiff "questioned at the highest level for Fraud & Treason" for his remarks at last week's hearing in which Mr. Maguire testified.

Mr. Trump demanded to meet the whistleblower as well as the person's sources.

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who illegally gave this information, which was largely incorrect, to the 'Whistleblower,'" Mr. Trump wrote. "Was this person SPYING on the U.S. President? Big Consequences!"

Andrew Bakaj, another lawyer representing the whistleblower, sent a letter Saturday to Mr. Maguire expressing fears for his client's safety.

"Unfortunately, we expect this situation to worsen, and to become even more dangerous for our client and any other whistleblowers, as Congress seeks to investigate this matter," Mr. Bakaj wrote.

In a separate letter, Mr. Bakaj urged the leaders of the congressional intelligence committees to "speak out in favor of whistleblower protection and reiterate that this is a protected system where retaliation is not permitted, whether direct or implied."

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The former vice president's son was not accused of wrongdoing in the investigation.

As vice president, Mr. Biden pressured Ukraine to fire the top prosecutor, Viktor Shokin, who Mr. Biden and other Western officials said was not sufficiently pursuing corruption cases. At the time, the investigation into Burisma was dormant, according to

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Rep. Jim Jordan (R., Ohio) pointed to an initial finding by the intelligence community inspector general stating that while the complaint was credible, the whistleblower had an “arguable political bias.”

“He had no firsthand knowledge. . . . And, second, he has a political bias,” Mr. Jordan said on CNN’s *State of the Union*. “That should tell us something about this guy who came forward with this claim.”

Host Jake Tapper pushed back against Mr. Jordan’s assertions.

“There is no evidence of that,” he said in response to Mr. Jordan’s claim of political bias, noting that the language used by the inspector general in describing the whistleblower “could mean that he interned for John McCain 20 years ago. We have no idea what it means.”

Mr. Jordan said he has no problems with the President’s call to the Ukrainian leader in July.

“We have now seen the transcript. . . . This is just one of the many and unending attacks the Democrats have leveled against this President,” he said.

White House senior adviser Stephen Miller appeared on on *Fox News Sunday* but sidestepped some questions from host Chris Wallace about allegations surrounding the President’s actions, such as Mr. Trump’s decision to use not the federal government but rather his personal attorney Rudy Giuliani to obtain information on the Bidens’ activities.

He also declined to answer when asked by Mr. Wallace to outline how, in his view, the Bidens broke any laws.

Mr. Miller also disputed the use of the word “whistleblower” to

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"The President of the United States is the whistleblower, and this individual is a saboteur trying to undermine a democratically elected government," Mr. Miller said.

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BLADE NEWS SERVICES
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SEP 29, 2019

10:42 PM

WASHINGTON — House Intelligence Committee Chairman Adam Schiff said Sunday that his panel has reached an agreement to secure testimony from the anonymous whistleblower whose detailed complaint triggered an impeachment investigation into President Trump.

Mr. Schiff (D., Calif.) said on ABC News' *This Week* that he expects the Intelligence Committee to hear from the whistleblower "very soon," pending a security clearance from acting Director of National Intelligence Joseph Maguire.

"We'll get the unfiltered testimony of that whistleblower," Mr.

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One of the whistleblower's attorneys, Mark Zaid, said bipartisan talks in both chambers are ongoing "and we understand all agree that protecting whistleblower's identity is paramount."

He said no date or time for the testimony has been set.

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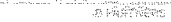
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1/8/2020

Schiff hopes whistleblower will testify 'very soon' | TheHill



Schiff hopes whistleblower will testify 'very soon'

BY REBECCA KLAR - 09/29/19 11:24 AM EDT

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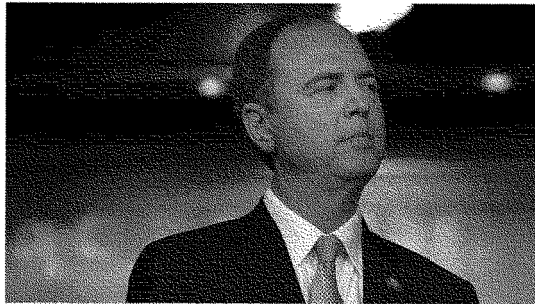
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9/29/19 Craig Nash

Rep. Adam Schiff (D-Calif.), the chairman of the House Intelligence Committee, said on Sunday that a deal has been reached for the whistleblower who filed a complaint that helped launch the impeachment inquiry into President Trump to testify on Capitol Hill, adding that he hopes it will happen "very soon."

Schiff said on NBC's "Meet the Press" that the whistleblower will testify, adding that he doesn't know the person's identity.

"And I hope very soon," Schiff said.

Schiff said all "that needs to be done at this point" is to make sure the attorneys that represent the whistleblower get clearance to accompany them and that logistics are in place to protect the person.

The whistleblower alleges Trump asked Ukrainian President Volodymyr Zelensky to investigate former Vice President Joe Biden, a 2020 candidate.

The complaint also alleges the Trump administration hid transcripts of the call on highly classified servers.

Rudy Giuliani, acting as the president's personal attorney, is a key player in the complaint.

Schiff on Sunday left the door open for Giuliani to testify.

1/8/2020

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Schiff hopes whistleblower will testify 'very soon' | TheHill

"I don't want to commit myself to that at this point," he said of calling Giuliani to testify. "We certainly have to do a lot of work to see what Giuliani has been doing in Ukraine."

"Whether it will be productive to bring him in, we will make that decision down the road."

Giuliani said earlier on ABC's "This Week" that he would testify if Trump directs him to.

He also called Schiff an "illegitimate chairman."

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--This report was updated at 12:48 p.m.

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Rep. Adam Schiff: Trump whistle-blower agrees to testify in Congress

Published: Sept. 29, 2019 at 2:58 PM

Daniel Uria

Sept. 29 (UPI) — House intelligence committee chairman Adam Schiff said Sunday that the whistle-blower who filed a complaint about a call between President Donald Trump and Ukrainian President Volodymyr Zelensky has agreed to testify before a congressional committee.

Appearing on ABC News *This Week*, the Democrat from California said House lawmakers had settled an agreement with the whistleblower's lawyers to ensure that there are precautions to protect his or her identity during the testimony.

"That whistle-blower will be allowed to come in without White House or DOJ lawyers to tell him or her what they can or can't say," Schiff said, comparing the situation to acting Director of National Intelligence Joseph McGuire's testimony on the issue Thursday. "We are taking all the precautions we can to protect the whistle-blower's identity."

He added the testimony will take place as soon as the director of National Intelligence can complete the security clearance process.

Schiff also mentioned the potential for security risks after Trump condemned the whistleblower at a private event in which he described the person who informed the whistleblower of the call as similar to a spy, in audio released by The Los Angeles Times.

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"Who's the person who gave the whistle-blower the information? Because that's close to a spy," Trump said. "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."

Trump's personal attorney Rudy Giuliani called for Schiff to be removed, saying he would not cooperate with the House intelligence committee under his leadership unless directed by Trump to do so.

"If he decides he wants me to testify, of course I'll testify, even though I think Adam Schiff is an illegitimate chairman," Giuliani said on *This week*. "He has already prejudged the case. If we want fairness here, we've got to put somebody in charge of the committee who has an open mind."

Giuliani defended his decision to press the Ukrainians to investigate former Vice President Joe Biden and his son Hunter Biden, which has led to Congress to launch an impeachment inquiry.

"Everything I did was to defend my client and I am proud of having uncovered what will turn out to be a massive pay-for-play scheme," he said referring to the dismissal of Ukraine's former prosecutor general, Viktor Shokin, who had been investigating Burisma, a gas company which Biden's son served on the board for.

Also Sunday, Trump's former homeland security adviser Tom Bossert criticized the president's attorney for repeating what he described as a "conspiracy theory" that Ukraine and not Russia interfered in the 2016 presidential election.

"At this point, I am deeply frustrated with what he and the legal team is doing and repeating that debunked theory to the president. It sticks in his mind when he hears it over and over again," Bossert said on *This Week*.

Giuliani responded by saying that Bossert "doesn't know what he's talking about."

"I'm not peddling anything," he said.

11/14/2019

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White House policy adviser Stephen Miller told *Fox News Sunday* in an interview the whistle-blower complaint "drips with condemnation, condescension and contempt for the president."

He added: "The president of the United States is the whistle-blower and this individual is a saboteur trying to undermine a democratically elected government."

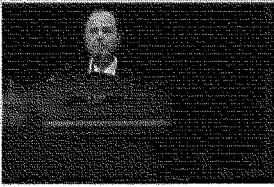
When host Chris Wallace countered the inspector general found the complaint "credible and a matter of urgent concern," Miller responded: "They're wrong."

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THE WEEK:

Schiff: Whistleblower will give 'unfiltered' testimony 'very soon'

September 29, 2019

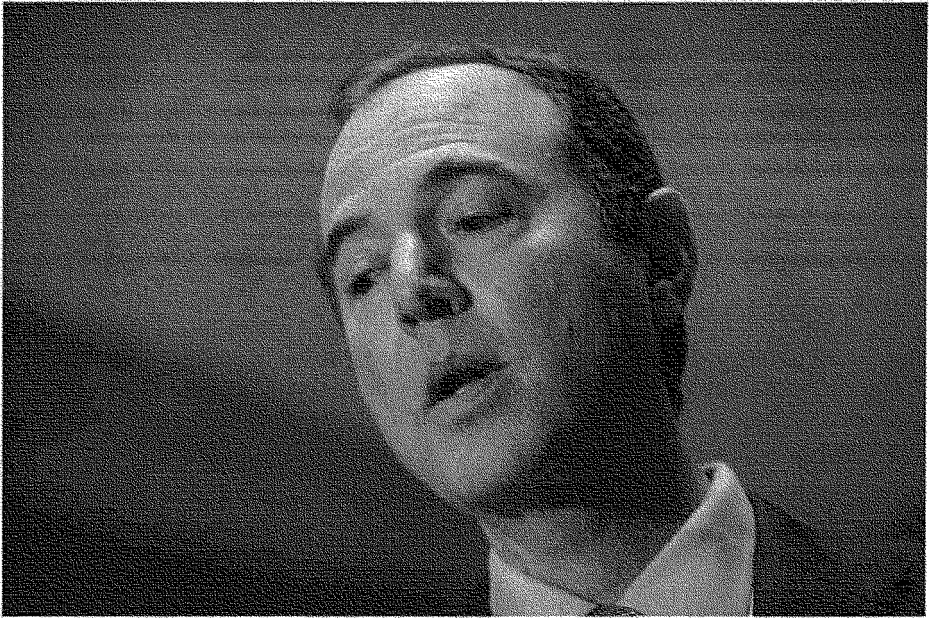


Andrew Caballero-Reynolds/AFP/Getty Images

House Intelligence Committee Chair Adam Schiff (D-Calif.) on Sunday said the whistleblower who filed a complaint about President Trump's July 25 phone call with Ukrainian President Volodymyr Zelensky will testify in the House "very soon."

Schiff told ABC News they are waiting on the whistleblower's attorneys to receive security clearances. One of those attorneys, Mark S. Zaid, tweeted on Sunday that his team is working with both parties in the House and Senate "and we understand all agree that protecting whistleblower's identity is paramount." They are still coordinating details, he added, and no date or time has been set. Schiff said the whistleblower will give their "unfiltered testimony," and lawmakers are "taking all the precautions" to protect their identity. Catherine Garcia

Schiff: Whistleblower testimony expected 'very soon'



U.S. Rep. Adam Schiff, far right, said no decision has yet been made on granting Flynn immunity.

By **BOSTON HERALD WIRE SERVICES** |

PUBLISHED: September 29, 2019 at 7:07 pm | UPDATED: September 30, 2019 at 6:54 am

WASHINGTON — House Intelligence Committee Chairman Adam Schiff said Sunday that he expects the whistleblower at the heart of impeachment proceedings against President Trump to testify "very soon."

"All that needs to be done, at this point, is to make sure that the attorneys that represent the whistleblower get the clearances that they need to be able to accompany the whistleblower to testimony," said Schiff (D-Calif.), "and that we figure out the logistics to make sure that we protect the identity of the whistleblower."

Trump allies, meanwhile, took to Sunday talk shows with myriad responses to the the latest developments the Democrats' impeachment proceedings.

Stephen Miller, the president's senior policy adviser, called the whole inquiry a "partisan hit job" orchestrated by "a deep state operative" who is also "a saboteur."

"The president of the United States is the whistleblower," Miller said during an appearance on "Fox News Sunday."

Tom Bossert, Trump's former homeland security adviser, said Trump needs to drop the conspiracy theories related to the 2016 campaign.

"I honestly believe this president has not gotten his pound of flesh yet from past grievances on the 2016 investigation," said Bossert. "If he continues to focus on that white whale," Bossert added, "it's going to bring him down."

The White House last week released a rough transcript of Trump's July 25 call with Ukrainian President Volodymyr Zelenskiy, as well as the whistleblower's complaint alleging the U.S. president pressured his counterpart to investigate the family of Joe Biden, the former vice president who is seeking the Democratic nomination to challenge Trump's re-election next year.

Trump has sought to implicate Biden and his son Hunter Biden in the kind of corruption that has long plagued Ukraine. Hunter Biden served on the board of a Ukrainian gas company at the same time his father was leading the Obama administration's diplomatic dealings with Kiev.

Giuliani has acknowledged broadly asking Ukraine to investigate the Bidens and defended the move as appropriate. Giuliani has claimed he acted at the behest of the State Department. The State Department has not commented.

"I did not do this on my own, I did it at the request of the State Department — I have a 'thank you' from them for doing a good job," Giuliani said Sunday on CBS' "Face the Nation."

UNCLASSIFIED

August 12, 2019

The Honorable Richard Burr
Chairman
Select Committee on Intelligence
United States Senate

The Honorable Adam Schiff
Chairman
Permanent Select Committee on Intelligence
United States House of Representatives

Dear Chairman Burr and Chairman Schiff:

I am reporting an "urgent concern" in accordance with the procedures outlined in 50 U.S.C. §3033(k)(5)(A). This letter is UNCLASSIFIED when separated from the attachment.

In the course of my official duties, I have received information from multiple U.S. Government officials that the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election. This interference includes, among other things, pressuring a foreign country to investigate one of the President's main domestic political rivals. The President's personal lawyer, Mr. Rudolph Giuliani, is a central figure in this effort. Attorney General Barr appears to be involved as well.

- Over the past four months, more than half a dozen U.S. officials have informed me of various facts related to this effort. The information provided herein was relayed to me in the course of official interagency business. It is routine for U.S. officials with responsibility for a particular regional or functional portfolio to share such information with one another in order to inform policymaking and analysis.
- I was not a direct witness to most of the events described. However, I found my colleagues' accounts of these events to be credible because, in almost all cases, multiple officials recounted fact patterns that were consistent with one another. In addition, a variety of information consistent with these private accounts has been reported publicly.

I am deeply concerned that the actions described below constitute "a serious or flagrant problem, abuse, or violation of law or Executive Order" that "does not include differences of opinions concerning public policy matters," consistent with the definition of an "urgent concern" in 50 U.S.C. §3033(k)(5)(G). I am therefore fulfilling my duty to report this information, through proper legal channels, to the relevant authorities.

- I am also concerned that these actions pose risks to U.S. national security and undermine the U.S. Government's efforts to deter and counter foreign interference in U.S. elections.

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To the best of my knowledge, the entirety of this statement is unclassified when separated from the classified enclosure. I have endeavored to apply the classification standards outlined in Executive Order (EO) 13526 and to separate out information that I know or have reason to believe is classified for national security purposes.¹

- If a classification marking is applied retroactively, I believe it is incumbent upon the classifying authority to explain why such a marking was applied, and to which specific information it pertains.

I. The 25 July Presidential phone call

Early in the morning of 25 July, the President spoke by telephone with Ukrainian President Volodymyr Zelenskyy. I do not know which side initiated the call. This was the first publicly acknowledged call between the two leaders since a brief congratulatory call after Mr. Zelenskyy won the presidency on 21 April.

Multiple White House officials with direct knowledge of the call informed me that, after an initial exchange of pleasantries, the President used the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid. According to the White House officials who had direct knowledge of the call, the President pressured Mr. Zelenskyy to, inter alia:

- initiate or continue an investigation² into the activities of former Vice President Joseph Biden and his son, Hunter Biden;
- assist in purportedly uncovering that allegations of Russian interference in the 2016 U.S. presidential election originated in Ukraine, with a specific request that the Ukrainian leader locate and turn over servers used by the Democratic National Committee (DNC) and examined by the U.S. cyber security firm Crowdstrike,³ which initially reported that Russian hackers had penetrated the DNC's networks in 2016; and
- meet or speak with two people the President named explicitly as his personal envoys on these matters, Mr. Giuliani and Attorney General Barr, to whom the President referred multiple times in tandem.

¹ Apart from the information in the Enclosure, it is my belief that none of the information contained herein meets the definition of "classified information" outlined in EO 13526, Part 1, Section 1.1. There is ample open-source information about the efforts I describe below, including statements by the President and Mr. Giuliani. In addition, based on my personal observations, there is discretion with respect to the classification of private comments by or instructions from the President, including his communications with foreign leaders; information that is not related to U.S. foreign policy or national security—such as the information contained in this document, when separated from the Enclosure—is generally treated as unclassified. I also believe that applying a classification marking to this information would violate EO 13526, Part 1, Section 1.7, which states: "In no case shall information be classified, continue to be maintained as classified, or fail to be declassified in order to: (1) conceal violations of law, inefficiency, or administrative error; [or] (2) prevent embarrassment to a person, organization, or agency."

² It is unclear whether such a Ukrainian investigation exists. See Footnote #7 for additional information.

³ I do not know why the President associates these servers with Ukraine. (See, for example, his comments to *Fox News* on 20 July: "And Ukraine. Take a look at Ukraine. How come the FBI didn't take this server? Podesta told them to get out. He said, get out. So, how come the FBI didn't take the server from the DNC?")

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The President also praised Ukraine's Prosecutor General, Mr. Yuriy Lutsenko, and suggested that Mr. Zelenskyy might want to keep him in his position. (Note: Starting in March 2019, Mr. Lutsenko made a series of public allegations—many of which he later walked back—about the Biden family's activities in Ukraine, Ukrainian officials' purported involvement in the 2016 U.S. election, and the activities of the U.S. Embassy in Kyiv. See Part IV for additional context.)

The White House officials who told me this information were deeply disturbed by what had transpired in the phone call. They told me that there was already a "discussion ongoing" with White House lawyers about how to treat the call because of the likelihood, in the officials' retelling, that they had witnessed the President abuse his office for personal gain.

The Ukrainian side was the first to publicly acknowledge the phone call. On the evening of 25 July, a readout was posted on the website of the Ukrainian President that contained the following line (translation from original Russian-language readout):

- "Donald Trump expressed his conviction that the new Ukrainian government will be able to quickly improve Ukraine's image and complete the investigation of corruption cases that have held back cooperation between Ukraine and the United States."

Aside from the above-mentioned "cases" purportedly dealing with the Biden family and the 2016 U.S. election, I was told by White House officials that no other "cases" were discussed.

Based on my understanding, there were approximately a dozen White House officials who listened to the call—a mixture of policy officials and duty officers in the White House Situation Room, as is customary. The officials I spoke with told me that participation in the call had not been restricted in advance because everyone expected it would be a "routine" call with a foreign leader. I do not know whether anyone was physically present with the President during the call.

- In addition to White House personnel, I was told that a State Department official, Mr. T. Ulrich Brechbuhl, also listened in on the call.
- I was not the only non-White House official to receive a readout of the call. Based on my understanding, multiple State Department and Intelligence Community officials were also briefed on the contents of the call as outlined above.

II. Efforts to restrict access to records related to the call

In the days following the phone call, I learned from multiple U.S. officials that senior White House officials had intervened to "lock down" all records of the phone call, especially the official word-for-word transcript of the call that was produced—as is customary—by the White House Situation Room. This set of actions underscored to me that White House officials understood the gravity of what had transpired in the call.

- White House officials told me that they were "directed" by White House lawyers to remove the electronic transcript from the computer system in which such transcripts are typically stored for coordination, finalization, and distribution to Cabinet-level officials.

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- Instead, the transcript was loaded into a separate electronic system that is otherwise used to store and handle classified information of an especially sensitive nature. One White House official described this act as an abuse of this electronic system because the call did not contain anything remotely sensitive from a national security perspective.

I do not know whether similar measures were taken to restrict access to other records of the call, such as contemporaneous handwritten notes taken by those who listened in.

III. Ongoing concerns

On 26 July, a day after the call, U.S. Special Representative for Ukraine Negotiations Kurt Volker visited Kyiv and met with President Zelenskyy and a variety of Ukrainian political figures. Ambassador Volker was accompanied in his meetings by U.S. Ambassador to the European Union Gordon Sondland. Based on multiple readouts of these meetings recounted to me by various U.S. officials, Ambassadors Volker and Sondland reportedly provided advice to the Ukrainian leadership about how to “navigate” the demands that the President had made of Mr. Zelenskyy.

I also learned from multiple U.S. officials that, on or about 2 August, Mr. Giuliani reportedly traveled to Madrid to meet with one of President Zelenskyy’s advisers, Andriy Yermak. The U.S. officials characterized this meeting, which was not reported publicly at the time, as a “direct follow-up” to the President’s call with Mr. Zelenskyy about the “cases” they had discussed.

- Separately, multiple U.S. officials told me that Mr. Giuliani had reportedly privately reached out to a variety of other Zelenskyy advisers, including Chief of Staff Andriy Bohdan and Acting Chairman of the Security Service of Ukraine Ivan Bakanov.⁴
- I do not know whether those officials met or spoke with Mr. Giuliani, but I was told separately by multiple U.S. officials that Mr. Yermak and Mr. Bakanov intended to travel to Washington in mid-August.

On 9 August, the President told reporters: “I think [President Zelenskyy] is going to make a deal with President Putin, and he will be invited to the White House. And we look forward to seeing him. He’s already been invited to the White House, and he wants to come. And I think he will. He’s a very reasonable guy. He wants to see peace in Ukraine, and I think he will be coming very soon, actually.”

IV. Circumstances leading up to the 25 July Presidential phone call

Beginning in late March 2019, a series of articles appeared in an online publication called *The Hill*. In these articles, several Ukrainian officials—most notably, Prosecutor General Yuriy Lutsenko—made a series of allegations against other Ukrainian officials and current and former U.S. officials. Mr. Lutsenko and his colleagues alleged, inter alia:

⁴ In a report published by the Organized Crime and Corruption Reporting Project (OCCRP) on 22 July, two associates of Mr. Giuliani reportedly traveled to Kyiv in May 2019 and met with Mr. Bakanov and another close Zelenskyy adviser, Mr. Serhiy Shefir.

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- that they possessed evidence that Ukrainian officials—namely, Head of the National Anticorruption Bureau of Ukraine Artem Sytnyk and Member of Parliament Serhiy Leshchenko—had “interfered” in the 2016 U.S. presidential election, allegedly in collaboration with the DNC and the U.S. Embassy in Kyiv;⁵
- that the U.S. Embassy in Kyiv—specifically, U.S. Ambassador Marie Yovanovitch, who had criticized Mr. Lutsenko’s organization for its poor record on fighting corruption—had allegedly obstructed Ukrainian law enforcement agencies’ pursuit of corruption cases, including by providing a “do not prosecute” list, and had blocked Ukrainian prosecutors from traveling to the United States expressly to prevent them from delivering their “evidence” about the 2016 U.S. election;⁶ and
- that former Vice President Biden had pressured former Ukrainian President Petro Poroshenko in 2016 to fire then Ukrainian Prosecutor General Viktor Shokin in order to quash a purported criminal probe into Burisma Holdings, a Ukrainian energy company on whose board the former Vice President’s son, Hunter, sat.⁷

In several public comments,⁸ Mr. Lutsenko also stated that he wished to communicate directly with Attorney General Barr on these matters.⁹

The allegations by Mr. Lutsenko came on the eve of the first round of Ukraine’s presidential election on 31 March. By that time, Mr. Lutsenko’s political patron, President Poroshenko, was trailing Mr. Zelenskyy in the polls and appeared likely to be defeated. Mr. Zelenskyy had made known his desire to replace Mr. Lutsenko as Prosecutor General. On 21 April, Mr. Poroshenko lost the runoff to Mr. Zelenskyy by a landslide. See Enclosure for additional information.

⁵ Mr. Sytnyk and Mr. Leshchenko are two of Mr. Lutsenko’s main domestic rivals. Mr. Lutsenko has no legal training and has been widely criticized in Ukraine for politicizing criminal probes and using his tenure as Prosecutor General to protect corrupt Ukrainian officials. He has publicly feuded with Mr. Sytnyk, who heads Ukraine’s only competent anticorruption body, and with Mr. Leshchenko, a former investigative journalist who has repeatedly criticized Mr. Lutsenko’s record. In December 2018, a Ukrainian court upheld a complaint by a Member of Parliament, Mr. Boryslav Rozenblat, who alleged that Mr. Sytnyk and Mr. Leshchenko had “interfered” in the 2016 U.S. election by publicizing a document detailing corrupt payments made by former Ukrainian President Viktor Yanukovich before his ouster in 2014. Mr. Rozenblat had originally filed the motion in late 2017 after attempting to flee Ukraine amid an investigation into his taking of a large bribe. On 16 July 2019, Mr. Leshchenko publicly stated that a Ukrainian court had overturned the lower court’s decision.

⁶ Mr. Lutsenko later told Ukrainian news outlet *The Babel* on 17 April that Ambassador Yovanovitch had never provided such a list, and that he was, in fact, the one who requested such a list.

⁷ Mr. Lutsenko later told *Bloomberg* on 16 May that former Vice President Biden and his son were not subject to any current Ukrainian investigations, and that he had no evidence against them. Other senior Ukrainian officials also contested his original allegations; one former senior Ukrainian prosecutor told *Bloomberg* on 7 May that Mr. Shokin in fact was not investigating Burisma at the time of his removal in 2016.

⁸ See, for example, Mr. Lutsenko’s comments to *The Hill* on 1 and 7 April and his interview with *The Babel* on 17 April, in which he stated that he had spoken with Mr. Giuliani about arranging contact with Attorney General Barr.

⁹ In May, Attorney General Barr announced that he was initiating a probe into the “origins” of the Russia investigation. According to the above-referenced OCCRP report (22 July), two associates of Mr. Giuliani claimed to be working with Ukrainian officials to uncover information that would become part of this inquiry. In an interview with *Fox News* on 8 August, Mr. Giuliani claimed that Mr. John Durham, whom Attorney General Barr designated to lead this probe, was “spending a lot of time in Europe” because he was “investigating Ukraine.” I do not know the extent to which, if at all, Mr. Giuliani is directly coordinating his efforts on Ukraine with Attorney General Barr or Mr. Durham.

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- It was also publicly reported that Mr. Giuliani had met on at least two occasions with Mr. Lutsenko: once in New York in late January and again in Warsaw in mid-February. In addition, it was publicly reported that Mr. Giuliani had spoken in late 2018 to former Prosecutor General Shokin, in a Skype call arranged by two associates of Mr. Giuliani.¹⁰
- On 25 April in an interview with *Fox News*, the President called Mr. Lutsenko's claims "big" and "incredible" and stated that the Attorney General "would want to see this."

On or about 29 April, I learned from U.S. officials with direct knowledge of the situation that Ambassador Yovanovitch had been suddenly recalled to Washington by senior State Department officials for "consultations" and would most likely be removed from her position.

- Around the same time, I also learned from a U.S. official that "associates" of Mr. Giuliani were trying to make contact with the incoming Zelenskyy team.¹¹
- On 6 May, the State Department announced that Ambassador Yovanovitch would be ending her assignment in Kyiv "as planned."
- However, several U.S. officials told me that, in fact, her tour was curtailed because of pressure stemming from Mr. Lutsenko's allegations. Mr. Giuliani subsequently stated in an interview with a Ukrainian journalist published on 14 May that Ambassador Yovanovitch was "removed...because she was part of the efforts against the President."

On 9 May, *The New York Times* reported that Mr. Giuliani planned to travel to Ukraine to press the Ukrainian government to pursue investigations that would help the President in his 2020 reelection bid.

- In his multitude of public statements leading up to and in the wake of the publication of this article, Mr. Giuliani confirmed that he was focused on encouraging Ukrainian authorities to pursue investigations into alleged Ukrainian interference in the 2016 U.S. election and alleged wrongdoing by the Biden family.¹²
- On the afternoon of 10 May, the President stated in an interview with *Politico* that he planned to speak with Mr. Giuliani about the trip.
- A few hours later, Mr. Giuliani publicly canceled his trip, claiming that Mr. Zelenskyy was "surrounded by enemies of the [U.S.] President...and of the United States."

On 11 May, Mr. Lutsenko met for two hours with President-elect Zelenskyy, according to a public account given several days later by Mr. Lutsenko. Mr. Lutsenko publicly stated that he had told Mr. Zelenskyy that he wished to remain as Prosecutor General.

¹⁰ See, for example, the above-referenced articles in *Bloomberg* (16 May) and OCCRP (22 July).

¹¹ I do not know whether these associates of Mr. Giuliani were the same individuals named in the 22 July report by OCCRP, referenced above.

¹² See, for example, Mr. Giuliani's appearance on *Fox News* on 6 April and his tweets on 23 April and 10 May. In his interview with *The New York Times*, Mr. Giuliani stated that the President "basically knows what I'm doing, sure, as his lawyer." Mr. Giuliani also stated: "We're not meddling in an election, we're meddling in an investigation, which we have a right to do... There's nothing illegal about it... Somebody could say it's improper. And this 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'm 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."

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Starting in mid-May, I heard from multiple U.S. officials that they were deeply concerned by what they viewed as Mr. Giuliani's circumvention of national security decisionmaking processes to engage with Ukrainian officials and relay messages back and forth between Kyiv and the President. These officials also told me:

- that State Department officials, including Ambassadors Volker and Sondland, had spoken with Mr. Giuliani in an attempt to "contain the damage" to U.S. national security; and
- that Ambassadors Volker and Sondland during this time period met with members of the new Ukrainian administration and, in addition to discussing policy matters, sought to help Ukrainian leaders understand and respond to the differing messages they were receiving from official U.S. channels on the one hand, and from Mr. Giuliani on the other.

During this same timeframe, multiple U.S. officials told me that the Ukrainian leadership was led to believe that a meeting or phone call between the President and President Zelenskyy would depend on whether Zelenskyy showed willingness to "play ball" on the issues that had been publicly aired by Mr. Lutsenko and Mr. Giuliani. (Note: This was the general understanding of the state of affairs as conveyed to me by U.S. officials from late May into early July. I do not know who delivered this message to the Ukrainian leadership, or when.) See Enclosure for additional information.

Shortly after President Zelenskyy's inauguration, it was publicly reported that Mr. Giuliani met with two other Ukrainian officials: Ukraine's Special Anticorruption Prosecutor, Mr. Nazar Kholodnytskyy, and a former Ukrainian diplomat named Andriy Telizhenko. Both Mr. Kholodnytskyy and Mr. Telizhenko are allies of Mr. Lutsenko and made similar allegations in the above-mentioned series of articles in *The Hill*.

On 13 June, the President told ABC's George Stephanopoulos that he would accept damaging information on his political rivals from a foreign government.

On 21 June, Mr. Giuliani tweeted: "New Pres of Ukraine still silent on investigation of Ukrainian interference in 2016 and alleged Biden bribery of Poroshenko. Time for leadership and investigate both if you want to purge how Ukraine was abused by Hillary and Clinton people."

In mid-July, I learned of a sudden change of policy with respect to U.S. assistance for Ukraine. See Enclosure for additional information.

ENCLOSURE: Classified appendix

~~TOP SECRET~~ [REDACTED]

August 12, 2019

(U) CLASSIFIED APPENDIX

(U) Supplementary classified information is provided as follows:

(U) Additional information related to Section II

(TS) [REDACTED] According to multiple White House officials I spoke with, the transcript of the President's call with President Zelenskyy was placed into a computer system managed directly by the National Security Council (NSC) Directorate for Intelligence Programs. This is a standalone computer system reserved for codeword-level intelligence information, such as covert action. According to information I received from White House officials, some officials voiced concerns internally that this would be an abuse of the system and was not consistent with the responsibilities of the Directorate for Intelligence Programs. According to White House officials I spoke with, this was "not the first time" under this Administration that a Presidential transcript was placed into this codeword-level system solely for the purpose of protecting politically sensitive—rather than national security sensitive—information.

(U) Additional information related to Section IV

[REDACTED]

(S) [REDACTED] I would like to expand upon two issues mentioned in Section IV that might have a connection with the overall effort to pressure the Ukrainian leadership. As I do not know definitively whether the below-mentioned decisions are connected to the broader efforts I describe, I have chosen to include them in the classified annex. If they indeed represent genuine policy deliberations and decisions formulated to advance U.S. foreign policy and national security, one might be able to make a reasonable case that the facts are classified.

- (S) [REDACTED] I learned from U.S. officials that, on or around 14 May, the President instructed Vice President Pence to cancel his planned travel to Ukraine to attend President
- [REDACTED]

~~TOP SECRET~~ [REDACTED]

~~TOP SECRET~~ [REDACTED]

Zelenskyy's inauguration on 20 May; Secretary of Energy Rick Perry led the delegation instead. According to these officials, it was also "made clear" to them that the President did not want to meet with Mr. Zelenskyy until he saw how Zelenskyy "chose to act" in office. I do not know how this guidance was communicated, or by whom. I also do not know whether this action was connected with the broader understanding, described in the unclassified letter, that a meeting or phone call between the President and President Zelenskyy would depend on whether Zelenskyy showed willingness to "play ball" on the issues that had been publicly aired by Mr. Lutsenko and Mr. Giuliani.

(S/ [REDACTED]) On 18 July, an Office of Management and Budget (OMB) official informed Departments and Agencies that the President "earlier that month" had issued instructions to suspend all U.S. security assistance to Ukraine. Neither OMB nor the NSC staff knew why this instruction had been issued. During interagency meetings on 23 July and 26 July, OMB officials again stated explicitly that the instruction to suspend this assistance had come directly from the President, but they still were unaware of a policy rationale. As of early August, I heard from U.S. officials that some Ukrainian officials were aware that U.S. aid might be in jeopardy, but I do not know how or when they learned of it.

~~TOP SECRET~~ [REDACTED]

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**THE WHITE HOUSE
WASHINGTON**

**EYES ONLY
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MEMORANDUM OF TELEPHONE CONVERSATION

SUBJECT: (U//FOUO) Telephone Conversation with
President-elect Volodymyr Zelenskyy of Ukraine

PARTICIPANT: President-elect Volodymyr Zelenskyy of Ukraine

Interpreter: Provided by the Department of State
Notetakers: The White House Situation Room

DATE, TIME April 21, 2019, 4:29 - 4:45 p.m. EDT
AND PLACE: Air Force One

(U) The President: I'd like to congratulate you on a job well done, and congratulations on a fantastic election.

(U) President-elect Zelenskyy: Good to hear from you. Thank you so very much. It's very nice to hear from you, and I appreciate the congratulations.

(U) The President: That was an incredible election.

(U) President-elect Zelenskyy: Again, thank you so very much. As you can see, we tried very hard to do our best. We had you as a great example.

(U) The President: I think you will do a great job. I have many friends in Ukraine who know you and like you. I have many friends from Ukraine and they think - frankly - expected you to win. And it's really an amazing thing that you've done.

CAUTION: A Memorandum of a Telephone Conversation (TELCON) is not a verbatim transcript of a discussion. The text in this document records the notes and recollections of Situation Room Duty Officers and NSC policy staff assigned to listen and memorialize the conversation in written form as the conversation takes place. A number of factors can affect the accuracy of the record, including poor telecommunications connections and variations in accent and/or interpretation. The word "inaudible" is used to indicate portions of a conversation that the notetaker was unable to hear.

An interpreter facilitated this conversation. Differences in interpretation may result in subtle differences in the exact meaning of phrases.

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I guess, in a way, I did something similar. We're making tremendous progress in the U.S. [United States] - we have the most tremendous economy ever. I just wanted to congratulate you. I have no doubt you will be a fantastic president.

(U) President-elect Zelenskyy: First of all, thank you so very much, again, for the congratulations. We in Ukraine are an independent country, and independent Ukraine - we're going to do everything for the people. You are, as I said, a great example. We are hoping we can expand on our job as you did. You will always, also, be a great example for many. You are a great example for our new managers. I'd also like to invite you, if it's possible, to the inauguration. I know how busy you are, but if it's possible for you to come to the inauguration ceremony, that would be a great, great thing for you to do to be with us on that day.

(U) The President: Well, that's very nice. I'll look into that, and well - give us the date and, at a very minimum, we'll have a great representative. Or more than one from the United States will be with you on that great day. So, we will have somebody, at a minimum, at a very, very high level, and they will be with you. Really, an incredible day for an incredible achievement.

(U) President-elect Zelenskyy: Again, thank you, and we're looking forward to your visit or to the visit of a high-level delegation. But there's no word that can describe our wonderful country. How nice, warm, and friendly our people are, how tasty and delicious our food is, and how wonderful Ukraine is. Words cannot describe our country, so it would be best for you to see it yourself. So, if you can come, that would be great. So, again, I invite you to come.

(U) The President: Well, I agree with you about your country, and I look forward to it. When I owned Miss Universe, they always had great people. Ukraine was always very well represented. 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.

(U) President-elect Zelenskyy: Well, thank you for the invitation. We accept the invitation and look forward to the visit. Thank you again. The whole team and I are looking forward to that visit. Thank you, again, for the congratulations. And I think that it will still be great if you could come and be with us on this very important day of our inauguration. The results are incredible - they're very

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impressive for us. So, it will be absolutely fantastic if you could come and be with us on that day.

(U) The President: Very good. We'll let you know very soon, and we will see you, very soon, regardless. Congratulations - and, please, say hello to the Ukrainian people and your family. Let them know that I send my best regards from our country.

(U) President-elect Zelenskyy: Well, thank you, again. You have a safe flight and see you soon.

(U) The President: Take care of yourself and give a great speech today. You take care of yourself, and I'll see you soon.

(U) President-elect Zelenskyy: Thank you very much. It is difficult for me, but I will practice English and we'll meet in English. Thank you very much.

(U) The President: [Laughter] All that's beautiful to hear! That's really good. I could not do that in your language. I'm very impressed. Thank you very much.

(U) President-elect Zelenskyy: Thank you very much. I'll see you very soon.

(U) The President: Great day. Good luck.

(U) President-elect Zelenskyy: Goodbye.

-- End of Conversation --

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 The Washington Post

The Fix

Read the text message excerpts between U.S. diplomats, Giuliani and a Ukrainian aide

By Aaron Blake ,
 Danielle Rindler ,
 Tim Meko ,
 Kevin Schaul and
 Kevin Uhrmacher October 4, 2019

A new cache of text messages released late Thursday reveals that top U.S. diplomats believed President Trump would not meet with Ukraine's president unless the country launched investigations into Trump's political enemies. Over several weeks, they coordinated with a top aide to new leader Volodymyr Zelensky and with Trump's personal lawyer Rudolph W. Giuliani to try to accomplish both, the texts show.

The excerpts were provided by Kurt Volker, the special envoy to Ukraine until his resignation last week. They were released by House Democratic investigators following Volker's 10-hour deposition on Thursday as part of the fast-moving impeachment inquiry into Trump. Among those involved were Volker, U.S. ambassador to the European Union Gordon Sondland, and William "Bill" Taylor, the U.S. Charges D'affaires in Ukraine. They show that Volker connected Andrey Yermak, the aide to Zelensky, and Giuliani, Trump's personal lawyer.

Rep. Adam B. Schiff (D-Calif.), the House Intelligence Committee chairman leading the investigation, and Sen. Eliot Engel (D-N.Y.) said in a letter that the texts released were

Keep up with the **impeachment inquiry**



Volker introduces Giuliani to Yermak

July 19, 2019

Kurt Volker

4:48 p.m.

Mr Mayor — really enjoyed breakfast this morning. As discussed, connecting you here with Andrey Yermak, who is very close to President Zelensky. I suggest we schedule a call together on Monday — maybe 10am or 11am Washington time? Kurt

“Mr. Mayor” in this exchange refers to President Trump’s personal lawyer, former New York City mayor Rudy Giuliani. At this point, Giuliani had already been pushing the idea that Ukraine should pursue specific investigations for months. His efforts included multiple meetings with two of the country’s prosecutors general, according to media reports and the whistleblower complaint.

Giuliani has pointed to such text messages as indicating the State Department was aware of and even supported his efforts in Ukraine.

Officials discuss goals for the Trump-Zelensky call

July 19, 2019

10030

570

Kurt Volker

4:49 p.m.

Can we three do a call tomorrow-say
noon WASHINGTON?

Gordon Sondland

6:50 p.m.

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

Gordon Sondland

6:52 p.m.

Sure!

Kurt Volker

7:01 p.m.

Good. Had breakfast with Rudy this
morning-teeing up call w Yermak
Monday. Must have helped. Most
impt is for Zelensky to say that he will
help investigation-and address any
specific personnel issues-if there are
any

These texts provide the earliest known example of the participants suggesting Zelensky will need to promise Trump something – without raising the other side of a potential quid pro quo, though. Sondland suggests he has briefed Zelensky on what to expect on his upcoming call with Trump. In response, Volker refers to the specific idea that Zelensky should tell Trump that “he will help investigation.”

Concerns about Ukraine becoming an 'instrument'
July 21, 2019

Bill Taylor

1:45 a.m.

Gordon, one thing Kurt and I talked about yesterday was Sasha Danyliuk's point that President Zelenskyy is sensitive about Ukraine being taken seriously, not merely as an instrument in Washington domestic, reelection politics.

Gordon Sondland

4:45 a.m.

Absolutely, but we need to get the conversation started and the relationship built, irrespective of the pretext. I am worried about the alternative.

Here comes the first indication that this was understood as relating to Trump's political prospects. "Sasha Danyliuk" appears to refer to Oleksandr Danylyuk, Ukraine's former finance minister who recently resigned as Zelensky's secretary of the national security and defence council. Per Taylor, he said Zelensky was wary of it looking like the United States dictated its business to Ukraine. Sondland, interestingly, responds by referring to the "pretext" of the two countries' conversation and relationship. It's not clear to what he is referring.

Officials plan Trump and Zelensky's July 25 call
July 22, 2019

Kurt Volker

4:27 p.m.

Orchestrated a great phone call w
Rudy and Yermak. They are going to
get together when Rudy goes to
Madrid in a couple of weeks.

Kurt Volker

4:28 p.m.

In the meantime Rudy is now
advocating for phone call.

Kurt Volker

4:28 p.m.

I have call into Fiona's replacement
and will call Bolton if needed.

Kurt Volker

4:28 p.m.

But I can tell Bolton and you can tell
Mick that Rudy agrees on a call if
that helps.

Gordon Sondland

4:30 p.m.

I talked to Tim Morrison Fiona's replacement. He is pushing but feel free as well.

Volker sends along word that Giuliani is approving of Trump speaking with Zelensky by phone, and the two of them talk about how they will set it up. ("Fiona" refers to Fiona Hill, a former top Russia adviser in the White House. "Bolton" refers to then-national security adviser John Bolton. "Mick" refers to acting White House chief of staff Mick Mulvaney.)

Volker and Yermak discuss the call before and after
July 25, 2019

Kurt Volker

8:36 a.m.

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 date for visit to Washington. Good luck! See you tomorrow- kurt

Andrey Yermak

10:15 a.m.

Phone call went well. President Trump proposed to choose any convenient dates. President Zelenskiy chose 20,21,22 September for the White House Visit. Thank you again for your help! Please remind Mr. Mayor to share the Madrid's dates

Kurt Volker

10:16 a.m.

Great-thanks and will do!

Here's the big one. For the first time that we know of, a U.S. official ties Zelensky's investigative promise to getting a White House visit – a potential quid pro quo. Volker, importantly, also indicates this was a message conveyed from the White House. And this came before the Trump-Zelensky call, so this was more coaching from U.S. diplomats of what Zelensky was supposed to say.

Yermak responds after the call and floats a few dates. These dates have now passed, though, and the trip has still not been planned.

U.S. officials advise Ukrainians on investigation language
Aug. 9, 2019

10035

575

Gordon Sondland

5:35 p.m.

Morrison ready to get dates as soon
as Yermak confirms.

Kurt Volker

5:46 p.m.

Excellent!! How did you sway him? :)

Gordon Sondland

5:47 p.m.

Not sure i did. I think potus really
wants the deliverable

Kurt Volker

5:48 p.m.

But does he know that?

Gordon Sondland

5:48 p.m.

Yep

Gordon Sondland

5:48 p.m.

Clearly lots of convos going on

Kurt Volker

5:48 p.m.

Ok—then that's good it's coming
from two separate sources

Gordon Sondland

5:51 p.m.

To avoid misunderstandings [sic],
might be helpful to ask Andrey for a
draft statement [sic] (embargoed) so
that we can see exactly what they
propose to cover. Even though Ze
does a live presser they can still
summarize in a brief statement.
Thoughts?

Kurt Volker

5:51 p.m.

Agree!

Here, Volker and Sondland plot out a potential statement Ukraine might make, in addition to a live press conference where Zelensky (they've apparently been led to believe) would make an announcement. Sondland also refers to a "deliverable" – apparently a reference to the end result of Ukraine actually announcing the investigations – and suggests Trump is anxious to get it.

Giuliani's input sought on Ukraine statement
Aug. 9, 2019

10037

577

Hi Mr Mayor! Had a good chat with Yermak last night. He was pleased with your phone call. Mentioned Z making a statement. Can we all get on the phone to make sure I advise Z correctly as to what he should be saying? Want to make sure we get this done right. Thanks!

Gordon Sondland

Good idea Kurt. I am on Pacific time.

Rudy Giuliani

Yes can you call now going to Fundraiser at 12:30

Volker loops Giuliani in on what the Ukraine statement might say. Again, Giuliani has suggested this meant the State Department was on-board with his efforts.

Yermak seeks date for White House visit
Aug. 10, 2019

Andrey Yermak
4:56 p.m.

Hi Kurt. Please let me know when you can talk. 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 and about our expectations and our guarantees for future visit. Let discuss it

Kurt Volker

5:01 p.m.

Ok! It's late for you—why don't we talk in my morning, your afternoon tomorrow? Say 10am/5pm?

Kurt Volker

5:02 p.m.

I agree with your approach. Let's iron out statement and use that to get date and then Prez can go forward with it?

Andrey Yermak

5:26 p.m.

Ok

Kurt Volker

5:38 p.m.

Great. Gordon is available to join as well

Andrey Yermak

5:41 p.m.

Excellent

Andrey Yermak

5:42 p.m.

Once we have a date, will call for a press briefing, announcing upcoming visit and outlining vision for the reboot of US-UKRAINE relationship, including among other things Burisma and election meddling in investigations

Kurt Volker

5:42 p.m.

Sounds great!

Yermak has apparently been given a list of things that should be included in the statement. But – and this is the key – he wants to get a date for a White House visit *before* Ukraine makes the commitments. This, again, suggests that the meeting was used as leverage. Volker proposes that they could finalize the statement and then use that to convince Trump to schedule the meeting.

Also important here is that Yermak refers explicitly to the investigations into the origins of the Russia investigation and the Bidens (Burisma).

Desire for specific references in Ukrainian statement

Aug. 13, 2019

Kurt Volker

10:26 a.m.

Special attention should be paid to the problem of interference in the political processes of the United States especially with the alleged involvement of some Ukrainian politicians. I want to declare that this is unacceptable. We intend to initiate and complete a transparent and unbiased investigation of all

available facts and episodes,
including those involving Burisma
and the 2016 U.S. elections, which in
turn will prevent the recurrence of
this problem in the future.

Gordon Sondland

10:27 a.m.

Perfect. Lets send to Andrey after our
call

They appear to be reviewing language intended for Ukraine's statement.

Aug. 17, 2019

Gordon Sondland

3:06 p.m.

Do we still want Ze to give us an
unequivocal draft with 2016 and
Boresma?

Kurt Volker

4:34 p.m.

That's the clear message so far ...

Kurt Volker

4:34 p.m.

I'm hoping we can put something out
there that causes him to respond
with that

Gordon Sondland

4:41 p.m.

Unless you think otherwise I will
return Andreys call tomorrow and

suggest they send us a clean draft.

Volker suggests someone is giving a “clear message” that the Ukraine statement should be specific about the two investigations. It’s not clear who that message is coming from.

Yermak shares report of U.S. withholding assistance

Aug. 29, 2019

Andrey Yermak

2:28 a.m.

Need to talk with you

Andrey Yermak

3:06 a.m.

<https://www.politico.com/story/2019/08/28/trump-ukraine-military-aid-russia-1689531>

Kurt Volker

6:55 a.m.

Hi Andrey — absolutely. When is good for you?

The link here is to a Politico story about the Trump administration deciding to withhold \$250 million in military aid to Ukraine. Reporting has suggested Ukraine might not have known it was being withheld, though Yermak doesn’t specifically indicate that this is the first time they are finding out about it.

U.S officials discuss Trump’s trip, withholding military assistance for Ukraine

Aug. 30, 2019

Bill Taylor

12:14 a.m.

Trip canceled

Kurt Volker

12:16 a.m.

Hope VPOTUS keeps the bilat — and
tees up WH visit...

Kurt Volker

12:16 a.m.

And hope Gordon and Perry still
going ...

Gordon Sondland

5:31 a.m.

I am going. Pompeo is speaking to
Potus today to see if he can go.

“The bilat” refers to Vice President Pence’s visit to Poland, where he would meet Zelensky.

Sept. 1, 2019

Bill Taylor

12:08 p.m.

Are we now saying that security
assistance and WH meeting are
conditioned on investigations?

Gordon Sondland

12:42 p.m.

Call me

For the first time, one of the diplomats suggests the military aid — separate from the meeting — is being withheld as leverage. It’s not clear why Taylor believes that. It could simply be that he saw the newspaper stories like the one Yermak shared.

Sondland's response – "Call me" – suggests he knows they shouldn't discuss things in a written form which could wind up in inquiries like this.

Sept. 8, 2019

Gordon Sondland

11:20 a.m.

Guys multiple convos with Ze, Potus.
Lets talk

Bill Taylor

11:21 a.m.

Now is fine with me

Kurt Volker

11:26 a.m.

Try again—could not hear

Bill Taylor

11:40 a.m.

Gordon and I just spoke. I can brief
you if you and Gordon don't connect

Bill Taylor

12:37 p.m.

The nightmare is they give the
interview and don't get the security
assistance. The Russians love it. (And
I quit.)

The three of them seem to try to salvage the situation. Taylor again suggests exasperation.

Sept. 9, 2019

Bill Taylor

12:31 a.m.

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.

Bill Taylor

12:34 a.m.

Counting on you to be right about this interview, Gordon.

Gordon Sondland

12:37 a.m.

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.

Bill Taylor

12:47 a.m.

As I said on the phone, I think it's crazy to withhold security assistance for help with a political campaign.

Gordon Sondland

5:19 a.m.

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 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 a call to discuss them directly. Thanks.

Another big moment: Taylor repeats his concern that military aid is being withheld for bad reasons – this time suggesting it's "for help with a political campaign." Sondland again suggests they talk about it rather than text, and delivers a lengthy defense of Trump that again suggests he's mindful of who might see these texts one day.

This conversation, notably, came eight days after Taylor first raised this prospect, and he apparently hadn't been disavowed of it during that time period.

Ann Gerhart contributed to this report.

Read more:

What's next in the Trump impeachment inquiry, and will Trump cooperate with it?

Three deeply problematic aspects of newly released text messages centered on the Ukraine scandal

Live updates: Trump says the Democratic-led House has the votes to impeach him

THE WHITE HOUSE

WASHINGTON

October 8, 2019

The Honorable Nancy Pelosi
Speaker
House of Representatives
Washington, D.C. 20515

The Honorable Eliot L. Engel
Chairman
House Foreign Affairs Committee
Washington, D.C. 20515

The Honorable Adam B. Schiff
Chairman
House Permanent Select Committee on
Intelligence
Washington, D.C. 20515

The Honorable Elijah E. Cummings
Chairman
House Committee on Oversight and Reform
Washington, D.C. 20515

Dear Madam Speaker and Messrs. Chairmen:

I write on behalf of President Donald J. Trump in response to your numerous, legally unsupported demands made as part of what you have labeled—contrary to the Constitution of the United States and all past bipartisan precedent—as an “impeachment inquiry.” As you know, you have designed and implemented your inquiry in a manner that violates fundamental fairness and constitutionally mandated due process.

For example, you have denied the President the right to cross-examine witnesses, to call witnesses, to receive transcripts of testimony, to have access to evidence, to have counsel present, and many other basic rights guaranteed to all Americans. You have conducted your proceedings in secret. You have violated civil liberties and the separation of powers by threatening Executive Branch officials, claiming that you will seek to punish those who exercise fundamental constitutional rights and prerogatives. All of this violates the Constitution, the rule of law, and *every past precedent*. Never before in our history has the House of Representatives—under the control of either political party—taken the American people down the dangerous path you seem determined to pursue.

Put simply, you seek to overturn the results of the 2016 election and deprive the American people of the President they have freely chosen. Many Democrats now apparently view impeachment not only as a means to undo the democratic results of the *last* election, but as a strategy to influence the *next* election, which is barely more than a year away. As one member of Congress explained, he is “concerned that if we don’t impeach the President, he will get reelected.”¹ Your highly partisan and unconstitutional effort threatens grave and lasting damage to our democratic institutions, to our system of free elections, and to the American people.

¹ Interview with Rep. Al Green, MSNBC (May 5, 2019).

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Cummings
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For his part, President Trump took the unprecedented step of providing the public transparency by declassifying and releasing the record of his call with President Zelenskyy of Ukraine. The record clearly established that the call was completely appropriate and that there is no basis for your inquiry. The fact that there was nothing wrong with the call was also powerfully confirmed by Chairman Schiff's decision to create a false version of the call and read it to the American people at a congressional hearing, without disclosing that he was simply making it all up.

In addition, information has recently come to light that the whistleblower had contact with Chairman Schiff's office before filing the complaint. His initial denial of such contact caused *The Washington Post* to conclude that Chairman Schiff "clearly made a statement that was false."² In any event, the American people understand that Chairman Schiff cannot covertly assist with the submission of a complaint, mislead the public about his involvement, read a counterfeit version of the call to the American people, and then pretend to sit in judgment as a neutral "investigator."

For these reasons, President Trump and his Administration reject your baseless, unconstitutional efforts to overturn the democratic process. Your unprecedented actions have left the President with no choice. In order to fulfill his duties to the American people, the Constitution, the Executive Branch, and all future occupants of the Office of the Presidency, President Trump and his Administration cannot participate in your partisan and unconstitutional inquiry under these circumstances.

I. Your "Inquiry" Is Constitutionally Invalid and Violates Basic Due Process Rights and the Separation of Powers.

Your inquiry is constitutionally invalid and a violation of due process. In the history of our Nation, the House of Representatives has never attempted to launch an impeachment inquiry against the President without a majority of the House taking political accountability for that decision by voting to authorize such a dramatic constitutional step. Here, House leadership claims to have initiated the gravest inter-branch conflict contemplated under our Constitution by means of nothing more than a press conference at which the Speaker of the House simply announced an "official impeachment inquiry."³ Your contrived process is unprecedented in the

² Glenn Kessler, *Schiff's False Claim His Committee Had Not Spoken to the Whistleblower*, Wash. Post (Oct. 4, 2019).

³ Press Release, Nancy Pelosi, Pelosi Remarks Announcing Impeachment Inquiry (Sept. 24, 2019).

Speaker Pelosi, and Chairmen Engel, Schiff, and Cummings
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history of the Nation,⁴ and lacks the necessary authorization for a valid impeachment proceeding.⁵

The Committees' inquiry also suffers from a separate, fatal defect. Despite Speaker Pelosi's commitment to "treat the President with fairness,"⁶ the Committees have not established any procedures affording the President even the most basic protections demanded by due process under the Constitution and by fundamental fairness. Chairman Nadler of the House Judiciary Committee has expressly acknowledged, at least when the President was a member of his own party, that "[t]he power of impeachment . . . demands a rigorous level of due process," and that in this context "due process mean[s] . . . the right to be informed of the law, of the charges against you, the right to confront the witnesses against you, to call your own witnesses, and to have the assistance of counsel."⁷ All of these procedures have been abandoned here.

These due process rights are not a matter of discretion for the Committees to dispense with at will. To the contrary, they are constitutional requirements. The Supreme Court has recognized that due process protections apply to all congressional investigations.⁸ Indeed, it has been recognized that the Due Process Clause applies to impeachment proceedings.⁹ And precedent for the rights to cross-examine witnesses, call witnesses, and present evidence dates back nearly 150 years.¹⁰ Yet the Committees have decided to deny the President these elementary rights and protections that form the basis of the American justice system and are protected by the Constitution. No citizen—including the President—should be treated this unfairly.

⁴ Since the Founding of the Republic, under unbroken practice, the House has never undertaken the solemn responsibility of an impeachment inquiry directed at the President without first adopting a resolution authorizing a committee to begin the inquiry. The inquiries into the impeachments of Presidents Andrew Johnson and Bill Clinton proceeded in multiple phases, each authorized by a separate House resolution. See, e.g., H.R. Res. 581, 105th Cong. (1998); H.R. Res. 525, 105th Cong. (1998); III Hinds' Precedents §§ 2400-02, 2408, 2412. And before the Judiciary Committee initiated an impeachment inquiry into President Richard Nixon, the Committee's chairman rightfully recognized that "a[n] [inquiry] resolution has always been passed by the House" and "is a necessary step." III Deschler's Precedents ch. 14, § 15.2. The House then satisfied that requirement by adopting H.R. Res. 803, 93rd Cong. (1974).

⁵ Chairman Nadler has recognized the importance of taking a vote in the House before beginning a presidential impeachment inquiry. At the outset of the Clinton impeachment inquiry—where a floor vote was held—he argued that even limiting the time for *debate* before that vote was improper and that "an hour debate on this momentous decision is an insult to the American people and another sign that this is not going to be fair." 144 Cong. Rec. H10018 (daily ed. Oct. 8, 1998) (statement of Rep. Jerrold Nadler). Here, the House has dispensed with any vote and any debate *at all*.

⁶ Press Release, Nancy Pelosi, Transcript of Pelosi Weekly Press Conference Today (Oct. 2, 2019).

⁷ *Examining the Allegations of Misconduct Against IRS Commissioner John Koskinen (Part II): Hearing Before the H. Comm. on the Judiciary*, 114th Cong. 3 (2016) (statement of Rep. Jerrold Nadler); *Background and History of Impeachment: Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 17 (1998) (statement of Rep. Jerrold Nadler).

⁸ See, e.g., *Watkins v. United States*, 354 U.S. 178, 188 (1957); *Quinn v. United States*, 349 U.S. 155, 161 (1955).

⁹ See *Hastings v. United States*, 802 F. Supp. 490, 504 (D.D.C. 1992), vacated on other grounds by *Hastings v. United States*, 988 F.2d 1280 (D.C. Cir. 1993).

¹⁰ See, e.g., III Hinds' Precedents § 2445.

Speaker Pelosi, and Chairmen Engel, Schiff, and Cummings
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To comply with the Constitution's demands, appropriate procedures would include—at a minimum—the right to see all evidence, to present evidence, to call witnesses, to have counsel present at all hearings, to cross-examine all witnesses, to make objections relating to the examination of witnesses or the admissibility of testimony and evidence, and to respond to evidence and testimony. Likewise, the Committees must provide for the disclosure of all evidence favorable to the President and all evidence bearing on the credibility of witnesses called to testify in the inquiry. The Committees' current procedures provide *none* of these basic constitutional rights.

In addition, the House has not provided the Committees' Ranking Members with the authority to issue subpoenas. The right of the minority to issue subpoenas—subject to the same rules as the majority—has been the standard, bipartisan practice in all recent resolutions authorizing presidential impeachment inquiries.¹¹ The House's failure to provide co-equal subpoena power in this case ensures that any inquiry will be nothing more than a one-sided effort by House Democrats to gather information favorable to their views and to selectively release it as only they determine. The House's utter disregard for the established procedural safeguards followed in past impeachment inquiries shows that the current proceedings are nothing more than an unconstitutional exercise in political theater.

As if denying the President basic procedural protections were not enough, the Committees have also resorted to threats and intimidation against potential Executive Branch witnesses. Threats by the Committees against Executive Branch witnesses who assert common and longstanding rights destroy the integrity of the process and brazenly violate fundamental due process. In letters to State Department employees, the Committees have ominously threatened—without any legal basis and before the Committees even issued a subpoena—that “[a]ny failure to appear” in response to a mere letter *request* for a deposition “shall constitute evidence of obstruction.”¹² Worse, the Committees have broadly threatened that if State Department officials attempt to insist upon the right for the Department to have an agency lawyer present at depositions to protect legitimate Executive Branch confidentiality interests—or apparently if they make any effort to protect those confidentiality interests *at all*—these officials will have their salaries withheld.¹³

The suggestion that it would somehow be problematic for anyone to raise long-established Executive Branch confidentiality interests and privileges in response to a request for a deposition is legally unfounded. Not surprisingly, the Office of Legal Counsel at the Department of Justice has made clear on multiple occasions that employees of the Executive Branch who have been instructed not to appear or not to provide particular testimony before Congress based on privileges or immunities of the Executive Branch cannot be punished for

¹¹ H.R. Res. 581, 105th Cong. (1998); H.R. Res. 803, 93rd Cong. (1974).

¹² Letter from Elliot L. Engel, Chairman, House Committee on Foreign Affairs, et al., to George P. Kent, Deputy Assistant Secretary, U.S. Department of State 1 (Sept. 27, 2019).

¹³ See Letter from Elliot L. Engel, Chairman, House Committee on Foreign Affairs, et al., to John J. Sullivan, Deputy Secretary of State 2-3 (Oct. 1, 2019).

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following such instructions.¹⁴ Current and former State Department officials are duty bound to protect the confidentiality interests of the Executive Branch, and the Office of Legal Counsel has also recognized that it is unconstitutional to exclude agency counsel from participating in congressional depositions.¹⁵ In addition, any attempt to withhold an official's salary for the assertion of such interests would be unprecedented and unconstitutional.¹⁶ The Committees' assertions on these points amount to nothing more than strong-arm tactics designed to rush proceedings without any regard for due process and the rights of individuals and of the Executive Branch. Threats aimed at intimidating individuals who assert these basic rights are attacks on civil liberties that should profoundly concern all Americans.

II. The Invalid "Impeachment Inquiry" Plainly Seeks To Reverse the Election of 2016 and To Influence the Election of 2020.

The effort to impeach President Trump—without regard to any evidence of his actions in office—is a naked political strategy that began the day he was inaugurated, and perhaps even before.¹⁷ In fact, your transparent rush to judgment, lack of democratically accountable authorization, and violation of basic rights in the current proceedings make clear the illegitimate, partisan purpose of this purported "impeachment inquiry." The Founders, however, did not create the extraordinary mechanism of impeachment so it could be used by a political party that feared for its prospects against the sitting President in the next election. The decision as to who will be elected President in 2020 should rest with the people of the United States, exactly where the Constitution places it.

Democrats themselves used to recognize the dire implications of impeachment for the Nation. For example, in the past, Chairman Nadler has explained:

The effect of impeachment is to overturn the popular will of the voters. We must not overturn an election and remove a President from office except to defend our system of government or our constitutional liberties against a dire threat, and we must not do so without an overwhelming consensus of the American people. There must never be a narrowly voted impeachment or an impeachment supported by one of our major political parties and opposed by another. Such an impeachment will produce divisiveness and bitterness in our

¹⁴ See, e.g., *Testimonial Immunity Before Congress of the Former Counsel to the President*, 43 Op. O.L.C. __, *19 (May 20, 2019); *Prosecution for Contempt of Congress of an Executive Branch Official Who Has Asserted a Claim of Executive Privilege*, 8 Op. O.L.C. 101, 102, 140 (1984) ("The Executive, however, must be free from the threat of criminal prosecution if its right to assert executive privilege is to have any practical substance.")

¹⁵ *Attempted Exclusion of Agency Counsel from Congressional Depositions of Agency Employees*, 43 Op. O.L.C. __, *1-2 (May 23, 2019).

¹⁶ See President Donald J. Trump, Statement by the President on Signing the Consolidated Appropriations Act, 2019 (Feb. 15, 2019); *Authority of Agency Officials To Prohibit Employees From Providing Information to Congress*, 28 Op. O.L.C. 79, 80 (2004).

¹⁷ See Matea Gold, *The Campaign To Impeach President Trump Has Begun*, Wash. Post (Jan. 21, 2017) ("At the moment the new commander in chief was sworn in, a campaign to build public support for his impeachment went live . . .").

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politics for years to come, and will call into question the very legitimacy of our political institutions.¹⁸

Unfortunately, the President's political opponents now seem eager to transform impeachment from an extraordinary remedy that should rarely be contemplated into a conventional political weapon to be deployed for partisan gain. These actions are a far cry from what our Founders envisioned when they vested Congress with the "important trust" of considering impeachment.¹⁹ Precisely because it nullifies the outcome of the democratic process, impeachment of the President is fraught with the risk of deepening divisions in the country and creating long-lasting rifts in the body politic.²⁰ Unfortunately, you are now playing out exactly the partisan rush to judgment that the Founders so strongly warned against. The American people deserve much better than this.

III. There Is No Legitimate Basis for Your "Impeachment Inquiry"; Instead, the Committees' Actions Raise Serious Questions.

It is transparent that you have resorted to such unprecedented and unconstitutional procedures because you know that a fair process would expose the lack of any basis for your inquiry. Your current effort is founded on a completely appropriate call on July 25, 2019, between President Trump and President Zelenskyy of Ukraine. Without waiting to see what was actually said on the call, a press conference was held announcing an "impeachment inquiry" based on falsehoods and misinformation about the call.²¹ To rebut those falsehoods, and to provide transparency to the American people, President Trump secured agreement from the Government of Ukraine and took the extraordinary step of declassifying and publicly releasing the record of the call. That record clearly established that the call was completely appropriate, that the President did nothing wrong, and that there is no basis for an impeachment inquiry. At a joint press conference shortly after the call's public release, President Zelenskyy agreed that the call was appropriate.²² In addition, the Department of Justice announced that officials there had reviewed the call after a referral for an alleged campaign finance law violation and found no such violation.²³

Perhaps the best evidence that there was no wrongdoing on the call is the fact that, after the actual record of the call was released, Chairman Schiff chose to concoct a false version of the call and to read his made-up transcript to the American people at a public hearing.²⁴ This

¹⁸ 144 Cong. Rec. H11786 (daily ed. Dec. 18, 1998) (statement of Rep. Jerrold Nadler).

¹⁹ The Federalist No. 65 (Alexander Hamilton).

²⁰ See *id.*

²¹ Press Release, Nancy Pelosi, Pelosi Remarks Announcing Impeachment Inquiry (Sept. 24, 2019).

²² *President Trump Meeting with Ukrainian President*, C-SPAN (Sept. 25, 2019).

²³ Statement of Kerri Kupec, Director, Office of Public Affairs, Dept. of Justice (Sept. 25, 2019) ("[T]he Department's Criminal Division reviewed the official record of the call and determined, based on the facts and applicable law, that there was no campaign finance violation and that no further action was warranted.").

²⁴ See *Whistleblower Disclosure: Hearing Before the H. Select Comm. on Intel.*, 116th Cong. (Sept. 26, 2019) (statement of Rep. Adam Schiff).

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powerfully confirms there is no issue with the actual call. Otherwise, why would Chairman Schiff feel the need to make up his own version? The Chairman's action only further undermines the public's confidence in the fairness of any inquiry before his Committee.

The real problem, as we are now learning, is that Chairman Schiff's office, and perhaps others—despite initial denials—were involved in advising the whistleblower before the complaint was filed. Initially, when asked on national television about interactions with the whistleblower, Chairman Schiff unequivocally stated that “[w]e have not spoken directly with the whistleblower. We would like to.”²⁵

Now, however, it has been reported that the whistleblower approached the House Intelligence Committee with information—and received guidance from the Committee—*before* filing a complaint with the Inspector General.²⁶ As a result, *The Washington Post* concluded that Chairman Schiff “clearly made a statement that was false.”²⁷ Anyone who was involved in the preparation or submission of the whistleblower's complaint cannot possibly act as a fair and impartial judge in the same matter—particularly after misleading the American people about his involvement.

All of this raises serious questions that must be investigated. However, the Committees are preventing anyone, including the minority, from looking into these critically important matters. At the very least, Chairman Schiff must immediately make available all documents relating to these issues. After all, the American people have a right to know about the Committees' own actions with respect to these matters.

* * *

Given that your inquiry lacks any legitimate constitutional foundation, any pretense of fairness, or even the most elementary due process protections, the Executive Branch cannot be expected to participate in it. Because participating in this inquiry under the current unconstitutional posture would inflict lasting institutional harm on the Executive Branch and lasting damage to the separation of powers, you have left the President no choice. Consistent with the duties of the President of the United States, and in particular his obligation to preserve the rights of future occupants of his office, President Trump cannot permit his Administration to participate in this partisan inquiry under these circumstances.

Your recent letter to the Acting White House Chief of Staff argues that “[e]ven if an impeachment inquiry were not underway,” the Oversight Committee may seek this information

²⁵ Interview with Chairman Adam Schiff, MSNBC (Sept. 17, 2019).

²⁶ Julian Barnes, et al., *Schiff Got Early Account of Accusations as Whistle-Blower's Concerns Grew*, N.Y. Times (Oct. 2, 2019).

²⁷ Glenn Kessler, *Schiff's False Claim His Committee Had Not Spoken to the Whistleblower*, Wash. Post (Oct. 4, 2019).

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as a matter of the established oversight process.²⁸ Respectfully, the Committees cannot have it both ways. The letter comes from the Chairmen of three different Committees, it transmits a subpoena “[p]ursuant to the House of Representatives’ impeachment inquiry,” it recites that the documents will “be collected as part of the House’s impeachment inquiry,” and it asserts that the documents will be “shared among the Committees, as well as with the Committee on the Judiciary as appropriate.”²⁹ The letter is in no way directed at collecting information in aid of legislation, and you simply cannot expect to rely on oversight authority to gather information for an unauthorized impeachment inquiry that conflicts with all historical precedent and rides roughshod over due process and the separation of powers. 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.

For the foregoing reasons, the President cannot allow your constitutionally illegitimate proceedings to distract him and those in the Executive Branch from their work on behalf of the American people. The President has a country to lead. The American people elected him to do this job, and he remains focused on fulfilling his promises to the American people. He has important work that he must continue on their behalf, both at home and around the world, including continuing strong economic growth, extending historically low levels of unemployment, negotiating trade deals, fixing our broken immigration system, lowering prescription drug prices, and addressing mass shooting violence. We hope that, in light of the many deficiencies we have identified in your proceedings, you will abandon the current invalid efforts to pursue an impeachment inquiry and join the President in focusing on the many important goals that matter to the American people.

Sincerely,

A large, stylized handwritten signature in black ink, reading "Pat A. Cipollone". The signature is written over the typed name and title.

Pat A. Cipollone
Counsel to the President

cc: Hon. Kevin McCarthy, Minority Leader, House of Representatives
Hon. Michael McCaul, Ranking Member, House Committee on Foreign Affairs
Hon. Devin Nunes, Ranking Member, House Permanent Select Committee on
Intelligence
Hon. Jim Jordan, Ranking Member, House Committee on Oversight and Reform

²⁸ Letter from Elijah E. Cummings, Chairman, House Committee on Oversight and Government Reform, et al., to John Michael Mulvaney, Acting Chief of Staff to the President 3 (Oct. 4, 2019).

²⁹ *Id.* at 1.

1/8/2020

Remarks by President Trump to the 73rd Session of the United Nations General Assembly | New York, NY | The White House

**REMARKS****Remarks by President Trump to the 73rd Session of
the United Nations General Assembly | New York, NY****— FOREIGN POLICY**

Issued on: September 25, 2018



United Nations Headquarters
New York, New York

10:38 A.M. EDT

THE PRESIDENT: Madam President, Mr. Secretary-General, world leaders, ambassadors, and distinguished delegates:

One year ago, I stood before you for the first time in this grand hall. I addressed the threats facing our world, and I presented a vision to achieve a brighter future for all of humanity.

Today, I stand before the United Nations General Assembly to share the extraordinary progress we've made.

In less than two years, my administration has accomplished more than almost any administration in the history of our country.

America's — so true. (Laughter.) Didn't expect that reaction, but that's okay. (Laughter and applause.)

America's economy is booming like never before. Since my election, we've added \$10 trillion in wealth. The stock market is at an all-time high in history, and jobless claims are at a 50-year low.

1/8/2020

Remarks by President Trump to the 73rd Session of the United Nations General Assembly | New York, NY | The White House

African American, Hispanic American, and Asian American unemployment have all achieved their lowest levels ever recorded. We've added more than 4 million new jobs, including half a million manufacturing jobs.

We have passed the biggest tax cuts and reforms in American history. We've started the construction of a major border wall, and we have greatly strengthened border security.

We have secured record funding for our military — \$700 billion this year, and \$716 billion next year. Our military will soon be more powerful than it has ever been before.

In other words, the United States is stronger, safer, and a richer country than it was when I assumed office less than two years ago.

We are standing up for America and for the American people. And we are also standing up for the world.

This is great news for our citizens and for peace-loving people everywhere. We believe that when nations respect the rights of their neighbors, and defend the interests of their people, they can better work together to secure the blessings of safety, prosperity, and peace.

Each of us here today is the emissary of a distinct culture, a rich history, and a people bound together by ties of memory, tradition, and the values that make our homelands like nowhere else on Earth.

That is why America will always choose independence and cooperation over global governance, control, and domination.

I honor the right of every nation in this room to pursue its own customs, beliefs, and traditions. The United States will not tell you how to live or work or worship.

We only ask that you honor our sovereignty in return.

From Warsaw to Brussels, to Tokyo to Singapore, it has been my highest honor to represent the United States abroad. I have forged close relationships and friendships and strong partnerships with the leaders of many nations in this room, and our approach has already yielded incredible change.

1/8/2020

Remarks by President Trump to the 73rd Session of the United Nations General Assembly | New York, NY | The White House

With support from many countries here today, we have engaged with North Korea to replace the specter of conflict with a bold and new push for peace.

In June, I traveled to Singapore to meet face to face with North Korea's leader, Chairman Kim Jong Un.

We had highly productive conversations and meetings, and we agreed that it was in both countries' interest to pursue the denuclearization of the Korean Peninsula. Since that meeting, we have already seen a number of encouraging measures that few could have imagined only a short time ago.

The missiles and rockets are no longer flying in every direction. Nuclear testing has stopped. Some military facilities are already being dismantled. Our hostages have been released. And as promised, the remains of our fallen heroes are being returned home to lay at rest in American soil.

I would like to thank Chairman Kim for his courage and for the steps he has taken, though much work remains to be done. The sanctions will stay in place until denuclearization occurs.

I also want to thank the many member states who helped us reach this moment — a moment that is actually far greater than people would understand; far greater — but for also their support and the critical support that we will all need going forward.

A special thanks to President Moon of South Korea, Prime Minister Abe of Japan, and President Xi of China.

In the Middle East, our new approach is also yielding great strides and very historic change.

Following my trip to Saudi Arabia last year, the Gulf countries opened a new center to target terrorist financing. They are enforcing new sanctions, working with us to identify and track terrorist networks, and taking more responsibility for fighting terrorism and extremism in their own region.

The UAE, Saudi Arabia, and Qatar have pledged billions of dollars to aid the people of Syria and Yemen. And they are pursuing multiple avenues to ending Yemen's horrible, horrific civil war.

Ultimately, it is up to the nations of the region to decide what kind of future they want for themselves and their children.

1/8/2020

Remarks by President Trump to the 73rd Session of the United Nations General Assembly | New York, NY | The White House

For that reason, the United States is working with the Gulf Cooperation Council, Jordan, and Egypt to establish a regional strategic alliance so that Middle Eastern nations can advance prosperity, stability, and security across their home region.

Thanks to the United States military and our partnership with many of your nations, I am pleased to report that the bloodthirsty killers known as ISIS have been driven out from the territory they once held in Iraq and Syria. We will continue to work with friends and allies to deny radical Islamic terrorists any funding, territory or support, or any means of infiltrating our borders.

The ongoing tragedy in Syria is heartbreaking. Our shared goals must be the de-escalation of military conflict, along with a political solution that honors the will of the Syrian people. In this vein, we urge the United Nations-led peace process be reinvigorated. But, rest assured, the United States will respond if chemical weapons are deployed by the Assad regime.

I commend the people of Jordan and other neighboring countries for hosting refugees from this very brutal civil war.

As we see in Jordan, the most compassionate policy is to place refugees as close to their homes as possible to ease their eventual return to be part of the rebuilding process. This approach also stretches finite resources to help far more people, increasing the impact of every dollar spent.

Every solution to the humanitarian crisis in Syria must also include a strategy to address the brutal regime that has fueled and financed it: the corrupt dictatorship in Iran.

Iran's leaders sow chaos, death, and destruction. They do not respect their neighbors or borders, or the sovereign rights of nations. Instead, Iran's leaders plunder the nation's resources to enrich themselves and to spread mayhem across the Middle East and far beyond.

The Iranian people are rightly outraged that their leaders have embezzled billions of dollars from Iran's treasury, seized valuable portions of the economy, and looted the people's religious endowments, all to line their own pockets and send their proxies to wage war. Not good.

Iran's neighbors have paid a heavy toll for the region's [regime's] agenda of aggression and expansion. That is why so many countries in the Middle East strongly supported my decision to withdraw the United States from the horrible 2015 Iran Nuclear Deal and re-impose nuclear sanctions.

1/8/2020

Remarks by President Trump to the 73rd Session of the United Nations General Assembly | New York, NY | The White House

The Iran deal was a windfall for Iran's leaders. In the years since the deal was reached, Iran's military budget grew nearly 40 percent. The dictatorship used the funds to build nuclear-capable missiles, increase internal repression, finance terrorism, and fund havoc and slaughter in Syria and Yemen.

The United States has launched a campaign of economic pressure to deny the regime the funds it needs to advance its bloody agenda. Last month, we began re-imposing hard-hitting nuclear sanctions that had been lifted under the Iran deal. Additional sanctions will resume November 5th, and more will follow. And we're working with countries that import Iranian crude oil to cut their purchases substantially.

We cannot allow the world's leading sponsor of terrorism to possess the planet's most dangerous weapons. We cannot allow a regime that chants "Death to America," and that threatens Israel with annihilation, to possess the means to deliver a nuclear warhead to any city on Earth. Just can't do it.

We ask all nations to isolate Iran's regime as long as its aggression continues. And we ask all nations to support Iran's people as they struggle to reclaim their religious and righteous destiny.

This year, we also took another significant step forward in the Middle East. In recognition of every sovereign state to determine its own capital, I moved the U.S. Embassy in Israel to Jerusalem.

The United States is committed to a future of peace and stability in the region, including peace between the Israelis and the Palestinians. That aim is advanced, not harmed, by acknowledging the obvious facts.

America's policy of principled realism means we will not be held hostage to old dogmas, discredited ideologies, and so-called experts who have been proven wrong over the years, time and time again. This is true not only in matters of peace, but in matters of prosperity.

We believe that trade must be fair and reciprocal. The United States will not be taken advantage of any longer.

For decades, the United States opened its economy — the largest, by far, on Earth — with few conditions. We allowed foreign goods from all over the world to flow freely across our borders.

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Yet, other countries did not grant us fair and reciprocal access to their markets in return. Even worse, some countries abused their openness to dump their products, subsidize their goods, target our industries, and manipulate their currencies to gain unfair advantage over our country. As a result, our trade deficit ballooned to nearly \$800 billion a year.

For this reason, we are systematically renegotiating broken and bad trade deals. Last month, we announced a groundbreaking U.S.-Mexico trade agreement. And just yesterday, I stood with President Moon to announce the successful completion of the brand new U.S.-Korea trade deal. And this is just the beginning.

Many nations in this hall will agree that the world trading system is in dire need of change. For example, countries were admitted to the World Trade Organization that violate every single principle on which the organization is based. While the United States and many other nations play by the rules, these countries use government-run industrial planning and state-owned enterprises to rig the system in their favor. They engage in relentless product dumping, forced technology transfer, and the theft of intellectual property.

The United States lost over 3 million manufacturing jobs, nearly a quarter of all steel jobs, and 60,000 factories after China joined the WTO. And we have racked up \$13 trillion in trade deficits over the last two decades.

But those days are over. We will no longer tolerate such abuse. We will not allow our workers to be victimized, our companies to be cheated, and our wealth to be plundered and transferred. America will never apologize for protecting its citizens.

The United States has just announced tariffs on another \$200 billion in Chinese-made goods for a total, so far, of \$250 billion. I have great respect and affection for my friend, President Xi, but I have made clear our trade imbalance is just not acceptable. China's market distortions and the way they deal cannot be tolerated.

As my administration has demonstrated, America will always act in our national interest.

I spoke before this body last year and warned that the U.N. Human Rights Council had become a grave embarrassment to this institution, shielding egregious human rights abusers while bashing America and its many friends.

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Our Ambassador to the United Nations, Nikki Haley, laid out a clear agenda for reform, but despite reported and repeated warnings, no action at all was taken.

So the United States took the only responsible course: We withdrew from the Human Rights Council, and we will not return until real reform is enacted.

For similar reasons, the United States will provide no support in recognition to the International Criminal Court. As far as America is concerned, the ICC has no jurisdiction, no legitimacy, and no authority. The ICC claims near-universal jurisdiction over the citizens of every country, violating all principles of justice, fairness, and due process. We will never surrender America's sovereignty to an unelected, unaccountable, global bureaucracy.

America is governed by Americans. We reject the ideology of globalism, and we embrace the doctrine of patriotism.

Around the world, responsible nations must defend against threats to sovereignty not just from global governance, but also from other, new forms of coercion and domination.

In America, we believe strongly in energy security for ourselves and for our allies. We have become the largest energy producer anywhere on the face of the Earth.

The United States stands ready to export our abundant, affordable supply of oil, clean coal, and natural gas.

OPEC and OPEC nations, are, as usual, ripping off the rest of the world, and I don't like it. Nobody should like it. We defend many of these nations for nothing, and then they take advantage of us by giving us high oil prices. Not good.

We want them to stop raising prices, we want them to start lowering prices, and they must contribute substantially to military protection from now on. We are not going to put up with it — these horrible prices — much longer.

Reliance on a single foreign supplier can leave a nation vulnerable to extortion and intimidation. That is why we congratulate European states, such as Poland, for leading the construction of a Baltic pipeline so that nations are not dependent on Russia to meet their energy needs. Germany will become totally dependent on Russian energy if it does not immediately change course.

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Here in the Western Hemisphere, we are committed to maintaining our independence from the encroachment of expansionist foreign powers.

It has been the formal policy of our country since President Monroe that we reject the interference of foreign nations in this hemisphere and in our own affairs. The United States has recently strengthened our laws to better screen foreign investments in our country for national security threats, and we welcome cooperation with countries in this region and around the world that wish to do the same. You need to do it for your own protection.

The United States is also working with partners in Latin America to confront threats to sovereignty from uncontrolled migration. Tolerance for human struggling and human smuggling and trafficking is not humane. It's a horrible thing that's going on, at levels that nobody has ever seen before. It's very, very cruel.

Illegal immigration funds criminal networks, ruthless gangs, and the flow of deadly drugs. Illegal immigration exploits vulnerable populations, hurts hardworking citizens, and has produced a vicious cycle of crime, violence, and poverty. Only by upholding national borders, destroying criminal gangs, can we break this cycle and establish a real foundation for prosperity.

We recognize the right of every nation in this room to set its own immigration policy in accordance with its national interests, just as we ask other countries to respect our own right to do the same — which we are doing. That is one reason the United States will not participate in the new Global Compact on Migration. Migration should not be governed by an international body unaccountable to our own citizens.

Ultimately, the only long-term solution to the migration crisis is to help people build more hopeful futures in their home countries. Make their countries great again.

Currently, we are witnessing a human tragedy, as an example, in Venezuela. More than 2 million people have fled the anguish inflicted by the socialist Maduro regime and its Cuban sponsors.

Not long ago, Venezuela was one of the richest countries on Earth. Today, socialism has bankrupted the oil-rich nation and driven its people into abject poverty.

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Virtually everywhere socialism or communism has been tried, it has produced suffering, corruption, and decay. Socialism's thirst for power leads to expansion, incursion, and oppression. All nations of the world should resist socialism and the misery that it brings to everyone.

In that spirit, we ask the nations gathered here to join us in calling for the restoration of democracy in Venezuela. Today, we are announcing additional sanctions against the repressive regime, targeting Maduro's inner circle and close advisors.

We are grateful for all the work the United Nations does around the world to help people build better lives for themselves and their families.

The United States is the world's largest giver in the world, by far, of foreign aid. But few give anything to us. That is why we are taking a hard look at U.S. foreign assistance. That will be headed up by Secretary of State Mike Pompeo. We will examine what is working, what is not working, and whether the countries who receive our dollars and our protection also have our interests at heart.

Moving forward, we are only going to give foreign aid to those who respect us and, frankly, are our friends. And we expect other countries to pay their fair share for the cost of their defense.

The United States is committed to making the United Nations more effective and accountable. I have said many times that the United Nations has unlimited potential. As part of our reform effort, I have told our negotiators that the United States will not pay more than 25 percent of the U.N. peacekeeping budget. This will encourage other countries to step up, get involved, and also share in this very large burden.

And we are working to shift more of our funding from assessed contributions to voluntary so that we can target American resources to the programs with the best record of success.

Only when each of us does our part and contributes our share can we realize the U.N.'s highest aspirations. We must pursue peace without fear, hope without despair, and security without apology.

Looking around this hall where so much history has transpired, we think of the many before us who have come here to address the challenges of their nations and of their times. And our thoughts turn to the same question that ran through all their speeches and resolutions, through every word and

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every hope. It is the question of what kind of world will we leave for our children and what kind of nations they will inherit.

The dreams that fill this hall today are as diverse as the people who have stood at this podium, and as varied as the countries represented right here in this body are. It really is something. It really is great, great history.

There is India, a free society over a billion people, successfully lifting countless millions out of poverty and into the middle class.

There is Saudi Arabia, where King Salman and the Crown Prince are pursuing bold new reforms.

There is Israel, proudly celebrating its 70th anniversary as a thriving democracy in the Holy Land.

In Poland, a great people are standing up for their independence, their security, and their sovereignty.

Many countries are pursuing their own unique visions, building their own hopeful futures, and chasing their own wonderful dreams of destiny, of legacy, and of a home.

The whole world is richer, humanity is better, because of this beautiful constellation of nations, each very special, each very unique, and each shining brightly in its part of the world.

In each one, we see awesome promise of a people bound together by a shared past and working toward a common future.

As for Americans, we know what kind of future we want for ourselves. We know what kind of a nation America must always be.

In America, we believe in the majesty of freedom and the dignity of the individual. We believe in self-government and the rule of law. And we prize the culture that sustains our liberty -- a culture built on strong families, deep faith, and fierce independence. We celebrate our heroes, we treasure our traditions, and above all, we love our country.

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Inside everyone in this great chamber today, and everyone listening all around the globe, there is the heart of a patriot that feels the same powerful love for your nation, the same intense loyalty to your homeland.

The passion that burns in the hearts of patriots and the souls of nations has inspired reform and revolution, sacrifice and selflessness, scientific breakthroughs, and magnificent works of art.

Our task is not to erase it, but to embrace it. To build with it. To draw on its ancient wisdom. And to find within it the will to make our nations greater, our regions safer, and the world better.

To unleash this incredible potential in our people, we must defend the foundations that make it all possible. Sovereign and independent nations are the only vehicle where freedom has ever survived, democracy has ever endured, or peace has ever prospered. And so we must protect our sovereignty and our cherished independence above all.

When we do, we will find new avenues for cooperation unfolding before us. We will find new passion for peacemaking rising within us. We will find new purpose, new resolve, and new spirit flourishing all around us, and making this a more beautiful world in which to live.

So together, let us choose a future of patriotism, prosperity, and pride. Let us choose peace and freedom over domination and defeat. And let us come here to this place to stand for our people and their nations, forever strong, forever sovereign, forever just, and forever thankful for the grace and the goodness and the glory of God.

Thank you. God bless you. And God bless the nations of the world.

Thank you very much. Thank you. (Applause.)

END

11:13 A.M. EDT

PRESS RELEASES

Nov 18 2019

Johnson Responds to House Republicans' Request for Information on Ukraine

(<https://www.ronjohnson.senate.gov/public/index.cfm/press-releases?ID=0A971750-8B01-4C35-AF3B-E6E0133A8C92>)

WASHINGTON – U.S. Senator Ron Johnson (R-Wis.) today responded to a request from Representatives Jim Jordan (R-Ohio) and Devin Nunes (R-Calif.), the ranking members of the House Committee on Oversight and Reform and Permanent Select Committee on Intelligence respectively, to share his firsthand knowledge about the U.S.-Ukraine relationship as part of the House Democrats' impeachment proceedings. Sen. Johnson has worked on Ukraine issues closely during his time in the Senate, and he is currently the chairman of the Senate Foreign Relations Committee's European Subcommittee.

Full text of Sen. Johnson's written response is below and can be found here (https://www.ronjohnson.senate.gov/public/index.cfm?a=files.serve&File_id=E0B73C19-9370-42E6-88B1-B2458EAEECD). The request letter from Reps. Jordan and Nunes can be found here (https://www.ronjohnson.senate.gov/public/index.cfm?a=files.serve&File_id=FAA19926-8888-4F3F-BEBA-E441BF9E2EFD).

U.S. Rep. Jim Jordan

U.S. Rep. Devin Nunes

Ranking Member

Ranking Member

Committee on Oversight and Reform

Permanent Select Committee on Intelligence

Nov. 18, 2019

I am writing in response to the request of Ranking Members Nunes and Jordan to provide my first-hand information and resulting perspective on events relevant to the House impeachment inquiry of President Trump. It is being written in the middle of that inquiry — after most of the depositions have been given behind closed doors, but before all the public hearings have been held.

I view this impeachment inquiry as a continuation of a concerted, and possibly coordinated, effort to sabotage the Trump administration that probably began in earnest the day after the 2016 presidential election. The latest evidence of this comes with the reporting of a Jan. 30, 2017 tweet (10 days after Trump's inauguration) by one of the whistleblower's attorneys, Mark Zaid: "#coup

(<https://twitter.com/hashtag/coup?src=hash>) has started. First of many steps. #rebellion (<https://twitter.com/hashtag/rebellion?src=hash>). #impeachment (<https://twitter.com/hashtag/impeachment?src=hash>) will follow ultimately.”

But even prior to the 2016 election, the FBI's investigation and exoneration of former Secretary of State Hillary Clinton, combined with Fusion GPS' solicitation and dissemination of the Steele dossier — and the FBI's counterintelligence investigation based on that dossier — laid the groundwork for future sabotage. As a result, my first-hand knowledge and involvement in this saga began with the revelation that former Secretary of State Hillary Clinton kept a private e-mail server.

I have been chairman of the Senate Committee on Homeland Security and Governmental Affairs (HSGAC) since January 2015. In addition to its homeland security portfolio, the committee also is charged with general oversight of the federal government. Its legislative jurisdiction includes federal records. So when the full extent of Clinton's use of a private server became apparent in March 2015, HSGAC initiated an oversight investigation.

Although many questions remain unanswered from that scandal, investigations resulting from it by a number of committees, reporters and agencies have revealed multiple facts and episodes that are similar to aspects of the latest effort to find grounds for impeachment. In particular, the political bias revealed in the Strzok/Page texts, use of the discredited Steele dossier to initiate and sustain the FBI's counterintelligence investigation and FISA warrants, and leaks to the media that created the false narrative of Trump campaign collusion with Russia all fit a pattern and indicate a game plan that I suspect has been implemented once again.

It is from this viewpoint that I report my specific involvement in the events related to Ukraine and the impeachment inquiry.

I also am chairman of the Subcommittee on Europe and Regional Security Cooperation of the Senate Foreign Relations Committee. I have made six separate trips to Ukraine starting in April 2011. Most recently, I led two separate Senate resolutions calling for a strong U.S. and NATO response to Russian military action against Ukraine's navy in the Kerch Strait. I traveled to Ukraine to attend president-elect Volodymyr Zelensky's inauguration held on May 20, and again on Sept. 5 with U.S. Sen. Chris Murphy to meet with Zelensky and other Ukrainian leaders.

Following the Orange Revolution, and even more so after the Maidan protests, the Revolution of Dignity, and Russia's illegal annexation of Crimea and invasion of eastern Ukraine, support for the people of Ukraine has been strong within Congress and in both the Obama and Trump administrations. There was also universal recognition and concern regarding the level of corruption that was endemic throughout Ukraine. In 2015, Congress overwhelmingly authorized \$300 million of security assistance to Ukraine, of which \$50 million was to be available only for lethal defensive weaponry. The Obama administration never supplied the authorized lethal defensive weaponry, but President Trump did.

Zelensky won a strong mandate — 73% — from the Ukrainian public to fight corruption. His inauguration date was set on very short notice, which made attending it a scheduling challenge for members of Congress who wanted to go to show support. As a result, I was the only member of Congress joining the executive branch's inaugural delegation led by Energy Secretary Rick Perry, Special Envoy Kurt Volker, U.S. Ambassador to the European Union Gordon Sondland, and Lt. Col. Alexander Vindman, representing the National Security Council. I arrived the evening before the inauguration and, after attending a country briefing provided by U.S. embassy staff the next morning, May 20, went to the inauguration, a luncheon following the inauguration, and a delegation meeting with Zelensky and his advisers.

The main purpose of my attendance was to demonstrate and express my support and that of the U.S. Congress for Zelensky and the people of Ukraine. In addition, the delegation repeatedly stressed the importance of fulfilling the election mandate to fight corruption, and also discussed the priority of Ukraine obtaining sufficient inventories of gas prior to winter.

Two specific points made during the meetings stand out in my memory as being relevant.

The first occurred during the country briefing. I had just finished making the point that supporting Ukraine was essential because it was ground zero in our geopolitical competition with Russia. I was surprised when Vindman responded to my point. He stated that it was the position of the NSC that our relationship with Ukraine should be kept separate from our geopolitical competition with Russia. My blunt response was, "How in the world is that even possible?"

I do not know if Vindman accurately stated the NSC's position, whether President Trump shared that viewpoint, or whether Vindman was really just expressing his own view. I raise this point because I believe that a significant number of bureaucrats and staff members within the executive branch have never accepted President Trump as legitimate and resent his unorthodox style and his intrusion onto their "turf." They react by leaking to the press and participating in the ongoing effort to sabotage his policies and, if possible, remove him from office. It is entirely possible that Vindman fits this profile.

Quotes from the transcript of Vindman's opening remarks and his deposition reinforce this point and deserve to be highlighted. Vindman testified that an "alternative narrative" pushed by the president's personal attorney, Rudy Giuliani, was "inconsistent with the consensus views of the" relevant federal agencies and was "undermining the consensus policy."

Vindman's testimony, together with other witnesses' use of similar terms such as "our policy," "stated policy," and "long-standing policy" lend further credence to the point I'm making. Whether you agree with President Trump or not, it should be acknowledged that the Constitution vests the power of conducting foreign policy with the duly elected president. American foreign policy is what the president determines it to be, not what the "consensus" of unelected foreign policy bureaucrats wants it to be. If any bureaucrats disagree with the president, they should use their powers of persuasion within their legal chain of command to get the president to agree with their viewpoint. In the end, if they are unable to carry out the policy of the president, they should resign. They should not seek to undermine the policy by leaking to people outside their chain of command.

The other noteworthy recollection involves how Perry conveyed the delegation concern over rumors that Zelensky was going to appoint Andriy Bohdan, the lawyer for oligarch Igor Kolomoisky, as his chief of staff. The delegation viewed Bohdan's rumored appointment to be contrary to the goal of fighting corruption and maintaining U.S. support. Without naming Bohdan, Secretary Perry made U.S. concerns very clear in his remarks to Zelensky.

Shortly thereafter, ignoring U.S. advice, Zelensky did appoint Bohdan as his chief of staff. This was not viewed as good news, but I gave my advice on how to publicly react in a text to Sondland on May 22: *"Best case scenario on COS: Right now Zelensky needs someone he can trust. I'm not a fan of lawyers, but they do represent all kinds of people. Maybe this guy is a patriot. He certainly understands the corruption of the oligarchs. Could be the perfect guy to advise Zelensky on how to deal with them. Zelensky knows why he got elected. For now, I think we express our concerns, but give Zelensky the benefit of the doubt. Also let him know everyone in the U.S. will be watching VERY closely."*

At the suggestion of Sondland, the delegation (Perry, Volker, Sondland and me) proposed a meeting with President Trump in the Oval Office. The purpose of the meeting was to brief the president on what we learned at the inauguration, and convey our impressions of Zelensky and the current political climate in Ukraine. The delegation uniformly was impressed with Zelensky, understood the difficult challenges he faced, and went into the meeting hoping to obtain President Trump's strong support for Zelensky and the people of Ukraine. Our specific goals were to obtain a commitment from President Trump to invite Zelensky to meet in the Oval Office, to appoint a U.S. ambassador to Ukraine who would have strong bipartisan support, and to have President Trump publicly voice his support.

Our Oval Office meeting took place on May 23. The four members of the delegation sat lined up in front of President Trump's desk. Because we were all directly facing the president, I do not know who else was in attendance sitting or standing behind us. I can't speak for the others, but I was very surprised by President Trump's reaction to our report and requests.

He expressed strong reservations about supporting Ukraine. He made it crystal clear that he viewed Ukraine as a thoroughly corrupt country both generally and, specifically, regarding rumored meddling in the 2016 election. Volker summed up this attitude in his testimony by quoting the president as saying, "They are all corrupt. They are all terrible people. ... I don't want to spend any time with that." I do not recall President Trump ever explicitly mentioning the names Burisma or Biden, but it was obvious he was aware of rumors that corrupt actors in Ukraine might have played a part in helping create the false Russia collusion narrative.

Of the four-person delegation, I was the only one who did not work for the president. As a result, I was in a better position to push back on the president's viewpoint and attempt to persuade him to change it. I acknowledged that he was correct regarding endemic corruption. I said that we weren't asking him to support corrupt oligarchs and politicians but to support the Ukrainian people who had given Zelensky a strong mandate to fight corruption. I also made the point that he and Zelensky had much in common. Both were complete outsiders who face strong resistance from entrenched interests both within and outside government. Zelensky would need much help in fulfilling his mandate, and America's support was crucial.

It was obvious that his viewpoint and reservations were strongly held, and that we would have a significant sales job ahead of us getting him to change his mind. I specifically asked him to keep his viewpoint and reservations private and not to express them publicly until he had a chance to meet Zelensky. He agreed to do so, but he also added that he wanted Zelensky to know exactly how he felt about the corruption in Ukraine prior to any future meeting. I used that directive in my Sept. 5 meeting with Zelensky in Ukraine.

One final point regarding the May 23 meeting: I am aware that Sondland has testified that President Trump also directed the delegation to work with Rudy Giuliani. I have no recollection of the president saying that during the meeting. It is entirely possible he did, but because I do not work for the president, if made, that comment simply did not register with me. I also remember Sondland staying behind to talk to the president as the rest of the delegation left the Oval Office.

I continued to meet in my Senate office with representatives from Ukraine: on June 13 with members of the Ukrainian Parliament's Foreign Affairs Committee; on July 11 with Ukraine's ambassador to the U.S. and secretary of Ukraine's National Security and Defense Council, Oleksandr Danyliuk; and again on July 31 with Ukraine's ambassador to the U.S., Valeriy Chaly. At no time during those meetings did anyone from Ukraine raise the issue of the withholding of military aid or express concerns regarding pressure being applied by the president or his administration.

During Congress' August recess, my staff worked with the State Department and others in the administration to plan a trip to Europe during the week of Sept. 2 with Senator Murphy to include Russia, Serbia, Kosovo and Ukraine. On or around Aug. 26, we were informed that our requests for visas into Russia were denied. On either Aug. 28 or 29, I became aware of the fact that \$250 million of military aid was being withheld. This news would obviously impact my trip and discussions with Zelensky.

Sondland had texted me on Aug. 26 remarking on the Russian visa denial. I replied on Aug. 30, apologizing for my tardy response and requesting a call to discuss Ukraine. We scheduled a call for sometime between 12:30 p.m. and 1:30 p.m. that same day. I called Sondland and asked what he knew about the hold on military support. I did not memorialize the conversation in any way, and my memory of exactly what Sondland told me is far from perfect. I was hoping that his testimony before the House would help jog my memory, but he seems to have an even fuzzier recollection of that call than I do.

The most salient point of the call involved Sondland describing an arrangement where, if Ukraine did something to demonstrate its serious intention to fight corruption and possibly help determine what involvement operatives in Ukraine might have had during the 2016 U.S. presidential campaign, then Trump would release the hold on military support.

I have stated that I winced when that arrangement was described to me. I felt U.S. support for Ukraine was essential, particularly with Zelensky's new and inexperienced administration facing an aggressive Vladimir Putin. I feared any sign of reduced U.S. support could prompt Putin to demonstrate even more aggression, and because I was convinced Zelensky was sincere in his desire to fight corruption, this was no time to be withholding aid for any reason. It was the time to show maximum strength and resolve.

I next put in a call request for National Security Adviser John Bolton, and spoke with him on Aug. 31. I believe he agreed with my position on providing military assistance, and he suggested I speak with both the vice president and president. I requested calls with both, but was not able to schedule a call with Vice President Pence. President Trump called me that same day.

The purpose of the call was to inform President Trump of my upcoming trip to Ukraine and to try to persuade him to authorize me to tell Zelensky that the hold would be lifted on military aid. The president was not prepared to lift the hold, and he was consistent in the reasons he cited. 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. He specifically cited the sort of conversation he would have with Angela Merkel, chancellor of Germany. To paraphrase President Trump: "Ron, I talk to Angela and ask her, 'Why don't you fund these things,' and she tells me, 'Because we know you will.' We're schmucks. Ron. We're schmucks."

I acknowledged the corruption in Ukraine, and I did not dispute the fact that Europe could and should provide more military support. But I pointed out that Germany was opposed to providing Ukraine lethal defensive weaponry and simply would not do so. As a result, if we wanted to deter Russia from further aggression, it was up to the U.S. to provide it.

I had two additional counterarguments. First, I wasn't suggesting we support the oligarchs and other corrupt Ukrainians. Our support would be for the courageous Ukrainians who had overthrown Putin's puppet, Viktor Yanukovich, and delivered a remarkable 73% mandate in electing Zelensky to fight corruption. Second, I argued that withholding the support looked horrible politically in that it could be used to bolster the "Trump is soft on Russia" mantra.

It was only after he reiterated his reasons for not giving me the authority to tell Zelensky the support would be released that I asked him about whether there was some kind of arrangement where Ukraine would take some action and the hold would be lifted. Without hesitation, President Trump immediately denied such an arrangement existed. As reported in the Wall Street Journal, I quoted the president as saying, "(Expletive deleted) — No way. I would never do that. Who told you that?" I have accurately characterized his reaction as adamant, vehement and angry — there was more than one expletive that I have deleted.

Based on his reaction, I felt more than a little guilty even asking him the question, much less telling him I heard it from Sondland. He seemed even more annoyed by that, and asked me, "Who is that guy"? I interpreted that not as a literal question — the president did know whom Sondland was — but rather as a sign that the president did not know him well. I replied by saying, "I thought he was your buddy from the real estate business." The president replied by saying he barely knew him.

After discussing Ukraine, we talked about other unrelated matters. Finally, the president said he had to go because he had a hurricane to deal with. He wrapped up the conversation referring back to my request to release the hold on military support for Ukraine by saying something like, "Ron, I understand your position. We're reviewing it now, and you'll probably like my final decision."

On Tuesday, Sept. 3, I had a short follow up call with Bolton to discuss my upcoming trip to Ukraine, Serbia and Kosovo. I do not recall discussing anything in particular that relates to the current impeachment inquiry on that call.

We arrived in Kyiv on Sept. 4, joining Taylor and Murphy for a full day of meetings on Sept. 5 with embassy staff, members of the new Ukrainian administration, and Zelensky, who was accompanied by some of his top advisers. We also attended the opening proceedings of the Ukrainian High Anti-Corruption Court. The

meetings reinforced our belief that Zelensky and his team were serious about fulfilling his mandate — to paraphrase the way he described it in his speech at the High Anti-Corruption Court — to not only fight corruption but to defeat it.

The meeting with Zelensky started with him requesting we dispense with the usual diplomatic opening and get right to the issue on everyone's mind, the hold being placed on military support. He asked if any of us knew the current status. Because I had just spoken to President Trump, I fielded his question and conveyed the two reasons the president told me for his hold. 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 much as Zelensky was concerned about losing the military aid, he was even more concerned about the signal that would send. I shared his concern. I suggested that in our public statements we first emphasize the universal support that the U.S. Congress has shown — and will continue to show — for the Ukrainian people. Second, we should minimize the significance of the hold on military aid as simply a timing issue coming a few weeks before the end of our federal fiscal year. Even if President Trump and the deficit hawks within his administration decided not to obligate funding for the current fiscal year, Congress would make sure he had no option in the next fiscal year — which then was only a few weeks away. I also made the point that Murphy was on the Appropriations Committee and could lead the charge on funding.

Murphy made the additional point that one of the most valuable assets Ukraine possesses is bipartisan congressional support. He warned Zelensky not to respond to requests from American political actors or he would risk losing Ukraine's bipartisan support. I did not comment on this issue that Murphy raised.

Instead, I began discussing a possible meeting with President Trump. I viewed a meeting between the two presidents as crucial for overcoming President Trump's reservations and securing full U.S. support. It was at this point that President Trump's May 23 directive came into play.

I prefaced my comment to Zelensky by saying, "Let me go out on a limb here. Are you or any of your advisers aware of the inaugural delegation's May 23 meeting in the Oval Office following your inauguration?" No one admitted they were, so I pressed on. "The reason I bring up that meeting is that I don't want you caught off-guard if President Trump reacts to you the same way he reacted to the delegation's request for support for Ukraine."

I told the group that President Trump explicitly told the delegation that he wanted to make sure Zelensky knew exactly how he felt about Ukraine before any meeting took place. To repeat Volker's quote of President Trump: "They are all corrupt. They are all terrible people. ... I don't want to spend any time with that." That was the general attitude toward Ukraine that I felt President Trump directed us to convey. Since I did not have Volker's quote to use at the time, I tried to portray that strongly held attitude and reiterated the reasons President Trump consistently gave me for his reservations regarding Ukraine: endemic corruption and inadequate European support.

I also conveyed the counterarguments I used (unsuccessfully) to persuade the president to lift his hold: 1) We would be supporting the people of Ukraine, not corrupt oligarchs, and 2) withholding military support was not politically smart. Although I recognized how this next point would be problematic, I also suggested any public statement Zelensky could make asking for greater support from Europe would probably be viewed favorably by President Trump. Finally, I commented on how excellent Zelensky's English was and encouraged him to use English as much as possible in a future meeting with President Trump. With a smile on his face, he replied, "But Senator Johnson, you don't realize how beautiful my Ukrainian is." I jokingly conceded the point by saying I was not able to distinguish his Ukrainian from his Russian.

This was a very open, frank, and supportive discussion. There was no reason for anyone on either side not to be completely honest or to withhold any concerns. At no time during this meeting — or any other meeting on this trip — was there any mention by Zelensky or any Ukrainian that they were feeling pressure to do anything in return for the military aid, not even after Murphy warned them about getting involved in the 2020 election — which would have been the perfect time to discuss any pressure.

Following the meeting with Zelensky and his advisers, Murphy and I met with the Ukrainian press outside the presidential office building. Our primary message was that we were in Kyiv to demonstrate our strong bipartisan support for the people of Ukraine. We were very encouraged by our meetings with Zelensky and other members of his new government in their commitment to fulfill their electoral mandate to fight and defeat corruption. When the issue of military support was raised, I provided the response I suggested above: I described it as a timing issue at the end of a fiscal year and said that, regardless of what decision President Trump made on the fiscal year 2019 funding, I was confident Congress would restore the funding in fiscal year 2020. In other words: Don't mistake a budget issue for a change in America's strong support for the people of Ukraine.

Congress came back into session on Sept. 9. During a vote early in the week, I approached one of the co-chairs of the Senate Ukraine Caucus, U.S. Sen. Richard Durbin. I briefly described our trip to Ukraine and the concerns Zelensky and his advisers had over the hold on military support. According to press reports, Senator Durbin stated that was the first time he was made aware of the hold. I went on to describe how I tried to minimize the impact of that hold by assuring Ukrainians that Congress could restore the funding in fiscal year 2020. I encouraged Durbin, as I had encouraged Murphy, to use his membership on the Senate Appropriations Committee to restore the funding.

Also according to a press report, leading up to a Sept. 12 defense appropriation committee markup, Durbin offered an amendment to restore funding. On Sept. 11, the administration announced that the hold had been lifted. I think it is important to note the hold was lifted only 14 days after its existence became publicly known, and 55 days after the hold apparently had been placed.

On Friday, Oct. 4, I saw news reports of text messages that Volker had supplied the House of Representatives as part of his testimony. The texts discussed a possible press release that Zelensky might issue to help persuade President Trump to offer an Oval Office meeting. Up to that point, I had publicly disclosed only the first part of my Aug. 31 phone call with President Trump, where I lobbied him to release the military aid and he provided his consistent reasons for not doing so: corruption and inadequate European support.

Earlier in the week, I had given a phone interview with Siobhan Hughes of the Wall Street Journal regarding my involvement with Ukraine. With the disclosure of the Volker texts, I felt it was important to go on the record with the next part of my Aug. 31 call with President Trump: his denial. I had not previously disclosed this because I could not precisely recall what Sondland had told me on Aug. 30, and what I had conveyed to President Trump, regarding action Ukraine would take before military aid would be released. To the best of my recollection, the action described by Sondland on Aug. 30 involved a demonstration that the new Ukrainian government was serious about fighting corruption — something like the appointment of a prosecutor general with high integrity.

I called Hughes Friday morning, Oct. 4, to update my interview. It was a relatively lengthy interview, almost 30 minutes, as I attempted to put a rather complex set of events into context. Toward the tail end of that interview, Hughes said, "It almost sounds like, the way you see it, Gordon was kind of freelancing and he took it upon himself to do something that the president hadn't exactly blessed, as you see it." I replied, "That's a possibility, but I don't know that. Let's face it: The president can't have his fingers in everything. He can't be stage-managing everything, so you have members of his administration trying to create good policy."

To my knowledge, most members of the administration and Congress dealing with the issues involving Ukraine disagreed with President Trump's attitude and approach toward Ukraine. Many who had the opportunity and ability to influence the president attempted to change his mind. I see nothing wrong with U.S. officials working with Ukrainian officials to demonstrate Ukraine's commitment to reform in order to change President Trump's attitude and gain his support.

Nor is it wrong for administration staff to use their powers of persuasion within their chain of command to influence policy. What is wrong is for people who work for, and at the pleasure of, the president to believe they set U.S. foreign policy instead of the duly elected president doing so. It also would be wrong for

those individuals to step outside their chain of command — or established whistleblower procedures — to undermine the president's policy. If those working for the president don't feel they can implement the president's policies in good conscience, they should follow Gen. James Mattis' example and resign. If they choose to do so, they can then take their disagreements to the public. That would be the proper and high-integrity course of action.

This impeachment effort has done a great deal of damage to our democracy. The release of transcripts of discussions between the president of the United States and another world leader sets a terrible precedent that will deter and limit candid conversations between the president and world leaders from now on. The weakening of executive privilege will also limit the extent to which presidential advisers will feel comfortable providing "out of the box" and other frank counsel in the future.

In my role as chairman of the Senate's primary oversight committee, I strongly believe in and support whistleblower protections. But in that role, I am also aware that not all whistleblowers are created equal. Not every whistleblower has purely altruistic motives. Some have personal axes to grind against a superior or co-workers. Others might have a political ax to grind.

The Intelligence Community Inspector General acknowledges the whistleblower in this instance exhibits some measure of "an arguable political bias." The whistleblower's selection of attorney Mark Zaid lends credence to the ICIIG's assessment, given Zaid's tweet that mentions coup, rebellion and impeachment only 10 days after Trump's inauguration.

If the whistleblower's intention was to improve and solidify the relationship between the U.S. and Ukraine, he or she failed miserably. Instead, the result has been to publicize and highlight the president's deeply held reservations toward Ukraine that the whistleblower felt were so damaging to our relationship with Ukraine and to U.S. national security. The dispute over policy was being resolved between the two branches of government before the whistleblower complaint was made public. All the complaint has accomplished is to fuel the House's impeachment desire (which I believe was the real motivation), and damage our democracy as described above.

America faces enormous challenges at home and abroad. My oversight efforts have persuaded me there has been a concerted effort, probably beginning the day after the November 2016 election, to sabotage and undermine President Trump and his administration. President Trump, his supporters, and the American public have a legitimate and understandable desire to know if wrongdoing occurred directed toward influencing the 2016 election or sabotaging Trump's administration. The American public also has a right to know if no wrongdoing occurred. The sooner we get answers to the many unanswered questions, the sooner we can attempt to heal our severely divided nation and turn our attention to the many daunting challenges America faces.

Ron Johnson

U.S. Senator

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Permalink: <https://www.ronjohnson.senate.gov/public/index.cfm/2019/11/johnson-responds-to-house-republicans-request-for-information-on-ukraine>
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ADAM B. SCHIFF, CALIFORNIA
 CHAIRMAN
 TUESDAY, NOVEMBER 6, 2019
 10073-225-7890
 www.intelligence.house.gov



ONE HUNDRED SIXTEENTH CONGRESS
 DEVIN NUNES, CALIFORNIA
 RANKING MEMBER
 ALISON SQUER, Majority Staff Director

**Permanent Select Committee
 on Intelligence
 U.S. House of Representatives
 November 6, 2019**

The Honorable Devin Nunes
 Ranking Member
 Permanent Select Committee on Intelligence
 U.S. House of Representatives
 Washington, D.C. 20515-6415

Dear Ranking Member Nunes:

At approximately 11:20 a.m. today, the Majority provided notice to you and the Members of the Permanent Select Committee on Intelligence (the "Committee") that the Committee will hold on November 13 at 10:00 a.m. the first in a series of open hearings as part of the House of Representatives' impeachment inquiry.¹ H. Res. 660 (the "Resolution") affords the Minority the opportunity to identify and request witnesses to testify during the open hearings.² Pursuant to the Resolution, the Minority should submit such a witness request in writing **within 72 hours of the provision of such notice**, which is Saturday, November 8, at 11:20 a.m.³

The Majority does not intend to request public testimony from every witness who previously testified in depositions or interviews as part of the impeachment inquiry. If the Minority wishes for any of those witnesses to testify during the open hearings, please include them in your request for witnesses.

As directed by the Resolution, the Minority's witness request must be submitted in writing, and must be accompanied by a detailed written justification of the relevance to the inquiry of the testimony of each requested witness.⁴ To guide relevance, the report submitted by the Committee on Rules to accompany the Resolution sets forth the inquiry's parameters:⁵

¹ Notice to Members of the House Permanent Select Committee on Intelligence, November 6, 2019.

² See generally H. Res. 660 (Oct. 31, 2019) § 2(1), (3).

³ *Id.* § 2(3).

⁴ *Id.*

⁵ H. Rept. 116-266 (Oct. 30, 2019) at 2.

1. Did the President request that a foreign leader and government initiate investigations to benefit the President's personal political interests in the United States, including an investigation related to the President's political rival and potential opponent in the 2020 U.S. presidential election?
2. Did the President – directly or through agents – seek to use the power of the Office of the President and other instruments of the federal government in other ways to apply pressure on the head of state and government of Ukraine to advance the President's personal political interests, including by leveraging an Oval Office meeting desired by the President of Ukraine or by withholding U.S. military assistance to Ukraine?
3. Did the President and his Administration seek to obstruct, suppress or cover up information to conceal from the Congress and the American people evidence about the President's actions and conduct?

The Committee looks forward to receiving by November 8, within the Resolution's stipulated deadline, the Minority's written request for witnesses, and is prepared to consult on proposed witnesses to evaluate their relevance to the inquiry's scope.

Sincerely,



Adam B. Schiff
Chairman

1/8/2020

Dear Colleague to All Members on Whistleblower Complaint | Speaker Nancy Pelosi

NEWSROOM

A V I D E O A N D A U D I O F I L M S A R C H I V E S E E K E R S C A N F I N D A L L O F T H E M H E R E .

Dear Colleague to All Members on Whistleblower Complaint

SEPTEMBER 22, 2019 PRESS RELEASE

Dear Colleague,

On Thursday, Acting Director of National Intelligence Joseph Maguire will appear before the House Intelligence Committee in an open hearing. At that time, we expect him to obey the law and turn over the whistleblower's full complaint to the Committee. We also expect that he will establish a path for the whistleblower to speak directly to the House and Senate Intelligence Committees as required by law.

The Intelligence Community Inspector General, who was appointed by President Trump, has determined that the complaint is both of "urgent concern and credible," and its disclosure "relates to one of the most significant and important of the Director of National Intelligence's responsibilities to the American people."

The Administration's blocking of Acting DNI Maguire from providing Congress with the whistleblower complaint calls upon him to violate the federal statute, which unequivocally states that the DNI "shall" provide Congress this information. The Administration is endangering our national security and having a chilling effect on any future whistleblower who sees wrongdoing.

We must be sure that the President and his Administration are always conducting our national security and foreign policy in the best interest of the American people, not the President's personal or political interest.

I am calling on Republicans to join us in insisting that the Acting DNI obey the law as we seek the truth to protect the American people and our Constitution.

This violation is about our national security. The Inspector General determined that the matter is "urgent" and therefore we face an emergency that must be addressed immediately.


If the Administration persists in blocking this whistleblower from disclosing to Congress a serious possible breach of constitutional duties by the President, they will be entering a grave new chapter of lawlessness which will take us into a whole new stage of investigation.

Thank you for your patriotism.

best regards,



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Whistleblower

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1/8/2020

Pelosi, Hoyer Announce Floor Consideration of Resolution Regarding Whistleblower Complaint | Speaker Nancy Pelosi

NEWSROOM

Pelosi, Hoyer Announce Floor Consideration of Resolution Regarding Whistleblower Complaint

SEPTEMBER 24, 2019 PRESS RELEASE

Washington, D.C. – House Speaker Nancy Pelosi and House Majority Leader Steny H. Hoyer released the following joint statement today:

"Allegations that the President of the United States sought to enlist a foreign government to interfere in our democratic process by investigating one of his political rivals – and may have used the withholding of Congressionally-appropriated foreign assistance days earlier as intimidation – are deeply alarming. It is imperative that the Acting Director of National Intelligence provide Congress the complaint, as specified under the law, and all requests for documents and testimony relating to this allegation. Furthermore, the whistleblower who brought this matter to the attention of the American people must be protected.

"On Wednesday, the House will vote on a resolution making it clear Congress's disapproval of the Administration's effort to block the release of the complaint and the need to protect the whistleblower. This is not a partisan matter, it's about the integrity of our democracy, respect for the rule of law and defending our Constitution. We hope that all Members of the House – Democrats and Republicans alike – will join in upholding the rule of law and oath of office to protect and defend the Constitution as Representatives of the American people."


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17. *Journal of the American Medical Association*, 1997; 277: 1039-1043.

SEPTEMBER 24, 2019 PRESS RELEASE

At that time, he must turn over the whistleblower's full complaint to the Committee. He will have to choose whether to break the law or honor his responsibility to the Constitution.

1/8/2020

Pelosi Remarks Announcing Impeachment Inquiry | Speaker Nancy Pelosi

On the final day of the Constitutional Convention in 1787, when our Constitution was adopted, Americans gathered on the steps of Independence Hall to await the news of the government our Founders had crafted.

They asked Benjamin Franklin, 'What do we have: a republic or a monarchy?' Franklin replied: 'A republic, if you can keep it.'

Our responsibility is to keep it.

Our republic endures because of the wisdom of our Constitution, enshrined in three co-equal branches of government, serving as checks and balances on each other.

The actions taken to date by the President have seriously violated the Constitution – especially when the President says, 'Article II says, I can do whatever I want.'

For the past several months, we have been investigating in our Committees and litigating in the courts, so the House can gather 'all the relevant facts and consider whether to exercise its full Article I powers, including a constitutional power of the utmost gravity – approval of articles of impeachment.'

And this week, the President has admitted to asking the President of Ukraine to take actions which would benefit him politically. The action of – the actions of the Trump Presidency revealed the dishonorable fact of the President's betrayal of his oath of office, betrayal of our national security, and betrayal of the integrity of our elections.

Therefore, today, I am announcing the House of Representatives is moving forward with an official impeachment inquiry. I am directing our six Committees to proceed with their investigations under that umbrella of impeachment inquiry.

The President must be held accountable. No one is above the law.


Getting back to our Founders – in the darkest days of the American Revolution, Thomas Paine wrote: 'The times have found us.' The times found them to fight for and establish our democracy. The times have found us today, not to place ourselves in the same category of greatness as our Founders, but to place us in the urgency of protecting and defending our Constitution from all enemies, foreign and domestic. In the words of Ben Franklin, to keep our Republic.

I thank our Chairmen – Chairman Nadler, Chairman Schiff. Chairman Nadler of Judiciary. Chairman Schiff of Intelligence. Chairman Engel of Foreign Affairs. Chairman Cummings of Oversight and Chairman Cummings I have been in touch with constantly. He is a master of so much but including, Inspectors General and whistleblowers. Congressman Richie Neal of the Ways and Means Committee. Congresswomen Maxine Waters of the Financial Services Committee.

And I commend all of our Members, our colleagues for their thoughtful, thoughtful approach to all of this – for their careful statements.

God bless them and God Bless America. Thank you all.

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Pelosi Remarks Announcing Impeachment Inquiry | Speaker Nancy Pelosi

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1/8/2020

Pelosi Statement on Notes of Call Between President Trump and Ukrainian President | Speaker Nancy Pelosi

NEWSROOM<https://www.speaker.gov/newsroom/92519>

Pelosi Statement on Notes of Call Between President Trump and Ukrainian President

SEPTEMBER 25, 2019 PRESS RELEASE


Washington, D.C. -- Speaker Nancy Pelosi issued this statement on the White House's release of the notes of the call between President Trump and President Zelensky of Ukraine:

"The release of the notes of the call by the White House confirms that the President engaged in behavior that undermines the integrity of our elections, the dignity of the office he holds and our national security. The President has tried to make lawlessness a virtue in America and now is exporting it abroad.

"I respect the responsibility of the President to engage with foreign leaders as part of his job. It is not part of his job to use taxpayer money to shake down other countries for the benefit of his campaign. Either the President does not know the weight of his words or he does not care about ethics or his constitutional responsibilities.

"The transcript and the Justice Department's acting in a rogue fashion in being complicit in the President's lawlessness confirm the need for an impeachment inquiry. Clearly, the Congress must act.

"As we await the transmittal of the full whistleblower complaint to the House and Senate Intelligence Committees, it is important to note that the complaint was determined by the Inspector General to be a matter of 'urgent concern' and 'credible.' The Intelligence Community has long recognized that whistleblowers constitute a vital part of our national security apparatus and that they must be protected. I reiterate my long-standing call to protect the whistleblower from retaliation."

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NEWSROOM

Pelosi Floor Speech on Resolution Calling on Administration to Release Whistleblower Complaint to Congress

SEPTEMBER 25, 2019 PRESS RELEASE

Washington, D.C. – Speaker Nancy Pelosi delivered remarks on the Floor of the House of Representatives in support of H.Res. 576, a resolution urging the Director of National Intelligence to follow the law and release the whistleblower complaint, made to the Congressional Intelligence Committees. Below are the Speaker's remarks:

Speaker Pelosi. Thank you very much, Madam Speaker. I thank the gentleman for yielding. I commend him for his great patriotism, for the equanimity that he brings to all that he does, with great wisdom and judgment. Thank you, Mr. Chairman, for yielding.

Mr. Chairman, just over a week ago when, on the anniversary of the adoption of our Constitution, on that very day, news broke of great allegations, which were a threat to our Constitution.

On that day, the Intelligence Community Inspector General formerly notified the Congress that the Administration was forbidding him from turning over a whistleblower complaint that he found to be of great – of 'urgent concern' and 'credible.'

The Administration's refusal to turn over the full complaint is a violation of the law, which is unequivocal, stating that the Director of National Intelligence 'shall' provide Congress with the full complaint. I repeat, the obligation is mandatory.

Shortly thereafter, the American people learned of a phone call by the White House calling upon a foreign power to intervene in the upcoming election.

Today's release of the notes of the call by the White House confirms this behavior, which undermines the integrity of our election, the dignity of any Presidency and our national security.

Let us repeat the facts: the Intelligence Community Inspector General, who was appointed by President Trump, determined that the complaint was of both 'urgent concern' and 'credible.' And, its disclosure 'relates to [one of] the most significant [and] important duties of the Director of National Intelligence's responsibilities to the American people.'

I want to talk a moment – Mr. Chairman, if I may – about whistleblowers. First, let me say what an asset the Intelligence Community is to the security of our country. We talk about our men and women in uniform and we praise them and could never thank them enough. Our Intelligence Community personnel are a significant part of the national security of our country.

Whistleblowers in any part of the government are important. But, whistleblowers – let me define: can be defined 'as an act of reporting waste, fraud, abuse and corruption in a lawful manner to those who can correct the wrongdoing.'

1/8/2020

Pelosi Floor Speech on Resolution Calling on Administration to Release Whistleblower Complaint to Congress | Speaker Nancy Pelosi

The Intelligence Community has publicly recognized the importance of whistleblowing and supports protections for whistleblowers who conform to guidelines to protect classified information.

This is a very important balance and when laws were written, and I was there for it as Member of the Committee and Ranking Member, Gang of Four before I even became Leadership. I saw the evolution of these laws and then the improvements of them, with further protection of whistleblowers. I was also there for the creation of the Office of Director of National Intelligence and the relationship between the two. And, it's a careful balance of protecting whistleblowers, but also protecting our national security and our intelligence, our intelligence.

So, in any event, one of the bills we wrote was the Intelligence Community Whistleblower Protection Act. The law plays a vital role in our democracy. It enables our system of separation of powers to maintain the rule of law to make sure that the abuses or unlawful actions are known, first, through the Inspector General of the Intelligence Community and then, the Congressional Intelligence Committees, House and Senate, which can act upon it.

The statute does not permit the DNI to second-guess the Inspector General's determination of any complaint he finds to be 'credible.' At no point in the history of this law has a DNI ever refused to turn over a whistleblower's complaint that has been found by the IG as 'credible.' Refusing to do this is a violation of the law.

Our national security depends on this framework. This vote today is about more than just any one President. This resolution is about the preservation of our American system of government.

Once we pass this resolution – and I acknowledge that we are joining the Senate, which passed it yesterday unanimously – once we pass this resolution, the DNI will be faced with the choice to honor his responsibility to help preserve our Republic or to break the law.

This resolution passed by unanimous consent, I repeat, in the Senate. Every Member, Democratic and Republican, should join us in passing this in the House.

While we await the release of the full complaint, we reiterate our call for the release of the full transcript of the call between President Trump and the Ukrainian President, and reiterate our call to protect whistleblowers from retaliation.

I urge a bipartisan vote to defend our national security and to protect our democracy and yield back the balance of my time.

Thank you, Mr. Chairman.

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Pelosi Floor Speech on Resolution Calling on Administration to Release Whistleblower Complaint to Congress | Speaker Nancy Pelosi

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1/8/2020

Dear Colleague on Work to Advance Impeachment Inquiry During District Work Period | Speaker Nancy Pelosi

NEWSROOM


Dear Colleague on Work to Advance Impeachment Inquiry During District Work Period

SEPTEMBER 27, 2019 PRESS RELEASE

Dear Democratic Colleague,

This is a sad time for our country. It has been a somber and prayerful time for all of us. None of us has come to Congress to impeach a president. All of us came to uphold the oath we take to support and defend the Constitution. Democrats and Republicans alike must always put country over party, especially now. I have always said that any decision we make would be based on a review of the facts and the oath that we take. I have also said that when the facts warranted it, we would be ready to proceed.

Sadly, the facts revealed in the past week have warranted an impeachment inquiry. In his telephone call with the President of Ukraine, the President showed a disregard for our national security, for the integrity of our elections and for the oath of office to preserve, protect and defend the Constitution.

I thank the Chairmen and all Members of our Caucus for their thoughtful consideration of the decision that we needed to make. The path forward will be centered in the Intelligence Committee led by Chairman Adam Schiff. I commend him and the Members who will be working over the District Work Period to continue to advance this inquiry.

This is a matter of national security. As a group of 300 leading former national security experts (<https://drive.google.com/file/d/117LiS4qKA148oyOnWon1h5HvSY6mZGtg/view>) who served under Republican and Democratic Presidents wrote today, "President Trump appears to have leveraged the authority and resources of the highest office in the land to invite additional foreign interference into our democratic processes. That would constitute an unconscionable abuse of power. It also would represent an effort to subordinate America's national interests – and those of our closest allies and partners – to this President's personal political interest... Having worked across administration of both parties to uphold and advance those national interests, we consider the President's actions to be a profound national security concern."

This is also a matter of the Constitution and the integrity of our elections. The whistleblower complaint, which the Intelligence Community's Inspector General determined to be both of "urgent concern" and "credible," warns that the President's actions "pose risks to U.S. national security and undermine the U.S. Government's efforts to deter and counter foreign interference in U.S. elections." Further, Acting DNI Maguire testified that "the greatest challenge that we do have is to make sure that we maintain the integrity of our election system," and that "protecting the sanctity of our election within the United States, whether it'd be a national, city, state, local is perhaps the most important job that we have [within] the intelligence community."



1/8/2020 Dear Colleague on Work to Advance Impeachment Inquiry During District Work Period | Speaker Nancy Pelosi

With our inquiry in place, we can focus on promoting our For The People agenda. We promised in the campaign that we would lower health care costs by reducing the price of prescription drugs, and I encourage all Members to have conversations with constituents about H.R.3: The Lower Drug Costs Now Act. I thank our Chairmen, Frank Pallone, Richie Neal and Bobby Scott, for their leadership in bringing this transformative legislation forward. The District Work Period Packet contains helpful information for communicating our message on this key legislation For The People.

The Chair of our Caucus has arranged a series of conference calls over the District Work Period, and I will be in regular touch with Members during this period. Please call me at any time.

Thank you for your patriotism and leadership.

Nancy

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1/8/2020

Transcript of Pelosi Weekly Press Conference Today | Speaker Nancy Pelosi

NEWSROOM**Transcript of Pelosi Weekly Press Conference Today****OCTOBER 2, 2019 PRESS RELEASE**

Washington, D.C. – Speaker Nancy Pelosi held her weekly press conference today in the Capitol Visitor Center. Below are the Speaker's remarks:

Speaker Pelosi. Good morning. Good morning, everyone.

Thank you for being here as we observe the district work period in their -- the Holy Days.

As we gather here, our Members across the country are having communication with their constituents on two subjects, in particular, and one perhaps. The first is on our legislation H.R. 3, to lower the cost of prescription drugs now. We are very pleased that the response that Members are receiving as we've asked them to go out there to receive public comment on H.R. 3, and when they return, we will be ready to proceed, some in committee, others are just among Members to present the legislation.

H.R. 3 is important because, as I've said to you before, across the country, you can see grown men cry at meetings because of the cost of prescription drugs. It's almost impossible for them to be healthy and financially healthy with the rising cost of prescription drugs. In the last year's election, this was a very high priority. It continues to be.

So, when the President says that he can't do anything if he has the threat of impeachment or the consideration of impeachment, I hope he doesn't mean he doesn't want to work together to lower the cost of prescription drugs.

It would give the Secretary additional powers to negotiate for lower costs. It would end the disparity of cost between what consumers in America pay and what they pay in other countries. It would have a cap on out-of-pocket expenses for catastrophic Medicare [drug] expenses. It would also, in a negotiation, not only be for Medicare, but for all, and it would have an inflation rebate that reverses years of increases.

So, we're very pleased with the work that has gone into it so far by our three Chairmen: Frank Pallone of Energy & Commerce, Richie Neal of Ways & Means and Bobby Scott of Education & [Labor], and many Members as well. We will be discussing this again over the break and the district work period when we return.

At the same time, we are making progress on a U.S.-Mexico-Canada Trade Agreement. This is an issue of concern around the country, and we want to be sure, as we go forward, we are protecting, we are strengthening America's working families and our farmers, who are very affected by this. This is not about trickle-down trade. We're not trickle-down economics people. We're not trickle-down trade people either. Unless it hits home for our workers and our farmers in terms of enforceability, we can't be there yet. But we are on a path to yes. And as probably know, on Friday, our House task force, under the leadership of Richie Neal in Ways & Means, put forth a counter-offer to what the Administration has proposed.

When we can arrive at a place where not only do we have our issues addressed, but that we have enforceability that will make it real for America's families and farmers, then we can go down that path. I hope, again, that the President saying because of other actions, in terms

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of upholding the Constitution of the United States, that he is not – he can't, he can't work with us, because I do think he wants this U.S.-Mexico-Canada Trade Agreement. And, we want it when it is right in terms of enforceability and that we can work together.

At the same time, we're hoping that if we can return, renew our conversations about infrastructure, building infrastructure of America. As I've said, our agenda last year when we ran, was For The People: lower the cost of health care by lowering the cost of prescription drugs – that's what we're doing – building infrastructure of America in a green way, so that we can increase paychecks. Lower health care, bigger paychecks, cleaner government. While I think that we can work with the Administration on prescription drugs – I hope so – and infrastructure – I hope so – clean government, that's more of a challenge.

So, as we gather here today, we are clearly at a place where we are legislating to try to meet the needs of the American people in a transformative way. We are investigating. We are litigating. We also are here today on the one year anniversary of the Khashoggi – since [Jamal] Khashoggi was killed. Such a very sad thing. And, at the same time, you see the administration schmoozing with the very people who perhaps orchestrated that.

The – again, it's yesterday, the Chinese observed their 70th anniversary. At the same time, the President was very positive about that. While observing their anniversary is one thing, praising them for it is another when they have serious repression going on right now in China, whether it's undermining the cultural language and religion of Tibet; whether it's the incarceration – placing in education camps one, two or three, depending on the cost, but at least one million Uyghurs; and whether it's the suppression of democracy in Hong Kong and just the violation of human rights throughout China.

It's the same fight we've been having for years. For what does it profit a man or a country if he gains the whole world and suffers the loss of his soul, but we seem to be able to ignore the shout out from our soul on respecting the dignity and worth of every person.

So, I know many of you are here, some of you are regulars, many of you are not, and I said to Mr. Schiff, maybe you should come to all of our meetings, we might get some coverage for what we're trying to do for the American people. But, we are very proud of the work of our Chairman of the Intelligence Committee.

We take this to be a very sad time for the American people, for our country. Impeaching a president or having the investigation to impeach a president is not anything to be joyful about. I don't know that anybody's joyful, but it is a sad time.

And, as you've heard me say over and over again, the dark days of the revolution, Thomas Paine said, 'The times have found us.' We think the times have found us now. Not that we place ourselves in the category of greatness of our Founders, but we do place ourselves in a time of urgency on the threat to the Constitution, a system of checks and balances, that is being made.

It is – they fought for our independence, they declared independence, they fought and won, they established a democracy. Thank God they made the Constitution amendable so we could always ever be expanding freedom, and we see the actions of this President being an assault on the Constitution. Once we had his even admission to that, we had no choice but to go forward.

It's hard. We want to weigh the equities. We want to be fair as we go forward, and we couldn't be better served than by the leadership of our Chairman of the Intelligence Committee, Adam Schiff, and it's my honor to present him to you now.

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Speaker Pelosi: Just one moment, please. I'll decide who asks the questions. Do we have any questions first on the work to meet the needs of the American people in terms of the USMCA and the H.R. 3? On that subject?

Q: How do you envision working with this President on these key Democratic agenda items: lowering prescription drug costs, you know, ensuring tougher gun safety measures as you're actively considering whether to remove him from office?

Speaker Pelosi: But they have nothing to do with each other. We have a responsibility to uphold our oath of office, to support and defend the Constitution of the United States. We also have a responsibility to get the job done for the American people.

The President has said he wants this Mexico, U.S. - U.S.-Mexico-Canada Trade Agreement to go forward and we are awaiting the language on enforceability, so does it mean that he doesn't, he can't do that? That's really up to him, and I do expect that he does want that, and that he does need that and that he's not going to blame it on us because we are honoring our oath of office. And then on - he says that he wants to lower the cost of prescription drugs. The American people want us to do that, so is the President saying, 'If you question my actions, I can't agree on any subject,' then the ball is in his court on that - on that.

But many of you have always been interested in USMCA, any ongoing interest there?

Yes, sir.

Q: On the USMCA, the President keeps saying that the USMCA will pay for his wall. How does money generated by the USMCA work its way into the general fund to be appropriated by Congress to pay for any wall?

Speaker Pelosi: It doesn't. It doesn't. It doesn't. Okay. No, I'm not calling on you, I'm calling on this young lady here. Thank you.

Q: Thank you, Madam Speaker. Lisa from PBS News. Thank you for having this news conference. A question for you and one for Chairman Schiff, do you - do you have plans or have you taken off the table the idea of a full House vote on impeachment -

Speaker Pelosi: Excuse me, dear. I'm first doing H.R. 3. Anyone on H.R. 3, does anybody in this room care about the cost of prescription drugs and what it means to America's working families? From time to time, you've asked those questions. Does anyone care about the USMCA? The U.S.-Mexico-Canada Agreement?

Q: Is there a hard, fast date on when you need this to be resolved?

Speaker Pelosi: This being what?

Q: USMCA.

Speaker Pelosi: No. Well, we - I'd like - we're on a path to yes, as far as the trade agreement is concerned, and at some point, I'm just saying, it's either yes or no. We either have enforceability or we don't, but I'm hopeful that we will, and I'm hopeful that it will be soon.

Q: Is there any kind of deadline you've given the Administration or anything?

Speaker Pelosi: No. We have a good working relationship. Believe me, the quiet you hear is progress. Is progress. We go back and forth and over this break, the staffs are, between the two trade reps and our negotiators, are seeking clarification, and where there's room for cooperation, where we may have more challenges.

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But it's going in a forward direction. So we're very pleased with that because, again, we're trying to find common ground with the President. He always wanted this. We do, too. And let's just find our common ground in that regard.

Q: Speaker Pelosi, another question on policy before we get to the other news of the day, which is impeachment. What about the quiet we hear on gun legislation? Two or three weeks ago the White House telegraphed we might hear when the President would support in some sort of gun package. We – even the press have heard nothing. Have you heard anything from the White House?

Speaker Pelosi. Well, the most recent communication I had from the White House on gun violence prevention was a call from the President last Tuesday. So, we can segue from one subject to the next here. He called early that morning to say that, how happy I would be to see the progress that he was making on coming to agreement on gun violence prevention. I was curious about what that progress could be, said he was working with Democrats and Republicans. I don't know of any – I reminded him that we had sent a bill over to the Senate, H.R. 8 and H.R. 1112, two pieces of legislation that will save the most lives, and I would hope that whatever he was talking about was very close to that.

Oh, yes, you're going to be very pleased. That's the last I've heard of that. At that point, that is when the President segued into the telephone call in which he admitted that this call took place and that what happened was 'perfect.' I didn't say – I said, 'Mr. President, it's not perfect, it's wrong, but your admission to what has now been in the public domain informs the timing of how we go forward.' So, again, that was the last I heard from them.

Let me just say on gun violence protection – prevention. We're not going away until we get legislation signed into law that protects our children. I said to the President on another occasion on the 200th day of the – Chuck Schumer and I called the President on that, that was a couple of Sundays ago – I think the 15th of September, two and a half weeks ago, that was the 200th day since we sent over H.R. 8. And I said to the President, 'I pray for you and the safety of you and your family. And I hope that God will – pray that God will give you illumination, an enlightenment to pray, to work for the safety of other families in our country.'

So again, the most recent – I'm not going to say the last, I hope it's not the last, but the most recent communication I've had from the White House was in the same call where the President admitted to what he said in that phone conversation, okay?

Q: Thank you, Madam Speaker. On impeachment?

Speaker Pelosi. Yes.

Q: Have you taken off the table, or do you plan for a full House vote on an impeachment inquiry? And Chairman Schiff, as the White House seems to be – in your words, you're worried about interference, delayed, in the past sometimes it's taken a long time, years, to compel documents and testimony from the White House. Are you preparing for a court battle, and how do you make sure that that happens in what you say is an expeditious manner?

Speaker Pelosi. First of all, there's no requirement that there be a Floor vote. That's not anything that is excluded and, by the way, there's some Republicans that are very nervous about our bringing that vote to the Floor.

Chairman Schiff. To say that we are concerned that the White House will attempt to stonewall our investigation, much as they have stonewalled other committees in the past, it's why I say the White House needs to understand that any action like that, that forces us to litigate or have to consider litigation, will be considered further evidence of obstruction of

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justice. And, of course, that was an article of impeachment against Nixon, the obstruction of the lawful functions of Congress, that is. We will also draw the inference, though, as appropriate, that they are trying to conceal facts that would corroborate the allegations in the whistleblower complaint, so we'll have to decide whether to litigate or how to litigate.

We're not from around here, though. We don't want this to drag on months and months and months, which appears to be the Administration's strategy, so they just need to know that even as they try to undermine our ability to find the facts around the President's effort to coerce a foreign leader to create dirt that he can use against the political opponent, that they will be strengthening the case on obstruction if they behave that way.

Q: Speaker, thank you very much. I would like to ask Madam Speaker and also, Chairman, this as well, the President wants to interview the whistleblower. He says he has the right to meet his accuser. Your response, both of you, please.

Chairman Schiff. The whistleblower has the right in the statute to remain anonymous, and we will do everything in our power to make sure that that whistleblower's protected, that that whistleblower's preferences, in terms of their anonymity, are respected. And let's – let's not make any mistake here, the President wants to make this all about the whistleblower and suggest people that come forward with evidence of his wrongdoing are somehow treasonous, and should be treated as traitors and spies. This is a blatant effort to intimidate witnesses, it's an incitement to violence, and I would hope, and we are starting to see Members of both parties speaking out against attacking this whistleblower or others that have pertinent information.

So, the other thing I wanted to underscore, though, is, what the whistleblower has set out, that is within our power to this day to confirm, we see confirmed in that call record. The President can attack the whistleblower rhetorically all the President wants. It doesn't change the fact that the record of that call shows the President of the United States in a same conversation, indeed, immediately after the Ukraine President asked for more military help, the President of the United States asked that leader 'a favor though' And no attack on the whistleblower or anyone else is going to change those underlying facts.

Speaker Pelosi. On the subject – excuse me – on the subject of the whistleblower, I said to the President on that call, you've come into my wheelhouse, 25 years on the Intelligence Committee as a Member, as Ranking Member, as Mr. Schiff was before he became the Chairman when we got the Majority. So I was part of the Gang of Four before I was even in the leadership as a Gang of Eight.

So, for 25 years, one way or another, I was there when we improved the whistleblower legislation in the late '90s. I was part of that. I was there when we made further improvements and President Obama made executive – I don't know if it's executive order, but executive action, improvements in the whistleblower legislation. And then we had further legislation. And then, I was there when we created the Office of the Director of National Intelligence and what his responsibility was in terms of a whistleblower.

So, this is very – I hope that you understand, and I suspect that you do, the seriousness of the President of the United States saying he wants to interview that person. We will treat the President with fairness in the – as we go forward.

We will have investigations and questioning that are worthy of the Constitution of the United States. It's unworthy of the Constitution of the United States to do what he did in that call, and he admitted to me, said it's 'perfect.' No, it's not perfect. It's wrong. A; and, B, that protecting whistleblowers is a very, very important requirement that we have.

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The Intelligence Community recognizes the importance of whistleblowers. Protecting whistleblowers who see wrongdoing of any kind in our government is essential. The President probably doesn't realize how dangerous his statements are when he says he wants to expose who the whistleblower is and those who may have given the whistleblower that information.

This is a very serious, very serious challenge that the President has put there. It's very sad. I don't see impeachment as a unifying thing for our country. I weighed those equities hard and long until I had the President's admission that he did what he did.

Q: One big picture question and one logistical question, just following up on what you just said. Some Republicans have said that the President's phone call wasn't great, but that it isn't an impeachable offense. Is it possible that you're making too much of one phone call?

Speaker Pelosi, Absolutely not. I want to yield to you.

Chairman Schiff, Well, if you think about what the framers were concerned about at the time of the drafting of the Constitution, they were paramountly concerned about foreign interference in American affairs. They wanted to ensure that the President of the United States was defending the interests and national security of the United States and not corruptly, secretly advancing some private agenda with a foreign power.

It's hard to imagine a set of circumstances that would've alarmed the Founders more than what's on that call, where you have a President using the full power of his office to try to effectively coerce a foreign leader that is completely dependent on our country for military, economic, diplomatic and other support, to intervene in our election to help his campaign. It's hard to imagine a more corrupt course of conduct.

So, to my Republican colleagues that say, 'There's nothing to see here,' or, 'Yeah, it's bad, but is it really something you'd remove the President from office for?' They're going to have to answer. If this conduct doesn't rise to the level of the concern the Founders have, what conduct does?

Now, we only know some of the facts at this point. The call record seems to be pretty undisputed. The suspension of military assistance is undisputed now. The sequestration of this call record and maybe others into a file in which they were never supposed to be placed, a file that is for classified information of the highest order, covert action, for example, those facts are not contested. But, all the facts around that we still need to flesh out: What was the State Department's role? What was the Secretary's role? What was the role of the Attorney General?

There's a great more that we need to know to understand the full depth of the President's misconduct. And, maybe when that comes out, it will persuade some of those Republicans to recognize the gravity of the situation. But, I think we have to be realistic here. There seems to be no floor below which this President can drop that some of the GOP Members, and maybe even many of the GOP Members, would not be willing to endorse, look away from, avoid comment on, let alone, rise to condemn as incompatible with the duties of his office.

Speaker Pelosi, Make no mistake, in that telephone call, the President undermined our national security because of his – what he had done a few days earlier. The President said, 'Well, I didn't say that in the call.' No. The sequencing of it. You have to look at the sequence. A few days before the President withdrew that. Now why? Why would that just come from the President? There was no, as far as we know, and we'll find out if there is, any

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National Security Council justification for the President withdrawing assistance that had been passed by the Congress of the United States, in a bipartisan way, and then the President, just on his own, decided he was going to use it as leverage.

So, using that as leverage, we – we supported that military assistance in the interest of our national security. Undermining our national security, undermining his oath of office to protect and defend the Constitution because he was overthrowing an act of Congress just on his own, undermining the integrity of our elections. And that's what means something to people in their lives.

They have to know that their vote counts and that it will be counted as cast, and this President of the United States is stooping to a level that is beneath the dignity of the Constitution of the United States and our Founders. Since the Chairman mentioned our Founders, they put guardrails in the Constitution because they knew there might be someone who would overplay his or her power. They never thought that we would have a President who would kick those guardrails over and disregard the Constitution and say, proposition, 'Article II says that I can do whatever I feel like.'

So, this is sad. We have to be prayerful. We have to be worthy of the Constitution as we go forward. We have to be fair to the President and that's why this is an investigation: an inquiry, and not an outright impeachment, and we have to give the President his chance to exonerate himself. But, he thinks what he did was perfect. So, we have that situation, but I say to my colleagues, 'Calmness, quiet so that we can hear, that we can hear what is being said in this regard.'

Again, on that very day, September 17th, that was Constitution Day, a Tuesday. Two Tuesdays ago from yesterday. That was when that explosion hit of what possibly happened in that phone conversation, which the President confirmed to me in our call.

Q: Madam Speaker?

Speaker Pelosi: And that day was the day we observed the adoption of our Constitution, September 17th. On that day, way back when, when Benjamin Franklin left Independence Hall, people said to him 'What do we have, Dr. Franklin, a monarchy or a Republic?' He said 'A Republic, if we can keep it.'

It is our responsibility to keep that Republic with the genius of the separation of powers, three co-equal branches of government, each a check and balance on the others, separation of power, a Republic, if we can keep it. That's our responsibility, that's the oath of office that we take, and that is what is the basis – one of the reasons why we just have to look at the facts and the Constitution.

Any other objections people may have to the President have no place in this discussion, in terms of is he too cowardly to protect children from gun violence? Is he too cruel to protect Dreamers? Is he too in denial to understand climate change? The list goes on. Save that for the election.


This is about the facts relating to the Constitution and that is how we proceed with dignity, with respect, prayerfully and, again, worthy of the sacrifice of our Founders; the sacrifice of our men and women in uniform who fight for our freedom; and the aspirations of our children, so they'll live under future presidents who will honor the Constitution of the United States.

Thank you all very much.

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Dear Colleague on Next Steps in House's Ongoing Impeachment Inquiry | Speaker Nancy Pelosi

NEWSROOM

Dear Colleague on Next Steps in House's Ongoing Impeachment Inquiry

OCTOBER 28, 2019 PRESS RELEASE

H. Res. ____ (<https://rules.house.gov/bill/116/h-res-PIH-inquiry>) — Directing certain committees to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America, and for other purposes.

Dear Democratic Colleague,

For weeks, the President, his Counsel in the White House, and his allies in Congress have made the baseless claim that the House of Representatives' impeachment inquiry "lacks the necessary authorization for a valid impeachment proceeding." They argue that, because the House has not taken a vote, they may simply pretend the impeachment inquiry does not exist.

Of course, this argument has no merit. The Constitution provides that the House of Representatives "shall have the sole Power of Impeachment." Multiple past impeachments have gone forward without any authorizing resolutions. Just last week, a federal court confirmed that the House is not required to hold a vote and that imposing such a requirement would be "an impermissible intrusion on the House's constitutional authority." More than 300 legal scholars have also refuted this argument, concluding that "the Constitution does not mandate the process for impeachment and there is no constitutional requirement that the House of Representatives authorize an impeachment inquiry before one begins."

The Trump Administration has made up this argument – apparently out of whole cloth – in order to justify its unprecedented cover-up, withhold key documents from multiple federal agencies, prevent critical witnesses from cooperating, and defy duly authorized subpoenas.

This week, we will bring a resolution to the Floor that affirms the ongoing, existing investigation that is currently being conducted by our committees as part of this impeachment inquiry, including all requests for documents, subpoenas for records and testimony, and any other investigative steps previously taken or to be taken as part of this investigation.

This resolution establishes the procedure for hearings that are open to the American people, authorizes the disclosure of deposition transcripts, outlines procedures to transfer evidence to the Judiciary Committee as it considers potential articles of impeachment, and sets forth due process rights for the President and his Counsel.

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We are taking this step to eliminate any doubt as to whether the Trump Administration may withhold documents, prevent witness testimony, disregard duly authorized subpoenas, or continue obstructing the House of Representatives.

Nobody is above the law.

best regards,

Nancy

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Pelosi Floor Speech in Support of Resolution for Open Hearings on Trump's Abuse of Power | Speaker Nancy Pelosi

NEWSROOM

Pelosi Floor Speech in Support of Resolution for Open Hearings on Trump's Abuse of Power

OCTOBER 31, 2019 PRESS RELEASE

Washington, D.C. – Speaker Nancy Pelosi delivered remarks on the Floor of the House of Representatives in support of H. Res. 660, which establishes the procedure for the next phase of the House's impeachment inquiry. Below are the Speaker's remarks:

Speaker Pelosi: I thank the gentleman for yielding.

And, Madam Speaker, thank you for the recognition.

I want to begin my remarks [with] some of the most beautiful words in our country's history: 'We the people of the United States, in order to form a more perfect union, establish justice, ensure domestic tranquility, provide for the common defense, promote the general welfare and secure the blessings of liberty to ourselves and to our posterity to ordain and establish this Constitution of the United States.'

It goes on, immediately, to establish Article I, the Legislative Branch; Article II, the Executive Branch; Article III, the Judiciary. The genius of the Constitution, a separation of powers: three co-equal branches of government to be a check and balance on each other. And, it's to that that we take the oath of office. We gather here on that opening day with our families gathered round to proudly raise our hands to protect and defend the Constitution of the United States. And, that is exactly what we are doing today.

Sadly, this is not any cause for any glee or comfort. This is something that is very solemn, that is something prayerful. And, that we had to gather so much information to take us to this next step.

Again, this is a solemn occasion. Nobody, I doubt anybody in this place, or anybody that you know, comes to Congress to take the oath of office, comes to Congress to impeach the President of the United States, unless his actions are jeopardizing our honoring our oath of office.

I'm grateful to our Committee Chairs for all the careful and thoughtful investigation they have been doing as this inquiry has proceeded. Today, the House takes the next step forward as we establish the procedures for open hearings, conducted by the House Intelligence Committee, so that the public can see the facts for themselves.

This resolution ensures transparency, advancing public disclosure of depositions transcripts and outlining the procedures for the transfer of evidence to the Judiciary Committee to use in its proceedings.

It enables effective public hearings: setting out procedures for the questioning of witnesses and continuing the precedent of giving the Minority the same rights in questioning witnesses as the Majority, which has been true at every step of this inquiry despite what you might hear.

It provides the President and his counsel opportunities to participate, including presenting his case, submitting requests for testimony, attending hearings, raising objections to testimony given, cross-examining witnesses and more. And, contrary to what you heard

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today, we gave more opportunity to the – to his case than was given to other Presidents before. And, thank you, Mr. Chairman, for making that point so clearly.

These actions, this process, these open hearings, seeking the truth and making it available to the American people, will inform Congress on the very difficult decisions we will have to make in the future as to whether to impeach the President.

That decision has not been made. That's what the inquiry will investigate and then we can make the decision, based on the truth. I don't know why the Republicans are afraid of the truth. Every Member should support allowing the American people to hear the facts for themselves. This – that is really what this vote is about. It is about the truth.

And, what is at stake? What is at stake, in all of this, is nothing less than our democracy.

I proudly stand next to the flag, and I thank the gentleman from New York for providing it for us. This flag, so many have fought and died for this flag, which stands for our democracy.

When Benjamin Franklin came out of Independence Hall – you heard this over and over – on September 17, 1787, the day our Constitution was adopted, he came out of Independence Hall, people said to him, 'Dr. Franklin, what do we have a monarchy or a republic?' And, he said, as you know, he said, 'A republic, if we can keep it.' If we can keep it.

And this Constitution is the blueprint for our republic and not a monarchy. But, when we have a President who says, 'Article II says I can do whatever I want,' that is in defiance of the separation of powers. That's not what our Constitution says.

So, what is at stake is our democracy. What are we fighting for? Defending our democracy for the people.

You know in the early days of our revolution, Thomas Paine said, 'The times have found us.' The times found our Founders to declare independence from a monarchy, to fight a war of independence, write our founding documents and thank God they made them amendable so we can always be expanding freedom. And, the genius, again that genius of that Constitution was the separation of power. Any usurping of that power is a violation of our oath of office.

So, proudly, you all, we all raised our hands to protect and defend and support the Constitution of the United States. That's what this vote is about.


Today – we think the time found our Founders, the times found others in the course of our history to protect our democracy, to keep our country united. The times have found each and every one of us in this room and in our country to pay attention to how we protect and defend the Constitution of the United States – honoring the vision of our Founders who declared independence from a monarch and established a country contrary to that principle, honoring men and women in uniform who fight for our freedom and for our democracy and honoring the aspirations of our children so that no President, whoever he or she may be in the future, could decide that Article II says they can do whatever they want.


Again, let us honor our oath of office. Let us defend our democracy. Let us have a good vote today and have clarity, clarity as to how we proceed, why we proceed, and again, doing so in a way that honors the Constitution. We must honor the Constitution and how we do this. We must respect the institution we serve. And, we must heed the further words of our Founders, 'E pluribus unum,' from many one. They didn't know how many we would be, or how different we would be, but they knew we needed to always be unify.

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Hopefully, as we go forward with this, the clarity of purpose, the clarity of procedure,
a clarity of fact, a clarity of truth about the truth – it's about the Constitution – we will do so
in a way that brings people together that is healing rather than dividing. And, that is how
we will honor our oath of office.

I urge an aye vote and yield back the balance of my time.

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Resolution for Open Hearings on Trump's Abuse of

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Trump's Abuse of Power)

United States Senate

WASHINGTON, DC 20510

September 27, 2019

VIA ELECTRONIC TRANSMISSION

The Honorable William Barr
Attorney General
Department of Justice

Dear Attorney General Barr:

We write to follow up on Senator Grassley's July 20, 2017 letter, which highlighted brazen efforts by the Democratic National Committee and Hillary Clinton campaign to use the government of Ukraine for the express purpose of finding negative information on then-candidate Trump in order to undermine his campaign.¹ That letter also highlighted news reports that, during the 2016 presidential election, "Ukrainian government officials tried to help Hillary Clinton and undermine Trump" and did so by "disseminat[ing] documents implicating a top Trump aide in corruption and suggest[ing] they were investigating the matter[.]"² Ukrainian officials also reportedly "helped Clinton's allies research damaging information on Trump and his advisers."³

At the center of this plan was Alexandra Chalupa, described by reports as a Ukrainian-American operative "who was consulting for the Democratic National Committee" and who reportedly met with Ukrainian officials during the presidential election for the express purpose of exposing alleged ties between then-candidate Donald Trump, Paul Manafort, and Russia.⁴ *Politico* also reported on a *Financial Times* story that quoted a Ukrainian legislator, Serhiy Leschenko, as saying that Trump's candidacy caused "Kiev's wider political leadership to do something they would never have attempted before: intervene, however indirectly, in a U.S. election."⁵

The July 20, 2017 letter further noted that the Democratic National Committee encouraged Chalupa to work with Ukrainian embassy staff to "arrange an interview in which Poroshenko [the president of Ukraine] might discuss Manafort's ties to Yanukovych."⁶ In March 2016, Chalupa met with Valeriy Chaly, Ukraine's ambassador to the U.S., and Oksana Shulyar, a top aid to the Ukrainian ambassador, to share her alleged concerns about Manafort. Reports state that the purpose of that initial meeting was to "organize a June reception at the embassy to promote Ukraine." However, another Ukrainian embassy official, Andrii Telizhenko, told

¹ Letter from Hon. Charles E. Grassley, Chairman, Senate Committee on the Judiciary, to Hon. Rod J. Rosenstein, Attorney General, U.S. Department of Justice (July 20, 2017), available at <https://www.grassley.senate.gov/sites/default/files/constituents/2017-0720%20CEG%20to%20DOJ%20%28Ukraine%20DNC%20FARA%29.pdf>.

² *Id.*

³ Kenneth P. Vogel & David Stern, *Ukrainian efforts to sabotage Trump backfire*, *POLITICO* (Jan. 11, 2017), <https://www.politico.com/story/2017/01/ukraine-sabotage-trump-backfire-233446>.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Politico that Shulyar instructed him to assist Chalupa with research to connect Trump, Manafort, and the Russians. He reportedly said, “[t]hey were coordinating an investigation with the Hillary team on Paul Manafort with Alexandra Chalupa” and that “Oksana [Shulyar] was keeping it all quiet...the embassy worked very closely with” Chalupa.⁷ In a May 2019 article, Telizhenko was quoted as saying,

[Chalupa] said the DNC wanted to collect evidence that Trump, his organization and Manafort were Russian assets, working to hurt the U.S. and working with [Russian President Vladimir] Putin against the U.S. interests. She indicated if we could find the evidence they would introduce it in Congress in September and try to build a case that Trump should be removed from the ballot, from the election.⁸

Reportedly, Telizhenko was instructed by the Ukrainian government to meet with an American journalist about Paul Manafort’s ties to Ukraine.⁹ In addition, in May 2016, Chalupa emailed a DNC official stating that she met with 68 Ukrainian investigative journalists about Manafort and that there would be “[a] lot more coming down the pipe.”¹⁰ Less than a month later, the “black ledger” identifying payments made to Manafort from Ukrainian politicians was announced in Ukraine.¹¹ And finally, Nellie Ohr, the wife of Justice Department official Bruce Ohr, stated during a congressional interview that Fusion GPS used Serhiy Leschenko, a Ukrainian politician that admitted Ukraine intervened in the 2016 election, as a source for derogatory material against then-candidate Trump.¹²

After two years, more than 2,800 subpoenas, approximately 500 search warrants and witness interviews, and \$30 million in taxpayer money, Robert Mueller reported that then-candidate Trump did not collude with the Russians or any other foreign government to interfere with the 2016 presidential election.¹³ In contrast, however, the Clinton campaign and Democratic National Committee hired Fusion GPS to conduct opposition research against candidate Trump, which included, among other efforts, the hiring of former British Intelligence Officer Christopher Steele to compile the “Steele Dossier” that reportedly used Russian government sources for information. These facts continue to raise concerns about foreign assistance in the 2016 election that have not been thoroughly addressed.

⁷ Kenneth P. Vogel & David Stern, *Ukrainian efforts to sabotage Trump backfire*, *POLITICO* (Jan. 11, 2017), <https://www.politico.com/story/2017/01/ukraine-sabotage-trump-backfire-233446>.

⁸ John Solomon, *Ukrainian Embassy confirms DNC contractor solicited Trump dirt in 2016*, *The Hill* (May 2, 2019), <https://thehill.com/opinion/white-house/441892-ukrainian-embassy-confirms-dnc-contractor-solicited-trump-dirt-in-2016>.

⁹ *Id.*

¹⁰ *Id.*
¹¹ John Solomon, *Ukrainian Embassy confirms DNC contractor solicited Trump dirt in 2016*, *The Hill* (May 2, 2019), <https://thehill.com/opinion/white-house/441892-ukrainian-embassy-confirms-dnc-contractor-solicited-trump-dirt-in-2016>; Jack Gillum et al., *Manafort firm received Ukraine ledger payout*, *AP* (Apr. 12, 2017), <https://www.apnews.com/20cfc75c82eb4a67b94c624e97207e23>.

¹² Transcript of Nellie Ohr Interview, Executive Session House Committee on the Judiciary joint with the Committee on Government Reform and Oversight (Oct. 19, 2018), <https://dougcollins.house.gov/sites/dougcollins.house.gov/files/10.19.18%20Nellie%20Ohr%20Interview.pdf>.

¹³ See generally DEP’T OF JUSTICE, OFF. OF SPECIAL COUNSEL, REPORT ON THE INVESTIGATION INTO RUSSIAN INTERFERENCE IN THE 2016 PRESIDENTIAL ELECTION (Mar. 2019), <https://www.justice.gov/storage/report.pdf>.

According to the Justice Department, U.S. Attorney John Durham is “exploring the extent to which...Ukraine, played a role in the counterintelligence investigation” during the 2016 election.¹⁴ However, the Justice Department has yet to inform Congress and the public whether it has begun an investigation into links and coordination between the Ukrainian government and individuals associated with the campaign of Hillary Clinton or the Democratic National Committee. Ukrainian efforts, abetted by a U.S. political party, to interfere in the 2016 election should not be ignored. Such allegations of corruption deserve due scrutiny, and the American people have a right to know when foreign forces attempt to undermine our democratic processes. Accordingly, please provide an answer to two questions from the July 2017 letter related to the Democrats’ collusion with Ukrainian officials:

1. Are you investigating links and coordination between the Ukrainian government and individuals associated with the campaign of Hillary Clinton or the Democratic National Committee? If not, why not?
2. Why hasn’t the Justice Department required Alexandra Chalupa to register as a foreign agent under FARA?

In addition, information has surfaced that raises new questions. A recent report described a note purporting to memorialize a meeting in Kiev between the Ukrainian Acting Prosecutor General, Yuriy Sevruck, and Burisma’s American legal team.¹⁵ Yuriy Sevruck was the temporary replacement for the Prosecutor General that Vice President Biden demanded be fired, Viktor Shokin. The note, reportedly written by Sevruck, states that “[t]he purpose of their visit was an apology for dissemination of false information by U.S. representatives and public figures on the activities of the Prosecutor General’s Office of Ukraine [Shokin] in regards to the investigation of criminal activities of Zlochevsky [Oligarch owner of Burisma Holdings].”¹⁶

The article also reports that Ukrainian prosecutors have unsuccessfully been trying to get information to Justice Department officials since the summer of 2018, possibly including “[h]undreds of pages of never-released memos and documents ... [that] conflict with Biden’s narrative”¹⁷ that his actions in Ukraine had nothing to do with his son’s connections to Burisma. In light of this reporting, has the Justice Department obtained or been offered documents from Ukrainian officials related to these matters? If so, what were those documents?

We respectfully request that you respond to all of these questions no later than October 14, 2019.

¹⁴ Jeff Mordock, *John Durham investigating Ukraine in Trump-Russia origins probe*, The Washington Times (Sept. 25, 2019), <https://www.washingtontimes.com/news/2019/sep/25/john-durham-probing-ukraine-as-part-of-trump-russi/>

¹⁵ John Solomon, *These once-secret memos cast doubt on Joe Biden’s Ukraine story*, The Hill (Sept. 26, 2019), <https://thehill.com/opinion/campaign/463307-solomon-these-once-secret-memos-cast-doubt-on-joe-bidens-ukraine-story>.

¹⁶ *Id.*

¹⁷ *Id.*

We anticipate that your written reply and most responsive documents will be unclassified. Please send all unclassified material directly to the Committee. In keeping with the requirements of Executive Order 13526, if any of the responsive documents do contain classified information, please segregate all unclassified material within the classified documents, provide all unclassified information directly to the Committees, and provide a classified addendum to the Office of Senate Security. Although the Committees comply with all laws and regulations governing the handling of classified information, they are not bound, absent their prior agreement, by any handling restrictions.

Thank you in advance for your prompt attention to these matters. Should you have any questions, please contact Joshua Flynn-Brown of Chairman's Grassley's staff at (202) 224-4515 or Brian Downey or Scott Wittmann of Chairman Johnson's staff at (202) 224-4751.

Sincerely,



Charles E. Grassley
Chairman
Senate Finance Committee



Ron Johnson
Chairman
Senate Homeland Security
and Governmental Affairs

1/8/2020

Trump kills plan to cut billions in foreign aid - POLITICO

POLITICO



POLITICO



Treasury Secretary Steven Mnuchin warned President Donald Trump cutting foreign aid would be detrimental to national security and to bipartisan negotiations ahead of a shutdown deadline. | Pablo Martinez Monsivais/AP Photo

CONGRESS

Trump kills plan to cut billions in foreign aid

By JOHN RICHMAN, JENNIFER SCHMITZ and MARIANNE LEVINE | 08/27/2019 01:14 PM EDT | Updated

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Trump kills plan to cut billions in foreign aid - POLITICO

The president's decision Thursday to forgo a "rescission" comes after another internal tug of war between his budget advisers and Cabinet officials. But the fiscal hawks in Trump's corner, failing again to sell him on spending restraint, blamed Congress for souring him on the idea.

"The president has been clear that there is fat in our foreign assistance and we need to be wise about where U.S. money is going," said a senior administration official. "Which is why he asked the administration to look into options to doing just that. It's clear that there are those on the Hill who aren't willing to join in curbing wasteful spending."

Treasury Secretary Steven Mnuchin, Secretary of State Mike Pompeo and several GOP lawmakers warned Trump over the last two weeks that the move would be detrimental to national security and to bipartisan negotiations ahead of another shutdown deadline.

The president's acting budget director, Russ Vought, and acting chief of staff Mick Mulvaney had both pushed Trump to pursue the plan.

Foreign aid advocates were quick to characterize Pompeo as a gutsy crusader against both fiscal hawks and progressive Democrats seeking to politicize foreign assistance.

"A huge shout-out to Secretary Pompeo who — for the second summer in a row — brought his swagger and fought for his department alongside strong bipartisan leadership in Congress," Liz Schrayner, head of U.S. Global Leadership Coalition, said in a statement.

The funding freeze would have been Trump's first big show of fiscal restraint since signing a budget deal into law this month that increases spending limits by about \$50 billion over current funding in each of the next two fiscal years. Behind the scenes, the president's budget advisers railed against the size of that bill, even as Trump encouraged GOP lawmakers to "Go for it" in passing the measure, promising "there is always plenty of time to CUT!"

Those cuts have yet to materialize, however, and congressional leaders say any funding freezes would undermine the tenets of the bipartisan budget deal congressional leaders struck through negotiations with Mnuchin.

In a letter Friday, House Speaker Nancy Pelosi said the foreign aid cuts Trump was

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Trump kills plan to cut billions in foreign aid - POLITICO

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House Budget Chairman John Yarmuth (D-Ky.) said Thursday that Trump's retreat from the rescission was "a win" for those who "pressured the White House" to nix the plan.

"The Constitution grants Congress the power of the purse, and we will not cede that authority to this Administration and their constant executive overreach," Yarmuth tweeted, referencing Trump administration decisions to dismiss the intent of congressional appropriators in funding projects like the president's border wall.

Senate Minority Leader Chuck Schumer said on Twitter that he hopes Trump "learned the lesson not to play games with the budget."

Before ultimately deciding to kill the plan altogether, the president privately considered lesser cuts Monday after a call with Mnuchin and Pompeo. Certain funding reductions might be "a pennywise," Trump said publicly on Tuesday, while others were "on the table very much."

Leaders at the Office of Management and Budget hatched the initial plan this month to force the expiration of \$2.3 billion for USAID and \$2 billion for the State Department, including \$787 million for U.N. international peacekeeping activities, \$522 million in core funding for the U.N. and \$364 million for a range of U.N. humanitarian and human rights programs.

Rep. Hal Rogers (R-Ky.), ranking member of the House Committee that oversees funding for the State Department, and Sen. Lindsey Graham (R-S.C.), a member of the Senate Foreign Relations and Appropriations committees, also sent a letter this month to Trump warning against the package.

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Burgess Everett contributed to this story.

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Thinking clearly about Trump and aid to Ukraine

by Byron York | October 20, 2019 10:33 PM

There's been a lot of confusion about what, exactly, President Trump's concerns were before withholding and later approving U.S. military aid to Ukraine. Mick Mulvaney, the acting White House chief of staff, made a hash of things during his much-discussed press conference on Thursday. Media coverage of Mulvaney's appearance just made things worse. So now, some clarification.

In various statements, the president or top aides have listed five reasons for his concern about U.S. aid to Ukraine:

1.) Trump's general dislike of foreign aid. "President Trump is not a big fan of foreign aid," Mulvaney said Thursday. "Never has been; still isn't. Doesn't like spending money overseas, especially when it's poorly spent."

Starting with his campaign and continuing from his first budget, Trump has proposed cutting U.S. foreign aid. Entirely apart from the Ukraine matter, Trump has on a number of occasions taken steps to block or slow the delivery of U.S. aid to a number of nations.

For example, in August 2018, the Office of Management and Budget directed the State Department to make a list of roughly \$3 billion in foreign aid that had not yet been spent. The White House's idea was to block the spending until the end of that fiscal year, Sept. 30, 2018, and then return it to the U.S. Treasury. But it took just a few weeks for the White House to back off its plan in the face of congressional opposition. This August, the OMB did the same thing, with the same result — except for Ukraine.

2.) Trump's concern that other countries do not contribute enough to foreign aid. This, again, is a point Trump has made many times, starting with his campaign and throughout his presidency. It was his main critique of NATO, and it is a concern that extends to Ukraine.

"We do a lot for Ukraine," Trump told President Volodymyr Zelensky in the July 25 phone conversation that started the Ukraine matter. "We spend a lot of effort and a lot of time. Much more than the 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."

While not fully accurate — Trump was wrong that other countries give little aid to Ukraine but right that they give little lethal military aid — the Zelensky conversation was a concise

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statement of Trump's attitude.

3.) Trump's general concern about corruption in Ukraine. The president believes Ukraine has a big corruption problem, and in that view, Trump is in line with previous administrations and the rest of the world. Trump would be unique if he did *not* think corruption was a major problem in Ukraine. "There is a long history of corruption and of basically Ukraine oligarchs getting their way in the Ukrainian system," a senior Obama administration official, reflecting a widely held view, said before one of then-Vice President Joe Biden's trips to Ukraine in December 2015.

There is also, of course, a long history of nations, including the United States, attaching anti-corruption conditions to aid to Ukraine. During a now-famous appearance in 2018, Biden recounted a March 2016 visit to Ukraine in which he insisted the government fire prosecutor general Viktor Shokin before receiving \$1 billion in U.S. loan guarantees. "I said, 'You're not getting the billion,'" Biden recalled. "I'm going to be leaving here in, I think it was about six 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," Biden said, delivering the punchline: "He got fired." Another condition successfully attached to U.S. aid to Ukraine.

4.) Trump's desire to see Ukraine assist in an inquiry of the Russia-2016 campaign investigation. To some readers, the most baffling portion of the Trump-Zelensky rough transcript was when Trump said, "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. There are a lot of things that went on, the whole situation."

It turned out that Trump was curious about a theory, one which appears to have no basis in fact, that someone in Ukraine somehow possesses the Democratic National Committee server that was hacked in 2016 and which the DNC did not let investigators examine. But there is a larger issue in what Trump said, and that is the ongoing Justice Department investigation into the origins of the Trump-Russia investigation. It's publicly known that John Durham, the U.S. attorney chosen by Attorney General William Barr to conduct the investigation, has been in contact with a number of foreign countries, including Ukraine, as part of the investigation. Trump has also heard from some Republicans that some Ukrainian officials had information to offer U.S. investigators. So he wanted Ukrainian assistance.

5.) Trump's desire to see Ukraine investigate the business dealings of Biden's son, Hunter. The final part of the president's view of foreign aid to Ukraine was his belief that the elder Biden, when he was vice president, might have corruptly pressed the Ukrainians to fire a prosecutor

— see above — to spare Hunter Biden, who had a suspiciously lucrative deal with the Ukrainian energy company Burisma.

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"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," Trump told Zelensky in the phone call. "Biden went around bragging that he stopped the prosecution, so if you can look into it ... It sounds horrible to me."

So there they are — the five reasons behind Trump's action on Ukraine. The first three are not only entirely legitimate but unremarkable. But there has been considerable controversy and confusion about the last two.

Trump's desire to see Ukraine assist in the 2016 "investigation of the investigation" was entirely reasonable. Mulvaney referred to "whether or not [Ukraine was] cooperating in an ongoing investigation with our Department of Justice — that's completely legitimate." In fact, some part of the U.S. government has been investigating the 2016 election since at least mid-2016. There is still an investigation going on — Durham's — and it would not be unusual for the government to want Ukraine to cooperate. After all, Robert Mueller's special counsel investigation sought and received the cooperation of several foreign countries. Investigating 2016 is something that has been standard procedure for the last few years.

It is the final reason — Trump's desire to see Ukraine investigate the Bidens — that set off the Ukraine affair. It differs fundamentally from the other four in that it would involve an investigation of a current political rival of the president. While a few Republicans and commentators have sought to defend Trump's request, others have suggested that the president should admit that it was improper but argue that it was simply not bad enough to warrant impeachment. "A truthful and sound defense," *National Review* editor Rich Lowry wrote recently, "would give ground on the impropriety of the focus on the Bidens, but emphasize that nothing came from any pressure campaign, which was quickly abandoned."

One fact that has gotten lost in the Mulvaney controversy is that the chief of staff clearly said Trump held up aid to Ukraine in part because he, Trump, wanted Ukraine to assist in the Durham investigation. At the same time, Mulvaney just as clearly denied that investigating the Bidens played any role in Trump's decision to withhold aid.

Some press coverage conflated the two and reported that Mulvaney had admitted Trump held up the aid while demanding Ukraine "investigate Democrats." Mulvaney, the *New York Times* said, "told reporters that military aid was held back in part to prod Ukraine to investigate Democrats." The *Washington Post* reported that Mulvaney admitted "that Trump withheld aid meant for Ukraine to push the government there to investigate Democrats."

But that is not what Mulvaney said at all. Investigating the roots of the Trump-Russia investigation is not "investigating Democrats." It is investigating the actions of U.S. intelligence

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Thinking clearly about Trump and aid to Ukraine

and law enforcement agencies during the 2016 campaign. Holding back aid to force Ukraine to investigate the Bidens would be "investigating Democrats," but Mulvaney specifically denied that Trump did that.

So the story is more complicated than some press coverage suggests. Four of Trump's reasons for withholding aid were legitimate. The fifth was not. But the fact remains that the president had acceptable reasons to temporarily hold back aid. There's more to the story than just Trump's fifth reason. And on that, perhaps the president should just take Lowry's advice and move on.

Testimony: How Trump helped Ukraine

by Byron York | November 07, 2019 01:52 AM

One notable and little-reported conclusion emerging from the House Democratic impeachment proceedings is a consensus among some foreign policy professionals that President Trump's Ukraine policy has been an improvement over President Barack Obama's.

Ukraine was an occasionally hot issue in the 2016 campaign for all the wrong reasons. At the Republican convention, a false headline in the *Washington Post*, "Trump campaign guts GOP's anti-Russia stance on Ukraine," gave birth to a false narrative that candidate Trump, desperate to appease Vladimir Putin, would undermine U.S. support for Ukraine in the face of Russian aggression.

Then Trump became president, and his administration enacted a new policy that not only continued a broad range of assistance to Ukraine but also expanded that aid to include the provision of Javelin anti-tank missiles — the so-called "lethal aid" that the Obama administration had declined to provide.

The Trump aid program has significantly helped Ukraine defend itself against Russia, according to three career foreign policy officials whose impeachment investigation testimony has been released in recent days: William Taylor, the highest-ranking American diplomat in Ukraine; Kurt Volker, the former U.S. special envoy for Ukraine; and Marie Yovanovitch, the former ambassador to Ukraine who was recalled by Trump in May.

Start with Taylor. Questioned by Republican lawyer Steve Castor, Taylor called Trump administration policy a "substantial improvement" over what came before.

"Once you joined the administration in Kiev, were you happy with the package of aid?" asked Castor.

"I was happy that we were providing aid," Taylor said. "It could always be more. But I was glad if it was coming. I would've been very unhappy if it didn't come."

"But the Trump administration had a package of aid to the Ukraine?"

"Yes."

"Including lethal defensive weapons?"

"Yes."

"Financial assistance?"

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Testimony: How Trump helped Ukraine

"I was very happy about that."

"And was that an improvement [over] years prior?"

"It was."

"Was it a substantial improvement?"

"It was a substantial improvement, in that this administration provided Javelin anti-tank weapons," Taylor explained. The shoulder-fired missiles, he said, "successfully deter Russians from trying to grab more territory."

"They were also a very strong political message that said that Americans were willing to provide more than blankets," Taylor continued. "I mean, that was the previous. And these weapons are serious weapons. They kill Russian tanks. So these were serious weapons. It was a demonstration that we support Ukraine."

The "provide more than blankets" line was a clear reference to the Obama administration's refusal to provide lethal aid to Ukraine. There is much commentary today slamming Trump for temporarily delaying the delivery of aid over the summer — that is the core of the Democrats' impeachment case — but the fact is, when it comes to lethal aid, Trump provided what Obama did not.

Then there was Volker.

"There has been U.S. assistance provided to Ukraine for some time," he told the House. "Under the Bush administration, Obama administration, and now under the Trump administration. I was particularly interested in the security assistance and lethal defensive weapons. The reason for this is this was something that the Obama administration did not approve. They did not want to send lethal defensive arms to Ukraine. I fundamentally disagreed with that decision."

"I thought that this is a country that is defending itself against Russian aggression," Volker continued. "They had their military largely destroyed by Russia in 2014 and 2015 and needed the help. And humanitarian assistance is great, and nonlethal assistance, you know MREs and blankets and all, that's fine, but if you're being attacked with mortars and artilleries and tanks, you need to be able to fight back."

"And has the lethal defensive arms that have been provided to date, has that been helpful?" asked Castor.

"It has been extremely helpful."

"And ... you can see materially that this is helping the country of Ukraine?"

"Absolutely."

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Testimony: How Trump helped Ukraine

Yovanovitch, removed from her post by Trump, was less inclined to give the president credit for anything. But even she admitted that her preferred policy in Ukraine — lethal aid — became reality under Trump.

"Can you testify to the difference the changes in aid to Ukraine with the new administration starting in 2017?" Castor asked. "The different initiatives, you know, as far as providing lethal weapons and — "

"Yeah, well, I think that most of the assistance programs that we had, you know, continued," Yovanovitch answered, "and due to the generosity of the Congress actually increased."

"In terms of lethal assistance," she continued, "We all felt it was very significant that this administration made the decision to provide lethal weapons to Ukraine."

"Did you advocate for that?"

"Yes."

"And did you advocate for that prior to the new administration back in 2016?"

"Well, yeah."

Despite Yovanovitch's advocacy, that aid never came from Obama. From Trump, it did. Amid all the accusations flying around in the Democratic impeachment campaign, it's important to remember that basic fact.

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Extortion: Democrats test new charge against Trump

by Byron York | October 17, 2019 01:36 PM

In recent weeks, some Democrats have struggled to cite a crime committed by President Trump in the Ukraine affair. While the Intelligence Community inspector general suggested the president might have violated campaign finance laws, Democrats have generally not specified what law or laws Trump might have broken — instead pointing out that, beyond treason and bribery, the Constitution does not list particular offenses that qualify for removal from office. The House has wide discretion in deciding what conduct, criminal or not, is impeachable.

Now, however, Democrats appear to be testing a new charge: The president committed extortion.

"We have a crime — extortion," Democratic Rep. Eric Swalwell told Fox News' Martha MacCallum Wednesday.

"You've already decided there was a crime?" asked MacCallum.

"Yes, that's why we're doing this," said Swalwell. "A crime was committed. We're now looking at the suspect, the president, who confessed to the crime, by the way."

The Democratic idea, apparently, is that Trump withheld U.S. military aid for Ukraine as part of a demand that Ukraine investigate the Bidens and events in Ukraine connected to the 2016 election. That is the alleged extortion to which Trump has "confessed," according to Swalwell.

Democrats encountered a problem with that theory early on in their investigation during an interview with Kurt Volker, the former U.S. special envoy to Ukraine. Rep. Adam Schiff, the Intelligence Committee chairman leading the Democratic impeachment effort, pushed Volker to say that the Ukrainians felt great pressure because Trump was withholding aid as he demanded an investigation.

Withholding the aid would give Trump "tremendous leverage" over Ukraine, Schiff said. "If it's inappropriate for a president to seek foreign help in a U.S. election, it would be doubly so if a president was doing that at a time when the United States was withholding military support from the country," he added.

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Extortion: Democrats test new charge against Trump

Volker said the problem with Schiff's scenario was that events did not unfold as he said. During the time in question, Ukrainian officials did not know that the U.S. aid was being withheld, Volker said; they learned that in late August, while the notorious Trump phone conversation with Ukrainian President Volodymyr Zelensky was in late July. In addition, Volker explained, relations with the U.S. seemed to be good even though the Ukrainians did nothing that Trump mentioned in that call — no investigation and no public statement announcing an inquiry.

"To my knowledge, the news about a hold on security assistance did not get into Ukrainian government circles ... until the end of August," Volker testified. "And by the time that we had that, we had dropped the idea of even looking at a statement."

Still, Schiff insisted that Trump's call to Zelensky came in "the context of withholding foreign assistance." Volker said no, it did not.

"Congressman, this is why I'm trying to say the context is different, because at the time they learned that [aid was being withheld], if we assume it's August 29th, they had just had a visit from the national security advisor, John Bolton. That's a high-level meeting already. He was recommending and working on scheduling the visit of President Zelensky to Washington. We were also working on a bilateral meeting to take place in Warsaw on the margins of a commemoration on the beginning of World War II. And in that context, I think the Ukrainians felt like things are going the right direction, and they had not done anything on — they had not done anything on an investigation, they had not done anything on a statement, and things were ramping up in terms of their engagement with the administration. So I think they were actually feeling pretty good then."

Volker's comments came after an extended back-and-forth in which Schiff tried to get him to say that yes, the Ukrainians felt pressured. Volker never did; at one point, an apparently frustrated Schiff said, "Ambassador, you're making this much more complicated than it has to be."

The Schiff-Volker exchange makes more sense in light of a Democratic effort to show that President Trump committed extortion.

Extortion is a real crime and a word that is familiar to most Americans. People have actually been convicted of extortion. Contrast that to the alleged campaign finance violation some had discussed in relation to the Ukraine affair, in which the information gained from a Ukrainian investigation into the Bidens, if given to Trump, would be a "thing of value" and thus an illegal foreign campaign contribution. It was, to say the least, a stretch, and one that few Americans would likely understand.

But extortion is different. "We have a crime — extortion," said Swalwell.

1/8/2020

Extortion: Democrats test new charge against Trump

"There was a concerted effort by this president and his White House to essentially extort the new president of Ukraine," said Democratic Rep. Gerry Connolly on CNN Wednesday.

"The president was attempting to extort the Ukrainian government," said Democratic Rep. John Garamendi on CNN Sunday. "The result of that extortion is, the president will be impeached."

The extortion charge has also popped up among commentators in recent days. In a sense, it is being test-marketed. Democrats do not need to cite a crime allegedly committed by the president in order to impeach him. But they do need to sell their case to the American people. And an accusation of extortion could help them do it.

1/8/2020

Pelosi calls Trump's actions 'bribery' as Democrats sharpen case for impeachment - The Washington Post

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Democrats sharpen impeachment case, decrying 'bribery' as another potential witness emerges linking Trump to Ukraine scandal

By **Mike DeBonis** and **Toluse Olorunnipa**

November 14, 2019 at 8:44 p.m. EST

Democrats sharpened their case for impeachment Thursday, escalating their rhetoric against President Trump as additional evidence emerged potentially implicating him directly in the abuse-of-power controversy surrounding U.S. relations with Ukraine.

Using her most aggressive language yet, House Speaker Nancy Pelosi (D-Calif.) accused Trump of committing "bribery" by seeking to use U.S. military aid as leverage to pressure the Ukrainian government to conduct investigations that could politically benefit the president.

Pelosi's move to cite a specific constitutional offense and move away from using the lawyerly Latin term "quid pro quo" to describe the president's actions came as a second official from the U.S. Embassy in Kyiv was revealed to have overheard Trump discussing political "investigations" in a July 26 phone call with Gordon Sondland, the U.S. ambassador to the European Union who served as a key liaison



Impeachment Inquiry



AD

That phone call, which Trump has said he doesn't recall, is expected to play a pivotal role in upcoming impeachment proceedings, as Democrats seek to directly tie Trump to what they charge was a bribery scheme worthy of removal from office. David Holmes, an embassy staffer in Ukraine who allegedly overheard Trump discussing "investigations" with Sondland, is slated to testify behind closed doors in the House impeachment probe Friday.

Democrats have seized on Holmes's allegation — which was revealed Wednesday during testimony by William B. Taylor Jr., the acting U.S. ambassador to Ukraine — as evidence of Trump's culpability in impeachable offenses.

Pelosi said Thursday that testimony by Taylor and Deputy Assistant Secretary of State George Kent highlighted how Trump had abused his power. Both senior diplomats testified that it was inappropriate for Trump and his allies to push for investigations targeting former vice president Joe Biden, a 2020 presidential candidate, and a debunked theory about Ukrainian interference in the 2016 election.

AD

“The devastating testimony corroborated evidence of bribery uncovered in the inquiry and that the president abused power and violated his oath by threatening to withhold military aid and a White House meeting in exchange for an investigation into his political rival,” Pelosi said at her weekly news conference.

In response, the White House and congressional Republicans have emphasized the diplomats’ lack of firsthand knowledge of Trump’s actions on Ukraine.

GOP lawmakers argued that Kent and Taylor have never spoken directly to Trump — and therefore cannot say with confidence that he tried to strong-arm a U.S. ally into doing him political favors.

AD

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Pelosi calls Trump's actions 'bribery' as Democrats sharpen case for impeachment - The Washington Post

"Their understanding, which is the foundation of the case for the Democrats, was based on secondhand information," House Minority Leader Kevin McCarthy (R-Calif.) told reporters Thursday.

For his part, Trump continued to complain about the impeachment proceedings.

"This Impeachment Hoax is such a bad precedent and sooo bad for our Country!" he wrote on Twitter.

On Friday, the impeachment hearings will continue with public and private testimony.

Marie Yovanovitch, the former ambassador to Ukraine who was recalled earlier this year by Trump, is scheduled to appear at an open hearing of the House Intelligence Committee.

Yovanovitch said in an Oct. 11 deposition that she was the target of a smear campaign to orchestrate her removal that involved Trump's personal attorney Rudolph W. Giuliani and Ukrainian officials suspected of fostering corruption, according to a transcript.

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Pelosi calls Trump's actions 'bribery' as Democrats sharpen case for impeachment - The Washington Post

While Yovanovitch's testimony could help Democrats build a broad case that Trump and Giuliani were using conspiracy theories and shadowy arrangements to advance their personal and political interests in Ukraine, Holmes's private testimony is expected to be more critical to the central thrust of the impeachment inquiry.

In his testimony Wednesday, Taylor quoted the embassy staffer saying that after he overheard Trump inquire about "the investigations" on a phone call with Sondland, he heard Sondland tell the president "that the Ukrainians were ready to move forward." The aide also said Sondland later described Trump as more interested in "the investigations of Biden, which Giuliani was pressing," than Ukraine policy, Taylor testified. Taylor did not name the staff member, but several people familiar with the situation have confirmed it was Holmes.

Suriya Jayanti, a Foreign Service officer based at the U.S. Embassy in Kyiv, also overheard the phone call that was described by Taylor, according to a person familiar with the matter, who spoke on the condition of anonymity Thursday to discuss a matter involved in the impeachment proceedings. It's not clear if Democrats will seek testimony from Jayanti.

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The July 26 call came a day after Trump pushed for investigations into Biden and a debunked conspiracy theory about Ukrainian election meddling during a conversation with Ukrainian President Volodymyr Zelensky.

While Republicans have struggled to rally around a consistent defense of Trump in the face of weeks of incriminating revelations, on Thursday they sought to undermine the witness testimony by dismissing it as "hearsay."

Rep. Douglas A. Collins (R-Ga.), who is not a member of the House Intelligence Committee, took to Twitter during the hearing for a bit of amplification. He posted a scene from the 1986 movie "Ferris Bueller's Day Off" in which a character explains the protagonist's absence from class: "My best friend's sister's boyfriend's brother's girlfriend heard from this guy who knows this kid who's going with the girl who saw Ferris pass out at 31 Flavors last night."

AD

"A live look into Ambassador Taylor's testimony in the Schiff impeachment proceedings," Collins wrote.

1/8/2020

Pelosi calls Trump's actions 'bribery' as Democrats sharpen case for impeachment - The Washington Post

The strategy, however, could be risky. Witnesses with firsthand knowledge of some of the president's actions are set to testify publicly next week, including Sondland, and others are currently being blocked by the White House.

One longtime career employee at the White House Office of Management and Budget is expected to break ranks and testify behind closed doors Saturday, potentially filling in important details on the holdup of military aid to Ukraine. Mark Sandy would be the first OMB employee to testify in the inquiry, after OMB acting director Russell T. Vought and two other political appointees at the agency defied congressional subpoenas to appear.

AD

But unlike these other OMB officials, Sandy is a career employee, not one appointed by the president. He has worked at the agency off and on for over a decade, under presidents of both parties, climbing the ranks to his current role as deputy associate director for national security programs.

1/9/2020

Pelosi calls Trump's actions 'bribery' as Democrats sharpen case for impeachment - The Washington Post

Sandy could provide insight into the process by which Trump's White House held up \$400 million in military and security aid to Ukraine over the summer. So far, none of Trump's defenders have provided a clear explanation for why the aid was frozen, only to be released after a whistleblower came forward with a report that was flagged to Congress.

In a message to Trump and in response to the GOP criticism, Pelosi said, "If the president has something that is exculpatory — Mr. President, that means you have anything that shows your innocence — then he should make that known."

AD

Pelosi's embrace of the term bribery — one of only two crimes specifically cited in the Constitution as impeachable — comes after nearly two months of debate over whether Trump's conduct amounted to a "quid pro quo" — a Latin term describing an exchange of things of value.

Bribery, Pelosi suggested, amounted to a translation of quid pro quo that would stand to be more accessible to Americans: "Talking Latin around here: E pluribus unum — from many, one. Quid pro quo — bribery. And that is in the Constitution, attached to the impeachment proceedings."

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Pelosi calls Trump's actions 'bribery' as Democrats sharpen case for impeachment - The Washington Post

Article II of the Constitution holds that the president and other civil federal officials “shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”

Several Democrats have stopped using the term “quid pro quo,” instead describing “bribery” as a more direct summation of Trump’s alleged conduct.

The shift came after the Democratic Congressional Campaign Committee conducted focus groups in key House battlegrounds in recent weeks, testing messages related to impeachment. Among the questions put to participants was whether “quid pro quo,” “extortion” or “bribery” was a more compelling description of Trump’s conduct. According to two people familiar with the results, which circulated among Democrats this week, the focus groups found “bribery” to be most damning. The people spoke on the condition of anonymity because the results have not been made public.

Rep. Jim Himes (D-Conn.), a House Intelligence Committee member, kicked off the effort to retire “quid pro quo” from the Democratic vocabulary during a Sunday appearance on NBC’s “Meet the Press,” where he said “it’s probably best not to use Latin words” to explain Trump’s actions.

On Thursday, he told reporters that “bribery” was a useful, if not altogether precise way to summarize the allegations.

“Abuse of power is not necessarily a concept that most Americans run around thinking about,” he said. “In this case, the abuse of power was some combination of bribery and extortion.”

GOP lawmakers said the shift in messaging would do little to change public perception of the impeachment effort.

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Pelosi calls Trump's actions 'bribery' as Democrats sharpen case for impeachment - The Washington Post

"They're trying a different narrative to see if that works," said Rep. Brad Wenstrup (R-Ohio), a House Intelligence Committee member. "'Quid pro quo' was squashed. If it wasn't, they would still be saying it, right? And, so, now they'll try a different term."

Sondland, however, told lawmakers that he never talked to Trump about leveraging military aid and a head-of-state meeting with Ukraine on a promise to investigate the Bidens, a major discrepancy he will be pushed to clear up next week.

Both parties are seeking to sharpen their messaging ahead of critical testimony next week, including an open hearing Wednesday featuring Sondland. The Trump donor and diplomat has previously amended his private testimony to confirm that he told Ukrainian officials that they needed to announce political investigations to obtain frozen military assistance and a meeting with Trump.

Sondland told at least four Trump officials that the president personally oversaw the entire operation, and his alleged July 26 phone call with the president could become a key piece of incriminating evidence establishing Trump's personal interest in orchestrating Ukrainian investigations into Biden and his son, Hunter.

Paul Sonne, Erica Werner, John Wagner, Rachael Bade and Josh Dawsey contributed to this report.

Impeachment: What you need to read

Updated December 30, 2019

Here's what you need to know to understand the impeachment of President Trump.

What's happening now: Trump is now the third U.S. president to be impeached, after the House of Representatives adopted both articles of impeachment against him.

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Pelosi calls Trump's actions 'bribery' as Democrats sharpen case for impeachment - The Washington Post

What happens next: Impeachment does not mean that the president has been removed from office. The Senate must hold a trial to make that determination. A trial is expected to take place in January. Here's more on what happens next.

How we got here: A whistleblower complaint led Pelosi to announce the beginning of an official impeachment inquiry on Sept. 24. Closed-door hearings and subpoenaed documents related to the president's July 25 phone call with Ukrainian President Volodymyr Zelensky followed. After two weeks of public hearings in November, the House Intelligence Committee wrote a report that was sent to the House Judiciary Committee, which held its own hearings. Pelosi and House Democrats announced the articles of impeachment against Trump on Dec. 10. The Judiciary Committee approved two articles of impeachment against Trump: abuse of power and obstruction of Congress.

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1/8/2020

Why not call it a 'bribe'? Democrats have focus group-tested their impeachment strategy for maximum effect

Why not call it a 'bribe'? Democrats have focus group-tested their impeachment strategy for maximum effect

by Becket Adams | November 15, 2019 02:40 PM

NBC News and Reuters were savaged by the anti-Trump #Resistance this week for warning that Democrats would miss their opportunity to move public opinion in support of removing President Trump from office if the impeachment hearings fail to capture the attention of the general electorate.

Not only is this analysis correct, but NBC and Reuters are also not alone in recognizing that Democrats need to appeal to more than just obsessively engaged former Russia-gate activists. Democratic leaders themselves recognize this, too, which is why they are workshopping their talking points and buzzwords for maximum impact and reach.

Democrats have, for example, retired the term "quid pro quo" for the simpler term "bribery," claiming the latter more accurately conveys the nature of the case against Trump. But there is more to the story, according to the *Washington Post*. Democrats shelved "quid pro quo" after private polling found "bribery" packed more of a punch with survey respondents.

"[T]he Democratic Congressional Campaign Committee conducted focus groups in key House battlegrounds in recent weeks, testing messages related to impeachment," the *Washington Post* reports. "Among the questions put to participants was whether 'quid pro quo,' 'extortion' or 'bribery' was a more compelling description of Trump's conduct."

It adds, "According to two people familiar with the results, which circulated among Democrats this week, the focus groups found 'bribery' to be most damning. The people spoke on the condition of anonymity because the results have not been made public."

You may not have even noticed the disappearance of the more accurate "quid pro quo," which had been used previously in every Democrat's speech and in every newsroom from New York City to Los Angeles.

Rep. Jim Himes of Connecticut, who sits on the House Intelligence Committee, led the charge to retire "quid pro quo" in favor of "bribery," saying this weekend on NBC News that "it's probably best not to use Latin words" to explain Trump's behavior.

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Why not call it a 'bribe'? Democrats have focus group-tested their impeachment strategy for maximum effect

Later, on Thursday, he said "bribery" was a more useful term, claiming it more precisely conveys the president's alleged actions.

"Abuse of power' is not necessarily a concept that most Americans run around thinking about," he said. "In this case, the abuse of power was some combination of bribery and extortion."

Trading "quid pro quo" for "bribery" means describing Trump's actions less accurately — bribes, after all, involve financially valuable personal gifts given in exchange for official acts. But the word might yet assist Democrats in their overall effort to make impeachment matter to more people.

1/8/2020

House is investigating whether Trump lied to Mueller, general counsel tells court - The Washington Post

The Washington Post

Democracy Dies in Darkness

House is investigating whether Trump lied to Mueller, its general counsel told a federal appeals court

By **Ann E. Marimow**, **Spencer S. Hsu** and **Rachael Bade**

November 18, 2019 at 9:50 p.m. EST

House investigators are examining whether President Trump lied to former special counsel Robert S. Mueller III, the House general counsel told a federal appeals court Monday in Washington.

The statement came during arguments over Congress's demand for the urgent release of secret grand jury evidence from Mueller's probe of Russia's 2016 election interference, with House lawyers detailing fresh concerns about Trump's truthfulness that could become part of the impeachment inquiry.

The hearing followed Friday's conviction of longtime Trump friend Roger Stone for lying to Congress. Testimony and evidence at his trial appeared to cast doubt on Trump's written answers to Mueller's questions, specifically about whether the president was aware of his campaign's attempts to learn about the release of hacked Democratic emails by the anti-secrecy group WikiLeaks.



Impeachment inquiry



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House is investigating whether Trump lied to Mueller, general counsel tells court - The Washington Post

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“Did the president lie? Was the president not truthful in his responses to the Mueller investigation?” General Counsel Douglas N. Letter said in court.

“The House is now trying to determine whether the current president should remain in office,” Letter added. “This is something that is unbelievably serious and it’s happening right now, very fast.”

The U.S. Court of Appeals for the D.C. Circuit is reviewing a lower court’s ruling that orders the Justice Department to disclose evidence the House says it needs as it holds public hearings about Trump’s alleged effort to pressure his Ukrainian counterpart to investigate a potential 2020 political rival, former vice president Joe Biden, and his son Hunter Biden.

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House is investigating whether Trump lied to Mueller, general counsel tells court - The Washington Post

Last month, Chief U.S. District Judge Beryl A. Howell for the District of Columbia found that the House was legally engaged in a judicial process that exempts Congress from the secrecy rules that shield grand jury materials.

By day's end, the appeals court in a brief order said it would not immediately release the documents "pending further order of the court." The court also asked the House and the Justice Department for more briefings and set a Jan. 3 date for another hearing.

For weeks now, senior Democrats have been privately playing down the suggestion that Mueller's investigation is likely to be part of articles of impeachment against Trump, noting that it's merely a legal tactic to get information from the executive branch to inform other investigations.

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1/8/2020

House is investigating whether Trump lied to Mueller, general counsel tells court - The Washington Post

Behind the scenes, there's been debate among Democratic lawmakers about whether articles of impeachment should include obstruction of justice allegations detailed in Mueller's report. House Speaker Nancy Pelosi of California and her leadership team have wanted to keep the focus on Ukraine, according to four aides who spoke on the condition of anonymity to talk candidly. But some more liberal members, including several lawmakers on the House Judiciary panel, want to include charges surrounding Mueller's inquiry.

In asking the court to move swiftly because of the impeachment hearings, Letter said redacted sections of Mueller's report relating to former Trump campaign chairman Paul Manafort were critical to the House's inquiry into whether Trump had been truthful.

Letter also referred broadly to the recent evidence from Stone's trial concerning Manafort, without citing specific details.

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House is investigating whether Trump lied to Mueller, general counsel tells court - The Washington Post

At trial, former Trump deputy campaign manager Rick Gates testified that Stone spoke to then-candidate Trump about Stone's efforts to learn about WikiLeaks' plans, and that Manafort directed Gates to stay in touch with Stone so that Manafort could update the campaign, including Trump. Stephen K. Bannon, a onetime chief strategist for Trump, also testified at that trial about regularly discussing WikiLeaks with Stone.

In written responses to Mueller's questions, Trump said he had "no recollection of the specifics of any conversations" with Stone during that period or of Stone's communications with his campaign.

"I do not recall discussing WikiLeaks with him, nor do I recall being aware of Mr. Stone having discussed WikiLeaks with individuals associated with my campaign, although I was aware that WikiLeaks was the subject of media reporting and campaign-related discussion at the time," according to the president's written answers.

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House is investigating whether Trump lied to Mueller, general counsel tells court - The Washington Post

Trump said Monday he will “strongly consider” testifying in writing as part of the impeachment inquiry at the outset of a week in which eight current and former officials are scheduled to publicly testify about his controversial actions regarding Ukraine.

In morning tweets, Trump said he might take up Pelosi on a suggestion she made over the weekend.

The appeals case argued Monday is one of several separation-of-powers battles teed up for the Supreme Court. Trump’s private lawyers last week asked the high court to block a subpoena for his tax records from New York prosecutors and to stop a separate House subpoena for his personal and business records.

AD

At oral argument Monday, a majority of the three-member panel of Judges Judith W. Rogers, Thomas B. Griffith and Neomi Rao seemed inclined to uphold the House’s authority to obtain the grand jury records. But the judges also raised the possibility of putting the release on hold and having the House provide a lower court behind closed doors a more detailed showing of why it needed each disclosure it seeks.

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House is investigating whether Trump lied to Mueller, general counsel tells court - The Washington Post

Justice Department attorneys say the material should be off-limits because impeachment trials are not “judicial proceedings” but a legislative function. In opposing the release, department lawyers have said a Watergate-era court ruling was wrongly decided in finding impeachment proceedings exempt from grand jury secrecy rules.

In court, Rogers was openly skeptical of the Justice Department’s argument that the House request was too broad. She repeatedly questioned how the House could have been more specific when the underlying material is secret.

AD

“They were quite clear what they were seeking,” said Rogers, a 1994 Bill Clinton nominee. “If it is secret, how can they say more than they did?”

Griffith, a 2005 George W. Bush appointee who served as Senate legal counsel during Clinton’s impeachment trial, appeared to agree, suggesting that at least House lawyers should get to view disputed material to argue whether the committee needed to see it.

“How would the Judiciary Committee be able to show particularized need without looking at the material?” Griffith said.

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House is investigating whether Trump lied to Mueller, general counsel tells court - The Washington Post

Rao, a former Trump administration official nominated by the president, asked Justice Department attorney Mark Freeman whether it was even appropriate for the court to wade into the battle between Congress and the White House. "Would that impermissibly involve this court in an impeachment proceeding?" Rao asked.

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Freeman said the Justice Department was not suggesting the courts have no jurisdiction to even consider such questions.

In her 75-page opinion, Howell said the Judiciary Committee and the House, in determining whether to recommend articles of impeachment, are serving like a grand jury.

"In carrying out the weighty constitutional duty of determining whether impeachment of the President is warranted, Congress need not redo the nearly two years of effort spent on the Special Counsel's investigation, nor risk being misled by witnesses, who may have provided information to the grand jury and the Special Counsel that varies from what they tell" the House, Howell wrote.

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Howell, a former Democratic Senate Judiciary Committee counsel and a 2010 nominee of Barack Obama, said the need for continued secrecy was “minimal” because the Justice Department already had made redacted portions of the Mueller report available to certain members of Congress and because the Judiciary Committee agreed to negotiations to prevent release of information that would harm any ongoing investigations.

At Stone’s trial this month, Gates testified that Trump and Stone spoke by phone about WikiLeaks’ plans on July 31, 2016, as the candidate rode in an SUV to a New York City airport, accompanied by Gates. He also testified that Manafort directed him to follow up and stay in contact with Stone for further developments.

According to the Mueller report, Manafort also stated that he spoke to Trump around that time, days after WikiLeaks released a batch of hacked emails timed for the beginning of the Democratic presidential nominating convention.

“Manafort recalled that Trump responded that Manafort should [redacted] keep Trump updated,” Mueller’s report states, with the redacted passage referring to Stone’s then-ongoing prosecution.

In court Monday, Letter referred specifically to the House’s need to review grand jury testimony from Manafort, who is serving a 7 ¹/₂-year prison sentence for conspiracy, fraud and tax violations.

“The Manafort situation shows so clearly that there is evidence, very sadly, that the president might have provided untruthful answers,” Letter said.

WASHINGTON (AP) — A House panel on Monday urged the president to release the Mueller report, but also said it would not do so until the president has been impeached. The panel, which is part of the House of Representatives, said it would not release the report until the president has been impeached. The panel, which is part of the House of Representatives, said it would not release the report until the president has been impeached.

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Trump May Give Written Testimony To Defend Himself In Impeachment Inquiry : NPR



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Trump Impeachment Inquiry

Democrats Offer Trump Chance To Testify, And He Says He Might Do It — In Writing

November 18, 2019 · 2:48 PM ET



BOBBY ALLYN



President Trump tweeted on Monday that he likes the idea of providing written testimony to House lawmakers leading the impeachment inquiry.

Evan Vucci/AP

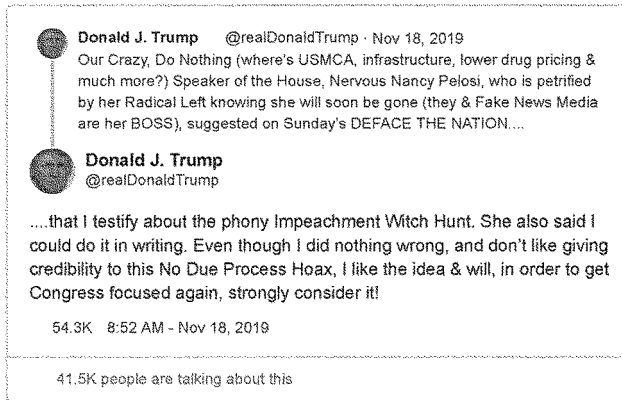
1/8/2020

Trump May Give Written Testimony To Defend Himself In Impeachment Inquiry : NPR

Updated at 5:11 p.m. ET

President Trump said Monday that he will "strongly consider" providing written testimony to House impeachment investigators. The president's surprise announcement comes a day after top Democrats invited him to defend himself in the face of accusations that he committed bribery by allegedly using foreign policy as a way to help his 2020 reelection bid.

"Even though I did nothing wrong, and don't like giving credibility to this No Due Process Hoax, I like the idea & will, in order to get Congress focused again, strongly consider it!" Trump tweeted.



Eight more witnesses are set to testify this week, marking the second week of public hearings examining whether the president abused his office by leveraging hundreds of millions of dollars in military assistance to push Ukraine to investigate one of Trump's chief political rivals.

Among the most anticipated scheduled witnesses is Gordon Sondland, a wealthy hotelier from Oregon who is Trump's ambassador to the European Union.

In a deposition transcript released over the weekend, it was revealed that Sondland and Trump spoke to each other about five times around the time that \$391 million in

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Trump May Give Written Testimony To Defend Himself In Impeachment Inquiry . NPR

security assistance to Ukraine was frozen, according to what former National Security Council aide Tim Morrison told House investigators.

Sondland is set to address House lawmakers on Wednesday.

The president and his defenders have assailed the motives and credibility of the parade of witnesses who have largely supported the complaint filed by an anonymous whistleblower that helped launch the inquiry.

On Sunday, Trump took a swipe at an aide assigned to Vice President Mike Pence's office scheduled this week to give testimony, calling her a "Never Trumper."

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The same day, House Speaker Nancy Pelosi said the president can "speak all the truth that he wants" under oath in front of House investigators. At a Sunday news conference in New York, Senate Minority Leader Chuck Schumer elaborated on Pelosi's offer.

"If Donald Trump doesn't agree with what he's hearing, doesn't like what he's hearing, he shouldn't tweet — he should come to the committee and testify under oath. And he should allow all those around him to come to the committee and testify under oath," Schumer said.

Trump declined to testify in person when Robert Mueller was investigating the Trump campaign and Russian election interference in the 2016 election, but he did submit

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Trump May Give Written Testimony To Defend Himself in Impeachment Inquiry : NPR

written testimony.

House impeachment investigators are now trying to determine whether the president lied in those written answers, Doug Letter, general counsel for the House of Representatives, confirmed to NPR on Monday.

Letter first indicated that the Democratic-controlled Judiciary Committee was interested in exploring whether Trump lied in his written deposition to Mueller in a September court filing as part of a case in which Democrats are seeking secret grand jury testimony from Mueller's probe.

"Not only could those materials demonstrate the President's motives for obstructing the Special Counsel's investigation, they also could reveal that Trump was aware of his campaign's contacts with WikiLeaks bearing on whether the President was untruthful, and further obstructed the Special Counsel's investigation, when in providing written responses to the Special Counsel's questions he denied being aware of any communications between his campaign and WikiLeaks," Letter wrote in a filing to Washington's U.S. District Court on Sept. 30.

A judge ordered that the Mueller material Democrats sought be released, but the Department of Justice appealed. The two sides met on Monday for oral arguments in front of a federal appeals court, which has not yet ruled on the case.

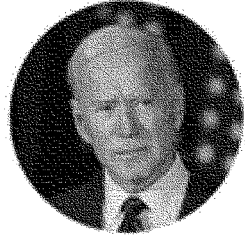
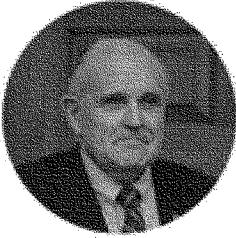
While Trump appeared to be warming to the idea of sharing written testimony for the impeachment inquiry, he had dismissed the format as insufficient when it was offered by a person who has been the target of Trump ire: the whistleblower who filed the complaint that kicked off the impeachment inquiry.

Earlier this month, Trump tweeted "written answers not acceptable!" after the legal team representing the whistleblower, who filed the complaint over the July 25 call between Trump and the Ukrainian president, said the whistleblower would respond to written questions under penalty of perjury. But House Republicans ignored the offer.

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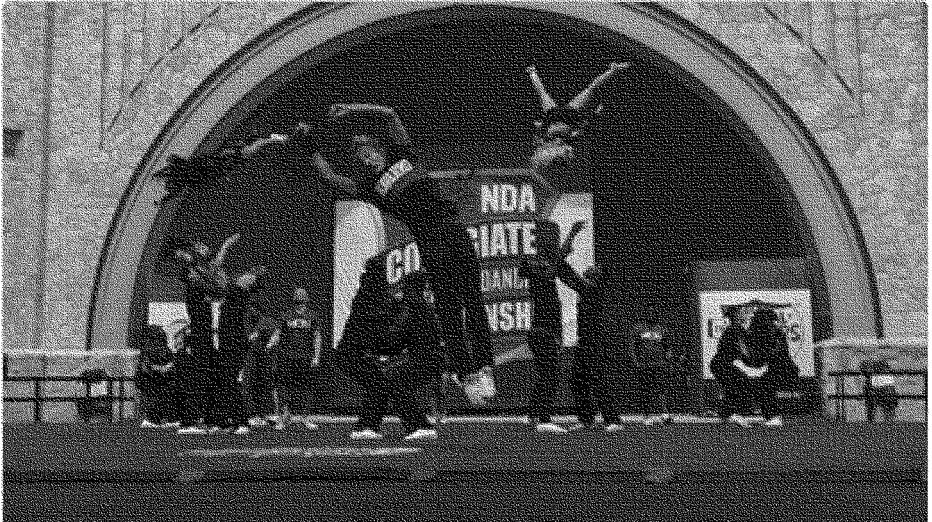
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Sen. Johnson says whistleblower's sources 'exposed things that didn't need to be exposed' - The Washington Post

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Sen. Johnson says whistleblower's sources 'exposed things that didn't need to be exposed'

By **Felicia Sonmez**, **Karoun Demirjian** and **Douglas MacMillan**

November 17, 2019 at 3:23 p.m. EST

Sen. Ron Johnson (R-Wis.) said Sunday that the Trump administration officials who provided information to the anonymous whistleblower about the president's efforts to pressure Ukraine "exposed things that didn't need to be exposed."

"This would have been far better off if we would've just taken care of this behind the scenes," Johnson said in an interview on NBC News's "Meet the Press." "We have two branches of government. Most people, most people wanted to support Ukraine. We were trying to convince President Trump."

Johnson's comments come days after the first public hearings in the impeachment inquiry. Democrats are seeking to prove that Trump leveraged military assistance and an Oval Office meeting in exchange for investigations into former vice president Joe Biden and a debunked theory concerning purported Ukrainian interference in the 2016 presidential election.



impeachment inquiry



AD

Trump on Sunday continued to take aim at his own administration officials, accusing Jennifer Williams, Vice President Pence's special adviser on Europe and Russia, of being a "Never Trumper."

"Tell Jennifer Williams, whoever that is, to read BOTH transcripts of the presidential calls, & see the just released ststatement from Ukraine," Trump said in a tweet. "Then she should meet with the other Never Trumpers, who I don't know & mostly never even heard of, & work out a better presidential attack!"

A Pence spokeswoman did not immediately respond to a request for comment.

Williams is expected to testify publicly on Tuesday.

Her closed-door testimony, which was released Saturday, suggests that the Office of Management and Budget had clamped down on Ukraine aid more than two weeks earlier than has been previously reported.

AD

Both Williams and National Security Council Ukraine expert Lt. Col. Alexander Vindman testified that they noticed as early as July 3 that the military aid for Ukraine that is traditionally controlled by the State Department had been held up, though they were not aware of the reason.

The earlier timeline raises new questions about when the White House may have decided to attempt leveraging Ukraine aid to pressure that country's leaders to commit to investigations that could politically benefit Trump.

The comments by Trump and Johnson also come amid intensifying scrutiny of the actions of U.S. Ambassador to the European Union Gordon Sondland, who is among those expected to testify publicly this week.

AD

According to testimony released Saturday, a former White House national security official told House investigators that Sondland was acting at Trump's behest and spoke to a top Ukrainian official about exchanging military aid for political investigations — two elements at the heart of the impeachment inquiry.

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Sen. Johnson says whistleblower's sources 'exposed things that didn't need to be exposed' - The Washington Post

Sen. Chris Murphy (D-Conn.) said he believes Sondland will face pressure this week when he's asked about inconsistencies between his testimony and that of other recent witnesses in the impeachment inquiry.

"His story continues to change," Murphy said on "Meet the Press." "He's got to decide this weekend whether he's an American first or a Trump loyalist."

AD

As the public phase of the impeachment probe enters its second week, Republicans have struggled to defend Trump's actions.

On "Fox News Sunday," House Minority Whip Steve Scalise (R-La.) dismissed the witnesses who have testified that they were concerned about Trump's efforts to pressure Ukraine, arguing that "they were not all Trump administration folks."

"They're Schiff's witnesses," Scalise said, referring to House Intelligence Committee Chairman Adam B. Schiff (D-Calif.).

When pressed by host Chris Wallace on the fact that most of the witnesses are part of the Trump administration, Scalise responded that "there are a lot of people who worked in the Trump administration who have very countering views to that and they've not been allowed to come forward."

AD

In an interview with CBS News's "Face the Nation" that was aired in full on Sunday, House Speaker Nancy Pelosi (D-Calif.) suggested that Democrats are pleased with how the process has unfolded.

"I don't think the president has had a good week," Pelosi told host Margaret Brennan.

Pelosi declined to weigh in on the timeline for a potential impeachment vote, saying only that there may be further depositions over the Thanksgiving holiday and that there may be "a decision or maybe they have more hearings" once Congress returns.

Democrats have also argued that Trump himself should testify and allow those his orbit to do so if he believes they may have exculpatory evidence.

AD

"If Donald Trump doesn't agree with what he's hearing — doesn't like what he's hearing — he shouldn't tweet," Senate Minority Leader Charles E. Schumer (D-N.Y.) told reporters in New York on Sunday. "He should come to the committee and testify under oath. And he should allow those around him to come to the committee and testify under oath."

Johnson, meanwhile, lamented the "damage that's being done to our entire country through this entire impeachment process."

"It's going to be very difficult for future presidents to have a candid conversation with a world leader, because now we've set the precedent of leaking transcripts," he said, referring to the release of rough transcripts of Trump's calls with Ukrainian President Volodymyr Zelensky. "The weakening of executive privilege is not good."

AD

Johnson also argued that the whistleblower's actions ultimately have not helped the U.S.-Ukraine relationship.

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Sen. Johnson says whistleblower's sources 'exposed things that didn't need to be exposed' - The Washington Post

“And, by the way, those individuals that leaked this, if their interest was a stronger relationship with the Ukraine, they didn’t accomplish this,” he said. “Having this all come out into public has weakened that relationship, has exposed things that didn’t need to be exposed.”

In recent weeks, Johnson has emerged as the member of Congress most closely involved in the Ukraine saga. The Wisconsin Republican met in July with a former Ukrainian diplomat who has circulated unproven claims that Ukrainian officials assisted Hillary Clinton’s 2016 presidential campaign.

AD

Johnson and Murphy also met with Zelensky in September, at a time when U.S. aid to the country was still being held up.

In her testimony, which was released Saturday, Williams was asked about her understanding of the timing of the freeze on the Ukraine aid.

“I had seen the update that OMB had decided or conveyed to the State Department that they were not clearing these particular congressional notifications,” Williams said of her awareness regarding Ukraine aid as of July 3, referring to a key procedural step in the administration releasing aid.

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Sen. Johnson says whistleblower's sources 'exposed things that didn't need to be exposed' - The Washington Post

Days later, as Williams was meeting with Ukrainian national security adviser Oleksandr Danylyuk on July 9, Williams still didn't know why the funding had been frozen, she said.

"I don't believe it was clear, even as of July 9, what exactly was behind that in terms of was this a, you know, long-term hold or what was the motivation behind it," Williams testified, according to the transcript. "But I was aware that there was a problem with clearing the assistance, yes."

REPORTER: THE SENATOR SAID THAT HE HAD BEEN TOLD BY THE WHISTLEBLOWER THAT THE FUNDING HAD BEEN FROZEN BECAUSE OF A PROBLEM WITH CLEARING THE ASSISTANCE. THE SENATOR SAID THAT HE HAD BEEN TOLD BY THE WHISTLEBLOWER THAT THE FUNDING HAD BEEN FROZEN BECAUSE OF A PROBLEM WITH CLEARING THE ASSISTANCE. THE SENATOR SAID THAT HE HAD BEEN TOLD BY THE WHISTLEBLOWER THAT THE FUNDING HAD BEEN FROZEN BECAUSE OF A PROBLEM WITH CLEARING THE ASSISTANCE.

The Adam Schiff Empowerment Act

by Byron York | October 31, 2019 12:01 AM

House Democrats plan to pass their Trump impeachment resolution Thursday. Its full description is: "Directing certain committees to continue their ongoing investigations as part of the existing House of Representatives inquiry into whether sufficient grounds exist for the House of Representatives to exercise its Constitutional power to impeach Donald John Trump, President of the United States of America, and for other purposes."

A better and much shorter title would be the Adam Schiff Empowerment Act.

The resolution gives Rep. Schiff, chairman of the House Intelligence Committee, far-reaching power over the Trump impeachment proceedings. Speaker Nancy Pelosi remains the ultimate authority, of course, but, like a chairman of the board choosing a chief executive officer, she has picked Schiff to run the show. And in the resolution, Democrats will give him near-total control.

The first thing the resolution will do is give the impeachment investigation to the Intelligence Committee. Until now, three committees — Intelligence, Oversight, and Foreign Affairs — have been conducting impeachment interviews. Going forward, Oversight and Foreign Affairs will be out of the interview picture in favor of Intelligence.

Among other things, that would mean that some Republicans who have been persistent critics of the process but who have been allowed into depositions by virtue of their membership in other participating committees — two examples are Oversight Committee members Rep. Jim Jordan and Rep. Mark Meadows — will no longer be allowed in the interview room.

"It's totally one-sided," Meadows told me Wednesday evening. "They can continue to do secret depositions. They have noticed depositions for John Bolton and others next week in anticipation of a positive vote Thursday. All it does is limit the committees that will be involved in the depositions."

The resolution also gives Schiff total control over whether transcripts of depositions already completed and those yet to be done will be made public. "The chair is authorized to make publicly available in electronic form the transcripts of depositions conducted by the [Intelligence Committee] in furtherance of the investigation," says the resolution. That means Schiff *can* release transcripts, but it does not mean he *must* release transcripts.

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The Adam Schiff Empowerment Act

"It says they are authorized to disclose depositions," Meadows noted, "which means they can pick and choose which depositions they will release." Perhaps Schiff will release them all. But he doesn't have to.

The resolution would also give Schiff the authority to call and conduct public hearings on impeachment. Schiff will control the witnesses. Although there has been some discussion about whether Republicans will have the right to call witnesses, the resolution only gives the ranking Republican on the Intelligence Community, Rep. Devin Nunes, the right to ask Schiff to call a witness.

"To allow for full evaluation of minority witness requests, the ranking minority member may submit to the chair, in writing, any requests for witness testimony relevant to the investigation," the resolution says. "Any such request shall be accompanied by a detailed written justification of the relevance of the testimony of each requested witnesses to the investigation." Republicans will get nothing that Schiff does not approve.

"There's no guarantee we can call *any* witnesses," said Republican Rep. Brad Wenstrup, a member of the Intelligence Committee, in an interview Wednesday.

"The rules the Democrats rammed through simply confirm the absolute control Schiff has been exercising this entire time," Nunes said. "He shouldn't be involved in impeachment at all since none of this has any intelligence component, but Pelosi obviously thinks Nadler is incompetent."

That was a reference to Democratic Rep. Jerry Nadler, chairman of the House Judiciary Committee. The Judiciary panel traditionally handles impeachments, but after disastrous hearings with Robert Mueller and Corey Lewandowski, Nadler did not inspire confidence that he could run a successful impeachment effort. So Pelosi passed him by in favor of Schiff.

In the end, Republicans expect Democrats to hold a small number of public hearings, picking a few of the witnesses they believe will be most effective on television and excluding the rest. It will all be run by Schiff, who will be, Republican Rep. Doug Collins said on Fox News Wednesday, "the sole arbiter of everything impeachment."

Republicans can't say for sure, but they expect GOP lawmakers to unanimously vote against the impeachment resolution. Even members who have some doubts about Trump will likely take a stand against the Democratic one-sidedness of the process.

Of course, that won't be enough to stop it. Democrats control the House, and they control the way impeachment will be run. That's what the 2018 election was about. And now, there's nothing Republicans can do to change it.

Democrats don't want public to know origins of Ukraine investigation like they didn't want public to know origins of Russia investigation

by Byron York | November 17, 2019 10:42 PM

Why are House Democrats stonewalling questions about the identity of the Trump-Ukraine whistleblower?

Start by taking them at their word. Perhaps they really are concerned about the whistleblower's personal safety. They also know that, beyond a limited prohibition applying to the inspector general of the intelligence community, no law bars anyone, in politics, media, or anywhere else, from revealing the whistleblower's identity. So they worry.

But there is more to the story. Should the whistleblower have connections to prominent Democrats, exposure of his identity could be embarrassing to the party. And perhaps most of all, reading through the impeachment investigation depositions that have been released so far, it's clear that cutting off questions that could possibly relate to the whistleblower has also allowed Democrats to shut off any look at how the Trump-Ukraine investigation started. Who was involved? What actions did they take? Why did some government employees think President Trump's July 25 call to Ukrainian President Volodymyr Zelensky represented a lost opportunity, or poor judgment, while others thought it represented wrongdoing requiring congressional investigation?

Democrats do not want the public to know. And in that, their position is familiar to anyone who has watched Washington for the last two years: The Democrats' determination to cut off questions about the origins of the Trump-Ukraine investigation is strikingly similar to their determination to cut off questions about the origins of the Trump-Russia investigation. In both cases, they fought hard to keep secret the origins of investigations that have shaken the nation, deeply divided the electorate, and affected the future of the presidency.

From their point of view, it makes sense. Democrats were rattled by Republican efforts to uncover the origins of the Trump-Russia investigation. The Steele dossier, the use of spies and informants to target the Trump campaign, the Carter Page wiretap, the murky start to the Crossfire Hurricane investigation — Democrats resisted GOP attempts to reveal them all. But in 2017 and 2018, Republicans controlled the House. Then-Chairman Devin Nunes used the power of the House Intelligence Committee to unearth key parts of the story. Nunes' efforts

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Democrats don't want public to know origins of Ukraine investigation like they didn't want public to know origins of Russia investigation

eventually led to a Justice Department inspector general investigation whose results, expected in the coming weeks, could further damage the Democratic Trump-Russia storyline. And then there is the ongoing criminal investigation led by U.S. Attorney John Durham.

But Democrats now control the House. As they lead the Trump-Ukraine impeachment investigation, House Intelligence Committee Chairman Adam Schiff and other Democrats are applying the lesson learned from Trump-Russia: Do not allow inquiry into the origins of the investigation.

The whistleblower's carefully-crafted Aug. 12 complaint created the template that Democrats have followed in the impeachment campaign. In public hearings, Democrats have praised the whistleblower's action. And behind the scenes, Schiff has exercised his authority to cut off lines of questioning that might reveal something about the investigation's origin. The transcripts of depositions his committee has released are filled with example after example of Schiff, or lawyers acting at his direction, stopping questioning that might lead to how the investigation began.

On Saturday, Democrats released the transcript of the Oct. 31 deposition of Tim Morrison, who until recently was the top National Security Council official in charge of Russia and Europe. At the deposition, Republicans asked Morrison about Lt. Col. Alexander Vindman, who served under Morrison in charge of Ukraine. Morrison testified that he had questions about Vindman's judgment. Specifically, Morrison told the committee, "I had concerns that he did not exercise appropriate judgment as to whom he would say what."

Vindman was the first witness to have actually listened to the Trump-Zelensky call. He talked to a number of people about it. Morrison appeared to know something about that. But Schiff did not want to find out.

"We want to make sure that there is no effort to try to, by process of elimination, identify the whistleblower," Schiff said to Morrison. "If you think [Republican] questions are designed to get at that information, or may produce that information, I would encourage you to follow your counsel's advice."

A moment later, GOP lawyer Steve Castor asked Morrison in a general sense who Vindman might have discussed the Trump-Zelensky call with. "What types of officials in the course of his duties would he be responsible for providing readouts to?"

The transcript indicates that an off-the-record discussion took place. Then Morrison said, "He — he may have felt it appropriate to speak to other departments and agencies if they had questions about the call."

"Do you know if he did?" asked Castor.

"Yes," said Morrison.

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Democrats don't want public to know origins of Ukraine investigation like they didn't want public to know origins of Russia investigation

"And who — do you know who he spoke to?"

At that moment, Morrison's lawyer, Barbara Van Gelder, intervened. "I'm not going to allow him to answer that, it is beyond the scope of this inquiry," she said.

Castor protested that he was not asking Morrison to testify beyond his knowledge of events. Van Gelder then read what appeared to be a prepared statement.

"I'm just saying it is outside the scope of what I believe his testimony is, which is whether President Trump jeopardized U.S. national security by pressing Ukraine to interfere with the 2020 election, and by withholding a White House meeting with Ukraine and military assistance provided by Congress to help Ukraine counter Russian aggression, as well as any efforts to cover up these matters." Her language mirrored Democratic language in several Ukraine-related letters to administration officials.

More arguing ensued, but Morrison did not answer the question.

At another moment, Morrison described the time Vindman came to him to express concerns about the Trump-Zelensky call. "Did you have any other communications with [Vindman] about the call?" asked Castor.

"Yes," said Morrison.

"And what were those?"

"You're not going to talk about that," interjected Van Gelder.

Vindman himself testified two days earlier, on Oct. 29. In that session, Schiff again decreed that the witness could not discuss some of the people he might have discussed the Trump call with. In fact, Schiff ordered a blackout on discussion of anyone even associated with the intelligence community. (The whistleblower has been reported to be a CIA analyst.) "Can I just caution again," Schiff said, "Not to go into names of people affiliated with the IC in any way."

Vindman said he had discussed the call, in a limited way, with State Department official George Kent. When asked who beyond Kent he might have discussed the call with, Vindman's lawyer Michael Volkov intervened.

"What I'm telling you right now is we're not going to answer that question," Volkov said. "If the chair wants to hold him in contempt for protecting the whistleblower, God be with you ... If you want to ask, you can ask — you can ask questions about his conversation with Mr. Kent. That's it. We're not answering any others."

"The only conversation that we can speak to Col. Vindman about is his conversation with Ambassador Kent?" asked Republican Rep. Lee Zeldin.

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Democrats don't want public to know origins of Ukraine investigation like they didn't want public to know origins of Russia investigation

"Correct," said Volkov, "and you've already asked him questions about it."

Volkov, like Van Gelder later, was simply following Schiff's directive. The chairman ruled out any talk about the call.

In the Trump-Russia affair, the investigation was entrusted to a special counsel who ultimately could not establish that Schiff's and the Democrats' key allegation, a conspiracy or coordination between Russia and the 2016 Trump campaign, ever actually occurred. Now, House Democrats are doing the Trump-Ukraine investigation themselves, making it easier to reach the conclusion they want.

But so far, at least, the investigation seems to have established that Trump's alleged misconduct exists in the eye of the beholder. Some officials heard the Zelensky call as it happened and saw no wrongdoing. Vindman, on the other hand, saw wrongdoing and got in touch with an unknown number of people about it. After that, the story grew and grew. How did one man's impression turn into the impeachment investigation of today?

And that is what Chairman Schiff does not want the nation to know.

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Ukraine's President Says Call With Trump Was 'Normal' - The New York Times

The New York Times<https://nyti.ms/2l3W1qG>

Ukraine's President Says Call With Trump Was 'Normal'

By Alan Yuhas

Sept. 25, 2019

Ukraine's president, in his first public comments on the phone call that led to an impeachment inquiry into President Trump, said Wednesday that the call was "normal," that "nobody pushed me," and that he did not want to become entangled in American elections.

"I'm sorry, but I don't want to be involved in the democratic elections of U.S.A.," said the Ukrainian leader, Volodymyr Zelensky, speaking to reporters with Mr. Trump on the sidelines of the United Nations General Assembly in New York.

"We had, I think, a good phone call," Mr. Zelensky added, referring to a call the leaders had on July 25, which is at the center of the inquiry. "It was normal. We spoke about many things. And so, I think, and you read it, that nobody pushed — pushed me."

Mr. Trump quickly interjected, saying, "in other words, no pressure, because you know what, there was no pressure."

Mr. Zelensky became a central figure last week in the impeachment debate in the United States over whether President Trump sought help from a foreign power against one of his domestic political opponents.

Mr. Trump and his personal lawyer, Rudolph W. Giuliani, have said publicly that they believe his leading Democratic opponent, former Vice President Joseph R. Biden Jr., should be investigated in connection with his son's role in a Ukrainian energy company.

The president has also publicly accused Mr. Biden and his son of "creating to the corruption already in the Ukraine," and acknowledged raising the corruption allegations in a phone call with Mr. Zelensky on July 25. He raised allegations of corruption again on Wednesday.

[The controversy has thrust Mr. Zelensky into the center of a standoff between Mr. Trump and Democrats.]

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Ukraine's President Says Call With Trump Was 'Normal' - The New York Times

The push toward opening a formal impeachment inquiry gained significant momentum after senior administration officials said that Mr. Trump personally ordered the suspension of \$391 million in aid to Ukraine in the days before the call. Since Russia claimed Crimea as its territory in 2014 and started backing separatists in eastern Ukraine, the government in Kiev has received tens of millions in military aid from Western nations, including from the United States under President Barack Obama and President Trump.

Mr. Trump has defended his conversation with Mr. Zelensky as “totally appropriate,” and said there had been “no quid pro quo” linking American aid to a Ukrainian investigation into Mr. Biden.

Mr. Zelensky has not announced any new investigations into Mr. Biden or his son. Speaking to reporters on Wednesday, he said Ukraine had a new prosecutor general, “a highly professional man” who would investigate “any case he considers and deems appropriate.”

“We have an independent country,” he said. “I can’t push anyone.”

Earlier on Wednesday, with the impeachment inquiry now rocketing to the center of attention in the United States, Mr. Zelensky did not make any references to Mr. Trump or even the American military aid for Ukraine in its war with Russian-backed separatists — a central element in the inquiry.

Instead, in his address to the annual General Assembly session at the United Nations, Mr. Zelensky spoke at length about the toll of wars around the world, and especially in Ukraine.

“Nobody will feel safe while Russia is waging war against Ukraine in the center of Europe,” he said. “The thought that this has nothing to do with you or will never touch your interests will be fatal.”

Mr. Zelensky also insisted that every nation had a stake in conflicts that seemed distant.

“We cannot think globally while turning a blind eye to small things, or as some may believe, to trifles,” he continued. “That is how the foundation of two world wars was laid down, and as a result millions of human lives have paid the price for negligence, silence, inaction or an unwillingness to relinquish our own ambitions.”

Mr. Zelensky, 41, vaulted into Ukraine’s highest office this year with an unconventional campaign and an even more unconventional background: He starred in a popular TV comedy about a schoolteacher who is unexpectedly elected president after a rant about corruption is posted online.

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Ukraine's President Says Call With Trump Was 'Normal' - The New York Times

The actor adopted the name of the show, “Servant of the People,” for the name of a new political party, and the platform of his character — taking on Ukraine’s corrupt oligarchs — for a campaign platform. He proceeded to bowl over a crowded field of candidates, most of them career politicians, and roundly defeated the incumbent president, the billionaire President Petro O. Poroshenko, in the final election.

Yet Mr. Zelensky took office in a country sapped by decades of corruption and more than five years of war against Russian-backed separatists in Ukraine’s east. He has put those two issues at the top of his agenda, and this month orchestrated a prisoner swap with President Vladimir V. Putin of Russia, in what Mr. Zelensky called “the first step to end the war.”

On Tuesday night, Mr. Zelensky said in a statement that he planned to invite Mr. Trump to Ukraine.

“I expect us to have awesome relations with the United States,” he said in the statement. “I expect us to invite Donald Trump to visit Ukraine. I would like the leaders of the countries to come and see how great Ukraine is. One should believe not the words, but the eyes.”

He added that “the most important thing” was that “nobody forgets about Ukraine.”

Common Questions About Impeachment

- **What is impeachment?**

Impeachment is charging a holder of public office with misconduct.

- **Why is the impeachment process happening now?**

A whistle-blower complaint filed in August said that White House officials believed they had witnessed Mr. Trump abuse his power for political gain.

- **Can you explain what President Trump is accused of doing?**

President Trump is accused of breaking the law by pressuring the president of Ukraine to look into former Vice President Joseph R. Biden Jr., a potential Democratic opponent in the 2020 election.

- **What did the President say to the president of Ukraine?**

Here is a reconstructed transcript of Mr. Trump’s call to President Volodymyr Zelensky of Ukraine, released by The White House.

- **What is the impeachment process like?**

Here are answers to seven key questions about the process.

How to Keep Up

THE WALL STREET JOURNAL.

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<https://www.wsj.com/articles/ukrainian-president-denies-trump-pressured-him-during-july-call-11570707164>

WORLD

Ukrainian President Denies Trump Pressured Him During July Call

‘There was no blackmail,’ Volodymyr Zelensky tells reporters at a rare all-day press event in Kyiv



Ukrainian President Volodymyr Zelensky, left, spoke to reporters at a food court in Kyiv on Thursday. PHOTO: SERGEY DOLZHENKO/EPA/SHUTTERSTOCK

By Georgi Kantchev

Updated Oct. 10, 2019 8:35 am ET

KYIV, Ukraine—Ukrainian President Volodymyr Zelensky denied that President Trump tried to pressure him during a July phone call that is now at the heart of an impeachment inquiry in Washington and a messy U.S. political scandal.

“There was no blackmail,” Mr. Zelensky told reporters at an all-day “press marathon” in Ukraine’s capital Thursday.

During the call, Mr. Trump pressed the new Ukrainian leader to look into the activities of his political rival Joe Biden and his son Hunter Biden in Ukraine, and into alleged Ukrainian interference in the 2016 U.S. presidential elections, according to a rough transcript released by the White House in September.

The revelations thrust Mr. Zelensky, a former comedian and a political neophyte elected in April, into a partisan fight in the U.S., on which Ukraine depends for help fending off Russian aggression.

On Thursday, Mr. Zelensky said his country should probe whether Ukrainians interfered in the 2016 U.S. elections, adding that he didn't know whether any meddling actually occurred.

"I think the Ukrainians should investigate this themselves," Mr. Zelensky said. "It is our business, it is very important for us that we never interfere in the elections of any country in the future."

In response to a question on whether Ukraine would investigate the Bidens, Mr. Zelensky said he wanted to avoid influencing the 2020 U.S. elections at all.

"I do not want to interfere in any way with the elections of an independent country called the United States of America," he said. "Choose your president yourself."

Mr. Zelensky has previously said Ukraine is open to investigating any illegal behavior. A Ukrainian prosecutor said in May he had no evidence of wrongdoing by Joe or Hunter Biden.

Despite initial efforts to stay away from U.S. politics, including declining a meeting with Mr. Trump's personal lawyer Rudy Giuliani in May, Mr. Zelensky got sucked into the affair.

Over the summer, Mr. Zelensky's new and inexperienced team tried to decipher conflicting signals from Washington, which included the lure of a potential White House summit and various overtures by Mr. Giuliani, both before and after the phone call with Mr. Trump.

Most crucially for Kyiv, which is battling Moscow-backed separatists in the East, the Ukrainians learned weeks after the decision that Washington would withhold nearly \$400 million in approved military assistance. The aid was then unlocked in September.

On Thursday, Mr. Zelensky said he was unaware of the aid suspension before his call with Mr. Trump in July and that he subsequently raised the issue at a meeting with Vice President Mike Pence in Warsaw in September.

- • White House Shifted Authority Over Ukraine Aid Amid Legal Concerns
- • Two Giuliani Associates Who Helped Him on Ukraine Charged With Campaign-Finance Violations
- • Trump Opens Door to Cooperate With House Impeachment Probe

"I told [Mr. Pence] that this is impossible. Please do something about this,"

Mr. Zelensky recounted Thursday. "After the meeting, America unblocked it."

He said the aim of the July call with Mr. Trump was to pave the way for a still-hoped-for White House summit.

"We look forward to an official visit to the United States," he said. "This is a very important signal for our partners that the United States supports the strategy and generally supports the policy of Ukraine."

Mr. Zelensky, whose press strategy more often involves posting videos on social media than interviews with journalists, held Thursday's press event at a popular food court in Kyiv.

"I am now in the center of attention of the world media—for some reason it happened—I did not want it to," he said. "It was in my past life [as a television personality]...that I really wanted to be world famous. But not because of such a case."

Mr. Zelensky said he was indifferent as to what happened with Burisma, a large Ukrainian gas company that had Hunter Biden on its board. Ukraine's prosecutor general's office said Friday it was reviewing past investigations into Burisma's owner.

"I'm not going to personally investigate Burisma or say—no, do not investigate! I don't care what will happen to this case," Mr. Zelensky said. "I do not want to be involved."

Write to Georgi Kantchev at georgi.kantchev@wsj.com

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Volodymyr Zelenskyy had a phone conversation with President of the United States — Official website of the President of Ukraine



PRESIDENT OF UKRAINE
VOLODYMYR ZELENSKYY
Official website

Volodymyr Zelenskyy had a phone conversation with President of the United States

| 25 July 2019 - 19:48

President of Ukraine Volodymyr Zelenskyy had a phone conversation with President of the United States Donald Trump. President of the United States congratulated Ukraine on successful holding free and democratic parliamentary elections as well as Volodymyr Zelenskyy with victory the Servant of the People Party.


Donald Trump is convinced that the new Ukrainian government will be able to quickly improve image of Ukraine, complete investigation of corruption cases, which inhibited the interaction between Ukraine and the USA.


He also confirmed continued support of the sovereignty and territorial integrity of Ukraine by the United States and the readiness of the American side to fully contribute to the implementation of a Large-Scale Reform Program in our country.

Volodymyr Zelenskyy thanked Donald Trump for US leadership in preserving and strengthening the sanctions pressure on Russia.

The Presidents agreed to discuss practical issues of Ukrainian-American cooperation during the visit of Volodymyr Zelenskyy to the United States.

'Nobody Pushed Me.' Ukrainian President Denies Trump Pressured Him to Investigate Biden's Son

 time.com/5686305/zelensky-ukraine-denies-trump-pressure/

By Tara Law 

September 25, 2019

Ukrainian President Volodymyr Zelensky sat beside President Donald Trump on Wednesday as he denied that Trump pressured him to investigate former Vice President and current 2020 presidential candidate Joe Biden's son for his work in the country.

The two leaders held a meeting at the U.N. one day after Speaker Nancy Pelosi announced that the House would launch a formal impeachment inquiry into Trump following reports of the President's phone call with Zelensky in July. Speaking to reporters on Wednesday, Zelensky declared that he had not been pressured during the July phone call, and insisted that he does not want to interfere in a foreign election. Earlier on Wednesday, the White House released a summary of the phone call, which is comprised of "notes and recollections" from staff assigned to listen to the call and is not a transcript of the call.

In one exchange from the White House memo, Zelensky thanks Trump for his support of Ukraine's defense. Trump responds, "I would like you to do us a favor though" and asks for Ukraine to investigate a matter related to the 2016 hacking of Democratic National Committee servers.

"I think you read everything. I think you read text," Zelensky said to the gathered reporters on Wednesday. "I'm sorry, but I don't want to be involved to democratic, open elections of U.S.A. No, you heard that we had good phone call. It was normal, we spoke about many things. I think, and you read it, that nobody pushed me."

"So no pressure," Trump added.

President Trump has been embroiled in controversy since last week, when reports emerged that a whistleblower in the U.S. intelligence community had filed a complaint about a phone call between the two heads of state. An official said that the whistleblower "found troubling" "certain representations concerning U.S. policy" during the call.

Trump had previously admitted that he and Zelensky discussed former Biden's son Hunter Biden during the phone call, but has denied that the call went into inappropriate territory and has insisted there was "no quid pro quo." The *Washington Post* reported last week that Trump froze nearly \$400 million in aid from the country at least a week before the July 25 phone call with Zelensky. The funds were eventually released on Sept. 11.

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Taking questions in Ukrainian and English on Wednesday, Zelensky said that he doesn't have the authority to pressure Ukrainian law enforcement, and did not attempt to do so.

"We have an independent country and independent general security. I can't push anyone," Zelensky said.

Trump again accused the former Vice President's son of corruption, although this claim has not been substantiated with evidence. Joe Biden said this past weekend that he "never" spoke with his son about the younger Biden's overseas dealings.

Write to Tara Law at tara.law@time.com.

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Ukraine's President Says Call With Trump Was 'Normal' - The New York Times

The New York Times<https://nyti.ms/2l3W1qG>

Ukraine's President Says Call With Trump Was 'Normal'

By Alan Yuhas

Sept. 25, 2019

Ukraine's president, in his first public comments on the phone call that led to an impeachment inquiry into President Trump, said Wednesday that the call was "normal," that "nobody pushed me," and that he did not want to become entangled in American elections.

"I'm sorry, but I don't want to be involved in the democratic elections of U.S.A.," said the Ukrainian leader, Volodymyr Zelensky, speaking to reporters with Mr. Trump on the sidelines of the United Nations General Assembly in New York.

"We had, I think, a good phone call," Mr. Zelensky added, referring to a call the leaders had on July 25, which is at the center of the inquiry. "It was normal. We spoke about many things. And so, I think, and you read it, that nobody pushed — pushed me."

Mr. Trump quickly interjected, saying, "in other words, no pressure, because you know what, there was no pressure."

Mr. Zelensky became a central figure last week in the impeachment debate in the United States over whether President Trump sought help from a foreign power against one of his domestic political opponents.

Mr. Trump and his personal lawyer, Rudolph W. Giuliani, have said publicly that they believe his leading Democratic opponent, former Vice President Joseph R. Biden Jr., should be investigated in connection with his son's role in a Ukrainian energy company.

The president has also publicly accused Mr. Biden and his son of "creating to the corruption already in the Ukraine," and acknowledged raising the corruption allegations in a phone call with Mr. Zelensky on July 25. He raised allegations of corruption again on Wednesday.

[The controversy has thrust Mr. Zelensky into the center of a standoff between Mr. Trump and Democrats.]

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Ukraine's President Says Call With Trump Was 'Normal' - The New York Times

The push toward opening a formal impeachment inquiry gained significant momentum after senior administration officials said that Mr. Trump personally ordered the suspension of \$391 million in aid to Ukraine in the days before the call. Since Russia claimed Crimea as its territory in 2014 and started backing separatists in eastern Ukraine, the government in Kiev has received tens of millions in military aid from Western nations, including from the United States under President Barack Obama and President Trump.

Mr. Trump has defended his conversation with Mr. Zelensky as “totally appropriate,” and said there had been “no quid pro quo” linking American aid to a Ukrainian investigation into Mr. Biden.

Mr. Zelensky has not announced any new investigations into Mr. Biden or his son. Speaking to reporters on Wednesday, he said Ukraine had a new prosecutor general, “a highly professional man” who would investigate “any case he considers and deems appropriate.”

“We have an independent country,” he said. “I can’t push anyone.”

Earlier on Wednesday, with the impeachment inquiry now rocketing to the center of attention in the United States, Mr. Zelensky did not make any references to Mr. Trump or even the American military aid for Ukraine in its war with Russian-backed separatists — a central element in the inquiry.

Instead, in his address to the annual General Assembly session at the United Nations, Mr. Zelensky spoke at length about the toll of wars around the world, and especially in Ukraine.

“Nobody will feel safe while Russia is waging war against Ukraine in the center of Europe,” he said. “The thought that this has nothing to do with you or will never touch your interests will be fatal.”

Mr. Zelensky also insisted that every nation had a stake in conflicts that seemed distant.

“We cannot think globally while turning a blind eye to small things, or as some may believe, to trifles,” he continued. “That is how the foundation of two world wars was laid down, and as a result millions of human lives have paid the price for negligence, silence, inaction or an unwillingness to relinquish our own ambitions.”

Mr. Zelensky, 41, vaulted into Ukraine’s highest office this year with an unconventional campaign and an even more unconventional background: He starred in a popular TV comedy about a schoolteacher who is unexpectedly elected president after a rant about corruption is posted online.

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Ukraine's President Says Call With Trump Was 'Normal' - The New York Times

The actor adopted the name of the show, “Servant of the People,” for the name of a new political party, and the platform of his character — taking on Ukraine’s corrupt oligarchs — for a campaign platform. He proceeded to bowl over a crowded field of candidates, most of them career politicians, and roundly defeated the incumbent president, the billionaire President Petro O. Poroshenko, in the final election.

Yet Mr. Zelensky took office in a country sapped by decades of corruption and more than five years of war against Russian-backed separatists in Ukraine’s east. He has put those two issues at the top of his agenda, and this month orchestrated a prisoner swap with President Vladimir V. Putin of Russia, in what Mr. Zelensky called “the first step to end the war.”

On Tuesday night, Mr. Zelensky said in a statement that he planned to invite Mr. Trump to Ukraine.

“I expect us to have awesome relations with the United States,” he said in the statement. “I expect us to invite Donald Trump to visit Ukraine. I would like the leaders of the countries to come and see how great Ukraine is. One should believe not the words, but the eyes.”

He added that “the most important thing” was that “nobody forgets about Ukraine.”

Common Questions About Impeachment

- **What is impeachment?**

Impeachment is charging a holder of public office with misconduct.

- **Why is the impeachment process happening now?**

A whistle-blower complaint filed in August said that White House officials believed they had witnessed Mr. Trump abuse his power for political gain.

- **Can you explain what President Trump is accused of doing?**

President Trump is accused of breaking the law by pressuring the president of Ukraine to look into former Vice President Joseph R. Biden Jr., a potential Democratic opponent in the 2020 election.

- **What did the President say to the president of Ukraine?**

Here is a reconstructed transcript of Mr. Trump’s call to President Volodymyr Zelensky of Ukraine, released by The White House.

- **What is the impeachment process like?**

Here are answers to seven key questions about the process.

How to Keep Up

1/8/2020

Ukraine president on Trump call: 'Nobody pushed me'



POLITICS

Ukraine's president on Trump call: 'Nobody pushed me'

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Jordan McDonald

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KEY POINTS

Ukrainian President Volodymyr Zelensky tells reporters gathered at the United Nations he was not pressured by anyone to reopen an investigation into former Vice President Joe Biden and his son Hunter.

Zelensky's denial comes on the heels of reports that Trump asked Zelensky to reopen a probe into the former vice president.

The White House releases a summary of the July call between Trump and Zelensky, where President Trump asked Zelensky to "look into" Biden.

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Ukraine president on Trump call: 'Nobody pushed me'



Ukrainian President Volodymyr Zelenskyy told reporters during a joint press conference with President Donald Trump on Wednesday that he had no pressure from the U.S. president to investigate former Vice President Joe Biden's son.

The words came amid a furor over a July 25 phone call between the two world leaders, details of which were released in a summary by the White House on Wednesday. During the call, Trump asked Zelenskyy to "look into" Biden.

"I think you read everything. I'm sorry, but I don't want to be involved [in] democratic, open elections of USA," Zelenskyy said to the press gathered at the United Nations General Assembly. "We had, I think, good phone call ... It was normal. We spoke about many things. I think you read that nobody pushed me."

Trump added, "In other words, no pressure."

Earlier this year, Trump's personal lawyer Rudy Giuliani had publicly called on Ukraine to investigate Joe Biden, even though no evidence has emerged of wrongdoing by the former vice president in connection with his son's work there.

During the July call, Trump said, "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," according to the summary.

"Biden went around bragging that he stopped the prosecution, so if you can look into it, It sounds horrible to me."



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Ukraine president on Trump call: 'Nobody pushed me'



Government to investigate the potential for Ukraine to investigate the Trump maintains his conversation with Zelensky was “perfect” and that there was no “quid pro quo.”

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Democracy Dies in Darkness

'America first' shouldn't mean cutting foreign aid

This tiny category of discretionary spending helps keep America safe.

By **Michael Gerson** and **Raj Shah**

Feb. 24, 2017 at 2:21 p.m. EST

Michael Gerson and **Raj Shah** are senior fellows with *Results for America* and the authors of the “*Moneyball for Government*” chapter “*Foreign Assistance and the Revolution of Rigor*.” Gerson, an opinion columnist for *The Washington Post*, served as an assistant to President George W. Bush for policy and planning. Shah served as USAID administrator under President Barack Obama.

We have entered the era of “America first” with only a vague understanding of its meaning. President Trump’s inaugural address signaled an ambitious nationalist reimagining of the post-World War II international order. Trump’s foreign policy team, in contrast, seems to spring from that order. The resulting uncertainty is global and dangerous. Vacuums of leadership are not generally filled by the good guys.

The administration’s policy shift is most evident so far in the areas of trade and refugees — Trump prefers less of both. Given a narrowed conception of national interest and the president’s discomfort with the idea of “nation building,” foreign assistance would seem a natural next target. Persistent rumors that the administration is mulling major cuts at the U.S. Agency for International Development (USAID) have heightened this speculation.

AD

Although Trump hasn't spoken much on this topic, some of his comments have reflected an inclination to pull back. "It is necessary that we invest in our infrastructure, stop sending foreign aid to countries that hate us and use that money to rebuild our tunnels, roads, bridges and schools," he said when he announced his candidacy. And in a March 2016 interview with the Washington Post editorial board, he said: "I watched as we built schools in Iraq and they'd be blown up. And we'd build another one, and it would get blown up. . . . And yet we can't build a school in Brooklyn. We have no money for education, because we can't build in our own country. And at what point do you say, hey, we have to take care of ourselves."

Yet Trump has also added notes of ambiguity. In August, he told the Miami Herald that Congress should increase funding to fight the Zika virus abroad. In September, he underlined the importance of ensuring clean water for everyone in the world. In October, he stated that "we're going to lead the way" on AIDS relief.

In this case, Trump's better angels would do more to serve the country than his budget-cutters. Putting foreign assistance on the chopping block would be a serious mistake, by any definition of the national interest.

AD

Let's begin by getting the facts straight. Surveys have shown that many Americans assume the country spends upwards of 20 percent of the federal budget on foreign aid. In reality, nonmilitary foreign assistance — including all of America's work on international development and global health — represents less than 1 percent of the federal budget. Slashing this tiny category of discretionary spending for the sake of budget control would be a form of deception — a sideshow to avoid truly important (and unpopular) budgetary choices.

For less than 1 percent of the federal budget, the United States led a global coalition to fight HIV/AIDS when the disease threatened to devastate and destabilize much of the African continent . Battling another of the world's most lethal killers, malaria, U.S.-led global programs have saved more than 6 million lives, mainly children under 5 years old. America also led a global effort to support agriculture when the food, fuel and financial crisis of 2008 pushed nearly 100 million people back into a state of chronic hunger and extreme poverty. As of 2015, that effort had directly benefited nearly 19 million rural households and reached more than 12 million children with nutrition programs. And America led a global partnership to bring power to half a billion people in Africa who have too often lived, worked, studied and given birth in the dark.

AD

This established impact runs up against a durable stereotype: that foreign assistance is routinely bundled in large bills and thrown down rat holes of waste and corruption. The charge is not entirely without historical root. During the Cold War, foreign assistance had some remarkable successes, including the Marshall Plan and the Green Revolution, but also notable failures such as aid to Vietnam and to dictators in Central America. In Africa, assistance sometimes went to strongmen such as Mobutu Sese Seko of Zaire, mainly because of a strategic chess game against the Soviet Union, not because he was spurring development.

But over the past two decades and past two presidential administrations, health and development spending has evolved into a rigorous, innovative and professional enterprise dedicated to measured outcomes. Aid and development practitioners know how to set smart targets, engage private-sector partners, adapt to changing circumstances and make sure taxpayers get the most value for their investments. And they have evidence that what they are doing works.

Most U.S. foreign assistance no longer even goes to foreign governments; It is given to U.S. companies and nonprofits in the form of contracts and grants; these organizations then implement projects in other countries, employing a combination of American and foreign staff members and often partnering with institutions of civil society.

AD

But why does this emphasis on rigor and outcomes matter to U.S. foreign policy?
How does foreign assistance serve definable American interests?

Many of our most dangerous global challenges — such as terrorism, the drug trade and pandemic diseases — gather strength in countries, or regions within countries, that are poorly governed, often corrupt, and marked by high levels of poverty, hunger and disease. These places are incubators of risks to the United States. Consider Ebola, which took root in the weak health systems of West Africa and threatened our nation and the world with death and panic. Or the poverty and conflict in the Northern Triangle of Central America, which led to tens of thousands of child migrants trying to make their way to the United States on the tops of trains. Or the collapse of sovereignty in Syria, which helped produce the Islamic State and a radiating, destabilizing flood of refugees into Jordan, Lebanon, Turkey and beyond. Or the weak governments of South America, which are often unable to halt the flow of drugs that enter our country.

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These are all very real consequences of poverty, instability and poor governance. But gains in hope, health and stability reduce these threats and better protect Americans. A forward-leaning Ebola response, employing America's full epidemiological and humanitarian capacity, helped save lives in Africa and prevented the outbreak from spreading around the globe. In the Northern Triangle, our partnerships have helped reduce gang violence and stem the flow of unaccompanied minors to the United States. The Syrian crisis continues apace, but our massive humanitarian support for those displaced and in dire need reduces the pressure of refugee migrations to many nations, including our own.

One of the best examples of the strategic role of aid has been in Colombia, where

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'America first' shouldn't mean cutting foreign aid - The Washington Post

criminal gangs, violent conflict and the world's largest production of cocaine threatened to destabilize the region and the world for decades. In the late 1990s and early 2000s, the United States had a large security budget in Colombia and a small budget for development assistance. Then the Colombians embraced a greater focus on long-term development, which they integrated into their stabilization plans when territory was taken back from rebels. U.S. development assistance was increased, then integrated and properly sequenced with defense activities. As soon as landmines were cleared and local officials could safely return to liberated towns, USAID poured in assistance, which was crucial to consolidate gains. Those long-term investments are now paying off, supporting peace negotiations and helping to reintegrate former rebels and displaced civilians, in addition to improving business opportunities for U.S. firms. U.S. foreign assistance in Colombia gave stability and peace a fighting chance, and helped remedy a serious security problem for the United States and its allies.

This type of foreign assistance is essential to preventing the kind of uncontrollable strategic threats that might eventually require military intervention. (We are not talking here about humanitarian assistance, which should be driven entirely by the nature and scale of the need, or about direct military aid.) Defense Secretary Jim Mattis made a compelling case for conflict prevention when he was head of U.S. Central Command: "If you don't fund the State Department fully, then I need to buy more ammunition." A small investment in foreign assistance today saves big on defense later.

AD

An “America first” approach to foreign assistance could mean deploying foreign aid even more rigorously to help keep America safe, rather than a simple retreat.

How do we create an aid system that uses big data to identify areas of weak governance that may produce global threats? One that systematically employs the full spectrum of assistance? One that uses information on measured outcomes to adjust policies and practices in real time? And one that ultimately builds local capacity to confront problems?

There are specific actions the new administration can take to deliver on this vision. It should designate a “coordinator for development” who is empowered to ensure results from U.S. foreign assistance programs. This coordinator could be the new USAID administrator or the secretary of state himself — but it must be someone who sits at the principals table at the National Security Council and has the clear backing of the White House. He or she would need to review existing efforts and determine how they match rising threats. To avoid being just another layer of bureaucracy, such an official should be authorized to move budget resources between the State Department, USAID and the Defense Department as necessary to effectively prevent conflicts. Under these circumstances, aid should be categorized in the budget as national security spending, not “non-defense discretionary” spending. And the Trump national security team should make sure American leadership on these issues remains the bipartisan priority it has been for decades, starting with proposing and defending a strong budget commitment to these efforts right now.

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'America first' shouldn't mean cutting foreign aid - The Washington Post

AD

The next few months could mark a turning point for foreign assistance, and it matters greatly what kind. We could see the erosion of support for a cost-effective instrument of foreign policy and national influence — and we would see the consequences of such negligence later, probably in the form of military commitments — or we could see a reform that makes foreign assistance a reflection of American ideals and a rigorous instrument of American interests. The latter is a worthy and necessary goal for a great nation.

AD

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Transcript: Donald Trump Expounds on His Foreign Policy Views - The New York Times

The New York Times<https://nyti.ms/1V07a89>

Transcript: Donald Trump Expounds on His Foreign Policy Views

March 26, 2016

Over two telephone conversations on Friday, Donald J. Trump, the Republican presidential candidate, discussed his views on foreign policy with Maggie Haberman and David E. Sanger of The New York Times. Here is an edited transcript of their interview (or just the highlights).

HABERMAN: I wanted to ask you about some things that you said in Washington on Monday, more recently. But you've talked about them a bunch. So, you have said on several occasions that you want Japan and South Korea to pay more for their own defense. You've been saying versions of that about Japan for 30 years. Would you object if they got their own nuclear arsenal, given the threat that they face from North Korea and China?

TRUMP: Well, you know, at some point, there is going to be a point at which we just can't do this anymore. And, I know the upsides and the downsides. But right now we're protecting, we're basically protecting Japan, and we are, every time North Korea raises its head, you know, we get calls from Japan and we get calls from everybody else, and "Do something." And there'll be a point at which we're just not going to be able to do it anymore. Now, does that mean nuclear? It could mean nuclear. It's a very scary nuclear world. Biggest problem, to me, in the world, is nuclear, and proliferation. At the same time, you know, we're a country that doesn't have money. You know, when we did these deals, we were a rich country. We're not a rich country. We were a rich country with a very strong military and tremendous capability in so many ways. We're not anymore. We have a military that's severely depleted. We have nuclear arsenals which are in very terrible shape. They don't even know if they work. We're not the same country, Maggie and David, I mean, I think you would both agree.

SANGER: So, just to follow Maggie's thought there, though, the Japanese view has always been, if the United States, at any point, felt as if it was uncomfortable defending them, there has always been a segment of Japanese society, and of Korean society that said, "Well, maybe we should have our own nuclear deterrent, because if the U.S. isn't certain, we need to make sure the North Koreans know that." Is that a reasonable position. Do you think at some point they should have their own arsenal?

TRUMP: Well, it's a position that we have to talk about, and it's a position that at some point is something that we have to talk about, and if the United States keeps on its path, its current path of weakness, they're going to want to have that anyway with or without me discussing it, because I don't think they feel very secure in what's going on with our country, David. You know, if you look at how we backed our enemies, it hasn't - how we backed our allies - it hasn't exactly

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Transcript: Donald Trump Expounds on His Foreign Policy Views - The New York Times

been strong. When you look at various places throughout the world, it hasn't been very strong. And I just don't think we're viewed the same way that we were 20 or 25 years ago, or 30 years ago. And, you know, I think it's a problem. You know, something like that, unless we get very strong, very powerful and very rich, quickly, I'm sure those things are being discussed over there anyway without our discussion.

HABERMAN: Will you –

SANGER: And would you have an objection to it?

TRUMP: Um, at some point, we cannot be the policeman of the world. And unfortunately, we have a nuclear world now. And you have, Pakistan has them. You have, probably, North Korea has them. I mean, they don't have delivery yet, but you know, probably, I mean to me, that's a big problem. And, would I rather have North Korea have them with Japan sitting there having them also? You may very well be better off if that's the case. In other words, where Japan is defending itself against North Korea, which is a real problem. You very well may have a better case right there. We certainly haven't been able to do much with him and with North Korea. But you may very well have a better case. You know, one of the things with the, with our Japanese relationship, and I'm a big fan of Japan, by the way. I have many, many friends there. I do business with Japan. But, that, if we are attacked, they don't have to do anything. If they're attacked, we have to go out with full force. You understand. That's a pretty one-sided agreement, right there. In other words, if we're attacked, they do not have to come to our defense, if they're attacked, we have to come totally to their defense. And that is a, that's a real problem.

Nuclear Weapons, Cyberwarfare and Spying on Allies

HABERMAN: Would you, you were just talking about the nuclear world we live in, and you've said many times, and I've heard you say it throughout the campaign, that you want the U.S. to be more unpredictable. Would you be willing to have the U.S. be the first to use nuclear weapons in a confrontation with adversaries?

TRUMP: An absolute last step. I think it's the biggest, I personally think it's the biggest problem the world has, nuclear capability. I think it's the single biggest problem. When people talk global warming, I say the global warming that we have to be careful of is the nuclear global warming. Single biggest problem that the world has. Power of weaponry today is beyond anything ever thought of, or even, you know, it's unthinkable, the power. You look at Hiroshima and you can multiply that times many, many times, is what you have today. And to me, it's the single biggest, it's the single biggest problem.

SANGER: You know, we have an alternative these days in a growing cyberarsenal. You've seen the growing cybercommand and so forth. Could you give us a vision of whether or not you think that the United States should regularly be using cyberweapons, perhaps, as an alternative to nuclear? And if so, how would you either threaten or employ those?

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Transcript: Donald Trump Expounds on His Foreign Policy Views - The New York Times

TRUMP: I don't see it as an alternative to nuclear in terms of, in terms of ultimate power. Look, in the perfect world everybody would agree that nuclear would, you know, be so destructive, and this was always the theory, or was certainly the theory of many. That the power is so enormous that nobody would ever use them. But, as you know, we're dealing with people in the world today that would use them, O.K.? Possibly numerous people that use them, and use them without hesitation if they had them. And there's nothing, there's nothing as, there's nothing as meaningful or as powerful as that, and you know the problem is, and it used to be, and you would hear this, David, and I would hear it, and everybody would hear it, and — I'm not sure I believed it, ever. I talk sometimes about my uncle from M.I.T., and he would tell me many years ago when he was up at M.I.T. as a, he was a professor, he was a great guy in many respects, but a very brilliant guy, and he would tell me many years ago about the power of weapons someday, that the destructive force of these weapons would be so massive, that it's going to be a scary world. And, you know, we have been under the impression that, well we've been, I think it's misguided somewhat, I've always felt this but that nobody would ever use them because of the power. And the first one to use them, I think that would be a very bad thing. And I will tell you, I would very much not want to be the first one to use them, that I can say.

HABERMAN: O.K.

SANGER: The question was about cyber, how would you envision using cyberweapons? Cyberweapons in an attack to take out a power grid in a city, so forth.

TRUMP: First off, we're so obsolete in cyber. We're the ones that sort of were very much involved with the creation, but we're so obsolete, we just seem to be toyed with by so many different countries, already. And we don't know who's doing what. We don't know who's got the power, who's got that capability, some people say it's China, some people say it's Russia. But certainly cyber has to be a, you know, certainly cyber has to be in our thought process, very strongly in our thought process. Inconceivable that, inconceivable the power of cyber. But as you say, you can take out, you can take out, you can make countries nonfunctioning with a strong use of cyber. I don't think we're there. I don't think we're as advanced as other countries are, and I think you probably would agree with that. I don't think we're advanced, I think we're going backwards in so many different ways. I think we're going backwards with our military. I certainly don't think we are, we move forward with cyber, but other countries are moving forward at a much more rapid pace. We are frankly not being led very well in terms of the protection of this country.

HABERMAN: Mr. Trump, just a quick follow-up on that question. As you know, we discovered in recent years that the U.S. spies extensively against its allies. That's what came up with Edward Snowden and his data trove including Israel and Germany.

TRUMP: Edward Snowden has caused us tremendous problems.

HABERMAN: But would you continue the programs that are in place now, or would you halt them, in terms of spying against our allies?

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Transcript: Donald Trump Expounds on His Foreign Policy Views - The New York Times

SANGER: Like Israel and Germany.

TRUMP: Right. They're spying against us. Edward Snowden has caused us tremendous problems. Edward Snowden has been, you know, you have the two views on Snowden, obviously: You have, he's wonderful, and you have he's horrible. I'm in the horrible category. He's caused us tremendous problems with trust, with everything about, you know, when they're showing, Merkel's cellphone has been spied on, and are - Now, they're doing it to us, and other countries certainly are doing it to us, and but what I think what he did, I think it was a tremendous, a tremendous disservice to the United States. I think and I think it's amazing that we can't get him back.

SANGER: President Obama ordered an end to the spying, to the listening in on Angela Merkel's cellphone, if that's in fact what we were doing. Was that the right decision?

TRUMP: Well you see, I don't know that, you know, when I talk about unpredictability, I'm not sure that we should be talking about me - On the assumption that I'm doing well, which I am, and that I may be in that position, I'm not sure that I would want to be talking about that. You understand what I mean by that, David. We're so open, we're so, "Oh I wouldn't do this, I wouldn't do that, I would do this, I would do that." And it's not so much with Merkel, but it's certainly with other countries. You know, that really, where there's, where there's a different kind of relationship, and a much worse relationship than with Germany. So, you know there's so, there's such predictability with our country. We go and we send 50 soldiers over to the Middle East and President Obama gets up and announces that we're sending 50 soldiers to the Middle East. Fifty very special soldiers. And they now have a target on their back, and everything we do, we announce, instead of winning, and announcing when it's all over. There's such, total predictability of this country, and it's one of the reasons we do so poorly. You know, I'd rather not say that. I would like to see what they're doing. Because you know, many countries, I can't say Germany, but many countries are spying on us. I think that was a great disservice done by Edward Snowden. That I can tell you.

How to Defeat ISIS

HABERMAN: Mr. Trump, you have talked about your plans to defeat ISIS, and how you would approach it. Would you be willing to stop buying oil from the Saudis if they're unwilling to go in and help?

SANGER: On the ground?

TRUMP: Oh yeah, sure. I would do that. The beautiful thing about oil is that, you know, we're really getting close, because of fracking, and because of new technology, we're really in a position that we weren't in, you know, years ago, and the reason we're in the Middle East is for oil. And all of a sudden we're finding out that there's less reason to be. Now, now, we're in the Middle East for really defense, because we can't allow them, I mean, look, I was against the war

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in Iraq. I thought it would destabilize the Middle East, and it has destabilized it, it's totally destabilized the Middle East. The way Obama got out of the war was, you know, disgraceful, and idiotic. When he announced the date certain, they pulled back, and they said, "Oh, well." As much as they don't mind dying, they do mind dying. And they pulled back, and then, you know, it's a, it was a terrible thing the way he announced that, and then he didn't leave troops behind so that, you know, whatever there was of Iraq, which in my opinion wasn't very much, because I think that, you know, the government was totally corrupt, and they put the wrong people in charge, and you know, that in its own way led to the formation of ISIS, because they weren't given their due. But, I think that President Obama, the way he got out of that war was unbelievable. I think Hillary Clinton was catastrophic in those decisions, having to do with Libya and just about everything else. Every bad decision that you could make in the Middle East was made. And now if you look at it, if you would go back 15 years ago, and I'm not saying it was only Obama, it was Obama's getting out, it was other people's getting in, but you go back 15 years ago, and I say this, if our presidents would have just gone to the beach and enjoyed the ocean and the sun, we would've been much better off in the Middle East, than all of this tremendous death, destruction, and you know, monetary loss, it's just incredible. 'Cause we're further, we're far worse off today than we were 15 years ago or 10 years ago in the Middle East. Far worse.

SANGER: But I just want to make sure I understand your answer to Maggie's question. So you said earlier this week that we should use air power but not send in ground forces. That had to be done by the regional Arab partners. We assume by that, you mean the Saudis, the U.A.E. and others from whom we might purchase oil or have alliances. I think Maggie's question, if I understood it right, was if these countries are unwilling to send in ground troops against ISIS, and so far they have been, despite President Obama's efforts to get them in, would you be willing to say, "We will stop buying oil from you, until you send ground troops?"

TRUMP: There's two answers to that. The answer is, probably yes, but I would also say this: We are not being reimbursed for our protection of many of the countries that you'll be talking about, that, including Saudi Arabia. You know, Saudi Arabia, for a period of time, now the oil has gone down, but still the numbers are phenomenal, and the amount of money they have is phenomenal. But we protect countries, and take tremendous monetary hits on protecting countries. That would include Saudi Arabia, but it would include many other countries, as you know. We have, there's a whole big list of them. We lose, everywhere. We lose monetarily, everywhere. And yet, without us, Saudi Arabia wouldn't exist for very long. It would be, you know, a catastrophic failure without our protection. And I'm trying to figure out, why is it that we aren't going in and saying, at a minimum, at a minimum it's a two-part question, with respect to Maggie's question. But why aren't we going in and saying, "At a minimum, I'm sorry folks, but you have to, under no circumstances can we continue to do this." You know, we needed, we needed oil desperately years ago. Today, because - again, because of the new technologies, and because of places that we never thought had oil, and they do have oil, and there's a glut on the market, there's a tremendous glut on the market, I mean you have ships out at sea that are loaded up and they don't even know where to go dump it. But we don't have that same pressure anymore, at all. And

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we shouldn't have that for a long period of time, because there's so many places. I mean, they're closing wells all over the place. So, I would say this, I would say at a minimum, we have to be reimbursed, substantially reimbursed, I mean, to a point that's far greater than what we're being paid right now. Because we're not being reimbursed for the kind of tremendous service that we're performing by protecting various countries. Now Saudi Arabia's one of them. I think if Saudi Arabia was without the cloak of American protection of our country's, of U.S. protection, think of Saudi Arabia. I don't think it would be around. It would be, whether it was internal or external, it wouldn't be around for very long. And they're a money machine, they're a monetary machine, and yet they don't reimburse us the way we should be reimbursed. So that's a real problem. And frankly, I think it's a real, in terms of bringing our country back, because our country's a poor country. Our country is a debtor nation, we're a debtor nation. I mean, we owe trillions of dollars to people that are buying our bonds, in the form of other countries. You look at China, where we owe them \$1.7 trillion, you have Japan, \$1.5 trillion. We're a debtor nation. We can't be a debtor nation. I don't want to be a debtor nation. I want it to be the other way. One of the reasons we're a debtor nation, we spend so much on the military, but the military isn't for us. The military is to be policeman for other countries. And to watch over other countries. And there comes a point that, and many of these countries are tremendously rich countries. Not powerful countries, but - in some cases they are powerful - but rich countries.

SANGER: One more along the lines of your ISIS strategy. You've seen the current strategy, which is, you've seen Secretary Kerry trying to seek a political accord between President Assad and the rebel forces, with Assad eventually leaving. And then the hope is to turn all those forces, including Russia and Iran, against ISIS. Is that the right way to do it? Do you have an alternative approach?

TRUMP: Well, I thought the approach of fighting Assad and ISIS simultaneously was madness, and idiocy. They're fighting each other and yet we're fighting both of them. You know, we were fighting both of them. I think that our far bigger problem than Assad is ISIS, I've always felt that. Assad is, you know I'm not saying Assad is a good man, 'cause he's not, but our far greater problem is not Assad, it's ISIS.

SANGER: I think President Obama would agree with that.

TRUMP: O.K., well, that's good. But at the same time - yeah, he would agree with that, I think to an extent. But I think, you can't be fighting two people that are fighting each other, and fighting them together. You have to pick one or the other. And you have to go at -

SANGER: So how would your strategy differ from what he's doing right now?

TRUMP: Well I can only tell you - I can't tell you, because his strategy, it's open and it would seem to be fighting ISIS but he's fighting it in such a limited capacity. I've been saying, take the oil. I've been saying it for years. Take the oil. They still haven't taken the oil. They still haven't taken it. And they hardly hit the oil. They hardly make a dent in the oil.

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SANGER: The oil that ISIS is pumping.

TRUMP: Yes, the oil that ISIS is pumping, where they're getting tremendous amounts of revenue. I've said, hit the banking channels. You know, they have very sophisticated banking channels, which I understand, but I don't think a lot of people do understand. You know, they're taking in tremendous amounts of money from banking channels. That, you know, many people in countries that you think are our allies, are giving ISIS tremendous amounts of money and it's going through very dark banking channels. And we should have stopped those banking channels long ago and I think we've done nothing to stop them, and that money is massive. Massive. It's a massive amount of money. So it's not only from oil, David, it's from also the bank, the bank. It's through banks. And very sophisticated channels. They call them the dark channels. Very sophisticated channels. And money is coming in from people that we think are our allies.

'NATO Is Obsolete'

HABERMAN: Mr. Trump, I also want to go back to something you said earlier this week about NATO being ineffective. Do you think it's the right institution for countering terror or do we need a new one and what might that new one look like?

TRUMP: Well I said something a few days ago and I was vastly criticized and I notice now this morning, people are saying Donald Trump is a genius. Because what I said - which of course is always nice to hear, David. But I was asked a question about NATO, and I've thought this but I have never expressed my opinion because until recently I've been an entrepreneur, I've been a very successful entrepreneur as opposed to a politician. And - I'd love to ask David, Maggie, if he's a little surprised at how well I've done. You know, we've knocked out a lot. We're down to the leftovers now, from the way I look at it. I call them the leftovers.

(Laughter.)

So anyway, but the question was asked of me a few days ago about NATO, and I said, well, I have two problems with NATO. No. 1, it's obsolete. When NATO was formed many decades ago we were a different country. There was a different threat. Soviet Union was, the Soviet Union, not Russia, which was much bigger than Russia, as you know. And, it was certainly much more powerful than even today's Russia, although again you go back into the weaponry. But, but - I said, I think NATO is obsolete, and I think that - because I don't think - right now we don't have somebody looking at terror, and we should be looking at terror. And you may want to add and subtract from NATO in terms of countries. But we have to be looking at terror, because terror today is the big threat. Terror from all different parts. You know in the old days you'd have uniforms and you'd go to war and you'd see who your enemy was, and today we have no idea who the enemy is.

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SANGER: If you just think about Maggie's question about whether it's the right institution for this, when you go to NATO these days, in Brussels, not far from where we've seen — just miles from where we saw the attacks the other day —

TRUMP: Which is amazing, right? Which is amazing in itself. Yes?

SANGER: What they'll say to you is that Russia is resurgent right now. They are rebuilding their nuclear arsenal. They're [unintelligible] Baltics. We've got submarine runs, air runs. Things that have at least echoes of the old Cold War. The view is that their mission is coming back. Do you agree with that?

TRUMP: I'll tell you the problems I have with NATO. No. 1, we pay far too much. We are spending — you know, in fact, they're even making it so the percentages are greater. NATO is unfair, economically, to us, to the United States. Because it really helps them more so than the United States, and we pay a disproportionate share. Now, I'm a person that — you notice I talk about economics quite a bit, in these military situations, because it is about economics, because we don't have money anymore because we've been taking care of so many people in so many different forms that we don't have money — and countries, and countries. So NATO is something that at the time was excellent. Today, it has to be changed. It has to be changed to include terror. It has to be changed from the standpoint of cost because the United States bears far too much of the cost of NATO. And one of the things that I hated seeing is Ukraine. Now I'm all for Ukraine, I have friends that live in Ukraine, but it didn't seem to me, when the Ukrainian problem arose, you know, not so long ago, and we were, and Russia was getting very confrontational, it didn't seem to me like anyone else cared other than us. And we are the least affected by what happens with Ukraine because we're the farthest away. But even their neighbors didn't seem to be talking about it. And, you know, you look at Germany, you look at other countries, and they didn't seem to be very much involved. It was all about us and Russia. And I wondered, why is it that countries that are bordering the Ukraine and near the Ukraine — why is it that they're not more involved? Why is it that they are not more involved? Why is it always the United States that gets right in the middle of things, with something that — you know, it affects us, but not nearly as much as it affects other countries. And then I say, and on top of everything else — and I think you understand that, David — because, if you look back, and if you study your reports and everybody else's reports, how often do you see other countries saying 'We must stop, we must stop.' They don't do it! And, in fact, with the gas, you know, they wanted the oil, they wanted other things from Russia, and they were just keeping their mouths shut. And here the United States was going out and, you know, being fairly tough on the Ukraine. And I said to myself, isn't that interesting? We're fighting for the Ukraine, but nobody else is fighting for the Ukraine other than the Ukraine itself, of course, and I said, it doesn't seem fair and it doesn't seem logical.

HABERMAN: Mr. Trump, speaking of —

TRUMP: David, does that make sense to you, by the way?

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SANGER: Well, President Obama said the other day in an interview he had that he thought that Russia, over time, was always going to have more influence over Ukraine than we would or anyone else would just given both the history and the geography.

TRUMP: And the location, right. The geography. I would agree with him.

SANGER: And so in the end do you agree that Russia is going to end up dominating the Ukraine?

TRUMP: Well, unless, unless there is, you know, somewhat of a resurgence frankly from people that are around it. Or they would ask us for help. But they don't ask us for help. They're not even asking us for help. They're literally not even talking about it, and these are the countries that border the Ukraine.

HABERMAN: Mr. Trump -

TRUMP: There doesn't seem to be any great anxiety over the Ukraine by everybody that should be affected and that's bordering the Ukraine.

SANGER: There are several countries that have joined NATO in recent times - Estonia, among them, and so forth - that we are now bound by treaty to defend if Russia moved in. Would you observe that part of the treaty?

TRUMP: Yeah, I would. It's a treaty, it's there. I mean, we defend everybody. *(Laughs.)* We defend everybody. No matter who it is, we defend everybody. We're defending the world. But we owe, soon, it's soon to be \$21 trillion. You know, it's 19 now but it's soon to be 21 trillion. But we defend everybody. When in doubt, come to the United States. We'll defend you. In some cases free of charge. And in all cases for a substantially, you know, greater amount. We spend a substantially greater amount than what the people are paying. We, we have to think also in terms - we have to think about the world, but we also have - I mean look at what China's doing in the South China Sea. I mean they are totally disregarding our country and yet we have made China a rich country because of our bad trade deals. Our trade deals are so bad. And we have made them - we have rebuilt China and yet they will go in the South China Sea and build a military fortress the likes of which perhaps the world has not seen. Amazing, actually. They do that, and they do that at will because they have no respect for our president and they have no respect for our country. Hey folks, I'm going to have to get off here now. Did you -

Tensions in the South China Sea

HABERMAN: I just had one quick follow-up on what you were saying about the South China Sea. How would you counter that assertiveness over those islands? Among other things, it's increasingly valuable real estate strategically. Would you be willing to build our own islands there?

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TRUMP: Well what you have to do – and you have to speak to Japan and other countries, because they're affected far greater than we are – you understand that – I mean, they're affected far – I just think the act is so brazen, and it's so terrible that they would do that without any consultation, without anything, and yet they'll sell their products to the United States and rebuild China, and frankly, even the islands, I mean, you know, they've made so much economic progress because of the United States. And in the meantime we're becoming a third-world nation. You look at our airports, you look at our roadways, you look at our bridges are falling down. They're building bridges all over the place, ours are falling down. You know, we've rebuilt China. The money they've drained out of the United States has rebuilt China. And they've done it through monetary manipulation, by devaluations. And very sophisticated. I mean, they're grand chess players at devaluation. But they've done it –

SANGER: I think what Maggie was asking was how would you deter their activity. Right now (*Crosstalk*) – But would you claim some of those reef scenarios to try to build our own military –

TRUMP: Perhaps, but we have great economic – and people don't understand this – but we have tremendous economic power over China. We have tremendous power. And that's the power of trade. Because they use us as their bank, as their piggy bank, they take – but they don't have to pay us back. It's better than a bank because they take money out but then they don't have to pay us back.

SANGER: So you would cut into trade in return –

TRUMP: No, I would use trade to negotiate.

HABERMAN: Oh, O.K. My last question. Sir, my last –

TRUMP: I would use trade to negotiate. Would I go to war? Look, let me just tell you. There's a question I wouldn't want to answer. Because I don't want to say I won't or I will or – do you understand that, David? That's the problem with our country. A politician would say, 'Oh I would never go to war,' or they'd say, 'Oh I would go to war.' I don't want to say what I'd do because, again, we need unpredictability. You know, if I win, I don't want to be in a position where I've said I would or I wouldn't. I don't want them to know what I'm thinking. The problem we have is that, maybe because it's a democracy and maybe because we have to be so open – maybe because you have to say what you have to say in order to get elected – who knows? But I wouldn't want to say. I wouldn't want them to know what my real thinking is. But I will tell you this. This is the one aspect I can tell you. I would use trade, absolutely, as a bargaining chip.

His Foreign Policy Team

HABERMAN: Mr. Trump, how did you come to settle on your foreign policy team? I know that it's still in formation and you've said –

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TRUMP: Recommended by people. And we're going to have new people put in. In fact, we have additional people too. You've got the one list, I think, but we have - we actually have - I only gave certain names.

HABERMAN: But did you meet with them?

TRUMP: We have some others that I really like a lot and we're going to put them in. Maj. Gen. Gary Harrell. Maj. Gen. Bert Mizuwawa. (*Ed. note: It's Mizusawa.*)

HABERMAN: These are the additional ones?

TRUMP: Rear Adm. Chuck Kubic. Yeah. He's Navy, retired. Very good, nice, supposedly.

HABERMAN: Interesting. Interesting.

TRUMP: These are people recommended - people that I respect recommended them. People - I've heard very good things about them. In addition, we're going to be adding some additional names that I've liked over the years.

HABERMAN: Ah, O.K.

TRUMP: I have very strong - as you've probably noticed - I've had very strong feelings on foreign policy and I've had very strong feelings on defense and offense. And I've been right about a lot of the things I've been saying. I've been right about a lot. And The New York Times criticized me very badly with a very major article when I said Brussels is a hellhole, and I talked about Brussels in a very negative way because of what they're doing over there. And yesterday all over Twitter, as you probably saw, everybody said that Trump is right, The New York Times - You know, The New York Times really hit me hard on Brussels when I said recently that it's a hellhole, and waiting to explode. And I didn't even realize it, and then yesterday all over the place, Twitter was crazy that Trump was right, again, this time about Brussels.

HABERMAN: You mean after the attacks?

TRUMP: I've been right - Yeah, after the attack. I've been right about a lot of different things. So. Anyway. You know, in my book I mention Osama bin Laden, and I wrote the book in 2000, prior to the World Trade Center coming down and the reason I did is that I saw this guy and I read about this terrorist who was a very aggressive, bad dude. And I wrote about it in "The America We Deserve." I wrote about Osama bin Laden. You know, not a lot, but a couple paragraphs - about Osama bin Laden. Look at him. You better take a look at him. And a year and a half later the World Trade Center came down. And your friend Joe Scarborough, interestingly, in one of his - you know, somebody had mentioned that, and Joe said, 'No way. There's no way he wrote about it before the fact.' And they said no, no, and they sent out for the book, and they put it before him and he said, 'Wow, you're right. Trump wrote about Osama bin Laden before the World Trade Center came down. That's amazing.' So look, I've said a lot. I don't get a lot of credit. I do from the people. I don't from a lot of the media. But that's O.K. I'd rather keep it that way. Hey David, I'd rather have it that way, I guess, right?

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(Laughter.)

The Iran Deal

SANGER: You have told us a lot about what your leverage would be over China in trade. Tell us on Iran: I know that you've said that you think that the Iran deal was an extremely bad deal. I'd be interested to know what your goals would be in renegotiating it. What your leverage would be and what you would renegotiate, what parts of the agreement.

TRUMP: Sure. It's not just that it's a bad deal, David. It's a deal that could've been so much better just if they'd walked a couple of times. They negotiated so badly. They were being mocked, they were being scorned, they were being harassed, our negotiators, including Kerry, back in Iran, by the various representatives and the leaders of Iran at the highest level. And they never walked. They should've walked, doubled up the sanctions, and made a good deal. Gotten the prisoners out long before, not just after they gave the \$150 billion. They should've never given the money back. There were so many things that were done, they were so, the negotiation was, and I think deals are fine, I think they're good, not bad. But, you gotta make good deals, not bad deals. This deal was a disaster.

SANGER: So, it's a deal you would inherit if you were elected, so what I'm trying to get at is, what would you insist on. Are the restrictions on nuclear not long enough, are the missile restrictions not strong enough?

TRUMP: Certainly the deal is not long enough. Because at the end of the deal they're going to have great nuclear capability. So certainly the deal isn't long enough. I would never have given them back the \$150 billion under any circumstances. I would've never allowed that to happen. They are, they are now rich, and did you notice they're buying from everybody but the United States? They're buying planes, they're buying everything, they're buying from everybody but the United States. I would never have made the deal.

SANGER: Our law prevents us from selling to them, sir.

TRUMP: Uh, excuse me?

SANGER: Our law prevents us from selling any planes or, we still have sanctions in the U.S. that would prevent the U.S. from being able to sell that equipment.

TRUMP: So, how stupid is that? We give them the money, and we now say, "Go buy Airbus instead of Boeing," right? So how stupid is that? In itself, what you just said, which is correct by the way, but would they now go and buy, you know, they bought 118 approximately, 118 Airbus planes. They didn't buy Boeing planes, O.K.? We give them the money, and we say you can't spend it in the United States, and create wealth and jobs in the United States. And on top of it,

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they didn't, they in theory, I guess, cannot do that, you know, based on what I've understood. They can't do that. It's hard to believe. We gave them \$150 billion and they can't spend it in our country.

SANGER: So you would lift the domestic sanctions so they could buy American goods?

TRUMP: Well, I wouldn't have given them back the money. So I wouldn't be in that position. I would never have given them back the - that would never be a part of the negotiation. I would have never, ever given it to them, and I would've made a better deal than they made, without the money, and I would've made a better deal.

SANGER: And to stop the missile launches they've been doing?

TRUMP: Well, it's ridiculous, I mean, now they're doing missile launches, and they're buying missiles from Russia, and they're doing things that nobody thought were, you know, even permissible or in the deal, and they're doing them.

HABERMAN: Mr. Trump, one thing you didn't talk about -

TRUMP: That deal was one of the most incompetent deals of any kind I've ever seen.

HABERMAN: One thing you talked about at Aipac -

TRUMP: Right, David, so I wouldn't talk in terms of not buying because I would've never, ever given them the money. Go ahead.

HABERMAN: Sorry, sir, one thing that didn't come up at Aipac, I think in actually anyone's speeches, but in yours also, I'm curious, in terms of Israel, and in terms of the peace process, do you think it should result in a two-state solution, or in a single state?

TRUMP: Well, I think a lot of people are saying it's going to result in a two-state solution. What I would love to do is to, a lot of people are saying that. I'm not saying anything. What I'm going to do is, you know, I specifically don't want to address the issue because I would love to see if a deal could be made. If a deal could be made. Now, I'm not sure it can be made, there's such unbelievable hatred, there's such, it's ingrained, it's in the blood, the hatred and the distrust, and the horror. But I would love to see if a real deal could be made. Not a deal that you know, lasts for three months, and then everybody starts shooting again. And a big part of that deal, you know, has to be to end terror, we have to end terror. But I would say this, in order to negotiate a deal, I'd want to go in there as evenly as possible and we'll see if we can negotiate a deal. But I would absolutely give that a very hard try to do. You know, a lot of people think that's the hardest of all deals to negotiate. A lot of people think that. So, but I would say that I would have a better chance than anybody of making a deal. I'll tell you one thing, people that I know from Israel, many people, many, many people, and almost everybody would love to see a deal on the side of Israel. Everybody would, now with that being said, most people don't think a deal can be made. But from the Israeli side, they would love to see a deal. And I've been a little bit surprised here.

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Now that I'm really into it, I've been a little bit surprised to hear that. I would've said, I would've said that maybe, maybe you know, maybe Israel never really wanted to make a deal or doesn't really want to make a deal. They really want to make a deal, they want to make a good deal, they want to make a fair deal, but they do want to make a deal. And, almost everybody, and I'm talking to people off the record, and off the record, they really would like to see a deal. I'm not so sure that the other side can mentally, you know, get their heads around the deal, because the hatred is so incredible. Folks, I have to go.

Developing Views on Foreign Affairs

Second interview begins:

TRUMP: So go ahead, start off wherever you want.

SANGER: One place that might be a good place to start is where we ended up on the foreign policy advisers. Because we're trying to figure out how much time you're cutting out now for foreign policy as you said — it's not an area you focused on in your business career as much.

TRUMP: Well I enjoyed it, I enjoyed reading about it. But it wasn't something that came into play as a business person. But I had an aptitude for it I think, and I enjoyed reading about and I would read about it.

SANGER: One question we had for you is, first of all, since you enjoyed reading about it, is there any particular book or set of articles that you found influential in developing your own foreign policy views?

TRUMP: More than anything else would be various newspapers including your own, you really get a vast array and, you know a big menu of different people and different ideas. You know you get a very big array of things from reading the media, from seeing the media, the papers, including yours. And it's something that I've always found interesting and I think I've adapted to it pretty well. I will tell you my whole stance on NATO, David, has been — I just got back and I'm watching television and that's all they're talking about. And you know when I first said it, they sort of were scoffing. And now they're really saying, well wait, do you know it's really right? And maybe NATO — you know, it doesn't talk about terror. Terror is a big thing right now. That wasn't the big thing when it originated and people are starting to talk about the cost.

SANGER: Well it's geared toward state actors and you're discussing gearing something toward nonstate actors. Is it possible that we need a new institution that is not burdened by the military structure of NATO in order to deal with nonstate actors and terrorists?

TRUMP: I actually think in terms of terror you may be better off with a new institution, an institution that would be more fairly based, an institution that would be more fairly taken care of from an economic standpoint. You have many wealthy states over there that are not going to be there if it's not for us, and they're not going to be there if it is for terror. Whether it's Saudi Arabia

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or others. I actually do think, while I'd like to adapt it, I think you have a different set of players, frankly. You have more of a Middle Eastern player and others but you would have in addition, Middle Eastern players.

SANGER: Who are not currently members of NATO. You think the membership of NATO is not set up right for combating terror.

TRUMP: No, it was set up to talk about the Soviet Union. Now of course the Soviet Union doesn't exist now it's Russia, which is not the same size, in theory not the same power, but who knows about that because of weaponry, but it's not the same size and this was set up for numerous things but for the Soviet Union. The point is the world is a much different place right now. And today all you have to do is read and see the world is, the big threat would seem to be based on terror and based on what's going on in 90 percent, 95 percent of the horror stories. I think, probably a new institution maybe would be better for that than using NATO which was not meant for that. And it's become very bureaucratic, extremely expensive and maybe is not flexible enough to go after terror. Terror is very much different than what NATO was set up for.

SANGER: And requires a different kind of force.

TRUMP: I think it requires a different flexibility, it requires a different speed maybe, watching nations or a nation or nations. I think it requires flexibility and speed.

SANGER: So Maggie and I were at the end of our conversation this morning we were talking with you a little bit about your foreign policy advisers. There's been a little bit of a sense that you've had a hard time attracting some of the bigger names of your party. There were a lot of former deputy secretaries of state, of defense, others were out there. And the list of advisers you've released so far has been very strong on having military backgrounds but not many with diplomatic backgrounds. We were wondering whether or not you are looking for a different mix or whether you're having trouble attracting some of the big names.

TRUMP: It's interesting, it's not trouble attracting. Many of them that I actually like a lot and that like me a lot and that want to do 100 percent, many of them are tied up with contracts working for various networks, you understand? I mean, I've had some that are — I currently have some that are thinking about getting out of their contract 'cause they're so excited about it. I've had a lot of excitement but there are some that are tied up where they have a contract with, as an example, they might have a contract with Fox, they may have a contract with CNN and they can't do it. They have contracts with the various networks and maybe the media too. I don't know about The Times but it's possible — I think less likely, I'm not sure how that structure works with the actual newspapers. But there are some that I've spoken to that want to do it but they're tied up with contracts that are with somebody else. There are some that were with campaigns that have now imploded, and I think they're going to be free agents very shortly. Hey, a lot of campaigns have imploded in the last couple of months, which you people perhaps have seen just as vividly as I have. Right? Not as happily as I have, but nevertheless just as vividly. So

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you know there are actually, there are a lot of people available, there are a lot of good people available. But some of the good people are currently under contract. Does that make sense to you, David?

SANGER: Yup, Maggie, did you having anything more on that before we wanted to turn back to Israel?

HABERMAN: Yeah, Mr. Trump, if you could just say how much time are you devoting a week at this point either to briefings to studying, you know, and if there's no major change now what it might look like in the future?

TRUMP: I think that you know, what I've really had to do is get through 17, cause it was really 18 total when we started. So I had to get through 17 people. I've gotten through almost all of the 17 people. But I'm down to two, from 17 to two. And you know many of them were front-runners, and they weren't front-runners for very long. You can go through the list, you know the list as well as I do. And my primary focus was that.

But during the period I've been, I think very well versed on matters as we're discussing and many more than just what we're just discussing. Now as it gets — as we get you know closer to the end of the process it'll take place more and more. I'm setting up a council, I'm setting up — and I have other people coming in, I gave you the other few names I think that we added, we have a few more coming in. But I have a few more that are going to come in. I just don't want to I just don't want to mention them unless they give me approval, meaning they're on board.

And we're going to have a very substantial council of very good people. And some of them are military. Look, the military is going to be very important because we have to do something with ISIS, David, and you know we do want the military. And I think that over the next few weeks I'll be able to give you some more names. People that are going to be coming in.

SANGER: Do you fear that if you have too many military on your council, they tend to search for the military solution first instead of the diplomatic or economic sanction solution first?

TRUMP: Yeah but I'd like to know the military solution and I'm working on the military solution. Because there's not huge negotiation involved with ISS, because there's an irrationality that is pretty — this is not something, 'Oh let's make a deal.' I don't see deals being made with ISIS. Nobody knows what ISIS is, nobody knows who is leading it, who is alive, who is not alive, I mean we're really not talking about too many diplomatic solutions. We're not talking about diplomatic solutions with ISIS, let me put it that way.

U.S. Influence in East Asia

SANGER: I wasn't referring to that in the ISIS context, I was referring more in the realm of dealing with our allies, dealing with China, dealing with Japan, the other places that we've discussed.

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TRUMP: So ISIS I think you'd agree with me on that and the rest will come. I have really strong feelings on China. I like China very much I like Chinese people. I respect the Chinese leaders, but you know China's been taking advantage of us for many, many years and we can't allow it to go on. And at the same time we'll be able to keep a good relationship with China. And same with Japan and same with — you have to see the trade imbalance between Japan and the United States, it's unbelievable. They sell to us and we practically give them back nothing by comparison. It's a very unfair situation.

SANGER: They also pay more for troop support than any other country in the world.

TRUMP: They do but still far less than it costs us.

HABERMAN: Would you be willing —

TRUMP: You're right about that David, but it's — and they do pay somewhat more, but they pay more because of the tremendous amount of business that they do with us, uneconomic business from our standpoint.

HABERMAN: Would you be willing to withdraw U.S. forces from places like Japan and South Korea if they don't increase their contribution significantly?

TRUMP: Yes, I would. I would not do so happily, but I would be willing to do it. Not happily. David actually asked me that question before, this morning before we sort of finalized out. The answer is not happily but the answer is yes. We cannot afford to be losing vast amounts of billions of dollars on all of this. We just can't do it anymore. Now there was a time when we could have done it. When we started doing it. But we can't do it anymore. And I have a feeling that they'd up the ante very much. I think they would, and if they wouldn't I would really have to say yes.

SANGER: So we talked a little this morning about Japan and South Korea, whether or not they would move to an independent nuclear capability. Just last week the United States removed from Japan, after a long negotiation, many bombs worth, probably 40 or more bombs worth of plutonium or highly enriched uranium that we provided them over the years. And that's part of a very bipartisan effort to keep them from going nuclear. So I was a little surprised this morning when you said you would be open to them having their own nuclear deterrent. Certainly if you pull back one of the risks is that they would go nuclear.

TRUMP: You know you're more right except for the fact that you have North Korea which is acting extremely aggressively, very close to Japan. And had you not had that, I would have felt much, I would have felt differently. You have North Korea, and we are very far away and we are protecting a lot of different people and I don't know that we are necessarily equipped to protect them. And if we didn't have the North Korea threat, I think I'd feel a lot differently, David.

SANGER: But with the North Korea threat you think maybe Japan does need its own nuclear...

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TRUMP: Well I think maybe it's not so bad to have Japan — if Japan had that nuclear threat, I'm not sure that would be a bad thing for us.

SANGER: You mean if Japan had a nuclear weapon it wouldn't be so bad for us?

TRUMP: Well, because of North Korea. Because of North Korea. Because we don't know what he's going to do. We don't know if he's all bluster or is he a serious maniac that would be willing to use it. I was talking about before, the deterrent in some people's minds was that the consequence is so great that nobody would ever use it. Well that may have been true at one point but you have many people that would use it right now in this world.

SANGER: For that reason, they may well need their own and not be able to just depend on us...

TRUMP: I really believe that's true. Especially because of the threat of North Korea. And they are very aggressive toward Japan. Well I mean look, he's aggressive toward everybody. Except for China and Iran.

See we should use our economic power to have them disarm — now then it becomes different, then it becomes purely economic, but then it becomes different. China has great power over North Korea even though they don't necessarily say that. Now, Iran, we had a great opportunity during this negotiation when we gave them the 150 billion and many other things. Iran is the No. 1 trading partner of North Korea. Now we could have put something in our agreement that they would have led the charge if we had people with substance and with brainpower and with some negotiating ability. But the No. 1 trading partner with North Korea is Iran. And we did a deal with them, and we just did a deal with them, and we don't even mention North Korea in the deal. That was a great opportunity to put another five pages in the deal, or less, and they do have a great influence over North Korea. Same thing with China, China has great influence over North Korea but they don't say they do because they're tweaking us. I have this from Chinese. I have many Chinese friends, I have people of vast wealth, some of the most important people in China have purchased apartments from me for tens of millions of dollars and frankly I know them very well. And I ask them about their relationship to North Korea, these are top people. And they say we have tremendous power over North Korea. I know they do. I think you know they do.

SANGER: They signed on to the most recent sanctions, more aggressive sanctions than we thought the Chinese would agree to.

TRUMP: Well that's good, but, I mean I know they did, but I think that they have power beyond the sanctions.

SANGER: So you would advocate that they have to turn off the oil to North Korea basically.

TRUMP: So much of their lifeblood comes through China, that's the way it comes through. They have tremendous power over North Korea, but China doesn't say that. China says well we'll try. I can see them saying, "We'll try, we'll try." And I can see them laughing in the room next door when they're together. So China should be talking to North Korea. But China's tweaking us.

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China's toying with us. They are when they're building in the South China Sea. They should not be doing that but they have no respect for our country and they have no respect for our president. So, and the other one, and this is an opportunity passed because why would Iran go back and renegotiate it having to do with North Korea? But Iran is the No. 1 trading partner, but we should have had something in that document that was signed having to do with North Korea as the No. 1 trading partner and as somebody with a certain power because of that. A very substantial power over North Korea.

SANGER: Mr. Trump with all due respect, I think it's China that's the No. 1 trading partner with North Korea.

TRUMP: I've heard that certainly, but I've also heard from other sources that it's Iran.

SANGER: Iran is a major arms exchanger with...

TRUMP: Well that is true but I've heard it both ways. They are certainly major arms exchangers, which in itself is terrible that we would make a deal with somebody that's a major arms exchanger with North Korea. But had that deal not been done and they were desperate to do it, and they wanted to do it much more so than we know in my opinion, meaning Iran wanted to make the deal much more than we know. We should have backed off that deal, doubled the sanctions and made a real deal. And part of that deal should have been that Iran would help us with North Korea. So, the bottom line is, I think that frankly, as long as North Korea's there, I think that Japan having a capability is something that maybe is going to happen whether we like it or not.

Boots on the Ground

SANGER: O.K.. We wanted to ask you a little bit, and Maggie maybe you may have something on this as well, about what standards you would use for using American troops abroad. You've said you wouldn't want to send them in against ISIS, that that should be the neighbors. But you did say this morning that if we have a treaty obligation under NATO to protect the Baltics, you would do that. When you think of your standards under which you would put American lives...

TRUMP: Well I think, I do think I'd want to renegotiate some of those treaties. I think those treaties are very unfair, and they're very one-sided and I do think that some of those treaties, just like the Iran deal. But I think that some of those treaties would — will be — renegotiated.

SANGER: Such as the U.S.-Japan defense treaty?

TRUMP: Well, like Japan as an example. I mean that's not a fair deal.

SANGER: Do you have general standards in mind? And, we're trying to understand your hierarchy of threats.

TRUMP: Are you talking about for...

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SANGER: For when you would commit American troops abroad?

TRUMP: O.K. You absol — I know you'll criticize me for this, but you cannot just have a standard. You cannot just say that we have a blanket standard all over the world because each instance is totally different, David. I mean, each instance is so different that you can't have a blanket standard. You may say... it sounds nice to say, "I have a blanket standard; here's what it is." Number one is the protection of our country, O.K.? That's always going to be number one, by far. That's by a factor of a hundred. But you know, then there will be standards for other places but it won't be a blanket standard.

SANGER: Humanitarian intervention: Are you in favor of that or not?

TRUMP: Humanitarian? Yes, I would be. You know, to help I would be, depending on where and who and what. And, you know, again — generally speaking — I'd have to see the country; I'd have to see what's going on in the region and you just cannot have a blanket. The one blanket you could say is, "protection of our country." That's the one blanket. After that it depends on the country, the region, how friendly they've been toward us. You have countries that haven't been friendly to us that we're protecting. So it's how good they've been toward us, et cetera, et cetera. So you can't say a blanket. You could say standards for different areas, different regions, and different countries.

Israel and the Palestinians

HABERMAN: You had said earlier, I think, when you called David that you had wanted to elaborate on your answer about Israel and a two-state solution. I just wanted to...

TRUMP: Well, not elaborate. I just put it off because I was running out of time and I didn't want to get into it too much because it's actually not that. So should we talk about Israel for a little while?

SANGER: Sure.

TRUMP: I have gotten some of the reviews of my speech at Aipac and, really, they've been very nice. They were very nice. Were you there? Were either of you at that speech?

HABERMAN: I was.

SANGER: I saw it on TV.

TRUMP: You saw the response Maggie, then, from the crowd?

HABERMAN: I did. I did.

TRUMP: Many, many standing ovations and they agreed with what I said. Basically I support a two-state solution on Israel. But the Palestinian Authority has to recognize Israel's right to exist as a Jewish state. Have to do that. And they have to stop the terror, stop the attacks, stop the

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teaching of hatred, you know? The children, I sort of talked about it pretty much in the speech, but the children are aspiring to grow up to be terrorists. They are taught to grow up to be terrorists. And they have to stop. They have to stop the terror. They have to stop the stabbings and all of the things going on. And they have to recognize that Israel's right to exist as a Jewish state. And they have to be able to do that. And if they can't, you're never going to make a deal. One state, two states, it doesn't matter: you're never going to be able to make a deal. Because Israel would have to have that. They have to stop the terror. They have to stop the teaching of children to aspire to grow up as terrorists, which is a real problem. So with that you'd go two states, but in order to go there, before you, you know, prior to getting there, you have to get those basic things done.

Now whether or not the Palestinians can live with that? You would think they could. It shouldn't be hard except that the ingrained hatred is tremendous.

Countering Extremism

HABERMAN: You had talked, and you've talked a lot recently, about wanting to expand laws regarding torture.

TRUMP: Yes.

HABERMAN: Much of that is governed by international law.

TRUMP: Yes.

HABERMAN: How would you go about bringing changes to...?

TRUMP: O.K., when you see a thing like an attack in Brussels, when you see as an example they have somebody that they've wanted very much, and they got him three, four days before Brussels, right? Before the bombing. Had they immediately subjected him to very serious interrogation — very, very serious — you might have stopped the bombing. He knew about the bombing. Just like the people, just like all of that people in the area where he grew up — where he was housed a couple of houses down the road — they all knew he was there. And they never turned him in. This is what I'm saying: there's something going on and it's not good. He was the No. 1 wanted fugitive in the world and he's living in his neighborhood, and I believe I saw a picture of him shopping in his neighborhood, right? In a grocery store? You know: shopping! Buying food! I mean, it's ridiculous they don't turn him in. Just like in California, the two people, where she probably radicalized him but they don't know, but the two — the married couple — that killed the 14 people: they had bombs all over the floor of their apartment and nobody said anything. And many people saw that apartment and many people saw bombs. You know, if you walk into an apartment, Maggie or David, you're going to say, "Oh, this is a little strange."

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SANGER: So would you invest in programs, or help the Europeans invest in programs, for counter-radicalization? For finding jobs and so forth for the refugees who come in so that their temptation to go to become radicalized in Europe would be lower? In other words do you have a program in mind to stop the radicalization?

TRUMP: The one thing I'd do, David, is build safe zones in Syria. You know this whole concept of us accepting, you know, tens of thousands of people, and you see I was originally right when I said, many more people, you know he was talking about 10,000, you know it's many more people than 10,000 are coming in. And will come in.

SANGER: And who would protect those safe zones, you know as soon as you build one...?

TRUMP: O.K., what I would do is this: We could lead it, but I would get the Gulf states and others to put up the money. I mean Germany should put up money. Look what's happened to Germany. Germany's being destroyed and I have friends, I just left people from Germany and they don't even want to go back. Germany's being destroyed by Merkel's naiveté or worse. But Germany is a whole different place and you're going to have a problem in Germany. The German people are not going to take it. The German people are not going to take what's going on there. You have people leaving the country, permanently leaving the country. You have tremendous crime, you have tremendous, you know, you read the same stories that I do. You write them, actually, it's even better. So you have tremendous problems over there but I do believe in building a safe zone, a number of safe zones, in sections of Syria and that when this war, this horrible war, is over people can go back and rebuild if they want to and I would have the Gulf states finance it because they have the money and they should finance it. So far, they've put up very little money and they taken nobody in, essentially nobody in. I would be very strong with them because they have tremendous, they have unlimited amounts of money, and I would ask them to finance it. We can lead it but I don't want to spend the money on it, because we don't have any money. Our country doesn't have money.

A Strong China

SANGER: I wanted to take you back to something you said on China earlier because your arguments about China so far have really been, over the years, very much about how to deal with a strong and rising China. But what we've seen in the past six months to a year has been a China that is economically weakening. I'm sure you see it in your own businesses there. So do you have a sense...

TRUMP: Well, they're down to G.D.P. of 7 percent.

SANGER: If you believe their numbers.

TRUMP: Yeah, if we ever hit 7 percent we'd have the most successful country. We'd be in a boom, the likes of which we've rarely seen before, right?

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SANGER: What I'm getting at is a weakening China may have different effects on the world and on the United States than a strengthening China. Do you fear a weaker China or a weakening China more than a strong China?

TRUMP: No. I want a strong United States and I hope China does well, but before I worry about China I have to worry about the United States and we're not doing well.

SANGER: You've given us a lot of your impressions of Vladimir Putin. We haven't heard you very much on Xi Jinping.

TRUMP: Well I haven't said anything. By the way, I've been really misquoted. Vladimir Putin said, "Donald Trump is brilliant and Donald Trump is a real leader. And Donald Trump will be the real leader." O.K.? I didn't say anything about him other than to say... I said, we were on "60 Minutes" the same night, remember? That was six months ago. But I never said good, bad, or indifferent. I said he is a strong leader, he is a strong leader. But I didn't say that, and I'm not saying that positively or negatively, I'm just saying he's a strong leader. That's pretty obvious that he's a strong leader.

SANGER: What's your impression of Xi Jinping?

TRUMP: I think they are in a very interesting position. The economy is going to be, I think actually very strong but the economy, I think they're doing better than people understand. Nobody has manipulated economic conditions better than they have. And I think they're doing just fine and I think they will continue to do just fine. But a lot of it's being taken out of the hide of our country and we can't allow that to happen. You know if you look at the number of jobs that we've lost, it's millions of jobs. It's not a little bit, it's millions. And if you look at our phony numbers of 5 percent unemployment, even opponents would say that, and would agree to that fact that the jobs that we have are bad jobs. They're not good jobs, they're bad jobs. We're losing, you know, when you see a Carrier move into Mexico, those are good jobs. We're losing the good jobs. We now have a lot of bad jobs, we have a lot of part-time jobs. It's not the same country. We're losing our companies. I mean when we lose Pfizer to Ireland, when we lose Ford and Carrier and many others to, Nabisco as an example from Chicago to Mexico, when we lose all of these companies going to Mexico and to many other places, we're going to end up having no comp— we're going to have nothing left. And it has to be stopped, and it has to be stopped fast and I know how to stop it. Nobody else, the politicians don't know how to stop it. And besides that the politicians are all taken care of by the special interests and the lobbyists. Lobbyists for hire. And somebody will get to them and they will pay them a lot of money and the politicians will not do what they have to do, which is keep companies in this country. Those companies that want to leave will get to the lobbyists and the special interests and those politicians will do what they want them to do, which is not in the interest of our country. O.K.

Lessons Learned From Iraq

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HABERMAN: Mr. Trump, I have heard you say for years now, including at your CPAC speech back in 2011, "Take the oil." That America should have taken the oil from Iraq.

TRUMP: I've said it for years.

HABERMAN: Why should the American...?

TRUMP: Originally I didn't say it. Originally I said, "Don't go into Iraq."

HABERMAN: Right.

TRUMP: Now, we went in, we destroyed a military base that was equal to, if not greater than, Iran. And we've destroyed that military, and they were holding each other off for many, you know for decades, decades, and we destroyed one of those military powers. And I said don't go in because if you dest — now, I didn't know that they didn't have weapons of mass destruction. But on top of everything else they had no weapons of mass destruction.

HABERMAN: Well, but sir, why should the American approach to rebuilding Iraq, or other countries where we have shed blood, why should that differ from how we rebuilt postwar Japan and Germany in the Marshall Plan?

TRUMP: Well it was much different. We rebuild Iraq and it gets blown up. We build a school? Gets blown up. Build it again? Gets blown up. You know, it's a mess. I mean you have government that's totally corrupt. The country is totally, totally corrupt and corruptible. The leader, I mean one of the big decisions that was made putting the people in charge of Iraq that were in charge of Iraq, and they were exclusionary. They excluded people that ultimately, you know large groups of people, that ultimately became ISIS. Became stronger than them. And the sad thing is, I always talk about the bad deal that we made with Iran as being one of the worst deals, actually the worst deal is what we've done again involving Iran, we've destroyed the military capability of Iraq and destroyed Iraq, period, and Iran is now going to take over Iraq, they've essentially already done that in my opinion, but they're going to officially take over Iraq in the very near future. And I mean Iraqis were already reporting to Iran, but Iran is going to take over Iraq, they've wanted to do it for decades. They're going to take over Iraq, they're going to take the oil reserves which are the second biggest in the world, extremely high quality oil under the ground, extremely high quality, they're going to take all of that over because of us. Because we destroyed —

SANGER: But Mr. Trump you've argued many times that you don't want to have ground troops, but "We take the oil" implies you're going to have to go in there and take it by force, defend it —

TRUMP: Well what I said is, I said when we left that we should have taken the oil.

SANGER: If you want to take the oil today you're going to have to go into a country that is now an ally, Iraq, even if it's a dysfunctional one, put your troops on the ground.

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TRUMP: Yeah, yeah, O.K.. Ready? I said take the oil. I've been saying that for years. And many very smart scholars and military scholars said that'd be a great thing to do, but people didn't do it. So, but I have been saying that for years, I'm glad you know that. At least four or five years. When we left I said take the oil. We shouldn't have been there, we shouldn't have destroyed the country, and Saddam Hussein was a bad guy but he was good at one thing: Killing terrorists. He killed terrorists like nobody, all right? Now it's Harvard of terrorism. You want to be a terrorist you go to Iraq. But he killed terrorists. O.K., so we destroyed that. By the way, bad guy, just so you know, officially, I want to say that, bad guy, but it was a lot better of situation than we have right now. And he did not knock down the World Trade Center, O.K.? So officially speaking, he did not, Iraq did not knock down the World Trade center. We went in there after the World Trade Center, well he didn't knock down the World Trade Center, so you could say why are we doing this, all right, that was another thing. I never felt that he did it, and it turned out that he didn't. And it'll be very interesting when those documents are opened up and released in the future, I think maybe they should be opened up and released sooner rather than later.

HABERMAN: You mean the House, the House and Senate report?

TRUMP: Yes, yes, exactly. It'd be very interesting to see because they must know. They must know, if they're anything, they must know what happened in terms of who were the people. But it wasn't Iraq, O.K.? You're not going to find that it was Iraq. So it was very faulty, but I was, I was talking about, I was talking about taking the oil, now we have a different situation because now we have to go in again and start fighting, you know, at that time we had it and we should've kept it. Now I would say knock the hell out of the oil and do it because it's a primary source of money for ISIS.

SANGER: So in other words you don't want to take the oil right now, you want to just destroy the oil fields.

TRUMP: Well now, we have to destroy the oil. We should've taken it and we would've have it. Now we have to destroy the oil. We don't do it, I just can't believe we don't do it.

SANGER: So you know Mr. Trump, from listening and enjoying these two conversations we've had today which have been extremely interesting, I've been trying to sort of fit where your worldview and your philosophy here, your doctrine fits in with sort of the previous Republican mainlines of inquiry. And so if you think back to George H. W. Bush, the most recent President Bush's father, he was an internationalist who was in the realist school, he wanted to sort of change the foreign policy of other nations but you didn't see him messing inside those countries and then you had a group of people around —

TRUMP: Well he did the right thing, David, he did the right thing. He went in, he knocked the hell out of Iraq and then he let it go, O.K.? He didn't go in. Now I don't know was that Schwarzkopf, was that, was that —

SANGER: It was George W. Bush himself.

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TRUMP: Or maybe it was him, but he didn't go in, he didn't get into the quicksand, right? He didn't get into the quicksand and I mean, history will show that he was right. And with that Saddam Hussein overplayed his card more than any human being I think I've ever seen. Instead of saying "Wow, I got lucky" that they didn't come in and take this all away from me. He should've just relaxed a little bit, O.K.? And instead he taunted Bush Sr. He taunted him. And Bush Jr. loves his father and didn't like what was happening, but I remember very vividly how Saddam Hussein was taunting, absolutely taunting, saying we have beaten the Americans, you know, meaning they didn't come in so he would tell everybody he beat them. Do you remember that, right?

SANGER: I do indeed.

TRUMP: And he was taunting to them, he was saying, and even I used to say "Wow" because I knew that we could've gone further. We went in for a short period of time and just knocked the hell out of them and then went back, sort of gave them a lesson, but we didn't destroy the country, we didn't destroy the grid, we didn't, you know, there was something left. There was a lot left. And instead of just sort of saying he got lucky and to himself, just going about, he was taunting the Bushes. And Junior said, "Well I'm not going to take it" and he went in. And you know, look that was —

'America First'

SANGER: There was something else to George W. Bush, Bush 43's philosophy. If we believed that his father was an internationalist, I think it's fair to say, at least a lot of the people around George W. Bush were transformational, they actually wanted to change the nature of regime. You heard this in George W. Bush's second inaugural address.

TRUMP: Yeah.

SANGER: What you are describing to us, I think is something of a third category, but tell me if I have this right, which is much more of a, if not isolationist, then at least something of "America First" kind of approach, a mistrust of many foreigners, both our adversaries and some of our allies, a sense that they've been freeloading off of us for many years.

TRUMP: Correct. O.K.? That's fine.

SANGER: O.K.? Am I describing this correctly here?

TRUMP: I'll tell you — you're getting close. Not isolationist, I'm not isolationist, but I am "America First." So I like the expression. I'm "America First." We have been disrespected, mocked, and ripped off for many many years by people that were smarter, shrewder, tougher. We were the big bully, but we were not smartly led. And we were the big bully who was — the big stupid bully and we were systematically ripped off by everybody. From China to Japan to South Korea to the Middle East, many states in the Middle East, for instance, protecting Saudi Arabia

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Transcript: Donald Trump Expounds on His Foreign Policy Views - The New York Times

and not being properly reimbursed for every penny that we spend, when they're sitting with trillions of dollars, I mean they were making a billion dollars a day before the oil went down, now they're still making a fortune, you know, their oil is very high and very easy to get it, very inexpensive, but they're still making a lot of money, but they were making a billion dollars a day and we were paying leases for bases? We're paying leases, we're paying rent? O.K.? To have bases over there? The whole thing is preposterous. So we had, so America first, yes, we will not be ripped off anymore. We're going to be friendly with everybody, but we're not going to be taken advantage of by anybody. We won't be isolationists — I don't want to go there because I don't believe in that. I think we'll be very worldview, but we're not going to be ripped off anymore by all of these countries. I mean think of it. We have \$21 trillion, essentially, very shortly, we'll be up to \$21 trillion in debt. O.K.? A lot of that is just all of these horrible, horrible decisions. You know, I'll give you another one, I talked about NATO and we fund disproportionately, the United Nations, we get nothing out of the United Nations other than good real estate prices. We get nothing out of the United Nations. They don't respect us, they don't do what we want, and yet we fund them disproportionately again. Why are we always the ones that funds everybody disproportionately, you know? So everything is like that. There's nothing that's not like that. That's why if I win and if I go in, it's always never sounds — I have a woman who came up to me, I tell this story, she said "Mr. Trump, I think you're great, I think you're going to be a great president, but I don't like what you say I got to make America rich again." But you can't make America great again unless you make it rich again, in other words, we're a poor nation, we're a debtor nation, we don't have the money to do, we don't have the money to fix our military and the reason we don't is because of the fact that because of all of the things we've been talking about for the last 25 min and other things.

When America Was 'Great'

HABERMAN: Mr. Trump, you — I was looking back at your speech in New Hampshire back in 1987 when you were releasing "The Art of the Deal" and a lot of your concerns are very similar to the ones you're voicing now.

TRUMP: Right, even similar countries.

HABERMAN: Right, and I'm just wondering what is the era when you think the United States last had the right balance, either in terms of defense footprint or in terms of trade?

TRUMP: Well sometime long before that. Because one of the presidents that I really liked was Ronald Reagan but I never felt on trade we did great. O.K.? So it was actually, it would be long before that.

SANGER: So was it Eisenhower, was it Truman, was it F.D.R.?

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Transcript: Donald Trump Expounds on His Foreign Policy Views - The New York Times

TRUMP: No if you really look at it, it was the turn of the century, that's when we were a great, when we were really starting to go robust. But if you look back, it really was, there was a period of time when we were developing at the turn of the century which was a pretty wild time for this country and pretty wild in terms of building that machine, that machine was really based on entrepreneurship etc, etc. And then I would say, yeah, prior to, I would say during the 1940s and the late '40s and '50s we started getting, we were not pushed around, we were respected by everybody, we had just won a war, we were pretty much doing what we had to do, yeah around that period.

SANGER: So basically Truman, Eisenhower, the beginning of the 1947 national security reviews, that's the period?

TRUMP: Yes, yes. Because as much as I liked Ronald Reagan, he started Nafta, now Clinton really was the one that — Nafta has been a disaster for our country, O.K., and Clinton is the one as you know that got it done; but it was conceived even before Clinton, but you could say that maybe those people didn't want done what was ultimately signed because it was changed a lot by the time it got finalized. But Nafta has been a disaster for our country.

SANGER: But you think of that period time that you most admire: late '40s, early '50s, it was also the most terrifying time with the build up of the Cold War, it's when the Russians got nuclear weapons, we got into an arms race, we were —

TRUMP: But David, a lot of that was just pure technology. The technology was really coming in at that time. And so a lot of that was just timing of technology.

SANGER: It was also a period of time when we were threatening to use nuclear weapons against the North Koreans and the Chinese in the war. Was that approach you saw of Douglas MacArthur's approach at that time, so forth, is that what you're admiring?

TRUMP: Well I was a fan as you probably know, I was a fan of Douglas MacArthur. I was a fan of George Patton. If we had Douglas MacArthur today or if we had George Patton today and if we had a president that would let them do their thing you wouldn't have ISIS, O.K.? You wouldn't be talking about ISIS right now, we'd be talking about something else, but you wouldn't be talking about ISIS right now. So I was a fan of Douglas MacArthur, I was a fan of — as generals — I was a fan of George Patton. We don't have, we don't have seemingly those people today, now I know they exist, I know we have some very, I know the Air Force Academy and West Point and Annapolis, I know that great people come out of those schools. A lot of times the people that get to the top aren't necessarily those people anymore because they're politically correct. George Patton was not a politically correct person.

SANGER: Yeah I think we can all agree on that.

TRUMP: He was a great general and his soldiers would do anything for him.

1/8/2020

Transcript: Donald Trump Expounds on His Foreign Policy Views - The New York Times

SANGER: But the other day, I'm sorry, this morning, you suggested to us you would only use nuclear weapons as a last resort.

TRUMP: Totally last resort.

SANGER: And what did Douglas MacArthur advocate?

TRUMP: I would hate, I would hate —

SANGER: General MacArthur wanted to go use them against the Chinese and the North Koreans, not as a last resort.

TRUMP: That's right. He did. Yes, well you don't know if he wanted to use them but he certainly said that at least.

SANGER: He certainly asked Harry Truman if he could.

TRUMP: Yeah, well, O.K.. He certainly talked it and was he doing that to negotiate, was he doing that to win? Perhaps. Perhaps. Was he doing that for what reason? I mean, I think he played, he did play the nuclear card but he didn't use it, he played the nuclear card. He talked the nuclear card, did he do that to win? Maybe, maybe, you know, maybe that's what got him victory. But in the meantime he didn't use them. So, you know. So, we need a different mind set. So you talked about torture before, well what did it say — well I guess you had enough and I hope you're going to treat me fairly and if you're not it'll be forgotten in three or four days and that'll be the story. It is a crazy world out there, I've never seen anything like it, the volume of press that I'm getting is just crazy. It's just absolutely crazy, but hopefully you'll treat me fairly, I do know my subject and I do know that our country cannot continue to do what it's doing. See, I know many people from China, I know many people from other countries, I deal at a very high level with people from various countries because I've become very international. I'm all over the world with deals and people and they can't believe what their countries get away with. I can tell you people from China cannot believe what their country's, what their country's getting away with. At let's say free trade, where, you know, it's free there but it's not free here. In other words, we try sell — it's very hard for us to do business in China, it's very easy for China to do business with us. Plus with us there's a tremendous tax that we pay when we go into China, where's when China sells to us there's no tax. I mean, it's a whole double standard, it's so crazy, and they cannot believe they get away with it, David. They cannot believe they get away with it. They are shocked, and I'm talking about people at the highest level, people at — the richest people, people with great influence over, you know, together with the leaders and they cannot believe it. Mexico can't believe what they get away with. When I talked about Mexico and I talked about they will build a wall, when you look at the trade deficit we have with Mexico it's very easy, it's a tiny fraction of what the cost of the wall is. The wall is a tiny fraction of what the cost of the deficit is. When people hear that they say "Oh now I get it." They don't get it. But Mexico will pay for the wall. But they can't believe what they get away with. There's such a double standard. With many countries. It's almost, we do well with almost nobody anymore and a lot of that is because of

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politics as we know it, political hacks get appointed to negotiate with the smartest people in China, when we negotiate deals with China, China is putting the smartest people in all of China on that negotiation, we're not doing that. So anyway, I hope you guys are happy.

SANGER: Thank you, you've been very generous with your time.

1/9/2020

Trump plans 28 percent cut in budget for diplomacy, foreign aid - Reuters



POLITICS

MARCH 16, 2017 / 12:29 AM / 3 YEARS AGO

Trump plans 28 percent cut in budget for diplomacy, foreign aid

Arshad Mohammed

WASHINGTON (Reuters) - President Donald Trump's proposed 28 percent budget cut for U.S. diplomacy and foreign aid next year would preserve \$3.1 billion in security aid to Israel but reduce funding for the United Nations, climate change and cultural exchange programs.

Trump's budget: winners and losers

1/8/2020

Trump plans 28 percent cut in budget for diplomacy, foreign aid - Reuters

The budget proposal for the fiscal year beginning on Oct. 1 is a first shot in a battle with Congress - which controls the government purse strings - that will play out over months and may yield spending far beyond Trump's requests.

Congress, controlled by Trump's fellow Republicans, may reject some or many of the proposed cuts to the U.S. State Department and Agency for International Development (USAID) budgets for maintaining America's diplomatic corps, fighting poverty, promoting human rights and improving health abroad.

The White House is proposing a combined \$25.6 billion budget for the State Department and USAID, a 28 percent reduction from current spending, according to documents the White House provided on Thursday.

"This is a 'hard power' budget. It is not a 'soft power' budget," Mick Mulvaney, Trump's budget director, told reporters, referring to the president's desire to prioritize military power over the influence that can flow from development aid.

In Tokyo, U.S. Secretary of State Rex Tillerson defended the cuts as a necessary correction to a "historically high" budget for the State Department that had grown to address conflicts abroad in which the United States was engaged as well as disaster aid. Tillerson said there would be a "comprehensive examination" of how the State Department's programs are executed and how the department is structured.

Trump's budget proposes spending \$54 billion more on military spending and sinking more money into deporting illegal immigrants.

'KEEPING AMERICA SAFE'

1/8/2020

Trump plans 28-percent cut in budget for diplomacy, foreign aid - Reuters

Senator Ben Cardin, the top Democrat on the Senate Foreign Relations Committee, said he was deeply disappointed and dismayed at Trump's proposal to slash foreign affairs spending.

David Miliband, president and CEO of the International Rescue Committee, said the roughly one-third cut in foreign aid endangered U.S. values and interests abroad.

"What's more, the U.S. foreign assistance budget makes up a mere 1 percent of the federal budget - a tiny category of discretionary spending which saves lives and spreads goodwill around the world," he said.

More than 120 retired U.S. generals and admirals urged Congress in a letter last month to fully fund diplomacy and foreign aid, arguing the functions were "critical to keeping America safe."

The budget also requests \$12 billion in "Overseas Contingency Operations," or OCO, funding for extraordinary costs, chiefly in war zones such as Afghanistan, Iraq and Syria. No comparison was provided for the current year's OCO spending.

The White House did not provide many details in its "skinny" budget proposal, a precursor to a more detailed budget submission the White House has said it will produce in May.

The budget would provide \$3.1 billion "to meet the security assistance commitment to Israel ... ensuring that Israel has the ability to defend itself from threats" and maintain its military superiority over more populous Arab neighbors.

It would also "maintain current commitments and all current patient levels on HIV/AIDS treatment" under PEPFAR, the President's Emergency Plan for AIDS Relief, the world's largest provider of AIDS-fighting medicine. The program has been credited with saving millions of lives and enjoys bipartisan support.

The budget would also meet U.S. commitments to the Global Fund for AIDS, Tuberculosis and Malaria, the documents said.

LOWER U.N. FUNDING

1/8/2020

Trump plans 28 percent cut in budget for diplomacy, foreign aid - Reuters

Without giving specifics, the documents laid out areas where the White House plans to save money, including by reducing U.S. funds to the United Nations and affiliated agencies “by setting the expectation that these organizations rein in costs and that the funding burden be shared more fairly among members.”

U.S. President Donald Trump’s overview of the budget priorities for Fiscal Year 2018 are displayed at the U.S. Government Publishing Office (GPO) on its release by the Office of Management and Budget (OMB) in Washington, U.S. March 16, 2017. REUTERS/Joshua Roberts

The United States would cut its contribution to the U.N. budget by an unspecified amount, and the U.S. government would not pay for more than 25 percent of U.N. peacekeeping costs, the documents said.

The United States is the largest contributor to the United Nations, paying 22 percent of the \$5.4 billion core U.N. budget and 28.5 percent of the \$7.9 billion U.N. peacekeeping budget.

1/8/2020

Trump plans 28 percent cut in budget for diplomacy, foreign aid - Reuters

Trump also plans to save money by eliminating the U.S. Global Climate Change Initiative, which among other things seeks to foster low-carbon economic growth, and by ceasing payments to U.N. climate change programs via the Green Climate fund.

He proposes cutting funds to multilateral development banks such as the World Bank by about \$650 million over three years from the Obama administration's commitments; reducing money for the State Department's Educational and Cultural Exchange Programs; turning some foreign military aid into loans from grants; and reorganizing the State Department and USAID.

Reporting by Arshad Mohammed; Additional reporting by Michelle Nichols at the United Nations, Roberta Rampton, Patricia Zengerle and Yara Bayoumy in Washington and Elaine Lies in Tokyo; Editing by Leslie Adler and Howard Goller

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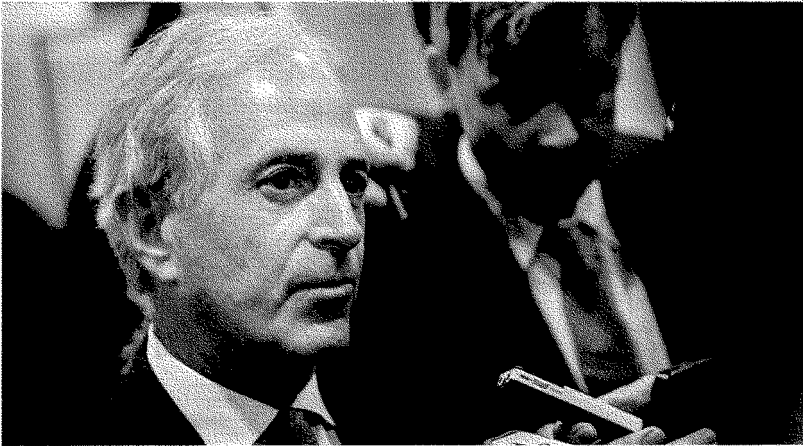
1/8/2020

Trump administration to attempt to kill \$3B in foreign aid - POLITICO

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Critics of the idea, including Senate Foreign Relations Chairman Bob Corker, are already vowing to challenge the move in court. | Drew Angerer/Getty Images

Trump administration to attempt to kill \$3B in foreign aid

By SARAH FERRIS | 08/17/2018 01:43 PM EDT

The White House budget office believes it has found a way to cancel about \$3 billion in foreign aid even if it is never approved by Congress, according to a Republican aide familiar with the plan.

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The White House plans to submit the package of so-called rescissions in the coming days, which triggers an automatic freeze on those funds for 45 days. The cuts would largely come from the U.S. funding for the United Nations, according to the aide.

With exactly 45 days left in fiscal 2018, the State Department wouldn't be able to use those funds even if Congress rejects the request because those dollars will have expired by Oct. 1.

The tactic, engineered by OMB chief Mick Mulvaney, is intended to prevent a cascade of end-of-year spending by the State Department. But critics of the idea, including Senate Foreign Relations Chairman Bob Corker (R-Tenn.), are already vowing to challenge the move in court.

"I don't know how they can do that legally, but we certainly look forward to seeing how to counter that, if that's the case," Corker said at a committee meeting Thursday.

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The White House budget office has long targeted the State Department for dramatic funding reductions, to the dismay of many Capitol Hill Republicans.

It would be the second time the Trump administration has submitted this kind of presidential rescissions package. The White House's last request, which would have reclaimed \$15 billion across multiple agencies, narrowly passed the House and was rejected by the GOP-led Senate. It was the first time a president had used the rescissions process since 2000.

The new plan is expected to be submitted in time for the House to consider when it returns from its five-week recess after Labor Day.

It would add yet another complication for GOP leaders in an already dimming schedule for

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Trump administration to attempt to kill \$38 in foreign aid - POLITICO

Even if GOP leaders choose not to take up the package, individual members can force a vote on the floor, which can take up time that might otherwise be used for appropriations bills. In the Senate, forcing a vote could risk endangering the nomination process for Brett Kavanaugh to become the next Supreme Court justice.

If the White House's plan doesn't pass muster in Congress, it could still prompt a bruising legal battle just weeks ahead of the midterms.

The OMB declined to comment. "We do not comment on alleged leaks and will not discuss deliberative and pre-decisional information," an administration official said.

The plan was first reported by The Washington Post.

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1/8/2020

Trump 2020 budget slashes foreign aid, hikes defense spending: official - Reuters



POLITICS

MARCH 11, 2019 / 11:42 AM / 10 MONTHS AGO

Trump 2020 budget slashes foreign aid, hikes defense spending: official



01:37 / 01:37

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1/8/2020

Trump 2020 budget slashes foreign aid, hikes defense spending: official - Reuters

The budget would raise defense spending by 4 percent to \$750 billion, the official said, speaking on condition of anonymity, while cutting foreign aid by \$13 billion. Over a decade, the blueprint would cut \$1.9 trillion from mandatory spending through proposed reforms, the official said.

Reporting by Roberta Rampton and Ginger Gibson; Editing by Bill Trott

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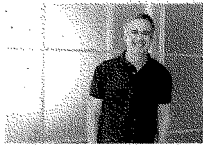
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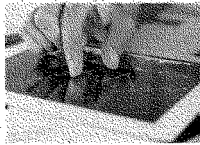
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Mr. CICILLINE. Mr. Chairman, may I have another unanimous——

Chairman NADLER. For what purpose does the gentleman seek——

Mr. CICILLINE. Mr. Chairman, I ask unanimous consent that this article that was just published about 15 minutes ago entitled “Law Professor Jonathan Turley said Democrats are setting a record for a fast impeachment. That’s demonstrably false” be made part of the record.

Chairman NADLER. Without objection——

Mr. JOHNSON of Louisiana. Mr. Chairman.

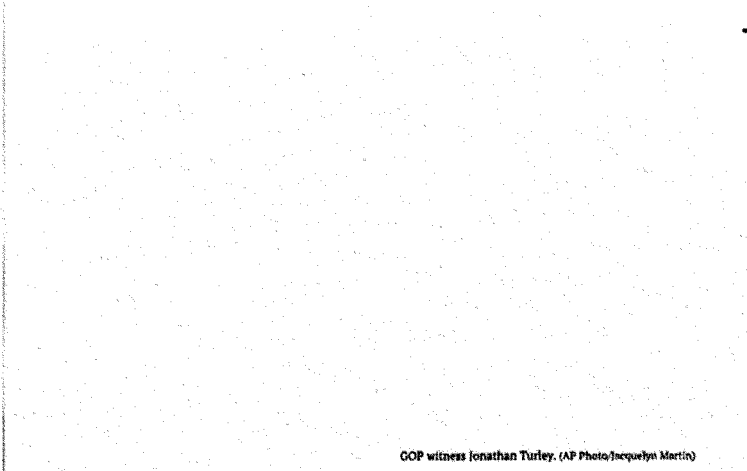
Chairman NADLER. Without objection, the document will be made part of the record.

[The information follows:]

MR. CICILLINE FOR THE OFFICIAL RECORD

12/4/2019

GOP's constitutional expert gets basic impeachment fact wrong at hearing

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GOP witness Jonathan Turley. (AP Photo/Jacquelyn Martin)

GOP's constitutional expert gets basic impeachment fact wrong at hearing

By Emily Singer - December 4, 2019 1:58 PM

Law professor Jonathan Turley said Democrats are setting a 'record' for a fast impeachment. That's demonstrably false.

A law professor Republicans called to testify at Wednesday's House Judiciary Committee hearing got a basic fact wrong in trying to defend Donald Trump from impeachment, incorrectly saying that Democrats are running the fastest impeachment process in history.

"That's the problem when you move towards impeachment on this abbreviated schedule that has not been explained to me why you want to set the record for the fastest impeachment," Turley said. "Fast is not good for impeachment."

That accusation is simply false.

The two other times presidents were impeached — Andrew Johnson in 1868 and Bill Clinton in 1998 — the impeachment process happened faster than the current process against Trump.

12/4/2019

GOP's constitutional expert gets basic impeachment fact wrong at hearing

Johnson was impeached for removing Edwin Stanton as secretary of war without congressional approval. The entire process took less than a month.

According to a timeline of events, Johnson removed Stanton as secretary on Feb. 21, 1868. By Feb. 24, 1868 — just three days later — the House passed a resolution impeaching Johnson. And by March 4, 1868, the House delivered articles of impeachment to the Senate. That's less than two weeks.

As for Clinton, the House voted on Oct. 5, 1998 to launch an impeachment inquiry. By Dec. 19, 1998, the House impeached Clinton. That's 75 days.

House Speaker Nancy Pelosi announced the formal impeachment inquiry into Trump on Sept. 24. So far, it's been 71 days since that announcement, and the House has yet to draft or pass articles of impeachment. News reports say that lawmakers have been told not to make plans on Dec. 21 or Dec. 22, as those could possibly be the date for the impeachment vote. That would make the impeachment process 89 days.

One of Turley's main points to defend Trump is demonstrably false.

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Emily Singer

Emily C. Singer is a political reporter based in New York. She's covered campaigns and elections for years, including at Roll Call, Mashable and Mic. Follow her on Twitter @CahnEmily.



Chairman NADLER. Who seeks recognition?

Mr. JOHNSON of Louisiana. Mr. Chairman.

Chairman NADLER. For what purpose does the gentleman seek recognition?

Mr. JOHNSON of Louisiana. I seek unanimous consent to enter into the record a tweet that the First Lady of the United States just issued within the hour that says, quote, "A minor child deserves privacy and should be kept out of politics. Pamela Karlan, you should be ashamed of your very angry and obviously biased public pandering, and using a child to do it," unquote.

Chairman NADLER. Without objection, the document will be entered into the record.

[The information follows:]

MR. JOHNSON (LA) FOR THE OFFICIAL RECORD



Melania Trump ●
@FLOTUS



A minor child deserves privacy and should be kept out of politics. Pamela Karlan, you should be ashamed of your very angry and obviously biased public pandering, and using a child to do it.

4:50 PM · Dec 4, 2019 · Twitter for iPhone

82K Retweets **300.1K** Likes

Chairman NADLER. Mr. Steube is recognized for the purpose of questioning the witnesses. Mr. Steube is not here momentarily.

Ms. Garcia is recognized.

Ms. GARCIA. Thank you, Mr. Chairman.

And I, too, want to thank all the witnesses for their time and your patience today. I know it's been a long day, but the end is in sight.

As my colleague, Ms. Scanlon, observed, the similarities between the President's conduct in the Ukraine investigation and his conduct in the special counsel's investigation are hard to ignore. In fact, we are seeing it as a pattern of a Presidential abuse of power. The President called the Ukraine investigation a hoax, and the Mueller investigation a witch hunt. He has threatened the Ukraine whistleblower for not testifying, like he threatened to fire his Attorney General for not obstructing the Russia investigation.

The President fired Ambassador Yovanovitch, and publicly tarnished her reputation, much in the same way he fired his White House counsel, and publicly attacked his integrity. And finally, the President attacked the civil servants who have testified about Ukraine, just like he attacked career officials of the Department of Justice for investigating his obstruction of the Russia investigation. Under any other circumstances, such behavior by any American President would be shocking, but here it is a repeat of what we have already seen in the special counsel's investigation.

I'd like to take a moment to discuss the President's efforts to obstruct the special counsel's investigation, a subject that this committee has been investigating since March. Here are two slides. The first one will show, as he did with—as the President, as he did with Ukraine, tried to coerce his subordinates to stop an investigation into his misconduct by firing Special Counsel Mueller. And the second slide, this shows that when the news broke out of the President's order, the President directed his advisers to falsely deny he had made the order.

Professor Gerhardt, are you familiar with the facts relating to these three episodes as described in the Mueller report? Yes or no, please.

Mr. GERHARDT. Yes, ma'am.

Ms. GARCIA. So accepting the special counsel's evidence as true, is this pattern of conduct obstruction of justice?

Mr. GERHARDT. It's clearly obstruction of justice.

Ms. GARCIA. And why would you say so, sir?

Mr. GERHARDT. The obvious object of this activity is to shut down an investigation. And, in fact, the acts of the President, according to these facts, each time is to use the power that he has unique to his office, but in a way that's going to help him frustrate the investigation.

Ms. GARCIA. So does this conduct fit within the Framers' view of impeachable offenses?

Mr. GERHARDT. I believe it does. I mean, the entire Constitution, including separation of powers, is designed to put limits on how somebody may go about frustrating the activity of another branch.

Ms. GARCIA. So you would say that this also would be an impeachable offense?

Mr. GERHARDT. Yes, ma'am.

Ms. GARCIA. Thank you, because I agree with you. The President's actions and behavior do matter. The President's obstruction of justice definitely matters. As a former judge and as a Member of Congress, I have raised my right hand and put my left hand on a Bible more than once, and have sworn to uphold the Constitution and laws of this country.

This hearing is about that, but it's also about the core of the heart of our American values, the values of duty, honor, and loyalty. It's about the rule of law. When the President asks Ukraine for a favor, he did so for his personal political gain, and not on behalf of the American people. And if this is true, he would have betrayed his oath and betrayed his loyalty to this country.

A fundamental principle of our democracy is that no one is above the law, not any one of you professors, not any one of us up here, Members of Congress, not even the President of the United States. That's why we should hold him accountable for his actions, and that's why, again, thank you for testifying today and helping us walk through all this to prepare for what may come. Thank you, sir.

I yield back.

Chairman NADLER. The gentlelady yields back.

Mr. Neguse.

Mr. NEGUSE. Thank you, Mr. Chair, and thank you to each of the four witnesses for your testimony today.

I'd like to start by talking about intimidation of witnesses. As my colleague, Congresswoman Garcia, noted, President Trump has tried to interfere in both the Ukraine investigation and Special Counsel Mueller's investigation in order to try to cover up his own misconduct. And in both the Ukraine investigation and Special Counsel Mueller's investigation, the President actively discouraged witnesses from cooperating, intimidated witnesses who came forward, and praised those who refused to cooperate.

For example, in the Ukraine investigation, the President harassed and intimidated the brave public servants who came forward. He publicly called the whistleblower a, quote, "disgrace to our country," and said that his identity should be revealed. He suggested that those involved in the whistleblower complaint should be dealt with in the way that we, quote, "used to do," end quote, for spies and treason. He called Ambassador Taylor, a former military officer with more than 40 years of public service, a, quote, "Never Trumper," end quote, on the same day that he called Never Trumpers, quote, "scum."

The President also treated accusations about many of the other public servants who testified, including Jennifer Williams and Ambassador Yovanovitch. And as we know, the President's latter tweet happened literally during the Ambassador's testimony in this room, in front of the Intelligence Committee, which she made clear was intimidating.

Conversely, we know that the President has praised witnesses who have refused to cooperate. For example, during the special counsel's investigation, the President praised Paul Manafort, his former campaign manager, for not cooperating. You can see the tweet up on the screen to my side.

As another telling example, the President initially praised Ambassador Sondland for not cooperating, calling him, quote, "a really good man and a great American." But after Ambassador Sondland testified and confirmed that there was, indeed, a quid pro quo between the White House visit and the request for investigations, the President claimed that he, quote, "hardly knew the ambassador."

Professor Gerhardt, you've touched on it previously, but I'd like you to just explain. Is the President's interference in these investigations by intimidating witnesses also the kind of conduct that the Framers were worried about and, if so, why?

Mr. GERHARDT. It's clearly conduct I think that worried the Framers, as reflected in the Constitution they have given us and the structure of that Constitution. The activities you're talking about here are consistent with the other pattern of activity we've seen with the President, either trying to stop investigations, either by Mr. Mueller, or by Congress, as well as to ask witnesses to make false documents about testimony. And all those different kinds of activities are not the kinds of activities the Framers expected the President to be able to take. They expect a President to be held accountable for it, and not just in elections.

Mr. NEGUSE. Professor Turley, you've studied the impeachments of President Johnson, President Nixon, President Clinton. Am I right that President Nixon allowed senior White House officials, including the White House counsel and the White House chief of staff, to testify in the House impeachment inquiry?

Mr. TURLEY. Yes.

Mr. NEGUSE. And you're aware that President Trump has refused to allow his chief of staff or White House counsel to testify in this inquiry, correct?

Mr. TURLEY. Yes, but various officials did testify, and they are remaining in Federal employment.

Mr. NEGUSE. And that does not include the White House counsel nor the White House chief of staff, correct?

Mr. TURLEY. That is correct.

Mr. NEGUSE. And am I right that President Clinton provided written responses to 81 interrogatories from the House Judiciary Committee during that impeachment inquiry?

Mr. TURLEY. I believe that is correct.

Mr. NEGUSE. Sounds about right? And you're aware that President Trump has refused any request for information submitted by the Intelligence Committee in this impeachment inquiry?

Mr. TURLEY. I am, yes.

Mr. NEGUSE. Are you familiar with the letter issued by White House counsel Pat Cipollone on October 8th, written on behalf of President Trump and, in effect, instructing executive branch officials not to testify in this impeachment inquiry?

Mr. TURLEY. Yes, I am.

Mr. NEGUSE. And am I correct that no President in the history of the Republic before President Trump has ever issued a general order instructing executive branch officials not to testify in an impeachment inquiry?

Mr. TURLEY. That's where I'm not sure I can answer that affirmatively. President Nixon, in fact, went to court over access to information, documents and the like, and he lost.

Mr. NEGUSE. Well, Professor Turley, I would just, again, refer you back to the history that's been recounted by each of the distinguished scholars here today, because we know, as we recount these examples, that President Nixon did, in fact, allow his chief of staff and his chief counsel to testify, and this President has not. We know that President Clinton responded to interrogatories propounded by that impeachment inquiry, and that this President has not. At the end of the day, this Congress and this committee has an obligation to ensure that the law is enforced.

And, with that, I yield back the balance of my time.

Chairman NADLER. The gentleman yields back.

Mrs. McBath.

Mrs. MCBATH. Thank you, Mr. Chairman.

And, Professors, I want to thank you so very much for spending these long arduous hours with us today. Thank you so much for being here.

Following up on my colleague, Mr. Neguse's questions, I'd like to briefly go through one particular example of the President's witness intimidation that I find truly disturbing and very devastating, because I think it's important that we all truly see what's going on here. As the slide shows, on his July 25th call, President Trump said that former Ambassador Yovanovitch would, and I quote, "go through some things." Ambassador Yovanovitch testified about how learning about the President's statements made her feel.

[Video played.]

Mrs. MCBATH. And, as we all witnessed in real time, in the middle of Ambassador Yovanovitch's live testimony, the President tweeted about the Ambassador, discrediting her service in Somalia and the Ukraine. Ambassador Yovanovitch testified that the President's tweet was, and I quote, "very intimidating."

Professor Gerhardt, these attacks on a career public servant are deeply upsetting, but how do they fit into our understanding of whether the President has committed high crimes and misdemeanors, and how do they fit into our broader pattern of behavior by this President to cover up and obstruct his misconduct?

Mr. GERHARDT. One way in which it contributes to the obstruction of Congress is that it doesn't just defame Ambassador Yovanovitch. By every other account, she's been an exemplary public servant. So what he's suggesting there may not be consistent with what we know as facts.

But one of the things that also happens when he sends out something like this, it intimidates everybody else who's thinking about testifying, any other public servants that think they should come forward. They are going to worry that they are going to get punished in some way, they're going to face things like she's faced.

Mrs. MCBATH. That is the woman President Trump has threatened before you. And I can assure you, I personally know what it's like to be unfairly attacked publicly for your sense of duty to America. Ambassador Yovanovitch deserves better. No matter your party, whether you are a Democrat or Republican, I don't think any of us thinks that this is okay. It is plainly wrong for the President of the United States to attack a career public servant just for telling the truth as she knows it.

And I yield back the balance of my time.

Chairman NADLER. The gentlelady yields back.

Mr. Stanton.

Mr. STANTON. Thank you very much, Mr. Chairman, and thank you to our outstanding witnesses here today.

President Trump has declared that he will not comply with congressional subpoenas. This blanket categorical disregard of the legislative branch began with the President's refusal to cooperate with regular congressional oversight, and has now extended to the House's constitutional duty on impeachment, the reason why we are here today. This disregard has been on display for the American people. When asked if he would comply with the Don McGahn subpoena, President Trump said, quote, "Well, we're fighting all the subpoenas," unquote.

Now, we've discussed here today the obstruction of Congress Article of Impeachment against President Nixon. I think I'd like to go a little bit deeper into that discussion and juxtapose it with President Trump's actions.

Professor Gerhardt, can you elaborate on how President Nixon obstructed Congress and how it compares to President Trump's actions?

Mr. GERHARDT. As I was discussing earlier and including my written statement, President Nixon ultimately refused to comply with four legislative subpoenas. These were zeroing in on the most incriminating evidence he had in his possession. So he refused to comply with those subpoenas, making them the basis for that third article, and he resigned a few days later.

Mr. STANTON. Professor Feldman, what are the consequences of this unprecedented obstruction of Congress to our democracy?

Mr. FELDMAN. For the President to refuse to participate in any way in the House's constitutional obligation of supervising him to impeach him breaks the Constitution. It basically says, Nobody can oversee me, Nobody can impeach me. First, I'll block witnesses from appearing, then I'll refuse to participate in any way, and then I'll say, you don't have enough evidence to impeach me.

And ultimately, the effect of that is to guarantee that the President is above the law and can't be checked. And since we know the Framers put impeachment in the Constitution to check the President, if the President can't be checked, he's no longer subject to the law.

Mr. STANTON. Professor Gerhardt, would you agree that the President's refusal to comply with congressional subpoenas invokes the Framers' worst fears and endangers our democracy?

Mr. GERHARDT. It does. And one way in which to understand that is to put all of his arguments together and then see what the ramifications are. He says he's entitled not to comply with all subpoenas. He says he's not subject to any kind of criminal investigation while he's President of the United States. He's immune to that. He's entitled to keep all information confidential from Congress, doesn't even have to give a reason.

Well, when you put all those things together, he's blocked off every way in which to hold himself accountable except for elections. And the critical thing to understand here is that is precisely what he was trying to undermine in the Ukraine situation.

Mr. STANTON. Professor Karlan, do you have anything to add to that analysis?

Ms. KARLAN. I think that is correct. And if I can just say one thing.

Mr. STANTON. Please.

Ms. KARLAN. I want to apologize for what I said earlier about the President's son. It was wrong of me to do that. I wish the President would apologize, obviously, for the things that he's done that's wrong, but I do regret having said that.

Mr. STANTON. Thank you, Professor.

One of the most important questions that every member of this committee must decide is whether we are a Nation of laws and not men. It used to be an easy answer, one we could all agree on. When President Nixon defied the law and obstructed justice, he was held to account by people on both sides who knew that for a republic to endure, we must have fidelity to our country rather than one party or one man. And the obstruction we're looking at today is far worse than President Nixon's behavior. Future generations will measure us, every single member of this committee, by how we choose to answer that question. I hope we get it right.

I yield back.

Chairman NADLER. The gentleman yields back.

Mr. Steube.

Mr. STEUBE. Thank you, Mr. Chairman.

I've only been in Congress since January of this year, and on the very first day of my swearing in, a Democrat in my class called for the impeachment of the President on day one, using much more colorful language than I would ever use.

Since then, this committee focused on the Mueller report and the Russia collusion theory. We all sat and listened to Mr. Mueller state unequivocally that there was no evidence that the Trump campaign colluded with Russia. So that didn't work for the Democrats. So they then changed their talking points and moved to the obstruction of justice theory, that the President obstructed justice. Then that fizzled.

Then after coordinating with Chairman Schiff's staff, a whistleblower filed a complaint based completely on hearsay and over-hearing other people that weren't on the phone call talk about a phone call between two world leaders, which led to the Intel Committee's so-called impeachment inquiry, which violated all past historical precedent, denied the President basic due process rights and fundamental fairness by conducting the so-called inquiry in secret, without the minority's ability to call witnesses, and denied the President the ability to have his lawyers cross-examine witnesses, a right afforded to President Clinton and every defendant in our justice system, including rapists and murderers.

The Republicans on this committee have repeatedly requested all evidence collected by the Intel Committee. As we sit here today, we still don't have the underlying evidence that we've been requesting, again, a right afforded every criminal defendant in the United States. So instead, we sit here getting lectures from law professors about their opinions, their opinions, not facts. I guess the Democrats needed a constitutional law refresher course. The Republicans don't.

Mr. Chairman, you have acknowledged, and I quote, the House's, quote, "power of impeachment demands a rigorous level of due process. Due process means the right to confront witnesses against you, to call your own witnesses, and to have the assistance of counsel." Those are your words, Mr. Chairman, not mine.

What are you afraid of? Let the minority call witnesses. Let the President call witnesses. Clinton alone called 14 witnesses to testify. Let the President's counsel cross-examine the whistleblower. Let the President's counsel cross-examine the Intel staff who colluded with the whistleblower. In your own words, those are the rights that should be afforded to the President, rights every criminal defendant is afforded.

Even terrorists in Iraq are afforded more due process than you and the Democratic majority have afforded the President. I know, because I served in Iraq, and I prosecuted terrorists in Iraq, and we provided terrorists in Iraq more rights and due process in the Central Criminal Court of Iraq than you and Chairman Schiff have afforded the President of the United States.

No collusion, no obstruction, no quid pro quo, no evidence of bribery except opinion, no evidence of treason, no evidence of high crime or misdemeanors. We have a bunch of opinions from partisan Democrats who have stated from day one that they want to impeach the President, and not on this theory, but on multiple other different theories. The American people are smarter than your ABCs of impeachment that you've had on the screen that were laid out today.

And it's extremely demonstrative of your lack of evidence, given you called law professors to give their opinions, and not fact witnesses to give their testimony today to be cross-examined and the rights afforded to the President of the United States.

Mr. Chairman, when can we anticipate that you will choose a date for the minority day of hearings? Mr. Chairman, I'm asking you a question. When can we anticipate that you will choose a date for the minority day of hearings?

Chairman NADLER. The gentleman is recognized for the purpose of questioning the witnesses, not for colloquy with colleagues.

Mr. STEUBE. Well, then I'll do that after my time. I yield the remainder of my time to Mr. Ratcliffe.

Mr. RATCLIFFE. I thank my colleague from Florida for yielding.

Professor Turley, since we last talked, based on questioning from my colleagues across the aisle, it does, in fact, appear that the Democrats do intend to pursue Articles of Impeachment for obstruction of justice based on the Mueller report. I asked you a question about that. You didn't really get a chance to give a complete answer.

In your statement today, you make this statement: I believe an obstruction claim based on the Mueller report would be at odds with the record and the controlling law. The use of an obstruction theory from the Mueller report would be unsupported—unsupportable in the House and unsustainable in the Senate.

Do you remember writing that?

Mr. TURLEY. Yes, I do.

Mr. RATCLIFFE. Why did you write that?

Mr. TURLEY. Because I think it's true. The fact is that this was reviewed by Main Justice. The special counsel did not reach a conclusion on obstruction. He should have. I think that his justification, quite frankly, was a bit absurd on not reaching a conclusion, but the Attorney General, Deputy Attorney General did, and they came to the right conclusion. I don't think this is a real case for obstruction of justice.

But then, this body would be impeaching the President on the basis of the inverse conclusion. I don't believe that it would be appropriate.

Chairman NADLER. The gentleman's time is expired.

Ms. Dean.

Ms. DEAN. Thank you, Mr. Chairman.

Words matter. In my earlier life, Professors, I was a professor of writing. I taught my students to be careful and clear about what they put to paper. That is a lesson that the Framers of our Constitution understood far better than anyone. They were laying the foundation for a new form of government, one that enshrines democratic principles and protects against those who would seek to undermine them. The Constitution explicitly lays out that a President may be impeached for treason, bribery, high crimes and misdemeanors.

We've heard a lot of words today, foreign interference, bribery, obstruction of justice. Professors, I'd like to go through the President's conduct and the public harms we have discussed today and ask if they would fit into what the forefathers contemplated when crafting those words of the impeachment clause.

Professor Karlan, I'd like to ask you about the foreign interference in elections. As Americans, we can agree foreign interference/foreign influence erodes the integrity of our elections and, as you said so plainly, it makes us less free. Yet, on July 25, 2019, the President coerced Ukrainian President Zelensky to announce an investigation into his political rival, Trump's political rival, which was corroborated by multiple witnesses throughout the Intelligence Committee hearings.

Professor Karlan, can you explain to the American people, in your opinion, whether the Framers considered solicitation of foreign interference, and would they have considered it a high crime or misdemeanor, and does the President's conduct rise to that level?

Ms. KARLAN. The Framers of our Constitution would have considered it abhorrent, would have considered it the essence of a high crime or misdemeanor for a President to invite in foreign influence, either in deciding whether he will be reelected, or deciding who his successor would be.

Ms. DEAN. Thank you.

Professor Feldman, I'd like to talk to you about bribery. During the course of the Intelligence Committee hearings, multiple witnesses gave sworn un rebutted testimony that the President withheld nearly \$400 million in congressionally approved aid on the condition that Russia—excuse me, that Ukraine announce investigations into his chief political adversary.

Professor, in your opinion, given those facts, and the Framers' specific concerns, would you describe the President's behavior here

and the use of his public office for a private benefit as rising to those levels?

Mr. FELDMAN. The Framers considered, as you said, bribery to consist—bribery under the Constitution to consist of the President abusing his office corruptly for personal gain. If this House determines, and if this committee determines that the President was, in fact, seeking personal gain in seeking the investigations that he asked for, then that would constitute bribery under the Constitution.

Ms. DEAN. Thank you.

Professor Gerhardt, I'd like to ask you about obstruction of justice. The President has categorically refused to produce any documents responsive to congressional subpoenas, attacked and intimidated prospective and actual witnesses, including career and civil military—excuse me, military and civil servants, as discussed here, like Ambassador Yovanovitch, Lieutenant Colonel Vindman, Ambassador Taylor, Jennifer Williams and others, and he directed all current and former administration witnesses to defy congressional subpoenas.

Professor, based on that set of facts, does this conduct meet the threshold for obstruction of justice, as envisioned in the Constitution?

Mr. GERHARDT. Yes, ma'am, I believe it does. I remember when I was here 21 years ago, along with Professor Turley, testifying before a differently constituted committee on a very serious question regarding impeachment. And I remember a number of law professors very eloquently talking about President Clinton's misconduct as an attack on the judicial system. And that's what you just described to me.

Ms. DEAN. Thank you. Thank you, Professors, all of you, all four of you. What you did today is you brought part of our Constitution to life, and I thank you for that. You've shown what the Framers were mindful of when they wrote the impeachment clause of our Constitution. They chose their words, and their words matter.

You know, it was my father, Bob Dean, a terrific dad and a talented writer, who instilled in me and my brothers and sister a love of language. He taught us our words matter, the truth matters. It's through that lens which I see all of the serious and somber things we're speaking about today, foreign interference, bribery, obstruction. The Framers likely could not have imagined all three concerns embodied in a single leader, but they were concerned enough to craft the remedy, impeachment.

The times have found us. I am prayerful for our President, for our country, for ourselves. May we the people always hold high the decency and promise and ambition of our founding and of the words that matter and of the truth.

With that, I yield back, Mr. Chairman.

Chairman NADLER. The gentlelady yields back.

Ms. MUCARSEL-POWELL.

Ms. MUCARSEL-POWELL. Thank you.

And thank you, Professors, for your time today. It's been a long day. I want to tell you I did not have the privilege of being born into this country. As an immigrant, when I became a citizen to this

great Nation, I took an oath to protect and defend the Constitution from all foreign and domestic enemies.

And I had the fortune of taking that oath once again when I became a Member of Congress. And that includes the responsibility to protect our Nation from continuing threats from a President, any President.

You testified that the President's actions are a continuing risk to our Nation and democracy, meaning that this is not a one-time problem. There is a pattern of behavior by the President that is putting at risk fair and free elections, and I think that we are here today because the American people deserve to know whether we need to remove the President because of it.

During the Nixon impeachment, the Judiciary Committee said, quote, "the purpose of impeachment is not personal punishment. Its function is primarily to maintain constitutional government."

Professor Karlan, to me that means that impeachment should be used when we must protect our American democracy. It is reserved for offenses that present a continuing risk to our democracy. Is that correct?

Ms. KARLAN. Yes, it is.

Ms. MUCARSEL-POWELL. Thank you. And I want to show you an example of what the President said just 1 week after the transcript of the July 25th call was released. When a reporter asked the President what he wanted from President Zelensky, and he responded with this.

[Video played.]

Ms. MUCARSEL-POWELL. So we've heard today conflicting dialogue from both sides, and I just want to ask, Mr. Feldman, is this clear evidence from a President asking for a foreign government to interfere in our elections?

Mr. FELDMAN. Congresswoman, I'm here for the Constitution. We are here for the Constitution. And when the President of the United States asks for assistance from a foreign power to distort our elections for his personal advantage, that constitutes an abuse of office and it counts as a high crime and misdemeanor, and that's what the Constitution is here to protect us against.

Ms. MUCARSEL-POWELL. Thank you.

And Professor Karlan, are the President's actions a continuing risk that the Framers intended impeachment to be used for?

Ms. KARLAN. Yes. This takes us back to the quotation from William Davie that we've all used several times in our testimony, which is a President—without impeachment, a President will do anything to get reelected.

Ms. MUCARSEL-POWELL. Thank you. And I want to show you one more example from the President's chief of staff when asked about the President's demands of the Ukrainian President.

[Video played.]

Ms. MUCARSEL-POWELL. Professor Karlan.

Ms. KARLAN. I think that Mr. Mulvaney is conflating or confusing two different notions of politics. Yes, there is political influence in our foreign affairs. Because President Trump won the election in 2016, we've exited climate accords, we've taken a different position on NATO than we would have taken had his opponent won.

But that's different than saying that partisan politics in the sense of electoral manipulation is something that we need to get over or get used to. If we get over that or we get used to that, we will cease to become the democracy that we are right now.

Ms. MUCARSEL-POWELL. Thank you. And I think that that is our greatest fear and threat. And I don't think that anyone is above the law. The Constitution establishes that. This type of behavior cannot be tolerated from any President, not now, not in the future.

And I yield back.

Chairman NADLER. The gentlelady yields back.

That concludes—I'm sorry, Ms. Escobar is recognized.

Ms. ESCOBAR. Thank you, Chairman.

Professors, thank you so much for your testimony and time today. Many facts, including the President's own words in that famous phone call, have been laid out before our very eyes and ears for months, despite the President's repeated efforts at a cover-up. But it appears that some have chosen to ignore those facts.

What we've seen today from those who choose to turn a blind eye is not a defense of the President's actions, because, frankly, those offenses are indefensible. Instead, we've seen them attack the process and attempt to impugn your integrity. For that I am sorry.

Now to my questions. Some have opined that instead of considering impeachment, we should just let this pass and allow the people to decide what to do next or what to do about the President's behavior in the next election.

The Framers of our Constitution specifically considered whether to just use elections and not have impeachment and rejected that notion. One statement from the Framers really stuck with me and it's up on the screen.

George Mason asked: Shall the man who has practiced corruption and by that means procured his appointment in the first instance, be suffered to escape punishment by repeating his guilt?

Professor Feldman, I have two questions for you. Briefly, can you please explain why the Framers decided that a corrupt executive could not be solved through elections, and can you tell us why impeachment is the appropriate option at this point, considering all the evidence Americans have seen and heard, rather than just letting this be decided in the next election?

Mr. FELDMAN. The Framers understood human motivation extremely well, and they knew that a President would have a great motive to corrupt the electoral process to get reelected. And that's exactly why they thought that it wasn't good enough to wait for the next election, because the President could cheat and could make the next election illegitimate. That's why they required impeachment. And if they couldn't impeach a corrupt President, James Madison said that could be fatal to the republic.

The reason that it's necessary to take action now is that we have a President who has, in fact, sought to corrupt the electoral process for personal advantage. Under those circumstances, the Framers' remedy of impeachment is the only option available.

Ms. ESCOBAR. Thank you. I want to play two clips, the first of President Nixon and the second of President Trump.

[Video played.]

Ms. ESCOBAR. Two Presidents openly stating that they are above the law.

Professor Karlan, what happens to our republic, to our country if we do nothing in the face of a President who sees himself above the law, who will abuse his power, who will ask foreign governments to meddle in our elections, and who will attack any witness who stands up to tell the truth? What happens if we don't follow our constitutional obligation of impeachment to remove that President from office?

Ms. KARLAN. We will cease to be a republic.

Ms. ESCOBAR. Thank you.

I represent a community that a little over a decade ago was marred by corruption at the local government level. There was no retreat into a partisan corner or an effort by anyone to explain it away. We also didn't wait for an election to cure the cancer of corruption that occurred on our watch. We were united as a community in our outrage over it. It was intolerable to us, because we knew that it was a threat to our institutions, institutions that belong to us.

What we face today is the same kind of test, only one far more grave and historic. From the founding of our country to today, one truth remains clear: The impeachment power is reserved for conduct that endangers democracy and imperils our Constitution. Today's hearing has helped us to better understand how we preserve our republic and the test that lies ahead for us.

Thank you, Mr. Chairman, I yield back my time.

Chairman NADLER. The gentlelady yields back.

That concludes the testimony under the 5-minute rule. I now recognize the ranking member for any concluding remarks he may have.

Mr. COLLINS. Thank you, Mr. Chairman. Well, today has been interesting, I guess, to say the least. It has been—we have found many things. In fact, three of our four witnesses here today alleged numerous crimes committed by the President, and at times it seemed like we were even trying to make up crimes as we go, well, if it wasn't this, well, it was the intent to do it.

It went along that—it was interesting today as I started this day and I'm going to come back to it now. As much as I respect these who came before us today, this is way too early, because we've not, as a committee, done our job. We've not as a committee come together, looked at evidence, taken fact witnesses, put people here in front of us under oath to say, what happened, and how did it happen, and why did it happen?

We're taking the work of the Intel Committee and the other committees. We're taking it at seemingly at face value. And I will remind all that the chairman even is the biggest proponent of this not happening in his earlier statements almost 20 years ago when he said: We should not take a report from another entity and just accept it; otherwise, we are a rubber stamp.

Now, to my Democratic majority, they may not care, because, as I said before, this is about a clock and a calendar, a clock and a calendar. They're so obsessed with the election next year that they just gloss over things. In fact, what is interesting is, as I said earlier, three of the four witnesses allege numerous crimes committed

by the President. However, during the Intel Committee hearings, none of the fact witnesses identified a crime. If you're writing about this, that should alarm you.

So this impeachment narrative being spun by the majority is a fake one. It's the majority spinning 3 percent of the facts while ignoring 97 percent of the other. In fact, Professor Turley earlier said today impeachment needs proof, not presumptions. We have one of the fact witnesses in the Intel Committee, I presumed that was what was going on, Mr. Sondland.

You know what is happening here today is also we found out today—I thought it was really interesting. This is the Judiciary Committee, but we also found out something today, that facts don't matter. In fact, facts don't matter unless we can fit those facts to fit the narrative we want to spin before this committee and the American people. If they don't matter, we also heard one of the witnesses state today that it doesn't matter if aid was released or not.

Of course, it matters, but, unfortunately, only one of the many facts ignored by the majority. They're ignoring a ton of substantive facts that matter.

It apparently doesn't matter to the Democrats that Ambassador Volker, the former Special Envoy to the Ukraine, made clear in his testimony there was no conditionality on the White House meeting or the aid. The Democrats and their witnesses haven't mentioned that, because it's unhelpful to the narrative they're spinning.

It apparently doesn't matter that to the Democrats in the majority here that the President did not condition his aid on an investigation. In fact, Mr. Sondland's statement, to the contrary, was presumption. It was right here in this room he called it a guess, right where you're sitting. Called it a guess, a presumption. It's what he thought.

God forbid if we walk into our courtrooms or in our proceedings now and find somebody guilty of something we're calling a crime, and we walk into court now and all of a sudden, well, I thought it was. The witness said, I presumed it was. God forbid this is where we're at.

But, you know, we've also heard today that you can make inference, though. It's okay if you're just inferring. I don't know about the professors here and for those of us in court on both side of the aisle, I've never heard anyone go in and hear a judge say, just infer what you think they meant and that will be enough. It's not inference.

You know, it probably doesn't matter that the President didn't condition a meeting on an investigation. He met with Zelensky with no preconditions. Zelensky didn't even find out about the hold on the aid until a month after the call when he read it in Politico. The aid was released shortly thereafter and Ukraine didn't have anything to do to get the aid released. Not only was the aid released, but lethal aid was given as well.

And if you think that doesn't matter, there were five meetings between the aid—the time the aid was stopped and the time the aid was released, and in none of those meetings between Ambassadors and others, including the Vice President and Senators, none of that was ever connected to a promise of anything on the aid.

Nothing was ever connected. Five times. And two of those were after President Zelensky learned that aid was being held.

Tell me there's not a problem here with the story. That's why fact witnesses aren't here right now. The evidence against the President is really about policy differences. In fact, three of the Democratic star witnesses, Hill, Taylor, and Kent, weren't even on the call. They read transcripts like everyone else.

On July 26, Zelensky met with Volker and Sondland and made no reference to quid pro quo or hold on aid. They met several more times, no references. But none of those are in—none of these inconvenient facts or so many other inconvenient facts matter to the majority.

Moreover, we don't even know what if additional hearings we will have to address other facts. This is the part that bothers me greatly. It is something we have seen from January of this year. No concern about a process that works, but simply a getting to an end that we want.

You know, I agree with Professor Feldman. He may find that strange, but I do agree with you on something. It's not his job to assess the credibility of the witnesses, it is this committee's job. And I agree. But this committee can't do our jobs if none of the witnesses testify before our committee, even ones that we have talked about calling today and the majority has said we don't want. To do that, we still don't have an answer on what this committee will do once this hearing ends.

The committee received Chairman Schiff's report yesterday, but we still don't have the underlying evidence. The rules even set up by this body are not being followed to this day, but yet nobody talks about it on the majority side. The witnesses produced by Chairman Schiff and the American people talked about their feelings, their guesses, their presumptions. But even though the facts may not matter to the majority, 97 percent of the other facts do matter to the American people.

So my problem is this: As the ranking member of this committee, one of the oldest, most should be fact-based, legal-based committees we have here where impeachment should have been all along, I have a group of Members who have no idea where we're headed next. I bet you, though, if I ask the majority Members outside the chairman, they don't have a clue either, very much one.

Because if they have it, they should share it, because this is not a time to play hide the ball. This is not a time to say, we're going to figure it out on the fly. You're talking about overturning 63 million votes of a President duly elected who is doing his job every day and, by the way, was overseas today while we're doing this, working with our NATO allies.

So the question I have is, where do we head next? We've heard this ambiguous presentation, but here's my challenge. I've already been voted down and tabled today. Mr. Schiff should testify. Chairman Schiff, not his staff, must appear before this committee to answer questions about the content of his report. That's what Ken Starr did 20 years ago and history demanded.

I told the chairman just a while ago and a couple weeks ago when we were doing a markup, I said, Mr. Chairman, the history

lights are on us. It is time that we talk and share how we're going forward. I'm still waiting for their answers.

So, Mr. Chairman, as we look ahead, as the Democratic majority promised that this was going to be a fair process when it got to Judiciary for the President and others. The President—and you may say he could have come today. What would have this done? Nothing. There's no fact witnesses here, nothing to rebut. In fact, it's been a good time just to see that really nothing came of it at the end of the day. So why should he be here?

Let's bring fact witnesses in. Let's bring people in. Because as you said, Mr. Chairman, you said, your words, we should never on this committee accept an entity giving us a report and not investigate it ourselves. Undoubtedly, we're well on our way to doing that, because of a calendar and a clock.

So, Mr. Chairman, I know you're about to give a statement, and they've worked on it and you've worked on it very hard I'm sure, but I want—before you gavel this hearing, before you start your statement, before you go any further, I would like to know two things: Number one, when do you plan on scheduling our minority hearing day?

And, number two, why or with—when are we actually going to have real witnesses here that are fact witnesses in this case? When? Or what you said many years ago has faded, just like the leaves in fall. I don't really care anymore that somebody else gives us a report.

Undoubtedly, Chairman Schiff is chairman over everything with impeachment and he doesn't get to testify. He's going to send a staff member. But I don't even know if we're going to have a hearing past that to figure out anything that's been going on.

So my question that I started out today is, where is fairness? It was promised. It's not being delivered. The facts talked about were not facts delivered. This President, as facts were given, did nothing wrong, nothing to be impeached, and nothing for why we're here.

And in the words of one of our witnesses, Mr. Turley, if you rush through this, you do it on flimsy grounds, the American people will not forget the light of history.

So today, before you give your opening statement—your closing statement, before you get to this time, my question is is will you talk to this committee? You're chairman. You hold a very prestigious role. Will you let us know where we're going? Are we going to adjourn from here after you sum up everything, saying that they all did good and go out from here, we're still wondering.

The lights are on. It's time to answer the question.

I yield back.

Chairman NADLER. The gentleman yields back.

And I want to before my closing statement acknowledge that I received a letter today requesting a minority day of testimony under rule XI. I have not had a chance to read the letter, but look forward to conferring with the ranking member about this request after I have had a chance to review it.

Mr. COLLINS. Mr. Chairman, I have a question. You can't review a letter. That is a demand that we have.

Chairman NADLER. The gentleman is not recognized.

Mr. COLLINS. There's nothing for you to review.

Chairman NADLER. I now recognize myself for a closing statement.

George Washington's farewell address warns of a moment when cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people and to usurp for themselves the reins of government.

President Trump placed his own personal and political interests above our national interests, above the security of our country, and, most importantly, above our most precious right, the ability of each and every one of us to participate in fair elections, free of corruption.

The Constitution has a solution for a President who places his personal or political interests above those of the Nation: The power of impeachment. As one of my colleagues pointed out, I have in the past articulated a three-part test for impeachment. Let me be clear. All three parts of that test have been met.

First, yes, the President has committed an impeachable offense. The President asked a foreign government to intervene in our elections, then got caught, then obstructed the investigators twice. Our witnesses told us in no uncertain terms that this conduct constitutes high crimes and misdemeanors, including abuse of power.

Second, yes, the President's alleged offenses represent a direct threat to the constitutional order. Professor Karlan warned, drawing a foreign government into our election process is an especially serious abuse of power, because it undermines democracy itself. Professor Feldman echoed, if we cannot impeach a President who abuses his office for personal advantage, we no longer live in a democracy. We live in a monarchy or under a dictatorship.

And Professor Gerhardt reminded us, if what we are talking about—if what we are talking about is not impeachable, then nothing is impeachable. President Trump's actions represent a threat to our national security and an urgent threat to the integrity of the next election.

Third, yes, we should not proceed unless at least some of the citizens who supported the President in the last election are willing to come with us. A majority of this country is clearly prepared to impeach and remove President Trump.

Rather than respond to the unsettling and dangerous evidence, my Republican colleagues have called this process unfair. It is not. Nor is this argument new. My colleagues on the other side of the aisle, unable to defend the behavior of the President, have used this argument before.

First, they said that these proceedings were not constitutional because we did not have a floor vote. We then had a floor vote. Then they said that our proceedings were not constitutional because they could not call witnesses. Republicans called three of the witnesses in the live hearings of the Intelligence Committee and will have an opportunity to request witnesses in this committee as well.

Next, they said that our proceedings were not constitutional because the President could not participate. But when the committee invited the President to participate in this hearing, he declined.

The simple fact is that all these proceedings have all the protections afforded prior Presidents. This process follows the constitu-

tional and legal precedents. So I am left to conclude that the only reason my colleagues rushed from one process complaint to the next is because there is no factual defense for President Trump.

Unlike any other President before him, President Trump has openly rejected Congress' right as a coequal branch of government. He has defied our subpoenas, he has refused to produce any documents, and he directed his aides not to testify.

President Trump has also asked a foreign government to intervene in our elections, and he has made clear that if left unchecked he will do it again. Why? Because he believes that, in his own words, quote, "I can do whatever I want," unquote. That is why we must act now. In this country, the President cannot do whatever he wants. In this country, no one, not even the President, is above the law.

Today we began our conversation where we should, with the text of the Constitution. We have heard clearly from our witnesses that the Constitution compels action. Indeed, every witness, including the witness selected by the Republican side, agreed that if President Trump did what the Intelligence Committee found him to have done after extensive and compelling witnesses from the Trump administration officials, he committed impeachable offenses.

While the Republican witness may not be convinced that there is sufficient evidence that the President engaged in these acts, the American people and the majority of this committee disagree.

I also think that the Republican witness, Professor Turley, issued a sage warning in 1998, when he was a leading advocate for the impeachment of Bill Clinton. He said, quote, "if you decide that certain acts do not rise to impeachable offenses, you will expand the space for executive conduct," close quote.

That was the caution of Professor Turley in 1998 in the impeachment of President Clinton. That caution should guide us all today. And by any account, that warning is infinitely more applicable to the abuses of power we are contemplating today, because, as we all know, if these abuses go unchecked, they will only continue and only grow worse.

Each of us took an oath to defend the Constitution. The President is a continuing threat to that Constitution and to our democracy. I will honor my oath, and as I sit here today, having heard consistent, clear, and compelling evidence that the President has abused his power, attempted to undermine the constitutional role of Congress, and corrupted our elections, I urge my colleagues, stand behind the oath you have taken. Our democracy depends on it.

This concludes today's hearing.

Mr. COLLINS. Mr. Chairman, I have one thing.

Chairman NADLER. For what purpose does the gentleman seek recognition?

Mr. COLLINS. Thank you, Mr. Chairman.

Pursuant to rule—pursuant to committee rule 8, I am giving notice of intent to file dissenting views to the committee's report on constitutional grounds for Presidential impeachment.

Chairman NADLER. Noted.

This concludes today's hearing. We thank all of our witnesses for participating. Without objection, all members will have 5 legislative days to submit additional written questions for——

Mr. COLLINS. We have an unanimous consent request. We have an unanimous consent request.

Chairman NADLER. Too late.

Mr. COLLINS. Too late? It's too late for a unanimous consent request?

Chairman NADLER [continuing]. The witnesses or additional materials for the record.

Without objection, the hearing is adjourned.

[Whereupon, at 6:32 p.m., the committee was adjourned.]

APPENDIX



CHAPMAN UNIVERSITY
Dale E. Fowler School of Law

Dr. John C. Eastman
Henry Salvatori Professor of Law & Community Service
Dean (2007-2010)

December 9, 2019

Hon. Jerrold Nadler, Chairman
U.S. House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Hon. Doug Collins, Ranking Member
U.S. House Committee on the Judiciary
2142 Rayburn House Office Building
Washington, D.C. 20515

Re: Testimony before the U.S. House Committee on the Judiciary
The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds
for Presidential Impeachment, Dec. 4, 2019

Dear Chairman Nadler and Ranking Member Collins:

I write to augment the written and oral testimony provided by the four witnesses invited to participate in last week's Judiciary Committee Hearing entitled "The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for Presidential Impeachment." I respectfully request that this statement be included in the official record of that hearing.

I am the Henry Salvatori Professor of Law & Community Service, and former Dean, at the Chapman University Fowler School of Law, where my teaching and scholarship focus primarily on the structural aspects of the Constitution.¹ I am also a Senior Fellow at The Claremont Institute, and as director of the Institute's Center for Constitutional Jurisprudence, have participated as amicus curiae or on behalf of parties in more than 150 cases of constitutional significance before the Supreme Court of the United States. I have also testified before various committees of Congress and state legislatures on more than twenty occasions involving a variety of constitutional issues. Most directly relevant to my statement for the record today, I testified last summer at this Committee's Hearing on "Lessons from the Mueller Report, Part III: 'Constitutional Processes for Addressing Presidential Misconduct,'" and previously testified

¹ I am submitting this statement for the record on my own behalf, and not on behalf of the Institutions with which I am affiliated.

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opposite Professor Jonathon Turley, one of your witnesses at last week's hearing, at a 2006 hearing before the House Permanent Select Committee on Intelligence addressing "Obligations of the Media With Respect to Publication of Classified Information" and the constitutionality of various actions taken by the Bush administration in response to the War on Terrorism. Significantly, Professor Turley and I disagreed at that hearing about the First Amendment implications for possible legal actions against major news outlets that had published sensitive classified information; indeed, he was invited as a witness by Ranking Member Jane Harmon (a Democrat), if I recall correctly, while I was called by Chairman Pete Hoekstra (a Republican). Despite our disagreement then, I find myself in almost complete agreement with his testimony last week.

I would nevertheless like to add to or elaborate on a few significant points of that testimony. The "sole power of impeachment," which the Constitution assigns to this House of Congress,² is one of the most awesome and solemn powers provided anywhere in the Constitution. The President of the United States was not to be a law unto himself, as the King of England had been,³ but was instead accountable to the people, through elections, and in extraordinary circumstances also accountable to the people through their representatives, via the impeachment process and potential removal from office. Nevertheless, the Founders rightly recognized that such an awesome power might be abused if the bar for its use was set too low, which is why they rejected "maladministration" as one of the grounds for impeachment,⁴ instead limiting impeachment to cases of "treason, bribery, and other high crimes and misdemeanors."⁵ The President was not to be subordinate to the Congress, as is the case in the parliamentary systems of Europe. Instead, the Executive and Legislative branches were to be co-equal (along with the third branch, the Judiciary). Each was to be a check on the others, to be sure, but each was also provided with ample power to resist encroachments by the others, if need be.⁶

The basic narrative for impeachment of the President currently⁷ under consideration, as articulated by Chairman of the Intelligence Committee Adam Schiff, is this: The President

² U.S. Const., Art. I, Sec. 2, Cl. 5.

³ I use the phrase, "law unto himself," instead of the phrase that is often used, "above the law," because technically the King was not "above the law" since he was the embodiment of the law.

⁴ Max Farrand, *Records of the Federal Convention*, Vol. 2, p. 550 (Sept. 8, 1787), at <https://bit.ly/356ppOZ>.

⁵ U.S. Const., Art. I, Sec. 2, Cl. 4.

⁶ This is the reason why, for example, claims that the President has obstructed justice merely by asserting executive privilege in response to subpoenas that he views as attempts to encroach on the executive authority he has directly from Article II of the Constitution are invalid; they undermine the separation of powers and the co-equal status of the legislative and executive branches.

⁷ I say "currently" because this is only the latest in a series of asserted grounds for impeachment that have been offered by members of Congress and outside groups dating back to before President Trump was even inaugurated. See, e.g., Rachael Revesz, "Donald Trump Impeachment Effort Already Underway," *Independent* (Jan. 20, 2017) (noting that a website, ImpeachDonaldTrump.org, pushed by two liberal advocacy groups, Free Speech for People and RootsAction, was already up and running before the inauguration); Matea Gold, "The campaign to impeach President Trump has begun," *Washington Post* (Jan. 20, 2019) (same); Emily Jane Fox, "Democrats Are Paving the Way to Impeach Donald Trump," *Vanity Fair* (Dec. 15, 2016). Just three weeks after the Inauguration, Representative Jerrold Nadler (D-NY), currently the Chairman of this Committee, filed a resolution of inquiry that was widely viewed as a first step toward impeachment. H. Con. Res. 5 (115th Cong., Feb. 9, 2017); see also, e.g.,

withheld military aid to Ukraine and a coveted White House meeting sought by newly-elected Ukrainian President Volodymyr Zelenskyy in exchange for President Zelenskyy initiating an investigation that would “make up dirt on [President Trump’s] political opponent,” former Vice-President Joe Biden. This was, Schiff claimed, “the essence of what [President Trump] communicate[d]” to Zelenskyy in a telephone call on July 25, a call that Schiff himself described as “read[ing] like a classic organized crime shakedown.”⁸ Schiff’s characterization was bolstered by claims made in a letter written by a purported “whistleblower,”⁹ in which the individual alleged “that the President of the United States is using the power of his office to solicit interference from a foreign country in the 2020 U.S. election” by, “among other things, pressuring a foreign country to investigate one of the President’s main domestic political rivals.” “[A]fter an initial exchange of pleasantries,” the “whistleblower” continued, “the President used

Deniqua, “Congressman Jerrold Nadler Takes First Steps Toward Impeachment of Donald Trump,” *The Source* (Feb. 10, 2017), at <https://bit.ly/2RE53sg>. Representative Al Green (D-TX) called for President Trump’s impeachment in a floor speech on May 17, 2017, less than four months after the President had taken office. <https://www.youtube.com/watch?v=F9AulcwXN8M&feature=youtu.be>. Articles of Impeachment were drafted and circulated by Representative Brad Sherman (D-CA) on June 12, 2017, and then formally introduced on July 12, 2017 as H. Res. 438. See Lindsey McPherson, “Democratic Rep. Sherman Drafts Article of Impeachment Against Trump,” *Roll Call* (June 12, 2017), at <https://bit.ly/2qFH5C4>; H. Res. 438, 115th Cong. (July 12, 2017). Representative Steve Cohen (D-TN), with 17 cosponsors, introduced Articles of Impeachment on November 15, 2017. H. Res. 621 (115th Cong., Nov. 15, 2017). Representative Green introduced his own Articles of Impeachment Resolution on Dec. 6, 2017, but the effort was immediately tabled by an overwhelmingly bipartisan vote of 364 to 58. H. Res. 646 and Roll Call No. 658 (115th Cong., Dec. 6, 2017). He tried again in January 2018, but his renewed resolution was again tabled by an overwhelmingly bipartisan vote, 355-66. H. Res. 705 and Roll Call No. 35 (115th Cong. Jan. 19, 2018). Other bills dripping with the threat of impeachment were also introduced. Representative Jamie Raskin (D-MD) introduced the Presidential Disclosure of Foreign Business Transactions Act in May 2017, for example, demanding that the President provide a report off all his business transactions of \$10,000 or more with a foreign government for the ten year period prior to assuming office, and asserted that “A violation of this Act shall constitute a high crime and misdemeanor for the purposes of article II, section 4 of the Constitution of the United States”—the impeachment provision. H.R.2440 (115th Cong., May 16, 2017). The next day, Representative Adriano Espaillat (D-NY) introduced the “Drain the Swamp and the President’s Assets Act,” prohibiting the President from holding certain assets (unless placed in a blind trust) and likewise specifying that “A violation of the amendment made by this Act shall constitute a high crime and misdemeanor for the purposes of” the Impeachment Clause. H.R.2494 (115th Cong., May 17, 2017). Representative Earl Blumenauer (D-OR) even introduced a bill that would create a new body to exercise the power to determine that the President was unable to perform the duties of office, in addition to the temporary removal authority already provided to Cabinet officials by the 25th Amendment. H.R. 2093 (115th Cong., April 14, 2017).

Once Democrats regained control of the House in January 2019 following the November 2018 midterm election, calls for impeachment began again in earnest. Representative Sherman reintroduced his first-out-of-the-gate Articles of Impeachment resolution on January 3, 2019, the very first day of the new Congress. H.Res.13 (116th Cong., Jan. 3, 2019). Representative Rashida Tlaib (D-MI) introduced a resolution in March directing the Judiciary Committee to open an impeachment inquiry. H.Res.257 (116th Cong., Mar. 27, 2019). Representative Sheila Jackson Lee followed suit two months later. H.Res. 396 (116th Cong., May 22, 2019). Representative Green tried again (unsuccessfully) with his impeachment resolution in July. H.Res.498 and Roll Call No. 483 (116th Cong., July 17, 2019). Hearings were held by this Committee in March, May, June, and July to consider whether various actions of the President (the use of the pardon power, claims of executive privilege, and conduct described in the Mueller Report) warranted impeachment proceedings. None of those *fifteen* prior formal efforts bore any fruit.

⁸ Opening Statement of Chairman Adam Schiff (D-CA), House Permanent Select Committee on Intelligence, Hearing on “Whistleblower Disclosure” (Sept. 26, 2019), official transcript available at <https://bit.ly/38m8oSG>.

⁹ I put the word “whistleblower” in quotes, because in my view, the individual does not qualify as a whistleblower under the relevant statutes.

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the remainder of the call to advance his personal interests. Namely, he sought to pressure the Ukrainian leader to take actions to help the President's 2020 reelection bid" by pressuring President Zelenskyy to "initiate or continue an investigation into the activities of former Vice President Joseph Biden and his son, Hunter Biden" and "assist in purportedly uncovering that allegations of Russian interference in the 2016 U.S. presidential election originated in Ukraine."¹⁰

The counter narrative, which I and numerous others have been able to piece together from publicly-available sources, is as follows: After the fall of the Berlin Wall and the collapse of the Soviet Union in 1991, there was a feeding frenzy for profits as the various economies of the old eastern bloc transitioned from socialism to privatization. Because many of these efforts were corrupt and outside the boundaries of law, the frenzy earned the nickname, "gangster capitalism."¹¹ Ukraine was not immune from this corruption; indeed, Ukraine has regularly been regarded as one of the most corrupt nations in the world.¹² U.S. diplomats even called it a "kleptocracy," according to reports based on documents published by Wikileaks.¹³ It appears that politicians, businessmen, and consultants from across the ideological-political spectrum in the United States may have been tempted by the easy profits that such corruption offered to the well-heeled and well-connected.¹⁴ After one reportedly corrupt Ukrainian President, Viktor Yanukovich, was ousted in the "Euromaiden Revolution" of February 2014 and the Russian army occupied Crimea that same month, legislation was introduced in Congress in March 2014 and quickly approved in early April to provide substantial aid to Ukraine—\$50 million in direct aid via the Secretary of State to assist with *anti-corruption efforts* and the diversification of *energy supplies*, \$100 million for security assistance, and an additional \$1 billion in U.S. loan guarantees, to be used to promote government, banking, and *energy sector* reform.¹⁵ Less than two weeks later, on April 16, 2014, Devon Archer, a major supporter of the 2004 presidential bid of Senator John Kerry, who was then serving as President Barack Obama's Secretary of State,

¹⁰ The unclassified version of the "whistleblower" complaint is available at <https://bit.ly/2PtKIDh>.

¹¹ See, e.g., Nancy Holmstrom and Richard Smith, "The Necessity of Gangster Capitalism," *Monthly Review* (Feb. 1, 2000), at <https://bit.ly/38nfpTk>.

¹² Ernst & Young reportedly listed Ukraine as one of the three most corrupt nations in the world in 2012, and the second most corrupt nation in the world as determined by a poll of experts in 2016. See Viktor Tkachuk, "People First: The latest in the watch on Ukrainian democracy," *Kyiv Post* (Sept. 11, 2012), at <https://bit.ly/2LCmvcS>; Ernst & Young, *Corporate misconduct—individual consequences: 14th Global Fraud Survey*, "Detailed Results," p. 44 (2016), at <https://go.ey.com/2LByPdx>.

¹³ Yuriy Onyshkiv, "Clearer Picture," *Kyiv Post* (Sept. 2, 2011), at <https://bit.ly/2qwXHM8>.

¹⁴ In addition to Republican consultants Paul Manafort and Richard Gates, who were convicted or plead guilty to a number of charges arising out of their dealings in Ukraine, former Obama White House Counsel Gregory Craig reportedly grossed millions from an oligarch allied with Yanukovich through his firm, Skadden Arps, via a confusing series of offshore accounts. See, e.g., Sharon LaFraniere, "Paul Manafort, Trump's Former Campaign Chairman, Guilty of 8 Counts," *New York Times* (Apr. 21, 2018), at <https://nyti.ms/342DATE>; Devlin Barrett and Spencer S. Hsu, "Former Trump campaign official Rick Gates pleads guilty to 2 charges," *Washington Post* (February 23, 2018), at <https://wapo.st/38mdYVn>; Sarah Chayes, "Hunter Biden's Perfectly Legal, Socially Acceptable Corruption," *The Atlantic* (Sept. 27, 2019), available at <https://bit.ly/33Yk5Mh>. There are reportedly many others.

¹⁵ Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, H.R.4152 (introduced Mar. 5, 2014), Pub. L. 113-95 (Apr. 3, 2014); see also Ukraine Support Act, H.R.4278 (Mar. 21, 2014).

met with Vice President Joe Biden just days before Biden traveled to Ukraine on April 21, 2014. The very next day, Archer was named to a seat on the Board of Directors of the reputedly corrupt Ukrainian *energy* company Burisma Holdings, Ltd.¹⁶ Biden's own son, Hunter, was named to the same Board in early May 2014, a move which the Washington Post reported at the time as highly problematic.¹⁷ The U.S. then signed a \$1 billion loan guarantee for Ukraine in May 2014, and by the end of the year, more than \$320 million in direct aid had also been committed.¹⁸ Some portion of those and other funds appears to have been laundered to Hunter Biden via a excessively lucrative salary as a board member,¹⁹ and to the company he co-managed with Devon Archer, Rosemont Seneca Partners.²⁰

Moreover, top ranking Ukrainian officials reportedly collaborated with operatives of the Democrat National Committee as well as U.S. law enforcement and intelligence agencies to undermine *candidate* Trump's 2016 presidential campaign.²¹ These efforts included a high-level meeting in Washington, D.C. in January 2016 between Ukrainian prosecutors and officials from the FBI, Department of State, Department of Justice, and National Security Council, the purpose of which was to encourage Ukrainian prosecutors to re-open an investigation into alleged corruption involving Trump's soon-to-be-named campaign chairman Paul Manafort, which had been closed back in 2014.²² Ukrainian prosecutors then returned to Ukraine and reopened the investigation in earnest. Manafort joined the Trump campaign on March 29, 2016, and became Chairman on May 19, 2016. Ukraine's National Anti-Corruption Bureau (NABU) then leaked the existence of a ledger purporting to show under-the-table payments to Manafort on May 29, 2016.²³ Although Manafort has denied the veracity of the ledger and the claims of illicit payments, the controversy nevertheless forced him to resign from the campaign in August 2016, shortly after portions of a black ledger depicting payments to him were made public.²⁴ A Ukrainian court subsequently found that the whole escapade of the leaked (and perhaps

¹⁶ See, e.g., Echo Chambers, "Vice President Joe Biden's son joins Ukraine gas company," BBC News (May 14, 2014), at <https://bbc.in/2LDpYYF>.

¹⁷ Adam Taylor, "Hunter Biden's new job at a Ukrainian gas company is a problem for U.S. soft power," Wash. Post (May 14, 2014), at <https://bit.ly/2sdIBN5>.

¹⁸ The White House, Office of the Press Secretary, "Fact Sheet: U.S. Assistance to Ukraine" (Nov. 21, 2014), at <https://bit.ly/2t19JOZ>; see also Ukraine Freedom Support Act of 2014, H.R.5859, Pub. L. 113-272 (Dec. 18, 2014).

¹⁹ John Haltiwanger, "A Ukraine gas company tied to Joe Biden's son is at the center of the Trump-whistleblower scandal," Business Insider (Nov. 19, 2019) (Biden "reportedly received compensation up to \$50,000 a month"), at <https://bit.ly/2sahzFv>; Kenneth P. Vogel and Iuliia Mendel, "Biden Faces Conflict of Interest Questions That Are Being Promoted by Trump and Allies," NY Times (May 1, 2019), at <https://nyti.ms/2RyxbwX>.

²⁰ John Solomon, "How the Obama White House engaged Ukraine to give Russia collusion narrative an early boost," The Hill (Apr. 25, 2019), at <https://bit.ly/2qG1AvA>; see also, e.g., *United States v. Galanis*, No. 16-371, Gov't Ex. 301 (depicting cash transfers into the Rosemont Seneca Partners LLC account at Morgan Stanley of nearly \$2.5 million on March 25, 2014), at <https://bit.ly/38iW9GB>.

²¹ See, e.g., Kenneth P. Vogel and David Stern, "Ukrainian efforts to sabotage Trump backfire," Politico (Jan. 11, 2017), at <https://politi.co/2E37Y66>; John Solomon, *supra* at n. 21.

²² John Solomon, *supra* at n. 20.

²³ *Id.*

²⁴ *Id.*

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fabricated) ledger was illegal and, according to the court's press service, "led to interference in the electoral processes of the United States in 2016 and harmed the interests of Ukraine as a state."²⁵

The January 2016 meetings also addressed ongoing corruption investigations of Burisma Holdings, but to opposite purpose. Instead of encouraging the investigation into potential corruption involving well-placed U.S. citizens, U.S. officials reportedly told the Ukrainians to drop the Burisma probe. After the Ukrainians declined, then-Vice President Joe Biden threatened to withhold more than \$1 billion in U.S. loan guarantees if the lead prosecutor looking into the matter, Viktor Shokin, was not fired. Biden later bragged at a January 23, 2018 meeting of the Council on Foreign Relations that his threat to withhold the \$1 billion loan guarantee resulted in Shokin's firing in March 2016.²⁶ The Burisma case was then transferred to NABU, and shut down.²⁷

These scandals raise quite a stink. So when the latest round of military aid to Ukraine was approved by Congress, the Trump administration placed it on hold to insure compliance with long-standing federal law, as it was arguably required to do. Section 102 of the Foreign Assistance Act of 1961, for example, provides that bilateral aid "shall be carried out in accordance" with various principles, including "progress in combating corruption."²⁸ And appropriations for aid to Ukraine have, since 2014, tied such aid to, among other things, "improvements in borrowing countries' financial management and judicial capacity to investigate, prosecute, and punish fraud and corruption"²⁹ and a certification "that the Government of Ukraine has taken substantial actions to make defense institutional reforms, ... for purposes of decreasing corruption"³⁰ It was therefore perfectly appropriate for the President to insure the new administration in Ukraine was adequately addressing longstanding corruption concerns before releasing a new round of military aid. Those efforts were potentially furthered when President Zelenskyy's party won control of Parliament on July 21, 2019, and solidified when the new Parliament passed a spate of anti-corruption legislation in early

²⁵ Matthew Kupfer, "UPDATE: Publication of Manafort payments violated law, interfered in US election, Kyiv court rules," Kyiv Post (Dec. 12, 2018), at <https://bit.ly/38qdpZ>.

²⁶ "Opinion: Joe Biden Forced Ukraine to Fire Prosecutor for Aid Money," Wall Street Journal (Sept. 23, 2019), at <https://on.wsj.com/2LENMeZ>. A recent story by the Washington Post has challenged Biden's memory on the exact timeline, but not the underlying point that Biden threatened to withhold the loan guarantee if Shokin was not fired. Glenn Kessler, "Correcting a media error: Biden's Ukraine showdown was in December 2015," Washington Post (Oct. 2, 2019), at <https://wapo.st/38fBYcC>.

²⁷ John Solomon, *supra* at n. 20.

²⁸ Pub. L. 87-195, Sec. 102(b)(4)(G), codified at 22 U.S.C. § 2151-1.

²⁹ *See, e.g.*, Pub. L. 113-235, § 7029(e) (Dec. 14, 2014).

³⁰ *See, e.g.*, Pub. L. 114-328, § 1237(c). That the Department of Defense had already issued a routine certification does not prevent a second look by the nation's chief executive, to whom the Secretary of Defense reports.

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September.³¹ U.S. military aid was released shortly thereafter.³² President Trump's call with Ukrainian President Zelenskyy on July 25, 2019, therefore appropriately mentioned investigations dealing with Ukraine's meddling in the 2016 U.S. presidential election as well as potential corruption involving Burisma and the Bidens. There was no mention of the military aid in that call (and Ukrainian officials reportedly did not learn that it had even been help up until more than a month later, when an article was published by Politico³³ disclosing the hold), nor any quid pro quo. Instead, the President's requests were well in line with established Congressional policy on the release of appropriated funds. Indeed, to have ignored the substantial evidence of 2016 election meddling would have encouraged future such meddling, and to have ignored the substantial evidence of corruption swirling around Burisma and the Bidens would have effectively placed Joe Biden "above the law."³⁴

So which of these two narratives are we to believe? Undoubtedly, both have a measure of spin to suit the respective political objectives of the opposing sides. But the evidence we have available strongly favors President Trump. First, Representative Schiff has already had to acknowledge that his description of President Trump's call was a "parody."³⁵ Most of the witnesses who testified in open hearings before Schiff's committee had to acknowledge they had no first-hand knowledge of any quid pro quo, but rather had based their conclusions on hearsay or presumptions. The only first-hand testimony that was provided stated unequivocally that President Trump had demanded that there be no quid pro quo.³⁶

Even if the evidence were in equipoise (as it is not), the normal presumption in the law is that government officials act in accord with their legal responsibilities, not contrary to them. In the face of much stronger evidence of illegality and/or partisan political motivation, this was the presumption that ostensibly led former FBI Director James Comey to "exonerate" Hillary Clinton's trafficking in classified information on a private, unsecured server, and the Department of Justice's Inspector General to largely exonerate FBI employees for the conduct of that

³¹ See, e.g., "Ukraine's Rada passes bill on incentives for corruption whistleblowers," Unian Information Agency (Sept. 13, 2019), at <https://bit.ly/2E49WTu>.

³² See, e.g., Joe Gould, "White House releases \$250 million in Ukraine military aid," DefenseNews (Sept. 12, 2019), at <https://bit.ly/2sZSLAh>.

³³ Caitlin Emma and Connor O'Brien, "Trump holds up Ukraine military aid meant to confront Russia," Politico (Aug. 28, 2019), at <https://politi.co/38pA0X4>.

³⁴ Contrary to Lt. Col. Vindman's testimony before the House Intelligence Committee, it is not "improper" to ask foreign governments for assistance in investigations of potential criminal conduct by U.S. citizens. Requests for foreign government cooperation in criminal investigations of U.S. citizens are routine. Such cooperation is even specifically part of a "Mutual Legal Assistance in Criminal Matters" treaty that former President Clinton negotiated with Ukraine back in 1998, and which the Senate ratified in 1999.

³⁵ Ellie Bufkin, "Schiff says his summary of Trump's Ukraine call was 'at least part in parody'," Washington Examiner (Sept. 26, 2019), at <https://washex.am/2ryUjNt>.

³⁶ Text message from Gordon Sondland to William Taylor and Kurt Volker (Sept. 9, 2019, 5:19 a.m.).

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investigation and the launch of Special Counsel Robert Mueller's investigation into alleged collusion between the Trump campaign and Russia.³⁷

In other words, this President is as much entitled to the benefit of any doubt as other presidents, and as other high-ranking government officials, the virulence of the opposition to him notwithstanding. To allow exaggerations based on hearsay and presumptions to form the basis of impeaching proceedings risks a perpetual state of political warfare between the two principle political parties in our country, much to the detriment of the people's business. Indeed, if this Committee were to proceed with formal articles of impeachment based on a record as sketchy as this one, I can only assume that, during any "trial" in the Senate, the President would be well within his rights to explore evidence of collusion between the principal parties and witnesses in this case. Representative Schiff publicly claimed on September 17, 2019, for example, that "We have not spoken directly with the whistleblower,"³⁸ but that claim was later proved to be demonstrably and blatantly false, as we subsequently learned that Schiff's own committee staff had not only spoken with the "whistleblower," but had advised him and referred him to friendly anti-Trump attorneys prior to the filing of his complaint.³⁹ The President would likewise be well within his rights to explore just how it came to be than an exaggerated version of his call got leaked to someone in the CIA; our CIA is not supposed to be spying on American citizens, least of all the President of the United States. And most importantly, I think it would be fair game for the President to demand a full exploration of conduct on the other side of the political aisle that occurred at the very advent of current controversy and that continues to reverberate through our politics, namely, the spying on the Trump campaign by U.S. law enforcement and intelligence agencies that was initiated by the Obama administration, based on a false dossier prepared by a former British spy using highly-placed Russian sources, that was bought and paid for by the Hillary Clinton campaign using funds illegally laundered through the campaign's law firm. That is perhaps greatest political scandal in American history, and Trump's actions with respect to Ukraine, even in the highly exaggerated version propounded by Representative Schiff, were not only legal but pale in comparison.

Respectfully submitted,



John C. Eastman

³⁷ See, e.g., Office of the Inspector General, Department of Justice, "A Review of Various Actions by the Federal Bureau of Investigation and Department of Justice in Advance of the 2016 Election," Review and Oversight Division 18-04 (June 2018), at <https://bit.ly/2YxHKSt>.

³⁸ "Morning Joe," MSNBC (Sept. 17, 2019), at <https://bit.ly/38g5bnM>.

³⁹ See, e.g., Julian E. Barnes, Michael S. Schmidt and Matthew Rosenberg, "Schiff Got Early Account of Accusations as Whistle-Blower's Concerns Grew," New York Times (Oct. 2, 2019), at <https://nyti.ms/36l7hkB>.

Statement for the Record of David B. Rivkin, Jr.

U.S. House Committee on the Judiciary

**The Impeachment Inquiry into President Donald J. Trump: Constitutional Grounds for
Presidential Impeachment**

December 4, 2019

President Trump has not committed an impeachable offense. His request to Ukraine for an investigation of potentially corrupt behavior by Ukrainian government officials and possible 2016 election interference by Ukrainians, is entirely within his constitutional authority as the head of the Executive Branch. Thus, this request is presumptively constitutional and cannot constitute an impeachable “high-crime or misdemeanor”.

Calling President Trump’s conduct vis-à-vis Ukraine bribery, abuse of office or an effort to seek foreign intervention in U.S. elections is nothing more than partisan rhetoric. Even if it were theoretically possible to recharacterize President Trump’s conduct of U.S. foreign policy vis-à-vis Ukraine as bribery or abuse of office, and I do not believe this to be the case, this would require clear and compelling evidence that the President undertook this action entirely and exclusively for the purposes of obtaining a personal benefit and that it was not in any way connected to what he believed to be in the U.S. national interest. The House Democrats have not only failed to put forward any such evidence regarding President Trump’s intentions, but they have chosen to avoid any judicial determination that could have helped them obtain testimony that would have shed definitive light on President Trump’s intentions from his senior White House advisors.

The claim that President Trump may have been able to obtain some political advantage from the Ukrainian investigation is constitutionally irrelevant. Virtually every action, whether in the foreign policy or domestic policy areas, by a politician in a democratic country involves some political consequences. Under Democrat legal theory, every President would be committing an impeachable offense on a daily basis. This cannot be true and this approach was also definitively rejected by the Framers, who rejected broader constitutional language that would have allowed impeachment for “maladministration” and chose to give the impeachment clause a more cabined scope, by opting for language that allowed impeachment only upon “conviction of, treason, bribery, or other high crimes and misdemeanors.”

The House Democrat-driven impeachment is the most partisan and procedurally flawed impeachment in U.S. history. They have made no case against President Trump. As such, it represents a gross abuse of impeachment power and threatens to destroy the Constitution’s separation-of-powers architecture. With this in mind, the Senate should not only acquit President Trump, but it must chastise the House’s entire impeachment exercise as being extra-constitutional.

David B. Rivkin, Jr., is a constitutional and appellate lawyer in private practice. He has served in the White House Counsel’s office and the Department of Justice in the Reagan and George H.W. Bush Administrations.

**U.S. HOUSE COMMITTEE ON THE JUDICIARY
THE IMPEACHMENT INQUIRY INTO PRESIDENT DONALD J. TRUMP
STATEMENT OF PROFESSOR RANDY E. BARNETT
DECEMBER 9, 2019**

**U.S. House Committee on the Judiciary
The Impeachment Inquiry into President Donald J. Trump
Statement of Professor Randy E. Barnett**

The Due Process of Law Clauses in the Fifth and Fourteenth Amendments requires a judicial process in which adequate proof that a person violated a valid legal command exists before that person can be deprived of life, liberty or property. It inserts certain protections between an individual citizen and the coercive power of a legislature and executive branch officials. The due process of law is not, however, limited to proceedings in an Article III federal court. It uncontroversially applies, for example, to actions of a judicial nature in the executive branch.

When exercising its impeachment power, Congress is not acting in its legislative capacity. Instead, by singling out a single person for the sanction of removal from office, it is acting in a judicial capacity. The interests a president has in his office, his salary and his reputation are all “property” protected by the Clause even where his life or liberty is not at stake. By acting to deprive him of those interests in its judicial rather than a legislative capacity, therefore, Congress is subject to the constraint of the Due Process of Law Clause of the Fifth Amendment.

But one need not agree that the Fifth Amendment literally applies to impeachment proceedings—or to the House proceedings that precede an impeachment trial in the Senate¹—to acknowledge that the traditional principle of “due process of law” to which the text refers is a fundamental norm that applies beyond the context of the enforcement of criminal and civil laws. The due process of law is a fundamental moral injunction that no person should be sanctioned without (1) adequate proof that (2) he or she violated a preexisting and valid norm. This injunction serves at least two functions. The first is *personal*: a concern for the personal welfare of an individual being sanctioned as well as the welfare of other persons who might one day be falsely accused. It is wrong to sanction an innocent person, and requiring the due process of law for *all* who are accused—*whether guilty or innocent*—helps protect the innocent.

A second function is *social*: third parties who lack personal knowledge of the events for which a person is being sanctioned—which describes nearly everyone but the parties involved—need assurance that a person being accused of wrongdoing is actually guilty of wrongdoing. Otherwise they would be concerned that the sanction being imposed is unjustified. Lacking personal knowledge of the facts upon which such charges are based, third parties must rely on the fairness of the fact-finding process being used to ascertain guilt or innocence. For it is only if a fact-finding process is perceived to be fair by third parties that the conclusions it reaches can be accepted as likely just. In the absence of due process, third parties are likely to be concerned that an injustice has taken place and warranted in their concerns.

The impeachment process in both the House and the Senate is no exception to this norm. Congress is ordinarily limited to its legislative power: enacting general rules for future conduct that must be enforced by another branch—the executive—with the further check of a judicial process to protect the innocent individual. Impeachment is an exceptional proceeding in which Congress sits in judgement on an individual person. Persons who are innocent of wrongdoing should not be removed from office, deprived of their salary, and their reputation. And the general public—including supporters of the person being removed—who necessarily lack personal

¹ Compare Application of the Committee on The Judiciary, U.S. House of Representatives, For an Order Authorizing the Release of Certain Grand Jury Materials 27-30 (2019) (an investigation regarding impeachment is preliminary to a “judicial proceeding”).

knowledge of the relevant events, requires assurance that anyone removed from office is indeed guilty of wrongdoing and has not wrongfully been removed from office.

The latter function is especially true when the person threatened with removal is an elected president who is member of one political party, whose removal is being advocated by members of the other political party. When this is happening, members of the public who voted for that president will justifiably be suspicious that the president is being removed for partisan political reasons rather than for good and sufficient cause.

If removal happens in the absence of due process, those suspicions will deepen. Indeed, the lack of due process will become a separate grievance that is independent of the alleged wrongdoing itself. This is why you hear more from Democrats about Judge Merrick Garland being denied a hearing in the Senate Judiciary Committee than you hear about the conceded power of the Senate to deny him a confirmation. Democrats are still angry about this alleged denial of due process—notwithstanding the fact that Senate Republicans announced before any nomination was made, their intent to postpone consideration of *any* nominee until after the election, which made a hearing into his particular qualifications immaterial.

A removal of an elected president without the perception of a fair process can cause serious rifts in the body politic, which can have serious unanticipated consequences. This is especially true if these partisan rifts preexisted the allegations of wrongdoing and the charges themselves can be viewed as motivated by such partisan rifts. For all these reasons—and more—it is vital that the procedures adopted by the House and Senate be perceived by the general public to be fair.

Normal legislative procedures are not appropriate to ensure this fairness. Normal legislative procedures are premised on the fundamental principle that, ordinarily, the majority should have its way. This means that legislative processes—for example, the composition of committees—give more power to the party holding the majority. In a republic like ours, additional checks on bare legislative majorities exist—like the need to obtain the majority of two legislative bodies and the assent of the president. And such majoritarian will is additionally checked by an independent judiciary to safeguard the rights of individuals who compose the ultimate sovereign. Still, legislative procedures are devised primarily to give effect to majority rule—although in certain instances, a super-majority may be required to take into account the views of the minority.

Because the exercise of majority will, rather than the ascertainment of truth, is the object of legislative procedures, such legislative procedures are not appropriate when Congress is performing a judicial function. In such a case, procedures should more closely resemble age-old judicial procedures designed to ensure that the general public can rest easy that the guilt of the accused has been fairly determined. Such procedures include rules of evidence, burdens of production and proof, the opportunity to call witnesses and cross examine witnesses, a public trial governed by a neutral judge, etc.

Above all, no preferential treatment should be given the majority party. Members of the majority and minority should have an equal chance to subpoena documents and witnesses and to call and question witnesses. And neither party should be able to control the legal theory of the other. Given that the judgment of what constitutes a high crime and misdemeanor will ultimately rest in the House and Senate, rather than in the courts, defenders of the president in both houses are entitled to make their case in public as to why the alleged acts, if proven, do not constitute an impeachable offence. Neither side can rule the theory of the other side out of order. Whether a particular theory is “in order” or not will ultimately be up to the electorate.

When assessing the fairness of the impeachment process, in recent months it has become fashionable to analogize the House proceedings to a criminal grand jury investigation, and the

Senate proceedings to a civil or criminal trial. But this analogy is far too facile—especially when applied to the House. A grand jury is not—or was not originally supposed to be—a creature of the prosecution, to be checked only by a future petit jury. Consider some of the differences:

- A grand jury is administered by the judicial branch, usually by the presiding judge of the relevant court who can make ultimate rulings on objections to its procedures; a committee of the House is entirely controlled by the majority party—under rules approved by a partisan majority of the House—not an independent judge.
- A grand jury is composed of individual impartial citizens, who must vote to approve a “true bill” of indictment; the House committee is composed of partisan members, more akin to fellow prosecutors, a majority of whom vote on its findings and recommendations—there are no impartial “grand jurors” on House committees.
- A grand jury does not make the law but enforces preexisting statutes with legal elements each of which need to be proved to the grand jury; a majority of a House committee—and eventually a majority of the House—votes on what constitutes an offense in addition to whether the “offense” has been committed.
- A grand jury proceeding is conducted in secret and it is a criminal offence to improperly disclose its testimony to protect the reputation of the innocent; in this current impeachment proceeding, secret House committee testimony was routinely and selectively leaked to the press by members of the majority party.
- The entirety of the grand jury proceedings is presented to the grand jurors who are ordinarily required to be present; here, unlike grand jurors, the House members who will be voting on articles of impeachment will not be privy to the entirety of the testimony elicited in secret by the Intelligence Committee, but only to reports by the majority and minority.
- The entirety of grand jury proceedings is also disclosed to the defendant’s attorneys; In this proceeding, the secret deliberations of the House Intelligence Committee has been—and I assume will continue to be—kept secret.

In this proceeding, a partisan majority of the House authorized multiple committees controlled by partisan chairs and majorities to investigate the president of another party in a manner in which the chairs and committee members of the majority served as prosecutor, judge, and grand jury members—all without the need to identify in advance the offenses being investigated. The scope of their questioning was also curtailed by rulings from the partisan chair, not an independent judge. Moreover, unlike a preliminary hearing, which in many jurisdictions substitutes for a grand jury, the minority has not been permitted to call any fact witnesses it deemed appropriate.

The power of impeachment, like all powers, can be exercised in bad faith. Indeed, exercising his powers in bad faith is exactly what the President is being accused of. In the case of the impeachment power, it would be bad faith to remove a duly-elected president from office because one disagrees with that president’s policies, or because one despises that president or believes him to be of low character. Impeachment is not a parliamentary vote of no confidence.

Consider this hypothetical: Imagine a president who, even before he takes office, is the subject of widespread impeachment talk by members of the opposing party in the media. Imagine House members of the opposing party run in the mid-term election on the platform of impeaching that president. Imagine several articles of impeachment on various charges are filed in the House by members of the opposing party. Imagine all this happening before any knowledge of the particular wrongdoing now being alleged occurs. Imagine further that

questions are raised about the source of these new allegations and his or her relationship with the chair and staff of one of the investigating committees.

Would the findings of such a hypothetical process be tainted by unfairness? Would a reasonable citizen who is of the president's party, or who considers themselves unaffiliated with a political party, have any reason to be confident in the fairness of such an outcome so dominated by partisanship? If the president is removed, should they have any reason for confidence that his removal was truly justified? Or would they be reasonable in concluding that the impeachment power had been exercised in bad faith for purposes of reversing the result of the previous election? Have they been given any reason to believe otherwise?

The only fact that would provide a check on the process described in this hypothetical is if the Senate happens to be held in the hands of the president's party. But if the entire case for the fundamental fairness of the process as a whole depends on the Senate being held by a different party than that which holds the House, this highlights the lack of due process inside the House's own deliberation. And if, in the future, the Senate is held by the same party as the House, and the Senate majority adopts rules similar to those adopted by the House, then the entire process would rightly be dismissed as a sham or show trial, rather than a good faith search for the truth.

But this hypothetical gives rise to two additional and difficult questions. After so partisan and contentious a history between this hypothetical president and the opposing party, what is the opposing party in the House to do when confronted with actual evidence of serious wrongdoing that it sincerely believes would merit the removal of any president regardless of party? And how should they proceed in the face of implacable support of the president from members of his own party?

Given such a rancorous history, and in the face of partisan support, the opposing party in the House really has but one option: to bend over backwards to adopt unquestionably fair procedures rather than partisan ones. Such fairness is vitally needed both to negate their own previous partisanship as well as to reveal the partisanship of the president's supporters, so those Americans who are caught between the two parties can assess whether the proceeding has been fair.

Let me take as an example the Judiciary Committee hearing of last week. Unlike others, I think it was wise of the Committee to begin with the testimony of constitutional experts. I am not troubled in the slightest that they are not "fact witnesses." I believe the House has its own independent duty to comply with the requirements of the Constitution even—indeed especially—when their actions will not be reviewed by the courts. So hearing from independent scholars of impeachment on the original meaning of the Impeachment Clause was the right thing to do.

But a fair hearing would not have consisted of three witnesses designated by the majority and one by the minority. It would have been limited to scholars with an expertise on impeachment and its history that was demonstrated before this event and indeed this presidency. And the Committee should have exercised utmost care to limit witnesses to those who were not also political partisans—excluding, for example, any who had made campaign contributions to the President's opponent.

While some of the witnesses called met some of these qualifications, enough of them did not to taint the hearings as predetermined and partisan in nature—especially given that they were stacked three to one. Finally, while I endorse the decision to begin hearings with a panel of impeachment scholars, I cannot imagine *limiting* the Judiciary Committee's deliberations to those witnesses—or to a report of witnesses that were heard in the public hearings of the Intelligence Committee. The hearings are not concluded, but the fact the minority members, the White House, and the public are not privy to what is yet to happen is part of the lack of due process in this proceeding.

I come to this affair with no personal knowledge of the relevant events. Nor am I an expert on the history of impeachment and its original meaning. I have been following these events in the news more or less closely as my other commitments allow. So I write as a citizen, a member of the general public, a former prosecutor, and constitutional scholar who is concerned with the preservation of our constitutional order, including the peaceful transfer of power by elections. Because of the absence of due process, I am deeply troubled by the proceedings I have witnessed. Given the procedures that have been followed, I have no reason to believe that the final vote on articles of impeachment was not determined before a single witness was sworn.

What is the remedy? At this point, the only remedy in the House is for Members of both parties to vote against any articles of impeachment on the ground that they are a product of a thoroughly tainted process. Every Member takes an oath to the Constitution. Regardless of whether they believe the president committed the actions for which he was charged, they should not legitimate a procedure so devoid in due process by a vote in favor of whatever articles that are produced in this way. And, if articles of impeachment that result from so tainted a process are approved by the House in this case, the impeachment power itself will be tainted in the future as merely a political weapon, even if a future House adopts fair rule.

I will close by heartily endorsing the view expressed by House Majority Whip James Clyburne on CNN:

This is a vote of conscience. I do believe that when it comes to something as divisive as impeachment, we have to leave members up to their own consciences, their own constituents, and what they think is in the best interest of their love for country. And so, I think it would be a bit unseemly for us to go out whipping up a vote on something like this. This is too serious, this is too much about preserving this great Republic, and I think we ought to leave it up to each member to decide how he or she would like to vote.

To the extent the House is like a grand jury, individual House members are the jurors in their individual representative capacity and not members of their respective parties. This is exactly the appropriate stance by which to approach a decision to remove the president. My regret is that the House has not conducted its impeachment proceedings in this same spirit, rather than in the spirit of party. House members voting their consciences should ground their vote, at least in part, on the failure of this impeachment proceeding to conform with the due process of law.

Sincerely,



Randy E. Barnett

Carmack Waterhouse Professor of Legal Theory, Georgetown University Law Center*
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*Affiliation for identification purposes only. The views expressed here do not reflect those of Georgetown University or the Georgetown Center for the Constitution.

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CONGRESSWOMAN SHEILA JACKSON LEE OF TEXAS
REMARKS PREPARED FOR
COMMITTEE ON THE JUDICIARY
THE IMPEACHMENT INQUIRY INTO
PRESIDENT DONALD J. TRUMP:
THE CONSTITUTIONAL GROUNDS FOR IMPEACHMENT
1100 LONGWORTH HOUSE OFFICE BUILDING
WEDNESDAY, DECEMBER 4, 2019
10:00AM



- In 1974, when the House of Representatives was considering whether to pursue impeachment against then president Richard Nixon, a site familiar to this congress was playing out in a federal courthouse just blocks from here.
- In the course of ruling on the matters before that court, Chief Judge John Sirica remarked "An impeachment investigation

involving the President of the United States is a matter of the most critical moment to the nation.”

- I regret to say that we find ourselves at a similar crossroads. Last month and for many weeks, in this room, respected career officials from the Department of Defense, the Department of State, the National Security Council and even political appointees of this president, came into this august room, and told a remarkably consistent story.
- The story they told is about the abuse of power. It is one about betrayal—about betraying our storied allies in the face of an implacable foe.
- And, it is about corrupting our elections—the very foundation of the republic and the heart of a representative democracy.
- A dozen government officials, for dozens of hours, testified before an empaneled committee of this House of Representatives—including an expert on Russia at the National Security Council, Fiona Hill; Lt. Col. Alexander Vindman, an official at the National Security Council who listened to the now-infamous July 25, 2019 call; and William Taylor, a decorated military veteran and an individual who has served our nation for 50 years—testified that the President of the United States leveraged congressionally appropriated funds set aside for a foreign ally, in order to leverage that ally to manufacture or procure derogatory information against a domestic political ally.
- When the framers of the Constitution gathered to draft what would become one of the nation’s enduring documents, they did so with ample experience in the institutions of government, and the failings of man.
- Bookended by two experiences—that of life under a monarchy and life under the Articles of Confederation, our first failed

government—the framers sought to calibrate a government of coordinate branches.

- Through a system of checks and balances, the Framers sought to curb the excesses likely to impede the exercise of a government of, by and for the people by distributing power among the three branches of government, with power principally divided between the popularly elected branches of government: a legislature—the Congress, and an Executive—the President.
- Beyond the divisions imbued in a system of checks and balances and the separation of powers, the Founders also created a legislature with the power to address wrongdoing by the President.
- In Article I, Section 2, Clause 5 of the Constitution, the Framers warned that a president could be impeached, and in Article II made clear that such an action was warranted upon a finding of high crimes and misdemeanors.
- It is that enigmatic phrase—high crimes and misdemeanors—which compels are presence here today.
- We have before us a set of undisputed material facts—even my colleagues from the other side of the aisle accept the only version of the facts.
- We are tasked to consider whether this conduct suffices to disturb the results of the last election.
- I want to make something clear—by pursuing this exercise, we are not seeking to overturn the dictates of the last election or we are doing something extra-constitutional or unconstitutional.
- Nothing about this process subverts the constitutional line of succession and nothing about this process is extra-constitutional—it is delineated in our nation's Constitution.

- The context of the presidential misconduct here is grave, too.
- The President is alleged to have solicited a foreign ally to interfere in the next election, to his benefit.
- As leverage, the president unlawfully withheld foreign military aid, which was appropriated by the Congress to help keep us safe, and be the first line of defense against Russia, our implacable foe.
- The task before us is mighty, and we are asked to apply this set of straightforward facts against a standard of high crimes and misdemeanors.
- And, we are asked to determine whether these facts warrant impeachment and removal.
- The following days before this committee will help illuminate that debate and for help in this endeavor, we turn to the witnesses assembled before us.
 - Noah Feldman, Professor Law, Harvard Law school
 - Pamela Karlan, Professor of Law, Stanford Law School
 - Michael Gerhardt, Professor of Law, University of North Carolina School of Law
 - Jonathan Turley, Professor of Law, George Washington University School of Law

Statement for the Record
Representative Martha Roby
To the House of Representatives Committee on the Judiciary
Hearing on, "The Impeachment Inquiry into President Donald J. Trump:
Constitutional Grounds for Presidential Impeachment"
Wednesday, December 4, 2019 at 10:00 a.m.

Thank you, Chairman Nadler, and thank you to the witnesses for being here today.

The United States House of Representatives has initiated impeachment inquiries against the President of the United States only three times in our nation's history prior to this one.

Those impeachment inquiries were done in this Committee, the Judiciary Committee, which has jurisdiction over impeachment matters.

Here in 2019 under this inquiry, fact witnesses that have been called were in front of the Intelligence Committee. We have been given no indication that this Committee will conduct substantive hearings with fact witnesses.

As a member serving on the Judiciary Committee, I can say that the process in which we are participating in is insufficient, unprecedented, and grossly inadequate.

Sitting before us is a panel of witnesses containing four distinguished law professors from some of our country's finest educational institutions. I do not doubt that each of you are extremely well-versed in the subject of Constitutional law.

And yes, there is precedent for similar panels in the aforementioned history, but only after specific charges had been made known and the underlying facts presented in full due to an exhaustive investigation.

However, I don't understand why we are holding this hearing at this time with these witnesses.

My colleagues on the other side of the aisle have admitted they don't know what articles of impeachment they will consider. How does anyone expect a panel of law professors to weigh in on the legal grounds for impeachment charges prior to even knowing what the charges brought by this committee are going to be?

Some of my Democratic colleagues have stated over and over that impeachment should be a nonpartisan process, and I agree.

One of my colleagues in the Democratic party stated, and I quote, "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."

My Democratic colleagues have stated numerous times that they are on a "truth-seeking" and "fact-finding" mission.

Another one of my Democratic colleagues said, and I quote, "We have a responsibility to consider the facts that emerge squarely and with the best interest of our country, not our party, in our hearts."

These types of historic proceedings – regardless of political beliefs – ought to be about "fact-finding" and "truth-seeking", but that is not what this has turned out to be.

Again, no disrespect to these witnesses, but for all I know, this is the only hearing that we will have, and none of them are fact witnesses.

My colleagues are saying one thing and doing something completely different. No Member of Congress can look their constituents and say that this is a comprehensive fact-finding, truth-seeking mission.

Ranking Member Collins and Members of the minority on this Committee have written 6 letters over the past month to Chairman Nadler asking for procedural fairness, for all underlying evidence to be transmitted to the Judiciary Committee, to expand the number of witnesses and have an even more bipartisan panel here today, and for clarity on today's impeachment proceedings since we hadn't received evidence to review.

The minority has yet to receive a response to these letters.

Right here today is another very clear example for all Americans to truly understand the ongoing lack of transparency and openness with these proceedings. The witness list for this hearing was not released until late Monday afternoon, opening statements from the witnesses today were not distributed until late last night, and the Intelligence Committee's finalized report has yet to be presented to this Committee.

You hear from those in the Majority that “process” is a Republican talking point, when in reality, it is an American talking point. Process is essential to the institution.

A thoughtful, meaningful process of this magnitude with such great implications should be demanded by the American people.

Whether you identify as a Republican, Democrat, or Independent, whether you agree or disagree with a president, whether you like or dislike a president, the American people should feel cheated by the way this is all taking place. This process is more than incomplete, and the American people deserve better. Today history is being made, and I would suggest it is perfectly bad precedent for the future of our Republic.