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House of Representatives

The House was not in session today. Its next meeting will be held on Monday, January 27, 2020, at 2 p.m.

Senate

SATURDAY, JANUARY 25, 2020

The Senate met at 10:03 a.m. and was called to order by the Chief Justice of the United States.

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

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

The Chaplain will lead us in prayer.

PRAYER

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

Let us pray.

Eternal God, the way, the truth, and the life, unite our Senators in their striving to do Your will.

Lord, You have been our help in ages past. You are our hope for the years to come. We trust the power of Your prevailing providence to bring this impeachment trial to the conclusion You desire.

Lord, we acknowledge that Your thoughts are not our thoughts and Your ways are not our ways; for as the heavens are higher than the Earth, so are Your thoughts higher than our thoughts and Your ways higher than our ways.

Lord, we love You. Empower our Senators. Renew their strength.

We pray in Your dependable Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

THE JOURNAL

The CHIEF JUSTICE. If there is no objection, the Journal of proceedings of the trial is approved to date.

The Sergeant at Arms will make the proclamation.

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

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

The CHIEF JUSTICE. The majority leader is recognized.

ORDER OF PROCEDURE

Mr. MCCONNELL. Mr. Chief Justice, colleagues, we should expect 2 to 3 hours of session today. We will take a quick break if needed.

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

The Senate will now hear you.

The Presiding Officer recognizes Mr. Cipollone to begin the presentation of the case for the President.

OPENING STATEMENT

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Senators, Leader MCCONNELL, Democratic Leader SCHUMER, thank you for your time and thank you for your attention. I want to start out, just very briefly, giving you a short plan for today. We are going to be very respectful of your time. As Leader MCCONNELL said, we anticipate going about 2 to 3 hours at most and to be out of here by 1 at the latest.

We are going to focus today on two points. You heard the House managers

speak for nearly 24 hours over 3 days. We don't anticipate using that much time. We don't believe that they have come anywhere close to meeting their burden for what they are asking you to do. In fact, we believe that, when you hear the facts—and that is what we intend to cover today, the facts—you will find that the President did absolutely nothing wrong. What we intend to do today—and we will have more presentations in greater detail on Monday, but what we intend to do today—is go through their record that they established in the House, and we intend to show you some of the evidence that they adduced in the House that they decided, over their 3 days and 24 hours, that they didn't have enough time or made a decision not to show you.

And every time you see one of these pieces of evidence, ask yourself: Why didn't I see that in the first 3 days? They had it. It came out of their process. Why didn't they show that to the Senate? I think that is an important question because, as House managers, really, their goal should be to give you all of the facts, because they are asking you to do something very, very consequential and, I would submit to you—to use a word that Mr. SCHIFF used a lot—very, very dangerous.

That is the second point that I would ask you to keep in mind today. They are asking you not only to overturn the results of the last election, but as I have said before, they are asking you to remove President Trump from the ballot in an election that is occurring in approximately 9 months. They are asking you to tear up all of the ballots

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



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S567

across this country, on your own initiative—take that decision away from the American people. And I don't think they spent 1 minute of their 24 hours talking to you about the consequences of that for our country—not 1 minute. They didn't tell you what that would mean for our country—today, this year, and forever into our future.

They are asking you to do something that no Senate has ever done, and they are asking you to do it with no evidence. That is wrong, and I ask you to keep that in mind. I ask you to keep that in mind. So what I would do is point out one piece of evidence for you, and then I am going to turn it over to my colleagues, and they will walk you through their record, and they will show you things that they didn't show you.

Now, they didn't talk a lot about the transcript of the call, which I would submit is the best evidence of what happened on the call. And they said things over and over again that are simply not true. One of them was: There is no evidence of President Trump's interest in burden-sharing; that wasn't the real reason. But they didn't tell you that burden-sharing was discussed in the call, in the transcript of the call. They didn't tell you that.

Why? Let me read it to you. Here is the President. And we will go through the entire transcript. I am not going to read the whole transcript. We will make it available. I am sure you have it, but we will make available copies of the transcript so you can have it.

The President said—and they read this line:

I will say that we do a lot for Ukraine. We spend a lot of effort and a lot of time.

But they stopped there. They didn't read the following:

Much more than European countries are doing and they should be helping you more than they are. Germany does almost nothing for you. All they do is talk and I think it's something that you should really ask them about. When I was speaking to Angela Merkel she talks Ukraine, but she doesn't do anything. A lot of European countries are the same way so I think it's something you want to look at but the United States has been very, very good to Ukraine.

That is where they picked up again with the quote, but they left out the entire discussion of burden-sharing.

Now, what does President Zelensky say? Does he disagree? No, he agrees. They didn't tell you this. They didn't tell you this. Didn't have time in 24 hours to tell you this:

Yes you are absolutely right. Not only 100%, but actually [100%] and I can tell you the following; I did talk to Angela Merkel and I did meet with her. I also met and talked with Macron and I told them that they are not doing quite as much as they need to be doing on the issues with the sanctions. They are not enforcing the sanctions. They are not working as much as they should work for Ukraine. It turns out that even though logically, the European Union should be our biggest partner but technically the United States is a much bigger partner than the European Union and I'm very grateful to you for that because the United States

is doing quite a lot for Ukraine. Much more than the European Union especially when we are talking about sanctions against the Russian Federation.

You heard a lot about the importance of confronting Russia, and we are going to talk about that. And you will hear that President Trump has a strong record on confronting Russia. You will hear that President Trump has a strong record of support for Ukraine. You will hear that from the witnesses in their record that they didn't tell you about.

That is one very important example. They come here to the Senate and ask you: remove a President, tear up the ballots in all of your States. And they don't bother to read the key evidence of the discussion of burden-sharing that is in the call itself. That is emblematic of their entire presentation.

I am going to turn the presentation over to my colleague, Mike Purpura. He is going to walk you through many more examples of this. With each example, ask yourself: Why am I just hearing about this now after 24 hours of sitting through arguments? Why? The reason is, we can talk about the process; we will talk about the law; but today we are going to confront them on the merits of their argument.

They have the burden of proof, and they have not come close to meeting it. I want to ask you to think about one issue regarding process, beyond process. If you were really interested in finding out the truth, why would you run a process the way they ran it? If you were really confident in your position on the facts, why would you lock everybody out of it from the President's side? Why would you do that?

We will talk about the process arguments, but the process arguments also are compelling evidence on the merits because it is evidence that they themselves don't believe in the facts of their case.

The fact that they came here for 24 hours and hid evidence from you is further evidence that they don't really believe in the facts of their case; that this is—for all their talk about election interference, that they are here to perpetrate the most massive interference in an election in American history, and we can't allow that to happen.

It would violate our Constitution; it would violate our history; it would violate our obligations to the future; and, most importantly, it would violate the sacred trust the American people have placed in you and have placed in them. The American people decide elections. They have one coming up in 9 months.

We will be very efficient. We will begin our presentation today. We will show you a lot of evidence that they should have showed you, and we will finish efficiently and quickly so that we can all go have an election.

Thank you, and I yield to my colleague, Michael Purpura.

Mr. Counsel PURPURA. Mr. Chief Justice, Members of the Senate, good morning.

Again, my name is Michael Purpura. I serve as Deputy Counsel to the President. It is my honor and privilege to appear before you today on behalf of President Donald J. Trump.

(Text of Videotape presentation:)

Mr. SCHIFF. And what is the President's response? Well, it reads like a classic organized crime shakedown.

Shorn of its rambling character and in not so many words, this is the essence of what the President communicates. We've been very good to your country. Very good. No other country has done as much as we have. But you know what? I don't see much reciprocity here.

I hear what you want. I have a favor I want from you, though. And I'm going to say this only seven times, so you better listen good. I want you to make up dirt on my political opponent. Understand? Lots of it, on this and on that.

I'm going to put you in touch with people, and not just any people. I'm going to put you in touch with the attorney general of the United States, my attorney general, Bill Barr. He's got the whole weight of the American law enforcement behind him. And I'm going to put you in touch with Rudy.

You're going to love him. Trust me. You know what I'm asking? And so I'm only going to say this a few more times in a few more ways. And by the way, don't call me again. I'll call you when you've done what I asked.

This is in sum and character what the President was trying to communicate.

Mr. Counsel PURPURA. That is fake. That is not the real call. That is not the evidence here. That is not the transcript that Mr. Cipollone just referenced. We can shrug it off and say we were making light or a joke, but that was in a hearing in the U.S. House of Representatives, discussing the removal of the President of the United States from office.

There are very few things, if any, that can be as grave and as serious. Let's stick with the evidence. Let's talk about the facts and the evidence in this case.

The most important piece of evidence we have in the case, and before you, is the one that we began with nearly 4 months ago—the actual transcript of the July 25, 2019, telephone call between President Trump and President Zelensky—the real transcript.

If that were the only evidence we had, it would be enough to show the Democrats' entire theory is completely unfounded, but the transcript is far from the only evidence demonstrating that the President did nothing wrong.

Once you sweep away all of the bluster and innuendo, the selective leaks, the closed-door examinations of the Democrats' hand-picked witnesses, the staged public hearings, what we are left with are six key facts that have not, and will not, change:

First, the transcript shows that the President did not condition either security assistance or a meeting on anything. The paused security assistance funds aren't even mentioned on the call.

Second, President Zelensky and other Ukrainian officials have repeatedly said that there was no quid pro

quo and no pressure on them to review anything.

Third, President Zelensky and high-ranking Ukrainian officials did not even know—did not even know—the security assistance was paused until the end of August, over a month after the July 25 call.

Fourth, not a single witness testified that the President himself said that there was any connection between any investigations and security assistance, a Presidential meeting, or anything else.

Fifth, the security assistance flowed on September 11, and a Presidential meeting took place on September 25, without the Ukrainian Government announcing any investigations.

Finally, the Democrats' blind drive to impeach the President does not and cannot change the fact, as attested to by the Democrats' own witnesses, that President Trump has been a better friend and stronger supporter of Ukraine than his predecessor.

Those are the facts. We plan to address some of them today and some of them next week. Each one of these six facts standing alone is enough to sink the Democrats' case. Combined, they establish what we have known since the beginning: The President did absolutely nothing wrong.

The Democrats' allegation that the President engaged in a quid pro quo is unfounded and contrary to the facts. The truth is simple, and it is right before our eyes. The President was, at all times, acting in our national interest and pursuant to his oath of office.

Before I dive in and speak further about the facts, let me mention something that my colleagues will discuss in greater detail. The facts that I am about to discuss today are the Democrats' facts. This is important because the House managers spoke to you for a very long time, over 21 hours, and they repeatedly claimed to you that their case is and their evidence is overwhelming and uncontested. It is not.

I am going to share a number of facts with you this morning that the House managers didn't share with you during more than 21 hours. I will ask you, as Mr. Cipollone already mentioned, that when you hear me say something the House managers didn't present to you, ask yourself: Why didn't they tell me that? Is that something I would have liked to have known? Why am I hearing it for first time from the President's lawyers?

It is not because they did not have enough time; that is for sure. They only showed you a very selective part of the record—their record. And they—remember this—have the very heavy burden of proof before you.

The President is forced to mount a defense in this Chamber against a record that the Democrats developed. The record that we have to go on today is based entirely on House Democratic facts precleared in a basement bunker—not mostly, entirely. Yet even those facts absolutely exonerate the President.

Let's start with the transcript. The President did not link security assistance to any investigations on the July 25 call. Let's step back. On July 25, President Trump called President Zelensky. This was their second phone call, both were congratulatory.

On April 21, President Trump called to congratulate President Zelensky on winning the Presidential election. On July 25, the President called because President Zelensky's party had just won a large number of seats in Parliament.

On September 24, before Speaker PELOSI had any idea what President Trump and President Zelensky actually said on the July 25 call, she called for an impeachment inquiry into President Trump.

In the interest of full transparency and to show that he had done nothing wrong, President Trump took the unprecedented—unprecedented—step of declassifying the call transcript so that the American people could see for themselves exactly what the two Presidents discussed.

What did President Trump say to President Zelensky on the July 25 call? President Trump raised two issues. I am going to be speaking about those two issues a fair amount this morning. They are the two issues that go to the core of how President Trump approaches foreign aid.

When it comes to sending U.S. taxpayer money overseas, the President is focused on burden-sharing and corruption. First, the President, rightly, had real concerns about whether European and other countries were contributing their fair share to ensuring Ukraine security.

Second, corruption. Since the fall of the Soviet Union, Ukraine has suffered from one of the worst environments for corruption in the world. A parade of witnesses testified in the House about the pervasive corruption in Ukraine and how it is in American's foreign policy and national security interests to help Ukraine combat corruption—turning the call right off the bat.

President Trump mentioned burden-sharing to President Zelensky. President Trump told President Zelensky that Germany does almost nothing for you, and a lot of European countries are the same way. President Trump specifically mentioned speaking to Angela Merkel of Germany, who he said talks Ukraine but she doesn't do anything.

President Zelensky agreed; you are absolutely right. He said that he spoke with the leaders of Germany and France and told them they are not doing quite as much as they need to be doing.

Right at the beginning of the call, President Trump was talking about burden-sharing. President Trump then turned to corruption in the form of foreign interference in the 2016 Presidential election.

There is absolutely nothing wrong with asking a foreign leader to help get

to the bottom of all forms of foreign interference in an American Presidential election. You will hear more about that later from one of my colleagues.

What else did the President say? The President also warned President Zelensky that he appeared to be surrounding himself with some of the same people as his predecessor and suggested that a very fair and very good prosecutor was shut down by some very bad people. Again, one of my colleagues will speak more about that.

The content of the July 25 call was in line with the Trump administration's legitimate concerns about corruption and reflected the hope that President Zelensky, who campaigned on a platform of reform, would finally clean up Ukraine.

So what did President Trump and President Zelensky discuss in the July 20 call? Two issues: burden-sharing and corruption.

Just as importantly, what wasn't discussed on the July 25 call? There was no discussion of the paused security assistance on the July 25 call. House Democrats keep pointing to President Zelensky's statement that "I would also like to thank you for your great support in the area of defense." But he wasn't talking there about the paused security assistance. He tells us in the very next sentence exactly what he was talking about—Javelin missiles. "We are ready," President Zelensky continues, "to continue to cooperate for the next steps specifically we are almost ready to buy more Javelins from the United States for defense purposes."

Javelins are the anti-tank missiles only made available to the Ukrainians by President Trump. President Obama refused to give Javelins to the Ukrainians for years. Javelin sales were not part of the security assistance that had been paused at the time of the call. Javelin sales have nothing to do with the paused security assistance. Those are different programs entirely. But don't take my word for it. Both former Ambassador to Ukraine Marie Yovanovitch and NSC Director Timothy Morrison confirmed the Javelin missiles and security assistance were unrelated.

The House managers didn't tell you about Ambassador Yovanovitch's and Tim Morrison's testimony. Why not? They could have taken 2 to 5 minutes out of 21 hours to make sure you understood that the Javelin sales being discussed were not part of the paused security assistance. This puts the following statement by President Trump in a whole new light, doesn't it? "I would like you to do us a favor though because our country has been through a lot and Ukraine knows a lot about it."

As everyone knows by now, President Trump asked President Zelensky "to do us a favor." And he made clear that "us" referred to our country and not himself. More importantly, the President was not connecting "do us a

favor" to the Javelin sales that President Zelensky mentioned; that makes no sense in the language there. But even if he had been, the Javelin sales were not part of the security assistance that had been temporarily paused.

I want to be very clear about this. When the House Democrats claim that the Javelin sales discussed in the July 25 call are part of the paused security assistance, it is misleading. They are trying to confuse you and just sort of wrap everything in, instead of unpacking it the right way. There was no mention of the paused security assistance on the call and certainly not for President Trump or from President Trump.

As you know, head-of-state calls are staffed by a number of aides on both sides. LTC Alexander Vindman, detailee at the National Security Council, raised a concern about the call, and that was just a policy concern. Lieutenant Colonel Vindman admitted he did not know if there was a crime or anything of that nature, but he had deep policy concerns. So there you have it.

But the President sets the foreign policy. In a democracy such as ours, the elected leaders make foreign policy while the unelected staff, such as Lieutenant Colonel Vindman, implement the policy. Other witnesses were on the July 25 call and had very different reactions than that of Lieutenant Colonel Vindman. LTG Keith Kellogg, national security advisor to the Vice President, former Acting National Security Advisor, and a long-serving and highly decorated veteran attended the call.

According to General Kelly:

I was on the much-reported July 25 call between President Donald Trump and President Zelensky. As an exceedingly proud member of President Trump's administration and as a 34-year highly experienced combat veteran who retired at the rank of Lieutenant General in the Army, I heard nothing wrong or improper on the call. I had and have no concerns.

The House managers said that other witnesses were also troubled by the July 25 call and identified those witnesses as Jennifer Williams and Tim Morrison.

Jennifer Williams, who works for Lieutenant General Kellogg, now claims that she has concerns about the call. You heard that from the House managers. They were very careful in the way they worded that. What they didn't tell you is that Ms. Williams was so troubled at the time of the call that she told exactly zero people of her concern. She told no one for 2 months following the call—not one person. Ms. Williams didn't raise any concerns about the call when it took place, not with Lieutenant General Kellogg, not with counsel, not with anyone.

Ms. Williams waited to announce her concerns until Speaker PELOSI publicly announced her impeachment inquiry. The House managers didn't tell you that. Why not?

Tim Morrison, who is Lieutenant Colonel Vindman's boss, was also on

the call. Mr. Morrison reported the call to the National Security Council lawyers, not because he was troubled by anything on the call but because he was worried about leaks and, in his words, "how it would play out in Washington's polarized environment."

"I want to be clear," Mr. Morrison testified, "I was not concerned that anything illegal was discussed."

Mr. Morrison further testified that there was nothing improper and nothing illegal about anything that was said on the call. In fact, Mr. Morrison repeatedly testified that he disagreed with Lieutenant Colonel Vindman's assessment that President Trump made demands of President Zelensky or that he said anything improper at all.

Here is Mr. Morrison:

(Text of Videotape presentation:)

Mr. SCHIFF. In that transcript, does the President not ask Zelensky to look into the Bidsens?

Mr. MORRISON. Mr. Chairman, I can only tell you what I was thinking at the time. That is not what I understood the President to be doing.

Mr. TURNER. Do you believe, in your opinion, that the President of the United States demanded that President Zelensky undertake these investigations?

Mr. MORRISON. No, sir.

Mr. WENSTRUP. And you didn't hear the President make a demand, did you?

Mr. MORRISON. No, sir.

Mr. RATCLIFFE. Again, there were no demands from your perspective, Mr. Morrison?

Mr. MORRISON. That is correct, sir.

Mr. RATCLIFFE. Is it fair to say that as you were listening to the call, you weren't thinking "Wow, the President is bribing the President of Ukraine"? That never crossed your mind?

Mr. MORRISON. It did not, sir.

Mr. RATCLIFFE. Or that he was extorting the President of Ukraine?

Mr. MORRISON. No, sir.

Mr. RATCLIFFE. Or doing anything improper?

Mr. MORRISON. Correct, sir.

Mr. Counsel PURPURA. Significantly, the Ukrainian Government never raised any concerns about the July 25 call. Just hours after the call, Ambassador William Taylor, head of the U.S. mission in Ukraine, had dinner with then-Secretary of the Ukrainian National Security and Defense Council, who seemed to think that the call went fine.

The call went well. He wasn't disturbed by anything.

The House managers didn't tell you that. Why not?

Ambassador Kurt Volker, the U.S. Special Representative for Ukraine, was not on the call, but Ambassador Volker spoke regularly with President Zelensky and other top officials in the Ukraine Government and even met with President Zelensky the day after the call. He testified that in no way, shape, or form in either the readouts for the United States or Ukraine did he receive any indication whatsoever for anything that resembles a quid pro quo on the July 25 call.

Here is Ambassador Volker.

(Text of Videotape presentation:)

Ms. STEFANIK. In fact, the day after the call, you met with President Zelensky. This would be on July 26.

Ambassador VOLKER. Correct.

Ms. STEFANIK. In that meeting, he made no mention of quid pro quo?

Ambassador VOLKER. No.

Ms. STEFANIK. He made no mention of withholding the aid?

Ambassador VOLKER. No.

Ms. STEFANIK. He made no mention of bribery?

Ambassador VOLKER. No.

Ms. STEFANIK. So the fact is that Ukrainians were not even aware of this hold on aid. Is that correct?

Mr. Counsel PURPURA. They didn't tell you about this testimony from Ambassador Volker. Why not? President Zelensky himself has confirmed on at least three separate occasions that his July 25 call with President Trump was a "good phone call" and "normal" and "nobody pushed me."

When President Zelensky's adviser, Andriy Yermak, was asked if he ever felt there was a connection between military aid and the request for investigations, he was adamant that "We never had that feeling" and "We did not have the feeling that this aid was connected to any one specific issue."

Of course, the best evidence that there was no pressure or quid pro quo is the statements of the Ukrainians themselves. The fact that President Zelensky himself felt no pressure on the call and did not perceive there to be any connection between security assistance and investigations would, in any ordinary case in any court, be totally fatal to the prosecution. The judge would throw it out. The case would be over. What more do you need to know? The House team knows that. They know the record inside out, upside down, left and right.

So what do they do? How do they try to overcome the direct words from President Zelensky and his administration that they felt no pressure? They tell you that the Ukrainians must have felt pressure regardless of what they have said. They try to overcome the devastating evidence against them by, apparently, claiming to be mind readers. They know what is in President Zelensky's mind better than President Zelensky does. President Zelensky said he felt no pressure. The House managers tell you they know better. This is really a theme of the House case.

I want you to remember this. Every time the Democrats say that President Trump made demands or issued a quid pro quo to President Zelensky on the July 25 call, they are saying that President Zelensky and his top advisers are being untruthful, and they acknowledge that is what they are saying. They have said it over the past few days.

Tell me how that helps U.S. foreign policy and national security to say that about our friends. We know there was no quid pro quo on the call. We know that from the transcripts. But the call is not the only evidence showing that there was no quid pro quo. There couldn't possibly have been a quid pro quo because Ukrainians did not even know the security assistance was on hold until it was reported in the

media by POLITICO at the end of August, more than a month after the July 25 call.

Think about this. The Democrats accused the President of leveraging security assistance to supposedly force President Zelensky to announce investigations, but how can that possibly be when the Ukrainians were not even aware that the security assistance was paused? There can't be a threat without the person knowing he is being threatened. There can't be a quid pro quo without the quo.

Ambassador Volker testified that the Ukrainians did not know about the hold until reading about it in POLITICO. Ambassador Taylor and Tim Morrison both agree. Deputy Assistant Secretary of State George Kent testified that no Ukrainian official contacted him about the paused security assistance until that first intense week in September.

Let's hear from the four of them.

(Text of Videotape presentation:)

Ambassador VOLKER. I believe that the Ukrainians became aware of the hold on August 29 and not before. That date is the first time any of them asked me about the hold by forwarding an article that had been published in POLITICO.

Ambassador TAYLOR. It was only after August 29 that I got calls from several of the Ukrainian officials.

Mr. CASTOR. You mentioned the August 28 POLITICO article. Is that the first time that you believed the Ukrainians may have had a real sense that the aid was on hold?

Ambassador TAYLOR. Yes.

Mr. HURD. Mr. Kent, had you had any Ukrainian official contacting you concerned about—when was the first time a Ukrainian official contacted you with concern about potential withholding of U.S. aid?

Mr. KENT. It was after the article in POLITICO came out in that first intense week of September.

Mr. HURD. It wasn't until the POLITICO article?

Mr. KENT. That is correct. I received a text message from one of my Ukrainian counterparts forwarding that article, and that is the first they raised it with me.

Mr. Counsel PURPURA. The House managers didn't show you this testimony from any of these four witnesses. Why not? Why didn't they give you the context of this testimony? Think about this as well. If the Ukrainians had been aware of the review on security assistance, they, of course, would have said something. There were numerous high-level diplomatic meetings between senior Ukrainian and U.S. officials during the summer after the review on the security assistance began, but before President Zelensky learned of the hold through the POLITICO article. If the Ukrainians had known about the hold, they would have raised it in one of those meetings. Yet the Ukrainians didn't say anything about the hold at a single one of those meetings, not on July 9, not on July 10, not on July 25, not on July 26, not on August 27. At none of those meetings—none of those meetings—did the Ukrainians mention the pause on security assistance.

Ambassador Volker testified that he was regularly in touch with the senior,

highest level officials in the Ukrainian Government and that the Ukrainian officials would confide things and would have asked if they had any questions about the aid. Nobody said a word to Ambassador Volker until the end of August.

Then, within hours of the POLITICO article's being published, Mr. Yermak texted Ambassador Volker with a link to the article and to ask about the report. In other words, as soon as the Ukrainians learned about the hold, they asked about it.

Mr. SCHIFF said something during the 21 hours—or more than 21 hours—that he and his team spoke that I actually agree with, which is when he talked about common sense. Many of us at the tables and in the room are former prosecutors at the State, Federal, or military level. Prosecutors talk a lot about common sense. Common sense comes into play right here.

The top Ukrainian officials said nothing—nothing at all—to their U.S. counterparts during all of these meetings about the pause on security assistance, but then—boom. As soon as the POLITICO article comes out, suddenly, in that first intense week of September, in George Kent's words, security assistance was all they wanted to talk about.

What must we conclude if we are using our common sense?—that they didn't know about the pause until the POLITICO article on August 28. There was no activity before. The article comes out, and there is a flurry of activity.

That is common sense, and it is absolutely fatal to the House managers' case. The House managers are aware that the Ukrainians' lack of knowledge on the hold is fatal to their case, so they desperately tried to muddy the water.

The managers told you the Deputy Assistant Secretary of Defense, Laura Cooper, presented two emails that people on her staff received from people at the State Department regarding conversations with people at the Ukraine Embassy that could have been about U.S. security assistance to Ukraine. What they did not tell you is that Ms. Cooper testified that she could not say for certain whether the emails were about the pause on security assistance. She couldn't say one way or another.

She also testified that she didn't want to speculate about the meaning of the words in the emails. The House managers also didn't tell you that Ms. Cooper testified: "I reviewed my calendar, and the only meeting where I can recall a Ukrainian official raising the issue of security assistance with me is on September 5 at the Ukrainian Independence Day celebration." The House managers didn't tell you that.

The House managers also mentioned that one of Ambassador Volker's advisers, Catherine Croft, claimed that the Ukrainian Embassy officials learned about the pause earlier than the POLITICO article; but when asked when

she heard from Ukraine Embassy officials, Ms. Croft admitted that she can't remember those specifics and did not think that she took notes.

Ms. Croft also did not remember when news of the hold became public. Remember though, that Ambassador Volker, her boss, who was in regular contact with President Zelensky and the top Ukrainian aides, was very clear: "I believe the Ukrainians became aware of the hold on August 29 and not before."

This is all the House managers have in contrast to the testimony of Volker, Taylor, Morrison, and Kent, the text from Yermak, the words of the high-ranking Ukrainians themselves, and the flurry of activity that began on August 28. That is the evidence that they want you to consider as a basis to remove the duly elected President of the United States.

The bottom line is, it is not possible for the pause on security assistance to have been used as leverage when President Zelensky and other top Ukrainian officials did not know about it. That is what you need to know. That is what the House managers didn't tell you.

The House managers know how important this issue is. When we briefly mentioned it a few days ago, they told us we needed to check our facts. We did. We are right. President Zelensky and his top aides did not know about the pause on security assistance at the time of the July 25 call and did not know about it until August 28, when the POLITICO article was published.

We know there was no quid pro quo on the July 25 call. We know the Ukrainians did not know the security assistance had been paused at the time of the call. There is simply no evidence anywhere that President Trump ever linked security assistance to any investigations.

Most of the Democrats' witnesses have never spoken to the President at all, let alone about Ukraine security assistance. The two people in the House's record who asked President Trump about whether there was any linkage between security assistance and investigations were told, in no uncertain terms, that there was no connection between the two.

When Ambassador to the European Union Gordon Sondland asked the President in, approximately, the September 9 timeframe, the President told him, "I want nothing. I want no quid pro quo."

Even earlier, on August 31, Senator RON JOHNSON asked the President if there were any connection between security assistance and investigations. The President answered:

No way. I would never do that. Who told you that?

Two witnesses, Ambassador Taylor and Tim Morrison, said they came to believe security assistance was linked to investigations, but both witnesses based this belief entirely on what they had heard from Ambassador Sondland before Ambassador Sondland spoke to

the President. Neither Taylor nor Morrison ever spoke to the President about the matter.

How did Ambassador Sondland come to believe that there was any connection between security assistance and investigations? Again, the House managers didn't tell you. Why not? In his public testimony, Ambassador Sondland used variations of the words "assume," "presume," "guess," "speculate," and "belief" over 30 times.

Here are some examples.

(Text of Videotape presentation:)

Ambassador SONDLAND. That was my presumption, my personal presumption.

That was my belief.

That was my presumption.

I presumed that might have to be done in order to get the aid released.

It was a presumption.

I have been very clear as to when I was presuming, and I was presuming on the aid.

It would be pure, you know, guesswork on my part, speculation. I don't know.

That was the problem, Mr. Goldman. No one told me directly that the aid was tied to anything. I was presuming it was.

Mr. Counsel PURPURA. They didn't show you any of this testimony—not once—during their 21-hour presentation. It was 21 hours—more than 21 hours—and they couldn't give you the context to evaluate Ambassador Sondland. All the Democrats have to support the alleged link between security assistance and investigations is Ambassador Sondland's assumptions and presumptions.

We remember this exchange.

(Text of Videotape presentation:)

Mr. TURNER. Is it correct no one on this planet told you that Donald Trump was tying this aid to the investigations? Because, if your answer is yes, then the chairman is wrong, and the headline on CNN is wrong. No one on this planet told you that President Trump was tying aid to investigations, yes or no?

Ambassador SONDLAND. Yes.

Mr. TURNER. So you really have no testimony today that ties President Trump to a scheme to withhold aid from Ukraine in exchange for these investigations?

Ambassador SONDLAND. Other than my own presumption.

Mr. Counsel PURPURA. When he was done presuming, assuming, and guessing, Ambassador Sondland finally decided to ask President Trump directly. What does the President want from Ukraine?

Here is the answer.

(Text of Videotape presentation:)

Ambassador SONDLAND. President Trump, when I asked him the open-ended question, as I testified previously, "What do you want from Ukraine?" his answer was "I want nothing. I want no quid pro quo. Tell Zelensky to do the right thing." That is all I got from President Trump.

Mr. Counsel PURPURA. The President was unequivocal. Ambassador Sondland stated that this was the final word he heard from the President of the United States, and once he learned this, he text-messaged Ambassadors Taylor and Volker: "The President has been crystal clear—no quid pro quos of any kind."

If you are skeptical of Ambassador Sondland's testimony, it was corroborated

by the statement of one of your colleagues, Senator JOHNSON. Senator JOHNSON had also heard from Ambassador Sondland that the security assistance might be linked to the investigations. So, on August 31, Senator JOHNSON asked the President directly whether there was some kind of arrangement where Ukraine would take some action and the hold would be lifted.

Again, President Trump's answer was crystal clear.

No way. I would never do that. Who told you that?

As Senator JOHNSON wrote: "I have accurately characterized his reaction as adamant, vehement, and angry."

They didn't tell you about Senator JOHNSON's letter. Why not?

The Democrats' entire quid pro quo theory is based on nothing more than the initial speculation of one person—Ambassador Sondland. That speculation is wrong. Despite the Democrats' hopes, the Ambassador's mistaken belief does not become true merely because he repeated it many times and, apparently, to many people.

Under Secretary of State David Hale, George Kent, and Ambassador Volker all testified that there was no connection whatsoever between security assistance and investigations.

Here is Ambassador Volker.

(Text of Videotape presentation:)

Mr. TURNER. You had a meeting with the President of the United States, and you believe that the policy issues that he raised concerning Ukraine were valid, correct?

Ambassador VOLKER. Yes.

Mr. TURNER. Did the President of the United States ever say to you that he was not going to allow aid from the United States to go to Ukraine unless there were investigations into Burisma, the Bidens, or the 2016 elections?

Ambassador VOLKER. No, he did not.

Mr. TURNER. Did the Ukrainians ever tell you that they understood that they would not get a meeting with the President of the United States, a phone call with the President of the United States, military aid, or foreign aid from the United States unless they undertook investigations of Burisma, the Bidens, or the 2016 elections?

Ambassador VOLKER. No, they did not.

Mr. Counsel PURPURA. The House managers never told you any of this. Why not? Why didn't they show you this testimony? Why didn't they tell you about this testimony? Why didn't they put Ambassador Sondland's testimony in its full and proper context for your consideration? Because none of this fits their narrative, and it wouldn't lead to their predetermined outcome.

Thank you for your attention.

I yield to Mr. Sekulow.

Mr. Counsel SEKULOW. Mr. Chief Justice, Majority Leader MCCONNELL, Democratic Leader SCHUMER, House managers, Members of the Senate, let me begin by saying that you cannot simply decide this case in a vacuum.

Mr. SCHIFF said yesterday—I believe it was his father who said it—you should put yourself in someone else's shoes. Let's, for a moment, put our-

selves in the shoes of the President of the United States right now.

Before he was sworn into office, he was subjected to an investigation by the Federal Bureau of Investigation, called Crossfire Hurricane. The President, within 6 months of his inauguration, found a special counsel being appointed to investigate a Russia collusion theory. In their opening statement, several Members of the House managers tried to, once again, relitigate the Mueller case.

Here is the bottom line: This is part 1 of the Mueller report. This part alone is 199 pages. The House managers, in their presentation, a couple of times referenced a "this for that." Let me tell you something. This cost \$32 million. This investigation took 2,800 subpoenas. This investigation had 500 search warrants. This had 230 orders for communication records. This had 500 witness interviews—all to reach the following conclusion.

I am going to quote from the Mueller report itself—it can be found on page 173—as relates to this whole matter of collusion and conspiracy: "Ultimately," in the words of Bob Mueller in his report, "the investigation did not establish that the campaign coordinated or conspired with the Russian Government in its election interference activities."

Let me say that again. This, the Mueller report, resulted in this—that for this: "Ultimately, the investigation did not establish that the campaign coordinated or conspired with the Russian Government in its election [related] interference activities"—this for that.

In his summation on Thursday night, Manager SCHIFF complained that the President chose not to go with the determination of his intelligence agencies regarding hard interference and instead decided that he would listen to people he trusted and he would inquire about the Ukraine issue himself. Mr. SCHIFF did not like the fact that the President did not apparently blindly trust some of the advice he was being given by the intelligence agencies.

First of all, let me be clear. Disagreeing with the President's decision on foreign policy matters or whose advice he is going to take is in no way an impeachable offense.

Second, Mr. SCHIFF and Mr. NADLER, of all people—because they chaired significant committees—really should know this, and they should know what is happening.

Let me remind you of something: Just six-tenths of a mile from this Chamber sits the Foreign Intelligence Surveillance Court, also known as the FISA Court. It is the Federal court established and authorized under the Foreign Intelligence Surveillance Act to oversee requests by Federal agencies for surveillance orders against foreign spies inside the United States, including American citizens.

Because of the sensitive nature of its business, the court is a more secret

court. Its hearings are closed to the public. In this court, there are no defense counsel, no opportunity to cross-examine witnesses, and no ability to test evidence. The only material the court ever sees are those materials that are submitted on trust—on trust—by members of the intelligence community, with the presumption that they would be acting in good faith.

On December 17, 2019, the FISA Court issued a scathing order in response to the Justice Department inspector general's report on the FBI's Crossfire Hurricane investigation into whether or not the Trump campaign was coordinating with Russia. We already know the conclusion. That report detailed the FBI's pattern of practice, systematic abuses of obtaining surveillance order requests, and the process they utilized.

In its order—this is the order from the court. I am going to read it. "This order responds to reports that personnel of the Federal Bureau of Investigation provided false information to the National Security Division of the Department of Justice, and withheld material information from the NSD which was detrimental to the FBI's case in connection with four applications to the Foreign Intelligence Surveillance Court."

When the FBI personnel misled NSD in the ways that are described in these reports, they equally misled the Foreign Intelligence Surveillance Court.

This order has been followed up. There has been another order. It was declassified just a couple of days ago.

Thanks in large part—

The court said—

to the . . . Office of the Inspector General, U.S. Department of Justice, the Court has received notice of material misstatements and omissions in the applications filed by the government in the above-captioned documents. . . . DOJ assesses that with respect to the applications in—

And it lists two specific docket numbers—

. . . 17-375 and 17-679, "if not earlier, there was insufficient predication to establish probable cause to believe that [Carter] Page was acting as an agent of a foreign power."

The President had reason to be concerned about the information he was being provided. Now, we could ignore this. We could make believe this did not happen. But it did.

As we begin introducing our arguments, I want to correct a couple of things in the record as well. That is what we are doing today. We really intend to show for the next several days that the evidence is actually really overwhelming that the President did nothing wrong.

Mr. SCHIFF and his colleagues repeatedly told you about the intelligence community assessment that Russia was acting alone, responsible for the election interference, implying that this somehow debunked the idea that there might be, you know, interference from other countries, including Ukraine. Mr. NADLER deployed a simi-

lar argument, saying that President Trump thought "Ukraine, not Russia, interfered in our last Presidential election." And this is basically what we call a straw man argument.

Let me be clear. The House managers, over a 23-hour period, kept pushing this false dichotomy that it was either Russia or Ukraine but not both. They kept telling you that the conclusion of the intelligence community and Mr. Mueller was Russia alone with regard to the 2016 elections.

Of course, that is not—the report that Bob Mueller wrote focused on Russian interference, although there is some information in letters regarding Ukraine, and I am going to point to those in a few moments. In fact, let me talk about those letters right now.

This is a letter dated May 4, 2018, to Mr. Yuriy Lutsenko, the general prosecutor for the Office of the Prosecutor General of Ukraine. It was a letter requesting that his office cooperate with the Mueller investigation involving issues involving the Ukraine Government and law enforcement officials. It is signed by Senator MENENDEZ, Senator LEAHY, and Senator DURBIN.

I am doing this to put this in an entire perspective. House managers tried to tell you that the importance—remember the whole discussion—and my colleague Mr. Purpura talked about this—between President Zelensky and President Trump and the bilateral meeting in the Oval Office of the White House, as if an Article of Impeachment could be based upon a meeting not taking place in the White House but taking place someplace else, like the United Nations General Assembly, where it, in fact, did take place.

Dr. Fiona Hill was quite clear in saying that a White House meeting would supply the new Ukrainian Government with the "legitimacy it needed, especially vis-a-vis the Russians," and that Ukraine viewed the White House meeting as a recognition of their legitimacy as a sovereign state. But here is what they did not play. Here is what they did not tell you. And I am going to quote from Dr. Hill's testimony on page 145 of her transcript. These are her words. This is what she said under oath:

It wasn't always a White House meeting per se, but definitely a Presidential-level, you know, meeting with Zelensky and the President. I mean, it could've taken place in Poland, in Warsaw. It could have been, you know, a proper bilateral in some other context. But, in other words, a White House-level Presidential meeting.

That can be found on page 145.

Contrary to what Manager SCHIFF and some of the other managers told you, this meeting did, in fact, occur. It occurred at the U.N. General Assembly on September 25, 2019.

Those were the words of Dr. Hill's that you did not hear.

This case is really not about Presidential wrongdoing. This entire impeachment process is about the House managers' insistence that they are able

to read everybody's thoughts, they can read everybody's intentions even when the principal speakers, the witnesses themselves, insist that those interpretations are wrong.

Manager SCHIFF, Managers GARCIA and DEMINGS relied heavily on selected clips from Ambassador Sondland's testimony. I am not going to replay those. My colleague Mr. Purpura played those for you. It is clear. We are not going to play the same clips seven times. He said it. You saw it. That is the evidence.

Ms. LOFGREN said that, you know, numerous witnesses testified that—and this is the quote—"that they were not provided with any reason for why the hold was lifted on September 11," again suggesting that the President's reason for the hold—Ukrainian corruption and burden-sharing—were somehow created after the fact. But, again, as my colleague just showed you, burden-sharing was raised in the transcript itself.

Mr. SCHIFF stated here that, just like the implementation of the hold, President Trump provided no reason for the release. This also is wrong.

In their testimony, Ambassadors Sondland and Volker said that the President raised his concerns about Ukrainian corruption in the May 23, 2019, meeting with the Ukraine delegation.

Deputy Defense Secretary Laura Cooper testified that she received an email in June of 2019 listing followups from a meeting between the Secretary of Defense Chief of Staff and the President relating specifically to Ukrainian security assistance, including asking about what other countries are contributing. Burden-sharing. That can be found in Laura Cooper's deposition, pages 33 and 34.

The President mentioned both corruption and burden-sharing to Senator JOHNSON, as you already heard.

It is also important to note that, as Ambassador David Hale testified, foreign aid generally was undergoing a review in 2019. From page 84 of his November 6, 2019, testimony, he said the administration "did not want to take a, sort of, business-as-usual approach to foreign assistance, a feeling that once a country has received a certain assistance package, it's a—it's something that continues forever."

They didn't talk about that in the 23-hour presentation.

Dr. Fiona Hill confirmed this review and testified on November 23, 2019—I am going to again quote from page 75 of her testimony—that "there had been a directive for a whole-scale review of our foreign policy—foreign policy assistance, and the ties between our foreign policy objectives and that assistance. This had been going on actually for many months."

So multiple witnesses testified that the President had longstanding concerns and specific concerns about Ukraine. The House managers understandably—understandably—ignore the testimony that took place before their own committees.

In her testimony of October 14, 2019, Dr. Hill testified at pages 118 and 119 of her transcript that she thinks the President has actually quite publicly said that he was very skeptical about corruption in Ukraine. And then she said, again in her testimony, “And, in fact, he’s not alone, because everyone has expressed great concerns about corruption in Ukraine.”

Similarly, Ambassador Yovanovitch testified that they all had concerns about corruption in Ukraine, and, as noted on page 142 of her deposition transcript, when asked what she knew about the President’s deep-rooted skepticism about Ukraine’s business environment, she answered that President Trump delivered an anti-corruption message to former Ukrainian President Poroshenko in their first meeting in the White House on June 20, 2017.

NSC Senior Director Morrison confirmed on November 19, 2019, at page 63 in his testimony transcript, that—this was during the Volker, Morrison public hearing—that he was aware that the President thought Ukraine had a corruption problem—his words, again—and he continued, “as did many others familiar with Ukraine.”

According to her October 30, 2019, testimony, Special Advisor for Ukraine Negotiations at the State Department, Catherine Croft, also heard the President raise the issue of corruption directly with then President Poroshenko of Ukraine during a bilateral meeting at the United Nations General Assembly, this time in September of 2017.

Special Advisor Croft testified she also understood the President’s concern that “Ukraine is corrupt” because she has—these are her words—tasked to write a paper to help then NSA head McMaster, General McMaster, make the case to the President in connection with prior—prior—security assistance.

These concerns were entirely justified. When asked—again, a quote from Dr. Hill’s October 14, 2019 hearing transcript, “. . . certainly eliminating corruption in Ukraine was one of if not the central goal of [U.S.] foreign policy?”

Does anybody think that one election of one President that ran on a reform platform who finally gets a majority in their legislative body that corruption in Ukraine just evaporates?

That is like looking at this—it goes back to the Mueller report. You can’t look at these issues in a vacuum. Virtually every witness agreed that confronting corruption is at the forefront of U.S. policy.

Now, I think there is some other things we have to understand about the timing. This again is according to the testimony of Tim Morrison in his testimony. This is when President Zelensky was first elected, and these are his words. There was real “concern about whether [he] would be a genuine reformer” and “whether he would genuinely try to root out corruption.”

It was also at this time, before the election, unclear whether President

Zelensky’s party would actually be able to get a workable majority. I think we are all glad that they did, but to say that that has been tested or determined that corruption in Ukraine has been removed, the Anticorruption Court of Ukraine did not commence its work until September 5, 2019, 121 days ago—4 months ago. We are acting as if there was a magic wand, that there was a new election and everything was now fine.

I will not—because we are going to hear more about it—get into some of the meetings the Vice President had. You will hear that in the days ahead.

Manager CROW said this. What is most interesting to me about this was that President Trump was only interested in Ukraine’s aid—nobody else. The U.S. provides aid to dozens of countries around the world, lots of partners and allies. He didn’t ask about any of them, just Ukraine.

I appreciate your service to our country, I really do. I didn’t serve in the military, and I appreciate that, but let’s get our facts straight.

That is what Manager CROW said. Here is what actually happened. President Trump has placed holds on aid a number of times. It would just take basic due diligence to figure this out. In September 2019, the administration announced that it was withholding over \$100 million in aid to Afghanistan over concerns about government corruption. In August 2019, President Trump announced that the administration and Seoul were in talks to substantially increase South Korea’s share—burden sharing—of the expenses of U.S. military aid support for South Korea.

In June, President Trump cut or paused over \$550 million in foreign aid to El Salvador, Honduras, and Guatemala because those countries were not fairly sharing the burden of preventing mass migrations to the United States.

In June, the administration temporarily paused \$105 million in aid to Lebanon. The administration lifted that hold in December, but one official explained that the administration continually reviews and thoroughly evaluates the effectiveness of all U.S. foreign assistance to ensure that funds go toward activities that further U.S. foreign policy and also further our national security interests, like any administration would.

In September 2018, the administration canceled the \$300 million in military aid to Pakistan because it was not meeting its counterterrorism obligations.

You didn’t hear about any of that from my Democratic colleagues, the House managers. None of that was discussed.

Under Secretary Hale, again, in his transcript said that, quote, aid has been withheld from several countries “across the globe” for various reasons.

Dr. Hill similarly explained that there was a freeze put on all kinds of aid, also a freeze put on assistance be-

cause, in the process at the time, there were an awful lot of reviews going on, on foreign assistance. That is the Hill deposition transcript.

She added—this was one of the star witnesses of the managers—she added that, in her experience, stops and starts are sometimes common in foreign assistance and that the Office of Management and Budget holds up dollars all the time, including the path for dollars going to Ukraine in the past. Similarly, Ambassador Volker confirmed that aid gets held up from time to time for a whole assortment of reasons.

Manager CROW told you that the President’s Ukraine policy was not strong against Russia, noting that we help our partner fight Russia over there so we don’t have to fight Russia over here. Our friends are on the frontlines in trenches and with sneakers. This was following the Russian invasion of Ukraine in 2014, “the United States has stood by Ukraine,” and those are your words.

Well, it is true that the United States has stood by Ukraine since the invasion of 2014. Only one President since then took a very concrete step. Some of you supported it. That step included actually providing Ukraine with lethal weapons including Javelin missiles. That is what President Trump did. Some of you in this very room—some of you managers—actually supported that.

Here is what Ambassador Taylor said that you didn’t hear in the 23 hours. You didn’t hear this. Javelin missiles are “. . . serious weapons. They kill Russian tanks.”

Ambassador Yovanovitch agreed, stating that Ukraine policy under President Trump actually got stronger, stronger than it was under President Obama.

There were talks about sanctions. President Trump has also imposed heavy sanctions on Russia. President Zelensky thanked him.

The United States has imposed heavy sanctions on Russia. President Zelensky thanked him.

Manager JEFFRIES said that the idea that Trump cares about corruption is laughable. This is what Dr. Hill said. They didn’t play this—“. . . eliminating corruption in Ukraine was one of, if the central goal of U.S. foreign policy” in Ukraine.

Let me say that again. Dr. Hill testified that “eliminating corruption in Ukraine was one of, if [not] the central goal of U.S. foreign policy [in Ukraine].” If you are taking notes, you can find that in the Hill deposition transcript 34:7 through 13.

Dr. Hill also said that she thinks:

. . . [T]he President has actually quite publicly said that he was very skeptical about corruption in Ukraine. And, in fact, he’s not alone, because everyone has expressed great concerns about corruption in Ukraine.

Ambassador Yovanovitch—they didn’t play this. She also said “we all had concerns.”

National Security Director Morrison confirmed that he “was aware that the President thought Ukraine had a corruption problem, as did many other people familiar with it.”

I am not going to continue to go over and over and over again the evidence that they did not put before you because we would be here for a lot longer than 24 hours, but to say that the President of the United States was not concerned about burden sharing, that he was not concerned about corruption in Ukraine, the facts from their hearing established exactly the opposite.

The President wasn’t concerned about burden sharing? Read all of the records.

And then there was Mr. SCHIFF saying yesterday, maybe we can learn a lot more from our Ukrainian ally.

Let me read you what our Ukrainian ally said. President Zelensky, when asked about these allegations of quid pro quo, he said:

I think you read everything. I think you read the text. We had a good phone call.

These are his words.

It was normal. We spoke about many things. And so, I think, and you read it, that nobody pushed me.

They think you can read minds. I think you look at the words.

I would yield the balance of my time to my colleague, the deputy White House counsel Pat Philbin. He is going to address two issues.

We are going to try to do this in a very systematic way in the days ahead. No. 1, involving issues related to obstruction—because this came at the end of theirs, so I want to do this in a sequence, as it relates to some of the subpoenas that were issued. He is also going to touch on some of the due process issues, since it was at the end of theirs and is fresh in everybody’s minds.

Mr. Chief Justice.

Mr. Counsel PHILBIN. Mr. Chief Justice, Senators, Majority Leader MCCONNELL, Democratic Leader SCHUMER: Good morning. As Mr. Sekulow said, I am going to touch upon a couple of issues related to obstruction and due process, just to hit on some points before we go into more detail in the rest of our presentation.

I would like to start with one of the points that Manager JEFFRIES focused a lot on toward the end of the presentation yesterday relating to the obstruction charge in the second Article of Impeachment because he tried to portray a picture of what he called “blanket defiance,” that there was a response from the Trump administration that was simply: We won’t cooperate with anything, we won’t give you any documents, we won’t do anything, and it was blanket defiance really without explanation. That was all there was. It was just an assertion that we wouldn’t cooperate.

And he said, and I pulled this from the transcript, that President Trump’s objections are not generally rooted in the law and are not legal arguments.

That is simply not true. That is simply not true. In every instance, when there was resistance to a subpoena, resistance to a subpoena for a witness or for documents, there is a legal explanation and justification for it.

For example, they focused a lot on an October 8 letter from the Counsel for the President, Pat Cipollone, but they didn’t show you the October 18 letter, which is up on the screen now, that went through in detail why subpoenas that had been issued by Manager SCHIFF’s committees were invalid because the House had not authorized their committees to conduct any such inquiry or to subpoena information in furtherance of it. That is because the House had not taken a vote to authorize the committee to exercise the power of impeachment to issue any compulsory process. I am going to get into that issue in just a moment.

Not only was there a legal explanation—a specific reason for every resistance, not just blanket defiance—every step that the administration took was supported by an opinion from the Department of Justice in the Office of Legal Counsel. Those are explained in our brief, and the major opinion from the Office of Legal Counsel is actually attached in our trial memorandum as an appendix.

Mr. JEFFRIES and other managers also suggested that the Trump administration took the approach of no negotiation, a blanket refusal, and no attempt to accommodate. That is also not true. That is also not true. In the October 8 letter that Mr. Cipollone sent to Speaker PELOSI, it said explicitly: “If the Committees wish to return to the regular order of oversight requests, we stand ready to engage in that process as we have in the past, in a manner consistent with well-established bipartisan constitutional protections and a respect for the separation of powers enshrined in our Constitution.”

It was Manager SCHIFF and his committees that did not want to engage in any accommodation process. We had said that we were willing to explore that.

The House managers have also asserted a number of times—this came up in the first long night when we were here until 2 as well—that the Trump administration never asserted executive privilege—never asserted executive privilege. I explained at the time that that is technically true but misleading—misleading because the rationale on which the subpoenas were resisted never depended on an assertion of executive privilege.

Each of the rationales that we have offered—and I will go into one of them today: that the House subpoenas were not authorized—does not depend on making that formal assertion of executive privilege. It is a different legal rationale. The subpoenas weren’t authorized because there was no vote, or the subpoenas were to senior advisers to the President who are immune from congressional compulsion, or the sub-

poenas were forcing executive branch officials to testify without the presence of agency counsel, which is a separate legal infirmity again supported by an opinion from the Office of Legal Counsel at the Department of Justice.

Let me turn to the specific issue of the invalidity of the subpoenas because they weren’t supported by a vote of the House authorizing Manager SCHIFF’s committee to exercise the power of impeachment to issue compulsory process.

Manager JEFFRIES said that there were no Supreme Court precedents suggesting such a requirement and that every investigation into a Presidential impeachment in history has begun without a vote from the House, and those statements simply aren’t accurate.

There is Supreme Court precedent explaining very clearly the principle that a committee of either House of Congress gets its authority only by a resolution from the parent body. *United States v. Rumely* and *Watkins v. United States* make this very clear. And it is common sense. The Constitution assigns the sole power of impeachment to the House of Representatives—to the House, not to any Member and not to a subcommittee—and that authority can be delegated to a committee to use only by a vote of the House.

It would be the same here in the Senate. The Senate has the sole power to try impeachments. But if there were no rules that had been adopted by the Senate, would you think that the majority leader himself could simply decide that he would have a committee receive evidence, handle that, submit a recommendation to the Senate, and that would be the way the trial would occur, without a vote from the Senate to give authority to that committee? I don’t think so. It doesn’t make sense. That is not the way the Constitution assigns that authority, and it is the same in the House.

Here, there was no vote to authorize the committee to exercise the power of impeachment. And this law has been boiled down by the DC Circuit in *Exxon Corp. v. FTC* to explain it this way: “To issue a valid subpoena, . . . a committee or subcommittee must conform strictly to the resolution establishing its investigatory powers.”

There must be a resolution voted on by the parent body to give the committee that power. And the problem here is, there is no standing rule. There was no standing authority giving Manager SCHIFF’s committee the authority to use the power of impeachment to issue compulsory process. Rule X of the House discusses legislative authority. It doesn’t mention impeachment. That is why, in every Presidential impeachment in history, the House has initiated the inquiry by voting to give a committee the authority to pursue that inquiry.

Contrary to what Manager JEFFRIES suggested, there has always been, in

every Presidential impeachment inquiry, a vote from the full House to authorize the committee, and that is the only way the inquiry begins.

There were three different votes for the impeachment of President Andrew Johnson—in January 1867, in March 1867, and in February 1868.

For President Nixon, Chairman Rodino of the House Judiciary Committee explained—there was a move to have them issue subpoenas after the Saturday Night Massacre, and they determined that they did not have that authority in the House Judiciary Committee without a vote from the House, and he determined, as he explained, that “such a resolution has always been passed by the House. . . . It is a necessary step if we are to meet our obligations.”

There has been reference to investigatory activities starting in the House Judiciary Committee in the Nixon impeachment prior to the vote from the House, but all that the committee was doing was assembling publicly available information and information that had been gathered by other congressional committees. There was never an attempt to issue compulsory process until there had been a vote by the House to give the House Judiciary Committee that authority.

Similarly, in the Clinton impeachment, there were two votes from the full House to give the House Judiciary Committee authority to proceed: first a vote on resolution 525 just to allow the committee to examine the independent counsel report and make recommendations on how to proceed and then a separate resolution, H. Res. 581, that gave the House Judiciary Committee subpoena authority.

At the time, in the House report, the House Judiciary Committee explained:

Because the issue of impeachment is of such overwhelming importance, the committee decided that it must receive authorization from the full House before proceeding on any further course of action. Because impeachment is delegated solely to the House of Representatives by the Constitution, the full House of Representatives should be involved in critical decisionmaking regarding various stages of impeachment.

Here, the House Democrats skipped over that step completely. What they had instead was simply a press conference with Speaker PELOSI announcing that she was directing committees to proceed with an impeachment inquiry against the President of the United States.

Speaker PELOSI didn't have the authority to delegate the power of the House to those committees on her own. So why does it matter? It matters because the Constitution places that authority in the House and ensures that there is a democratic check on the exercise of that authority and that there will have to be a vote by the full House before there can be a proceeding to start inquiring into impeaching the President of the United States.

One of the things that the Framers were most concerned about in impeach-

ment was the potential for a partisan impeachment—a partisan impeachment that was being pushed merely by a faction—and a way to ensure a check on that is to require democratic accountability from the full House, to have a vote from the entire House before any impeachment can proceed. That didn't happen here. It was only after 5 weeks of hearings that the House decided to have a vote.

What that meant, at the outset, was that all of the subpoenas that were issued under the law of the Supreme Court cases I discussed—all those subpoenas were invalid, and that is what the Trump administration pointed out specifically to the House. That was the reason for not responding to them, because under long-settled precedent, there had to be a vote from the House to give authority, and the administration would not respond to subpoenas that were invalid.

The next point I would like to touch on briefly has to do with due process because we heard from the House managers that they offered the President due process at the House Judiciary Committee. Manager NADLER described it as that he sent the President a letter—the President's counsel a letter—offering to allow the President to participate, and the President's counsel just refused, as if that was the only exchange, and there was just a blanket refusal to participate.

Let me explain what actually happened. I should note before I get into those details that there was a suggestion also that due process is not required in the House proceeding and that it is simply a privilege, but that wasn't the position Manager NADLER has taken in the past. In 2016, he said:

The power of impeachment is a solemn responsibility, assigned to the House by the Constitution, and to this committee by our peers. That responsibility demands a rigorous level of due process.

In the Clinton impeachment in 1998, he explained:

What does due process mean? It means, among other things, the right to confront the witnesses against you, to call your own witnesses, and to have the assistance of counsel.

Now, I think we all know that all of those rights were denied to the President in the first two rounds of hearings—the first round of secret hearings in the basement bunker where Manager SCHIFF had three committees holding hearings and then in a round of public hearings to take the testimony that had been screened in the basement bunker and have it in a public televised setting, which was totally unprecedented in any Presidential impeachment inquiry—in both the Clinton and the Nixon inquiries. For every public hearing, the President was allowed to be represented by counsel and cross-examine witnesses.

But the House managers say that is all right because when we got to the third round of hearings, after people had testified twice, then we were going

to allow the President to have some due process. But the way that played out was this: First, they scheduled a hearing for December 4 that was going to hear solely from law professors. By the time they wanted the President to commit whether he would participate, it was unclear—they couldn't specify how many law professors or who the law professors were going to be, and the President's counsel wrote back and declined to participate in that.

But at the same time, Manager NADLER had asked what other rights under the House Resolution 660—the rules governing the House inquiry—the President would like to exercise. The President's counsel wrote back asking specific questions in order to be able to make an informed decision and asked whether you intend to allow fact witnesses to be called, including the witnesses who had been requested by HPSCI Ranking Member NUNES; whether you intend to allow members of the Judiciary Committee and the President's counsel a right to cross-examine fact witnesses; and whether your Republican colleagues on the Judiciary Committee will be allowed to call witnesses of their choosing. Manager NADLER didn't respond to that letter. There wasn't information provided.

We had discussions with the staff on the Judiciary Committee to try to find out what were the plans and what were the hearings going to be like. The way the week played out, on December 4, there was the hearing with the law professors—the first hearing before the Judiciary Committee—and on December 5, the morning of December 5, Speaker PELOSI announced the conclusion of the entire Judiciary Committee process because she announced that she was directing Chairman NADLER to draft Articles of Impeachment. So the conclusion of the whole process was already set.

Then, after the close of business on the 5th, we learned from the staff that the committee had no plans, other than a hearing on December 9, to hear from staffers who had prepared HPSCI committee reports. They had no plans to have other hearings, no plans to hear from fact witnesses, and no plans to do any factual investigation.

So the President was given a choice of participating in a process that was going to already have the outcome determined—the Speaker had already said Articles of Impeachment were going to be drafted—and there were no plans to hear from any fact witnesses. That is not due process. That is why the President declined to participate in that process, because the Judiciary Committee had already decided they were going to accept an ex parte record developed in Manager SCHIFF's process, and there was no point in participating in that. So the idea that there was due process offered to the President is simply not accurate.

The entire proceedings in the House, from the time of the September 4 press conference until the Judiciary Committee began marking up Articles of

Impeachment on December 11, lasted 78 days. It is the fastest investigatory process for a Presidential impeachment in history.

For 71 days of that process, for 71 days of the hearing and taking of depositions and hearing testimony, the President was completely locked out. He couldn't be represented by counsel. He couldn't cross-examine witnesses. He couldn't present evidence. He couldn't present witnesses for 71 of the 78 days. That is not due process.

It goes to a point that Mr. Cipollone raised earlier. Why would you have a process like that? What does that tell you about the process?

As we pointed out a couple of times, cross-examination in our legal system is regarded as the greatest legal engine ever invented for the discovery of truth. It is essential. The Supreme Court has said in *Goldberg v. Kelly*, for any determination that is important, that requires determining facts, cross-examination has been one of the keys for due process.

Why did they design a mechanism here where the President was locked out and denied the ability to cross-examine witnesses? It is because they weren't really interested in getting at the facts and the truth. They had a timetable to meet. They wanted to have impeachment done by Christmas, and that is what they were striving to do.

Now, as a slight shift in gears, I want to touch on one last point before I yield to one of my colleagues, and that relates to the whistleblower—the whistleblower, whom we haven't heard that much about—who started all of this. We know from a letter that the inspector general of the intelligence community sent that he thought the whistleblower had political bias. We don't know exactly what the political bias was because the inspector general testified in the House committee in an executive session, and that transcript is still secret. It wasn't transmitted up to the House Judiciary Committee. We haven't seen it. We don't know what is in it. We don't know what he was asked and what he revealed about the whistleblower.

Now, you would think that before going forward with an impeachment proceeding against the President of the United States, that you would want to find out something about the complaint that had started this, because motivations, bias, reasons for wanting to bring this complaint could be relevant. But there wasn't any inquiry into that.

Recent reports, public reports suggest that, potentially, the whistleblower was an intelligence community staffer who worked with then-Vice President Biden on Ukraine matters, which, if true, would suggest an even greater reason for wanting to know about potential bias or motive for the whistleblower.

At first, when things started, it seemed like everyone agreed that we

should hear from the whistleblower, including Manager SCHIFF.

I think we have what he said.

(Text of Videotape presentation:)

Mr. SCHIFF. But, yes, we would love to talk directly to the whistleblower.

We will get the unfiltered testimony from the whistleblower.

We don't need the whistleblower.

Mr. Counsel PHILBIN. Now, what changed? At first, Manager SCHIFF agreed we should hear the unfiltered testimony from the whistleblower, but then he changed his mind, and he suggested that it was because now we had the transcript. But the second clip there was from September 29, which was 4 days after the transcript had been released. But there was something that came into play, and that was something Manager SCHIFF had said earlier when he was asked about whether he had spoken to the whistleblower.

(Text of Videotape presentation:)

Mr. SCHIFF. We have not spoken directly with the whistleblower. We would like to.

Mr. Counsel PHILBIN. It turned out that that statement was not truthful.

Around October 2 or 3, it was exposed that Manager SCHIFF's staff, at least, had spoken with the whistleblower before the whistleblower filed the complaint and potentially had given some guidance of some sort to the whistleblower, and after that point, it became critical to shut down any inquiry into the whistleblower.

During the House hearings, of course, Manager SCHIFF was in charge. He was chairing the hearings. That creates a real problem from a due-process perspective and from a search-for-the-truth perspective because he was an interested fact witness at that point. He had a reason—since he had been caught out saying something that wasn't truthful about that contact—to not want that inquiry, and it was he who ensured that there wasn't any inquiry into that.

I think this is relevant here because, as you have heard from my colleagues, a lot of what we have heard over the past 23 hours, over the past 3 days, has been from Chairman SCHIFF. He has been telling you things like what is in President Trump's head and what is in President Zelensky's head. It is all his interpretation of the facts and the evidence, trying to pull inferences out of things.

There is another statement that Chairman SCHIFF made that I think we have on video.

(Text of Videotape presentation:)

Mr. TODD. But you admit all you have right now is a circumstantial case?

Mr. SCHIFF. Actually, no, Chuck. I can tell you that the case is more than that. And I can't go into the particulars, but there is more than circumstantial evidence now. So, again, I think—

Mr. TODD. So you have seen direct evidence of collusion?

Mr. SCHIFF. I don't want to go into specifics, but I will say that there is evidence that is not circumstantial and is very much worthy of investigation.

Mr. Counsel PHILBIN. So that was in March of 2017, when Chairman SCHIFF, as ranking member of HPSCI, was telling the public—the American public—that he had more than circumstantial evidence, through his position on HPSCI, that President Trump's campaign had colluded with Russia.

Now, of course, as Mr. Sekulow pointed out, after \$32 million and over 500 search warrants—roughly 500 search warrants—the Mueller report determined that there was no collusion, that that wasn't true.

We wanted to point these things out simply for this reason: Chairman SCHIFF has made so much of the House's case about the credibility of interpretations that the House managers want to place on not hard evidence but on inferences. They want to tell you what President Trump thought. They want to tell you: Don't believe what Zelensky says; we can tell you what Zelensky actually thought. Don't believe what the other Ukrainians actually said about not being pressured; we can tell you what they actually thought.

This is very relevant to know whether the assessments of evidence that he presented in the past are accurate. We would submit they have not been, and that that is relevant for your consideration.

With that, I yield to my colleague, Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Members of the Senate, I have good news: just a few more minutes from us today. But I want to point out a couple of points.

No. 1, just to follow up on what Mr. Philbin just told you, do you know who else didn't show up in the Judiciary Committee to answer questions about his report in the way Ken Starr did in the Clinton impeachment? Ken Starr was subjected to cross-examination by the President's counsel. Do you know who didn't show up in the Judiciary Committee? Chairman SCHIFF. He did not show up. He did not give Chairman NADLER the respect of appearing before his committee and answering questions from his committee. He did send staff, but why didn't he show up? That is another good question you should think about.

They have come here today, and they basically said: Let's cancel an election over a meeting with Ukraine. And, as my colleagues have shown, they failed to give you key facts about a meeting and lots of other evidence that they produced themselves.

Let's talk about the meeting. They said it was all about an invitation to a meeting. If you look at the first transcript—at the first transcript—the President said to President Zelensky:

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

President Zelensky said:

Well, thank you for the invitation. We accept the invitation, and look forward to the visit. Thank you again.

Then, President Zelensky got a letter on May 29 inviting him, again, to come to the White House. Then, going back to the transcript of the July 25 call—again, a part of the call that they didn't talk to you about—President Trump said:

Whenever you would like to come to the White House, feel free to call. Give us a date, and we'll work that out. I look forward to seeing you.

President Zelensky replied:

Thank you very much. I would be very happy to come and would be happy to meet with you personally and get to know you better. I am looking forward to our meeting and I also would like to invite you to visit Ukraine and come to the city of Kyiv which is a beautiful city. We have a beautiful country which would welcome you.

Then he said:

On the other hand, I believe that on September 1 we will be in Poland and we can meet in Poland hopefully.

Now, they didn't read to you that part of the transcript, and they didn't tell you what happened. A meeting in Poland was scheduled. President Trump was scheduled to go to Poland. He was scheduled to meet with President Zelensky.

What happened? President Trump couldn't go to Poland. Why? Because there was a hurricane in the United States. He thought it would be better

for him to stay here to help deal with the hurricane. So the Vice President went.

Why didn't they tell you that? Why didn't they tell you that President Zelensky suggested: Hey, how about we meet in Poland?

Why didn't they tell you that that meeting was scheduled and had to be canceled for a hurricane. Why? That was our first question that we asked you. You heard a lot of facts that they didn't tell you—facts that are critical, facts that they know completely collapse their case on the facts.

Now, you heard a lot from them: You are not going to hear facts from the President's lawyers. They are not going to talk to you about the facts.

That is all we have done today. Ask yourself—ask yourself: Given the facts you have heard today that they didn't tell you, who doesn't want to talk about the facts? Who doesn't want to talk about the facts?

The American people paid a lot of money for those facts. They paid a lot of money for this investigation. And they didn't bother to tell you. Ask yourself why. If they don't want to be fair to the President, at least out of respect for all of you, they should be fair to you. They should tell you these things. And when they don't tell you these things, it means something. So

think about that. Impeachment shouldn't be a shell game. They should give you the facts.

That is all we have for today. We ask you, out of respect, to think about it. Think about whether what you have heard would really suggest to anybody anything other than it would be a completely irresponsible abuse of power to do what they are asking you to do—to stop an election, to interfere in an election, and then to remove the President of the United States from the ballot.

Let the people decide for themselves. That is what the Founders wanted. That is what we should all want.

With that, I thank you for your attention, and I look forward to seeing you on Monday.

The CHIEF JUSTICE. The majority leader is recognized.

ADJOURNMENT UNTIL MONDAY,
JANUARY 27, 2020, AT 1 P.M.

Mr. McCONNELL. Mr. Chief Justice, I ask unanimous consent that the trial adjourn until 1 p.m., Monday, January 27, and that this order also constitute the adjournment of the Senate.

There being no objection, the Senate, at 12:01 p.m., adjourned until Monday, January 27, 2020, at 1 p.m.