

97. See Statement of Facts ¶¶ 188–89; H. Rep. No. 116–346, at 130.

98. Statement of Facts A6.176.

99. H. Rep. No. 116–346, at 12 (quoting Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Dec. 6, 2019)).

100. U.S. Const., Art. I, § 2, cl. 5.

101. U.S. Const., Art. I, § 5, cl. 2.

102. *Nixon v. United States*, 506 U.S. 224, 230 (1993).

103. *Id.* at 229.

104. *Id.* at 231.

105. *Opp.* at 4.

106. One district court presented with this same argument recently concluded that “[i]n cases of presidential impeachment, a House resolution has never, in fact, been required to begin an impeachment inquiry,” explaining that the argument “has no textual support in the U.S. Constitution [or] the governing rules of the House.” *In re Application of Comm. on Judiciary, U.S. House of Representatives, for an Order Authorizing Release of Certain Grand Jury Materials*, No. 19–48 (BAH), 2019 WL 5485221, at *27 (D.D.C. Oct. 25, 2019). Although both President Trump and the Office of Legal Counsel of the Department of Justice go to great lengths to criticize the district court’s analysis, *see, e.g.*, *Opp. app’x C* at 38 n.261, the Department of Justice tellingly has declined to advance these arguments in litigation on the appeal of this decision.

107. *Opp.* at 1.

108. *Opp.* at 41.

109. See *In re Application of Comm. on Judiciary*, 2019 WL 5485221, at *26 (citing proceedings relating to Judges Walter Nixon, Alcee Hastings, and Harry Claiborne).

110. See *Proceedings in the United States Senate in the Impeachment Trial of Walter Nixon, Jr., a Judge of the United States District Court for the Southern District of Mississippi*, S. Doc. No. 101–22, at 439 (1989); *Proceedings of the United States Senate in the Impeachment Trial of Alcee L. Hastings, a Judge of the United States District Court for the Southern District of Florida*, S. Doc. No. 101–18, at 705 (1989); *Proceedings of the United States Senate in the Impeachment Trial of Harry E. Claiborne, a Judge of the United States District Court for the District of Nevada*, S. Doc. No. 99–48, at 298 (1986).

111. H. Res. 660, 116th Cong. (2019); Statement of Facts ¶ 162.

112. See *Opp.* at 37–38.

113. See H. Res. 6, 116th Cong. (2019).

114. *Barker v. Conroy*, 921 F.3d 1118, 1130 (D.C. Cir. 2019) (quotation marks omitted).

115. Statement of Facts ¶ 161.

116. *Id.* ¶ 162; see H. Res. 660.

117. *Opp.* at 37; see *Opp.* at 41.

118. See, *e.g.*, House Rule XI.1(b)(1) (authorizing standing committees of the House to “conduct at any time such investigations and studies as [they] consider[] necessary or appropriate”); see also *id.* XI.2(m)(1)(B) (authorizing committees to “require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as [they] consider[] necessary”).

119. *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*, H. Rep. No. 116–266, at 3 (2019).

120. *Opp.* at 57.

121. H. Rep. No. 116–346, at 19 (quoting Impeachment Inquiry Staff, H. Comm. on the Judiciary, *Memorandum: Presentation Procedures for the Impeachment Inquiry* 11, 93d Cong. (1974)).

122. *Id.* at 19, 21.

123. See *id.* at 17–22.

124. *United States v. Procter & Gamble Co.*, 356 U.S. 677, 681 n.6 (1958).

125. Statement of Facts ¶¶ 177, 190.

126. Statement of Facts ¶ 163; 165 Cong. Rec. E1357 (2019) (Impeachment Inquiry Procedures in the Committee on the Judiciary Pursuant to H. Res. 660); see *id.* at (A)(3), (B)(2)–(3), (C)(1)–(2), (4).

127. *Opp.* at 20–21.

128. See, *e.g.*, 132 Cong. Rec. S29124–94 (daily ed. October 7, 1986).

129. Cong. Research Serv., 98–990 A, *Standard of Proof in Senate Impeachment Proceedings* 6 (1999), <https://perma.cc/9YKGTJLH>.

130. *Opp.* at 107–09.

131. H. Res. 611, 105th Cong. (1998).

132. U.S. Const., Art. I, § 3, cl. 6. See also *Nixon v. United States*, 506 U.S. 224, 229–31 (1993).

133. H. Rep. No. 116–346, at 12 (quoting Letter from Pat A. Cipollone, Counsel to the President, to Jerrold Nadler, Chairman, H. Comm. on the Judiciary (Dec. 6, 2019)).

134. *Opp.* at 13.

The CHIEF JUSTICE. I note the presence in the Senate Chamber of the managers on the part of the House of Representatives and counsel for the President of the United States.

The majority leader is recognized.

PRIVILEGES OF THE FLOOR

Mr. McCONNELL. Mr. Chief Justice, I send to the desk a list of floor privileges for closed sessions. It has been agreed to by both sides. I ask that it be inserted in the RECORD and agreed to by unanimous consent.

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

FLOOR PRIVILEGES DURING CLOSED SESSION

Sharon Soderstrom, Chief of Staff, Majority Leader
 Scott Raab, Deputy Chief of Staff, Majority Leader
 Andrew Ferguson, Chief Counsel, Majority Leader
 Robert Karem, National Security Advisor, Majority Leader
 Stefanie Muchow, Deputy Chief of Staff, Majority Leader (Cloakroom only)
 Nick Rossi, Chief of Staff, Assistant Majority Leader
 Mike Lynch, Chief of Staff, Democratic Leader
 Erin Vaughn, Deputy Chief of Staff, Democratic Leader
 Mark Patterson, Counsel, Democratic Leader
 Reginald Babin, Counsel, Democratic Leader
 Meghan Taira, Legislative Director, Democratic Leader
 Gerry Petrella, Policy Director, Democratic Leader
 Reema Dodin, Deputy Chief of Staff, Democratic Whip
 Dan Schwager, Counsel, Secretary of the Senate
 Mike DiSilvestro
 Pat Bryan, Senate Legal Counsel
 Morgan Frankel, Deputy Senate Legal Counsel
 Krista Beal, ASAA, Capitol Operations, (Bob Shelton will substitute for Krista Beal if needed)
 Jennifer Hemingway, Deputy SAA
 Terence Liley, General Counsel
 Robert Shelton, Deputy ASAA, Capitol Operations*
 Brian McGinty, ASAA, Office of Security and Emergency Preparedness
 Robert Duncan, Assistant Majority Secretary

Tricia Engle, Assistant Minority Secretary
 Leigh Hildebrand, Assistant Parliamentarian
 Christy Amatos, Parliamentary Clerk
 Mary Anne Clarkson, Senior Assistant Legislative Clerk
 Megan Pickel, Senior Assistant Journal Clerk
 Adam Gottlieb, Assistant Journal Clerk
 Dorothy Rull, Chief Reporter
 Carole Darche, Official Reporter
 Diane Dorhamer, Official Reporter
 Chantel Geneus, Official Reporter
 Andrea Huston, Official Reporter
 Catalina Kerr, Official Reporter
 Julia LaCava, Official Reporter
 Michele Melhorn, Official Reporter
 Shannon Taylor-Scott, Official Reporter
 Adrian Swann, Morning Business Coordinator
 Sara Schwartzman, Bill Clerk
 Jeff Minear, Counselor to the Chief Justice

PROGRAM

Mr. McCONNELL. Mr. Chief Justice, for the further information of all Senators, I am about to send a resolution to the desk that provides for an outline of the next steps in these proceedings. It will be debatable by the parties for 2 hours, equally divided. Senator SCHUMER will then send an amendment to the resolution to the desk. Once that amendment has been offered and recorded, we will have a brief recess. When we reconvene, Senator SCHUMER’s amendment will be debatable by the parties for 2 hours. Upon the use or yielding back of time, I intend to move to table Senator SCHUMER’s amendment.

PROVIDING FOR RELATED PROCEDURES CONCERNING THE ARTICLES OF IMPEACHMENT AGAINST DONALD JOHN TRUMP, PRESIDENT OF THE UNITED STATES

Mr. Chief Justice, I send a resolution to the desk and ask that it be read.

The CHIEF JUSTICE. The clerk will read the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 483) to provide for related procedures concerning the articles of impeachment against Donald John Trump, President of the United States.

Resolved, That the House of Representatives shall file its record with the Secretary of the Senate, which will consist of those publicly available materials that have been submitted to or produced by the House Judiciary Committee, including transcripts of public hearings or markups and any materials printed by the House of Representatives or the House Judiciary Committee pursuant to House Resolution 660. Materials in this record will be admitted into evidence subject to any hearsay, evidentiary, or other objections that the President may make after opening presentations are concluded. All materials filed pursuant to this paragraph shall be printed and made available to all parties.

The President and the House of Representatives shall have until 9 a.m. on Wednesday, January 22, 2020, to file any motions permitted under the rules of impeachment with the exception of motions to subpoena witnesses or documents or any other evidentiary motions. Responses to any such motions shall be filed no later than 11 a.m. on Wednesday, January 22, 2020. All materials filed pursuant to this paragraph shall be

filed with the Secretary and be printed and made available to all parties.

Arguments on such motions shall begin at 1 p.m. on Wednesday, January 22, 2020, and each side may determine the number of persons to make its presentation, following which the Senate shall deliberate, if so ordered under the impeachment rules, and vote on any such motions.

Following the disposition of such motions, or if no motions are made, then the House of Representatives shall make its presentation in support of the articles of impeachment for a period of time not to exceed 24 hours, over up to 3 session days. Following the House of Representatives' presentation, the President shall make his presentation for a period not to exceed 24 hours, over up to 3 session days. Each side may determine the number of persons to make its presentation.

Upon the conclusion of the President's presentation, Senators may question the parties for a period of time not to exceed 16 hours.

Upon the conclusion of questioning by the Senate, there shall be 4 hours of argument by the parties, equally divided, followed by deliberation by the Senate, if so ordered under the impeachment rules, on the question of whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents. The Senate, without any intervening action, motion, or amendment, shall then decide by the yeas and nays whether it shall be in order to consider and debate under the impeachment rules any motion to subpoena witnesses or documents.

Following the disposition of that question, other motions provided under the impeachment rules shall be in order.

If the Senate agrees to allow either the House of Representatives or the President to subpoena witnesses, the witnesses shall first be deposed and the Senate shall decide after deposition which witnesses shall testify, pursuant to the impeachment rules. No testimony shall be admissible in the Senate unless the parties have had an opportunity to depose such witnesses.

At the conclusion of the deliberations by the Senate, the Senate shall vote on each article of impeachment.

The CHIEF JUSTICE. The resolution is arguable by the parties for 2 hours, equally divided.

Mr. Manager Schiff, are you a proponent or an opponent of this motion?

Mr. Manager SCHIFF. Mr. Chief Justice, the House managers are in opposition to this resolution.

The CHIEF JUSTICE. Thank you.

Mr. Cipollone, are you a proponent or an opponent of the motion?

Mr. Counsel CIPOLLONE. We are a proponent of the motion.

The CHIEF JUSTICE. Mr. Cipollone, your side may proceed first, and we will be able to reserve rebuttal time if you wish.

Mr. Counsel CIPOLLONE. Thank you, Mr. Chief Justice.

Majority Leader MCCONNELL, Democratic Leader SCHUMER, Senators, my name is Pat Cipollone. I am here as counsel to the President of the United States. Our team is proud to be here, representing President Trump.

We support this resolution. It is a fair way to proceed with this trial. It is modeled on the Clinton resolution, which had 100 Senators supporting it the last time this body considered impeachment. It requires the House man-

agers to stand up and make their opening statement and make their case. They have delayed bringing this impeachment to this body for 33 days, and it is time to start with this trial. It is a fair process. They will have the opportunity to stand up and make their opening statement. They will get 24 hours to do that. Then the President's attorneys will have a chance to respond. After that, all of you will have 16 hours to ask whatever questions you have of either side. Once that is finished and you have all of that information, we will proceed to the question of witnesses and some of the more difficult questions that will come before this body.

We are in favor of this. We believe that once you hear those initial presentations, the only conclusion will be that the President has done absolutely nothing wrong and that these Articles of Impeachment do not begin to approach the standard required by the Constitution, and, in fact, they themselves will establish nothing beyond those articles. You will look at those articles alone, and you will determine that there is absolutely no case.

So we respectfully ask you to adopt this resolution so that we can begin with this process. It is long past time to start this proceeding, and we are here today to do it, and we hope that the House managers will agree with us and begin this proceeding today.

We reserve the remainder of our time for rebuttal.

Mr. Manager SCHIFF. Mr. Chief Justice, Senators, and counsel for the President, the House managers, on behalf of the House of Representatives, rise in opposition to Leader MCCONNELL's resolution.

Let me begin by summarizing why. Last week we came before you to present the Articles of Impeachment against the President of the United States for only the third time in our history. Those articles charge President Donald John Trump with abuse of power and obstruction of Congress. The misconduct set out in those articles is the most serious ever charged against a President.

The first article, abuse of power, charges the President with soliciting a foreign power to help him cheat in the next election. Moreover, it alleges—and we will prove—that he sought to coerce Ukraine into helping him cheat by withholding official acts—two official acts: a meeting that the new President of Ukraine desperately sought with President Trump at the White House to show the world and the Russians, in particular, that the Ukrainian President had a good relationship with his most important patron, the President of the United States. And even more perniciously, President Trump illegally withheld almost \$400 million in taxpayer-funded military assistance to Ukraine, a nation at war with our Russian adversary, to compel Ukraine to help him cheat in the election.

Astonishingly, the President's trial brief, filed yesterday, contends that

even if this conduct is proved, that there is nothing that the House or this Senate may do about it. It is the President's apparent belief that under article II he can do anything he wants, no matter how corrupt, outfitted in gaudy legal clothing.

And yet, when the Founders wrote the impeachment clause, they had precisely this type of misconduct in mind—conduct that abuses the power of his office for personal benefit, that undermines our national security, that invites foreign interference in our democratic process of an election. It is the trifecta of constitutional misconduct justifying impeachment.

In article II the President is charged with other misconduct that would likewise have alarmed the Founders—the full, complete, and absolute obstruction of a coequal branch of government, the Congress, during the course of its impeachment investigation into the President's own misconduct. This is every bit as destructive to our constitutional order as the misconduct charged in the first article.

If a President can obstruct his own investigation, if he can effectively nullify a power the Constitution gives solely to Congress—indeed, the ultimate power—the ultimate power the Constitution gives to prevent Presidential misconduct, then, the President places himself beyond accountability, above the law. He cannot be indicted, cannot be impeached. It makes him a monarch, the very evil against which our Constitution and the balance of powers it carefully laid out was designed to guard against.

Shortly, the trial in these charges will begin, and when it has concluded, you will be asked to make several determinations. Did the House prove that the President abused his power by seeking to coerce a foreign nation to help him cheat in the next election; and did he obstruct the Congress in its investigation into his own misconduct by ordering his agencies and officers to refuse to cooperate in any way—to refuse to testify, to refuse to answer subpoenas for documents, and through every other means.

And if the House has proved its case—and we believe the evidence will not be seriously contested—you will have to answer at least one other critical question: Does the commission of these high crimes and misdemeanors require the conviction and removal of the President?

We believe that it does, and that the Constitution requires that it be so or the power of impeachment must be deemed irrelevant or a casualty to partisan times and the American people left unprotected against a President who would abuse his power for the very purpose of corrupting the only other method of accountability, our elections themselves.

And so you will vote to find the President guilty or not guilty, to find his conduct impeachable or not impeachable. But I would submit to you

these are not the most important decisions you will make.

How can that be? How can any decision you will make be more important than guilt or innocence, than removing the President or not removing the President?

I believe the most important decision in this case is the one you will make today. The most important question is the question you must answer today. Will the President and the American people get a fair trial? Will there be a fair trial?

I submit that this is an even more important question than how you vote on guilt or innocence, because whether we have a fair trial will determine whether you have a basis to render a fair and impartial verdict. It is foundational—the structure upon which every other decision you will make must rest.

If you only get to see part of the evidence, if you only allow one side or the other a chance to present their full case, your verdict will be predetermined by the bias in the proceeding. If the defendant is not allowed to introduce evidence of his innocence, it is not a fair trial. So too for the prosecution. If the House cannot call witnesses or introduce documents and evidence, it is not a fair trial. It is not really a trial at all.

Americans all over the country are watching us right now, and imagine they are on jury duty. Imagine that the judge walks into that courtroom and says that she has been talking to the defendant, and at the defendant's request, the judge has agreed not to let the prosecution call any witnesses or introduce any documents. The judge and the defendant have agreed that the prosecutor may only read to the jury the dry transcripts of the grand jury proceedings. That is it.

Has anyone on jury duty in this country ever heard a judge describe such a proceeding and call it a fair trial? Of course not. That is not a fair trial. It is a mockery of a trial.

Under the Constitution, this proceeding, the one we are in right now, is the trial. This is not the appeal from a trial. You are not appellate court judges. OK, one of you is. And unless this trial is going to be different from any other impeachment trial or any other kind of trial, for that matter, you must allow the prosecution and defense, the House managers and the President's lawyers, to call relevant witnesses. You must subpoena documents that the President has blocked but which bear on his guilt or innocence. You must impartially do just as your oath requires.

So what does a fair trial look like in the context of impeachment? The short answer is it looks like every other trial. First, the resolution should allow the House managers to obtain documents that have been withheld—first, not last—because the documents will inform the decision about which witnesses are most important to call. And

when the witnesses are called, the documentary evidence will be available and must be available to question them with. Any other order makes no sense.

Next, the resolution should allow the House managers to call their witnesses, and then the President should be allowed to do the same, and any rebuttal witnesses. And when the evidentiary portion of the trial ends, the parties argue the case. You deliberate and render a verdict.

If there is a dispute as to whether a particular witness is relevant or material to the charges brought, under the Senate rules, the Chief Justice would rule on the issue of materiality.

Why should this trial be different than any other trial? The short answer is it shouldn't. But Leader MCCONNELL's resolution would turn the trial process on its head. His resolution requires the House to prove its case without witnesses, without documents, and only after it is done will such questions be entertained, with no guarantee that any witnesses or any documents will be allowed even then. That process makes no sense.

So what is the harm of waiting until the end of the trial, of kicking the can down the road on the question of documents and witnesses? Beside the fact it is completely backwards—trial first, then evidence—beside the fact that the documents would inform the decision on which witnesses and help in their questioning, the harm is this: You will not have any of the evidence the President continues to conceal throughout most or all of the trial.

And although the evidence against the President is already overwhelming, you may never know the full scope of the President's misconduct or those around him, and neither will the American people.

The charges here involve the sacrifice of our national security at home and abroad and a threat to the integrity of the next election. If there are additional remedial steps that need to be taken after the President's conviction, the American people must know about it.

But if, as a public already jaded by experience has come to suspect, this resolution is merely the first step of an effort orchestrated by the White House to rush the trial, hide the evidence, and render a fast verdict, or worse, a fast dismissal to make the President go away as quickly as possible, to cover up his misdeeds, then the American people will be deprived of a fair trial and may never learn just how deep the corruption of this administration goes or what other risk to our security and elections remain hidden.

The harm will also endure for this body. If the Senate allows the President to get away with such extensive obstruction, it will affect the Senate's power of subpoena and oversight just as much as the House. The Senate's ability to conduct oversight will be beholden to the desires of this President and future Presidents, whether he or

she decides they want to cooperate with a Senate investigation or another impeachment inquiry and trial. Our system of checks and balances will be broken. Presidents will become accountable to no one.

Now, it has been reported that Leader MCCONNELL has already got the votes to pass his resolution, the text of which we did not see until last night, and which has been changed even moments ago.

And they say that Leader MCCONNELL is a very good vote counter. Nonetheless, I hope that he is wrong, and not just because I think this process—the process contemplated by this resolution—is backwards and designed with a result in mind and that the result is not a fair trial. I hope that he is wrong because whatever Senators may have said or pledged or committed has been superseded by an event of constitutional dimensions. You have all now sworn an oath—not to each other, not to your legislative leadership, not to the managers or even to the Chief Justice. You have sworn an oath to do impartial justice. That oath binds you. That oath supersedes all else.

Many of you in the Senate and many of us in the House have made statements about the President's conduct or this trial or this motion or expectations. None of that matters now. That is all in the past. Nothing matters now but the oath to do impartial justice, and that oath requires a fair trial—fair to the President and fair to the American people.

But is that really possible? Or as the Founders feared, has factionalism or an excessive partisanship made that now impossible?

One way to find out what a fair trial should look like, devoid of partisan consideration, is to ask yourselves how would you structure the trial if you didn't know what your party was and you didn't know what the party of the President was? Would it make sense to you to have the trial first and then decide on witnesses and evidence later? Would that be fair to both sides? I have to think that your answer would be no.

Let me be blunt. Let me be very blunt. Right now a great many, perhaps even most, Americans do not believe there will be a fair trial. They don't believe that the Senate will be impartial. They believe that the result is precooked. The President will be acquitted, not because he is innocent—he is not—but because the Senators will vote by party, and he has the votes—the votes to prevent the evidence from coming out, the votes to make sure the public never sees it.

The American people want a fair trial. They want to believe their system of governance is still capable of rising to the occasion. They want to believe that we can rise above party and do what is best for the country, but a great many Americans don't believe that will happen.

Let's prove them wrong. Let's prove them wrong.

How? By convicting the President? No, not by conviction alone, by convicting him if the House proves its case and only if the House proves its case, but by letting the House prove its case, by letting the House call witnesses, by letting the House obtain documents, by letting the House decide how to present its own case and not deciding it for us—in sum, by agreeing to a fair trial.

Now let's turn to the precise terms of the resolution, the history of impeachment trials, and what fairness and impartiality require.

Although we have many concerns about the resolution, I will begin with its single biggest flaw. The resolution does not ensure that subpoenas will, in fact, be issued for additional evidence that the Senate and the American people should have—and that the President continues to block—to fairly decide the President's guilt or innocence. Moreover, it guarantees that such subpoenas will not be issued now, when it would be most valuable to the Senate, the parties, and the American people.

According to the resolution the leader has introduced, first the Senate receives briefs and filings from the parties. Next it hears lengthy presentations from the House and the President. Now my colleagues, the President's lawyers, have described this as opening statements. But let's not kid ourselves; that is the trial that they contemplate. The opening statements are the trial. They will either be most of the trial or they will be all of the trial. If the Senate votes to deprive itself of witnesses and documents, the opening statements will be the end of the trial. So to say "Let's just have the opening statements, and then we will see" means "Let's have the trial, and maybe we can sweep this all under the rug."

So we will hear these lengthy presentations from the House. There will be a question-and-answer period for the Senators, and then—and only then—after, essentially, the trial is over, after the briefs have been filed, after the arguments have been made, and after Senators have exhausted other questions, only then will the Senate consider whether to subpoena crucial documents and witness testimony that the President has desperately tried to conceal from this Congress and the American people—documents and witness testimony that, unlike the Clinton trial, have not yet been seen or heard.

It is true that the record compiled by the House is overwhelming. It is true the record already compels the conviction of the President in the face of unprecedented resistance by the President. The House has assembled a powerful case, evidence of the President's high crimes and misdemeanors that includes direct evidence and testimony of officials who were unwilling and unwitting in this scheme and saw it for what it was. Yet there is still more evidence—relative and probative evidence—that the President continues to

block that would flesh out the full extent of the President's misconduct and those around him.

We have seen that, over the past few weeks, new evidence has continued to come to light as the nonpartisan Government Accountability Office has determined that the hold on military aid to Ukraine was illegal and broke the law; as John Bolton has offered to testify in the trial; as one of the President's agents, Lev Parnas, has produced documentary evidence that clarifies Mr. Giuliani's activities on behalf of the President and corroborates Ambassador Sondland's testimony that everyone was in the loop; as documents released under the Freedom of Information Act have documented the alarm at the Department of Defense that the President illegally withheld military support for Ukraine, an ally at war with Russia, without explanation; as the senior Office of Management and Budget official, Michael Duffey, instructed Department of Defense officials on July 25, 90 minutes after President Trump spoke by phone with President Zelensky, that the Defense Department should pause all obligation of Ukraine military assistance under its purview—90 minutes after that call.

Duffey added, "Given the sensitive nature of the request, I appreciate your keeping that information closely held to those who need to know to execute the direction."

Although the evidence is already more than sufficient to convict, there is simply no rational basis for the Senate to deprive itself of all relevant information in making such a hugely consequential judgment.

Moreover, as the President's answer to his summons and his trial brief made clear, the President intends to contest the facts in false and misleading ways.

But the President should not have it both ways. He should not be permitted to claim that the facts uncovered by the House are wrong while also concealing mountains of evidence that bear precisely on those facts.

If this body seeks impartial justice, it should ensure that subpoenas are issued and that they are issued now, before the Senate begins extended proceedings based on a record that every person in this room and every American watching at home knows does not include documents and witness testimony it should because the President would not allow it to be so.

Complying with these subpoenas would not impose a burden. The subpoenas cover narrowly tailored and targeted documents and witnesses that the President has concealed.

The Senate deserves to see the documents from the White House, the State Department, the Office of Management and Budget, and the Department of Defense. These agencies already should have collected and at least preserved these documents in response to House subpoenas.

Indeed, in some cases agencies have already produced documents in FOIA lawsuits, albeit in heavily redacted form. Witnesses with direct knowledge or involvement should be heard. That includes the President's Acting Chief of Staff, Mick Mulvaney; his former National Security Advisor, John Bolton, who has publicly offered to testify—two senior officials integral to implementing the President's freeze on Ukraine's military aid also have very relevant testimony; why not hear it?—Robert Blair, who served as Mr. Mulvaney's senior adviser; Michael Duffey, a senior official at OMB; and other witnesses with direct knowledge whom we reserve the right to call later—but these witnesses with whom we wish to begin the trial.

Last month, President Trump made clear that he supported having senior officials testifying before the Senate during his trial, declaring that he would "love" to have Secretary Pompeo, Mr. Mulvaney, now former Secretary Perry, and "many other people testify" in the Senate trial:

(Text of Videotape presentation:)

So, when it's fair, and it will be fair in the Senate, I would love to have Mike Pompeo, I'd like to have Mick, I'd love to have Rick Perry and many other people testify.

Mr. Manager SCHIFF. The Senate has an opportunity to take the President up on his offer to make his senior aides available, including Secretaries Perry and Pompeo.

But now the President is changing his tune. The bluster of wanting these witnesses to testify is over. Notwithstanding the fact that he has never asserted the claim of privilege in the course of the House impeachment proceedings, he threatens to invoke one now in a last-ditch effort to keep the rest of the truth from coming out.

The President sends his lawyers here to breathlessly claim that these witnesses or others cannot possibly testify because it involves national security. Never mind that it was the President's actions in withholding military aid from an ally at war that threatened our national security in the first place. Never mind that the most impeachable, serious offenses will always involve national security because they will involve other nations, and that misconduct based on foreign entanglement is what the Framers feared most.

The President's absurdist argument amounts to this: We must endanger national security to protect national security. We must make a President's conduct threatening our security beyond the reach of impeachment powers if we are to save the Presidency.

This is dangerous nonsense.

As Justices of the Supreme Court have underscored, the Constitution is not a suicide pact.

But let us turn from the abstract to the very concrete, and let me show you just one example of what the President is hiding in the name of national security.

There is a document, which the President has refused to turn over, in

which his top diplomat in Ukraine says to two other appointees of the President: “As I said on the phone, I think it’s crazy to withhold security assistance for help with a political campaign.”

The administration refuses to turn over that document and so many more. We only know about its existence, we have only seen its contents because it was turned over by a cooperating witness.

This is what the President would hide from you and from the American people. In the name of national security, he would hide graphic evidence of his dangerous misconduct. The only question is—and it is the question raised by this resolution—Will you let him?

Last year, President Trump said that article II of the Constitution would allow him to do anything he wanted, and evidently believing that article II empowered him to denigrate and defy a coequal branch of government, he also declared that he would fight all subpoenas. Let’s hear the President’s own words: “Then I have an Article II, where I have the right to do whatever I want as President.”

True to his pledge to obstruct Congress, when President Trump faced an impeachment inquiry in the House of Representatives, he ordered the executive branch to defy every single request on every single subpoena. He issued this order through his White House Counsel, Pat Cipollone, on October 8—the same counsel who stood before you a moment ago to defend the President’s misconduct. He then affirmed it again at a rally on October 10.

Following President Trump’s categorical order, we never received the documents and communications. It is important to note, in refusing to respond to Congress, the President did not make any—any—formal claim of privilege, ever. Instead, Mr. Cipollone’s letter stated, in effect, that the President would withhold all evidence from the executive branch unless the House surrendered to demands that would effectively place President Trump in charge of the inquiry into his own misconduct.

Needless to say, that was a non-starter and designed to be so. The President was determined to obstruct Congress no matter what we did, and his conduct since—his attacks on the impeachment inquiry, his attacks on witnesses—has affirmed that the President never had any intention to cooperate under any circumstance. And why? Because the evidence and testimony he conceals would only further prove his guilt. The innocent do not act this way.

Simply stated, this trial should not reward the President’s obstruction by allowing him to control what evidence is seen and when it is seen and what evidence will remain hidden. The documents the President seeks to conceal include White House records, including records about the President’s unlawful

hold on military aid; State Department records, including text messages and WhatsApp messages exchanged by the State Department and Ukrainian officials and notes to file by career officials as they saw the President’s scheme unfold in realtime; OMB records demonstrating evidence to fabricate an after-the-fact rationale for the President’s order, showing internal objections that the President’s orders violated the law; Defense Department records reflecting baffle and alarm that the President suspended military aid to a key security partner without explanation.

Many of the President’s aides have also followed his orders and refused to testify. These include essential figures in the impeachment inquiry, including White House Chief of Staff Mick Mulvaney, former National Security Advisor John Bolton, and many others with relevant testimony, like Robert Blair and Michael Duffey. Mr. Blair, who serves as a senior adviser to Acting Chief of Staff Mulvaney, worked directly with Mr. Duffey, a political appointee in the Office of Management and Budget, to carry out the President’s order to freeze vital military and security assistance to Ukraine.

The Trump administration has refused to disclose their communications, even though we know from written testimony, public reporting, and even Freedom of Information Act lawsuits that they were instrumental in implementing the hold and extending it at the President’s express direction even—even—as career officials warned accurately that doing so would violate the law.

The President has also made the insupportable claim that the House should have enforced its subpoenas in court and allowed the President’s impeachment to delay for years. If we had done so, we would have abdicated our constitutional duty to act on the overwhelming facts before us and the evidence the President was seeking to cheat in the next election.

We could not engage in a deliberately protracted court process while the President continued to threaten the sanctity of our elections.

Resorting to the courts is also inconsistent with the Constitution that gives the House the sole power of impeachment. If the House were compelled to exhaust all legal remedies before impeaching the President, it would interpose the courts or the decision of a single judge between the House and the power to impeach. Moreover, it would invite the President to present his own impeachment by endlessly litigating the matter in court—appealing every judgment, engaging in any frivolous motion or device. Indeed, in the case of Don McGhan—the President’s lawyer, who was ordered to fire the special counsel and lie about it—he was subpoenaed by the House in April of last year, and there is still no final judgment.

A President may not defeat impeachment or accountability by engaging in

endless litigation. Instead, it has been the long practice of the House to compile core evidence necessary to reach a reasoned decision about whether to impeach and then to bring the case here to the Senate for a full trial. That is exactly what we did here, with an understanding that the Senate has its own power to compel documents and testimony.

It would be one thing if the House had shown no interest in documents or witnesses during its investigation—although, even there, the House has the sole right to determine its proceedings as long as it makes the full case to the House, as it did—but it is quite another when the President is the cause of his own complaint, when the President withholds witnesses and documents and then attempts to rely on his own noncompliance to justify further concealment.

President Trump made it crystal clear that we would never see a single document or a single witness when he declared, as we just watched, that he would fight all subpoenas. As a matter of history and precedent, it would be wrong to assert that the Senate is unable to obtain and review new evidence during a Senate trial regardless of why evidence was not produced in the House.

You can and should insist on receiving all the evidence so you can render impartial justice and can earn the confidence of the public in the Senate’s willingness to hold a fair trial.

Under the Constitution, the Senate does not just vote on impeachments. It does not just debate them. Instead, it is commanded by the Constitution to try all cases of impeachment. If the Founders intended for the House to try the matter and the Senate to consider an appeal based on the cold record from the other Chamber, they would have said so, but they did not. Instead, they gave us the power to charge and you the power to try all impeachments.

The Framers chose their language and the structure for a reason. As Alexander Hamilton said, the Senate is given “awful discretion” in matters of impeachment. The Constitution thus speaks to Senators in their judicial character as a court for the trial of impeachments. It requires them to aim at real demonstrations of innocence or guilt and requires them to do so by holding a trial.

The Senate has repeatedly subpoenaed and received new documents, often many of them while adjudicating cases of impeachment. Moreover, the Senate has heard witness testimony in every one of the 15 Senate trials—full Senate trials—in the history of this Republic, including those of Presidents Andrew Johnson and Bill Clinton. Indeed, in President Andrew Johnson’s Senate impeachment trial, the House managers were permitted to begin presenting documentary evidence to the Senate on the very first day of the trial. The House managers’ initial presentation of documents in President

Johnson's case carried on for the first 2 days of trial and immediately after witnesses were called to appear in the Senate.

This has been the standard practice in prior impeachment trials. Indeed, in most trials, this body has heard from many witnesses, ranging from 3 in President Clinton's case to 40 in President Johnson's case and well over 60 in other impeachments. As these numbers make clear, the Senate has always heard from key witnesses when trying an impeachment.

The notion that only evidence that was taken before the House should be considered is squarely and unequivocally contrary to Senate precedent. Nothing in law or history supports it.

To start, consider Leader MCCONNELL's own description of his work in a prior Senate impeachment proceeding. In the case of Judge Claiborne, after serving on the Senate trial committee, Leader MCCONNELL described how the Senate committee "labored intensively for more than 2 months, amassing the necessary evidence and testimony." In the same essay, Leader MCCONNELL recognized the full body's responsibility for amassing and digesting evidence. It was certainly a lot of evidence for the Senate to amass and digest in that proceeding, which involved charges against a district court judge. The Senate heard testimony from 19 witnesses, and it allowed for over 2,000 pages of documents to be entered into the record over the course of that trial.

At no point did the Senate limit evidence to what was before the House. It did the opposite, consistent with unbroken Senate practice in every single impeachment trial—every single one.

For example, of the 40 witnesses who testified during President Johnson's Senate trial, only 3 provided testimony to the House during its impeachment inquiry—only 3. The remaining 37 witnesses in that Presidential impeachment trial testified before the Senate.

Similarly, the Senate's full first impeachment trial, which involved charges against Judge Pickering, involved testimony from 11 witnesses, all of whom were new to the impeachment proceedings and had not testified before the House.

There are many other examples of this point, including the Senate's most recent impeachment trial of Judge Porteous in 2010. It is one that many of you and some of us know well. It, too, is consistent with this longstanding practice. There, the Senate heard testimony from 26 witnesses, 17 of whom had not testified before the House during its impeachment inquiry.

Thus, there is a definitive tradition of the Senate hearing from new witnesses when trying Articles of Impeachment. There has never been a rule limiting witnesses to those who appeared in the House or limiting evidence before the Senate to that which the House itself considered. As Senator Hiram Johnson explained in 1934, that is because the integrity of Senate im-

peachment trials depend heavily upon the witnesses who are called, their appearance on the stand, their mode of giving testimony.

There is thus an unbroken history of witness testimony in Senate impeachment trials, Presidential and judicial. I would argue, in the case of a President, it is even more important to hear the witnesses and see the documents.

Any conceivable doubt on this score—and there should be none left—is dispelled by the Senate's own rules for trial of impeachment. Obtaining documents and hearing live witness testimony is so fundamental that the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials, which date back to 19th century, devote more attention to the gathering, handling, and admission of new evidence than any other single subject. These rules expressly contemplate that the Senate will hear evidence and conduct a thorough trial when sitting as a Court of Impeachment. At every turn, they reject the notion that the Senate would take the House's evidentiary record, blind itself to everything else, and vote to convict or acquit.

For example, rule VI says the Senate shall have the power to compel the attendance of witnesses and enforce obedience to its own orders.

Rule VII authorizes the Presiding Officer to rule on all questions of evidence, including, but not limited to, questions of relevancy, materiality, and redundancy. This rule, too, presumes that the Senate trial will have testimony, giving rise to such questions.

Rule XI authorizes the full Senate to designate a committee of Senators to receive evidence and take testimony at such times and places as the committee may determine. As Rule XI makes clear, the committee's report must be transmitted to the full Senate for final adjudication. But nothing here in the rules states: shall prevent the Senate from sending for any witness and hearing his testimony in open Senate or by order of the Senate involving the entire trial in the open Senate. Here, too, the Senate's operative impeachment rules expressly contemplate and provide for subpoenaing witnesses and hearing their testimony as part of the Senate trial.

And the list goes on.

These rules plainly contemplate a robust role for the Senate in gathering and considering evidence. They reflect centuries of practice of accepting and requiring new evidence in Senate trials. This Senate should honor that practice today by rejecting this resolution.

It will be argued: What about the Clinton trial? Even if we are departing from every other impeachment trial in history, including the impeachment of President Andrew Johnson, it will be argued: What about the Clinton trial? Aren't we following the same process as in the Clinton trial? The answer is no.

First, the process for the Clinton trial was worked out by mutual consent among the parties. That is not true here, where the process is sought to be imposed by one party on the other.

Second, all of the documents in the Clinton trial were turned over prior to the trial—all 90,000 pages of them—so they could be used in the House's case. None of the documents have been turned over by the President in this case, and under Leader MCCONNELL's proposal, none may ever be. They certainly will not be available to you or to us during most or all of the trial. If we are really going to follow the Clinton precedent, the Senate must insist on the documents now before the trial begins.

Third, the issue in the Clinton trial was not one of calling witnesses but of recalling witnesses. All of the key witnesses in the Clinton trial had testified before the grand jury or had been interviewed by the FBI—one of them, dozens of times—and their testimony was already known. President Clinton himself testified on camera and under oath before the Senate trial. He allowed multiple chiefs of staff and other key officials to testify, again, before the Senate trial took place. Here, none of the witnesses we seek to call—none of them—have testified or have been interviewed by the House. And, as I said, the President cannot complain that we did not call these witnesses before the House when their unavailability was caused by the President himself.

Last, as you will remember—those of you who were here—the testimony in the Clinton trial involved decorum issues that are not present here. You may rest assured, whatever else the case may be, such issues will not be present here.

In sum, the Clinton precedent—if we are serious about it, if we are really serious about modeling this proceeding after the Clinton trial—is one where all the documents had been provided up front and where all the witnesses had testified up front prior to the trial. That is not being replicated by the McConnell resolution—not in any way, not in any shape, not in any form. It is far from it. The traditional model followed in President Johnson's case and all of the others is really the one that is most appropriate to the circumstances.

The Senate should address all the documentary issues and most of the witnesses now, not later. The need to subpoena documents and testimony now has only increased due to the President's obstruction for several reasons.

First, his obstruction has made him uniquely and personally responsible for the absence of the witnesses before the House. Having ordered them not to appear, he may not be heard to complain now that they followed his orders and refused to testify. To do otherwise only rewards the President's obstruction

and encourages future Presidents to defy lawful process in impeachment investigations.

Second, if the President wishes to contest the facts—and his answer and trial brief indicate that he will try—he must not continue to deny the Senate access to the relevant witnesses and documents that shed light on the very factual matters he wishes to challenge. The Senate trial is not analogous to an appeal where the parties must argue the facts on the basis of the record below. There is no record below. There is no below. This is the trial.

Third, the President must not be allowed to mislead the Senate by selectively introducing documents while withholding the vast body of documents that may contradict them. This is very important. The President must not be allowed to mislead you by introducing documents selectively and withholding all of the rest. All of the relevant documents should be produced so there is full disclosure of the truth; otherwise, there is a clear risk that the President will continue to hide all evidence harmful to his position, while selectively producing documents without any context or opportunity to examine their creators.

Finally, you may infer the President's guilt from his continuing efforts to obstruct the production of documents and witnesses. The President has said he wants witnesses like Mulvaney and Pompeo and others to testify and that his interactions with Ukraine have been perfect. Counsel has affirmed today that would be the President's defense: His conduct was perfect. It was perfect. It was perfectly fine to coerce an ally by withholding military aid to get help cheating in the next election. That will be part of the President's defense, although albeit not worded in that way.

Now he has changed course. He does not want his witnesses to testify. The logical inference in any court of law would be that the party's continued obstruction of lawful subpoenas may be construed as evidence of guilt.

Let me conclude. The facts will come out in the end. The documents which the President is hiding will be released, through the Freedom of Information Act or through other means over time. Witnesses will tell their stories in books and film. The truth will come out.

The question is, Will it come out in time? And what answer shall we give if we did not pursue the truth now and let it remain hidden until it was too late to consider on the profound issue of the President's guilt or innocence?

There are many overlapping reasons for voting against this resolution, but they all converge on this single idea: fairness.

The trial should be fair to the House, which has been wrongly deprived of evidence by a President who wishes to conceal it. It should be fair to the President, who will not benefit from an acquittal or dismissal if the trial is not

viewed as fair, if it is not viewed as impartial. It should be fair to Senators, who are tasked with the grave responsibility of determining whether to convict or acquit and should do so with the benefit of all the facts. And it should be fair to the American people, who deserve the full truth and who deserve representatives who will seek it on their behalf.

With that, Mr. Chief Justice, I yield back.

The CHIEF JUSTICE. Mr. Cipollone, Mr. Sekulow, you have 57 minutes available.

Mr. Counsel SEKULOW. Mr. Chief Justice, Members of the Senate, Leader MCCONNELL, and Democratic Leader SCHUMER, it is also my privilege to represent the President of the United States before this Chamber.

Senator SCHUMER said earlier today that the eyes of the Founders are on these proceedings. Indeed, that is true, but it is the heart of the Constitution that governs these proceedings.

What we just heard from Manager SCHIFF is that courts have no role; privileges don't apply; and what happened in the past, we should just ignore. In fact, Manager SCHIFF just tried to summarize my colleague's defense of the President. He said it not in his words, of course, which is not the first time Mr. SCHIFF has put words into transcripts that did not exist.

Mr. SCHIFF also talked about a trifecta. I will give you a trifecta. During the proceedings that took place before the Judiciary Committee, the President was denied the right to cross-examine witnesses; the President was denied the right to access evidence; and the President was denied the right to have counsel present at hearings. That is a trifecta—a trifecta that violates the Constitution of the United States.

Mr. SCHIFF did say that the courts really don't have a role in this. Executive privilege—why would that matter? It matters because it is based on the Constitution of the United States. One manager said it is you that is on trial: the Senate. He also said—and others did—that you are not capable of abiding by your oath.

Then we had the invocation of the ghost of the Mueller report. I know something about that report. It came up empty on the issue of collusion with Russia. There was no obstruction. In fact, the Mueller report, contrary to what these managers say today, came to the exact opposite conclusions of what they said.

Let me quote from the House impeachment report at page 16:

Although President Trump has at times invoked the notion of due process, an impeachment trial, impeachment inquiry, is not a criminal trial and should not be confused with it.

Believe me, what has taken place in these proceedings is not to be confused with due process because due process demands and the Constitution requires that fundamental parities and due

process—we are hearing a lot about due process. Due process is designed to protect the person accused.

When the Russia investigation failed, it devolved into the Ukraine, a quid pro quo. When that didn't prove out, it was then bribery or maybe extortion. Somebody said—one of the Members of the House said treason. Instead, we get two Articles of Impeachment—two Articles of Impeachment that have a vague allegation about a noncrime allegation of abuse of power and obstruction of Congress.

Members, managers—right here before you today—who have said that executive privilege and constitutional privileges have no place in these proceedings—on June 28, 2012, Attorney General Eric Holder became the first U.S. Attorney General to be held in both civil and criminal contempt. Why? Because President Obama asserted executive privilege.

With respect to the Holder contempt proceedings, Mr. Manager SCHIFF wrote: “The White House assertion of privilege is backed by decades of precedent that has recognized the need for the President and his senior advisers to receive candid advice and information from their top aides.”

Indeed, that is correct—not because Manager SCHIFF said it but because the Constitution requires it.

Mr. Manager Nadler said that the effort to hold Attorney General Holder in contempt for refusing to comply with various subpoenas was “politically motivated,” and Speaker PELOSI called the Holder matter “little more than a witch hunt.”

What are we dealing with here? Why are we here? Are we here because of a phone call or are we here before this great body because, as the President was sworn into office, there was a desire to see him removed?

I remember in the Mueller report there were discussions about—remember—insurance policies. The insurance policy didn't work out so well, so then we moved to other investigations. I guess you would call them a reinsurance or an umbrella policy. That didn't work out so well, and here we are today.

Manager SCHIFF quoted the Supreme Court, and I would like to make reference to the Supreme Court as well. It was then-Justice Rehnquist, later to be Chief Justice Rehnquist, who wrote for the majority in *United States v. Russell* in 1973. These are the words: “. . . we may someday be presented with a situation in which the conduct of law enforcement agents is so outrageous that due process principles would absolutely bar the government from invoking judicial process to obtain a conviction. . . .”

That day is today. That day was a year ago. That day was in July when Special Counsel Mueller testified. I am not today going to take the time to review, but I will do it later, the patterns and practices of irregularities that have gone on in these investigations

from the outset; but to say that the courts have no role, the rush to impeachment, to not wait for a decision from a court on an issue as important as executive privilege—as if executive privilege hasn't been utilized by Presidents since our founding. This is not some new concept. We don't waive executive privilege, and there is a reason we keep executive privilege and we assert it when necessary, and that is to protect—to protect the Constitution and the separation of powers.

The President's opponents, in their rush to impeach, have refused to wait for a complete judicial review. That was their choice. Speaker PELOSI clearly expressed her impatience and contempt for judicial proceedings when she said: "We cannot be at the mercy of the courts." Think about that for a moment. We cannot be at the mercy of the courts.

So take article III of the U.S. Constitution and remove it. We are acting as if the courts are an improper venue to determine constitutional issues of this magnitude? That is why we have courts. That is why we have a Federal judiciary.

It was interesting when Professor Turley testified before the House Judiciary Committee, in front of Mr. NADLER's committee. He said:

We have three branches of government, not two. If you impeach a President and you make a high crime and misdemeanor out of going to courts an abuse of power, it's your abuse of power.

You know it is more than that. It is a lot more than that. There is a lot more than abuse of power if you say the courts don't apply, constitutional principles don't apply.

Let's start with a clean slate as if nothing happened. A lot has happened. As we proceed in the days ahead, we will lay out our case. We are going to put forward to the American people—but, more importantly, for the Constitution's sake—what is taking place here; that this idea that we should ignore what is taking place over the last 3 years is outrageous.

We believe that what Senator MCCONNELL has put forward provides due process and allows the proceedings to move forward in an orderly fashion.

Thirty-three days—thirty-three days—they held on to those impeachment articles. Thirty-three days. It was such a rush for our national security to impeach this President before Christmas that they then held them for 33 days. To do what: to act as if the House of Representatives should negotiate the rules of the U.S. Senate. They didn't hide this. This was the expressed purpose. This was the reason they did it.

We are prepared to proceed. Majority leader, Democratic minority leader, we are prepared to proceed. In our view, these proceedings should begin.

Mr. Chief Justice, I yield the rest of my time to my colleague, the White House Counsel.

The CHIEF JUSTICE. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, I just want to make a couple of additional points.

It is very difficult to sit there and listen to Mr. SCHIFF tell the tale he just told. Let's remember how we all got here: They made false allegations about a telephone call. The President of the United States declassified that telephone call and released it to the public. How is that for transparency?

When Mr. SCHIFF found out there was nothing to his allegations, he focused on the second telephone call. He made false and his colleagues made false allegations about that second telephone call that occurred before the one he had demanded. So the President of the United States declassified and released that telephone call. Still nothing.

Again, complete transparency in a way that, frankly, I am unfamiliar with any precedent of any President of the United States releasing a classified telephone call with a foreign leader.

When Mr. SCHIFF saw that his allegations were false and he knew it anyway, what did he do? He went to the House, and he manufactured a fraudulent version of that call. He manufactured a false version of that call. He read it to the American people, and he didn't tell them it was a complete fake.

Do you want to know about due process? I will tell you about due process. Never before in the history of our country has a President of the United States been confronted with this kind of impeachment proceeding in the House. It wasn't conducted by the Judiciary Committee. Mr. NADLER, when he applied for that job, told his colleagues, when they took over the House, that he was really good at impeachment.

But what happened was the proceedings took place in a basement of the House of Representatives. The President was forbidden from attending. The President was not allowed to have a lawyer present.

In every other impeachment proceeding, the President has been given a minimal due process. Nothing here. Not even Mr. SCHIFF's Republican colleagues were allowed into the SCIF. Information was selectively leaked out. Witnesses were threatened. Good public servants were told that they would be held in contempt. They were told that they were obstructing.

What does Mr. SCHIFF mean by "obstructing"? He means that unless you do exactly what he says, regardless of your constitutional rights, then, you are obstructing.

The President was not allowed to call witnesses. By the way, there is still evidence in the SCIF that we haven't been allowed to see. I wonder why. No witnesses.

Let's think about something else for a second. Let's think about something else. They held these articles for 33 days. We hear all this talk about an overwhelming case—an overwhelming case that they are not even prepared today to stand up and make an opening

argument about. That is because they have no case. Frankly, they have no charge.

When you look at these Articles of Impeachment, they are not only ridiculous; they are dangerous to our republic. And why? First of all, the notion that invoking your constitutional rights to protect the executive branch, that has been done by just about every President since George Washington—that is obstruction.

That is our patriotic duty, Mr. SCHIFF, particularly when confronted with a wholesale trampling of constitutional rights that I am unfamiliar with in this country. Frankly, it is the kind of thing that our State Department would criticize if we see it in foreign countries. We have never seen anything like it.

And Mr. SCHIFF said: Have I got a deal for you. Abandon all your constitutional rights, forget about your lawyers, and come in and do exactly what I say.

No, thank you. No, thank you.

And then has the temerity to come into the Senate and say: We have no use for courts.

It is outrageous.

Let me tell you another story. There is a man named Charlie Kupperman. He is the Deputy National Security Advisor. He is the No. 2 to John Bolton.

You have to remember that Mr. SCHIFF wants you to forget, but you have to remember how we got here. They threatened him. They sent him a subpoena. Mr. Kupperman did whatever any American should be allowed to do, used to be allowed to do. He was forced to get a lawyer. He was forced to pay for that lawyer, and he went to court.

Mr. SCHIFF doesn't like courts. He went to court.

And he said: Judge, tell me what to do. I have obligations that, frankly, rise to what the Supreme Court has called the apex of executive privilege in the area of national security. And then I have a subpoena from Mr. SCHIFF. What do I do?

You know what Mr. SCHIFF did? Mr. Kupperman went to the judge, and the House said: Never mind. We withdraw the subpoena. We promise not to issue it again.

And then they come here and ask you to do the work that they refused to do for themselves. They ask you to trample on executive privilege.

Would they ever suggest that the executive could determine on its own what the speech or debate Clause means? Of course not. Would they ever suggest the House could invade the discussions the Supreme Court has behind closed doors? I hope not. But they come here, and they ask you to do what they refuse to do for themselves.

They had a court date. They withdrew the subpoena. They evaded the decision, and they are asking you to become complicit in that evasion of the courts. It is ridiculous. We should call it out for what it is.

Obstruction for going to court? It is an act of patriotism to defend the constitutional rights of the President, because if they can do it to the President, they can do it to any of you and do it to any American citizen, and that is wrong. Laurence Tribe, who has been advising them—I guess he didn't tell you that in the Clinton impeachment, it is dangerous to suggest that invoking constitutional rights is impeachable. It is dangerous.

You know what? It is dangerous, Mr. SCHIFF.

What are we doing here? We have the House that completely concocted a process that we have never seen before. They lock the President out. By the way, will Mr. SCHIFF give documents? We asked them for documents. We asked them for documents when, contrary to his prior statements, it turned out that his staff was working with the whistleblower.

We said: Let us see the documents; release them to the public.

We are still waiting.

The idea that they would come here and lecture the Senate—by the way, I was surprised to hear that. Did you realize you are on trial? Mr. NADLER is putting you on trial.

Everybody is on trial except for them. It is ridiculous. It is ridiculous.

They said in their brief: We have overwhelming evidence. And they are afraid to make their case. Think about it. Think about it. It is common sense—overwhelming evidence to impeach the President of the United States. And then, they come here on the first day and say: You know what, we need some more evidence.

Let me tell you something. If I showed up in any court in this country and said: Judge, my case is overwhelming, but I am not ready to go yet; I need more evidence before I can make my case, I would get thrown out in 2 seconds. And that is exactly what should happen here. That is exactly what should happen here.

It is too much to listen to almost—the hypocrisy of the whole thing. What are the stakes? What are the stakes? There is an election in almost 9 months. Months from now, there is going to be an election. Senators in this body the last time had very wise words. They echoed the words of our Founders. "A partisan impeachment is like stealing an election." That is exactly what we have.

Talk about the Framers' worst nightmare. It is a partisan impeachment they delivered to your doorstep, in an election year. Some of you are upset because you should be in Iowa right now, but, instead, we are here, and they are not ready to go. It is outrageous. It is outrageous.

The American people will not stand for it. I will tell you that right now. They are not here to steal one election. They are here to steal two elections. It is buried in the small print of their ridiculous Articles of Impeachment. They want to remove President Trump

from the ballot. They will not tell you that. They don't have the guts to say it directly, but that is exactly what they are here to do. They are asking the Senate to attack one of the most sacred rights we have as Americans—the right to choose our President in an election year. It has never been done before. It shouldn't be done.

The reason it has never been done is because no one ever thought that it would be a good idea for our country, for our children, for our grandchildren to try to remove a President from a ballot, to deny the American people the right to vote based on a fraudulent investigation conducted in secret with no rights.

I could go on and on, but my point is very simple. It is long past time we start this so we can end this ridiculous charade and go have an election.

Thank you very much, Mr. Chief Justice.

The CHIEF JUSTICE. Does the President's counsel yield back the remainder of their time?

Mr. Manager NADLER. We do.

The CHIEF JUSTICE. The Democratic leader is recognized.

AMENDMENT NO. 1284

Mr. SCHUMER. Mr. Chief Justice, I send an amendment to the desk to subpoena certain documents and records from the White House, and I ask that it be read.

The CHIEF JUSTICE. The clerk will read the document.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 1284.

(Purpose: To subpoena certain White House documents and records)

At the appropriate place in the resolving clause, insert the following:

SEC. _____. Notwithstanding any other provision of this resolution, pursuant to rules V and VI of the Rules of Procedure and Practice in the Senate When Sitting on Impeachment Trials—

(1) the Chief Justice of the United States, through the Secretary of the Senate, shall issue a subpoena to the Acting Chief of Staff of the White House commanding him to produce, for the time period from January 1, 2019, to the present, all documents, communications, and other records within the possession, custody, or control of the White House, including the National Security Council, referring or relating to—

(A) all meetings and calls between President Trump and the President of Ukraine, including documents, communications, and other records related to the scheduling of, preparation for, and follow-up from the President's April 21 and July 25, 2019 telephone calls, as well as the President's September 25, 2019 meeting with the President of Ukraine in New York;

(B) all investigations, inquiries, or other probes related to Ukraine, including any that relate in any way to—

(i) former Vice President Joseph Biden;

(ii) Hunter Biden and any of his associates;

(iii) Burisma Holdings Limited (also known as "Burisma");

(iv) interference or involvement by Ukraine in the 2016 United States election;

(v) the Democratic National Committee; or

(vi) CrowdStrike;

(C) the actual or potential suspension, withholding, delaying, freezing, or releasing

of United States foreign assistance, military assistance, or security assistance of any kind to Ukraine, including but not limited to the Ukraine Security Assistance Initiative (USAI) and Foreign Military Financing (FMF);

(D) all documents, communications, notes, and other records created or received by Acting Chief of Staff Mick Mulvaney, then-National Security Advisor John R. Bolton, Senior Advisor to the Chief of Staff Robert B. Blair, and other White House officials relating to efforts to—

(i) solicit, request, demand, induce, persuade, or coerce Ukraine to conduct or announce investigations;

(ii) offer, schedule, cancel, or withhold a White House meeting for Ukraine's president; or

(iii) hold and then release military and other security assistance to Ukraine;

(E) meetings at or involving the White House that relate to Ukraine, including but not limited to—

(i) President Zelensky's inauguration on May 20, 2019, in Kiev, Ukraine, including but not limited to President Trump's decision not to attend, to ask Vice President Pence to lead the delegation, directing Vice President Pence not to attend, and the subsequent decision about the composition of the delegation of the United States;

(ii) a meeting at the White House on or around May 23, 2019, involving, among others, President Trump, then-Special Representative for Ukraine Negotiations Ambassador Kurt Volker, then-Energy Secretary Rick Perry, and United States Ambassador to the European Union Gordon Sondland, as well as any private meetings or conversations with those individuals before or after the larger meeting;

(iii) meetings at the White House on or about July 10, 2019, involving Ukrainian officials Andriy Yermak and Oleksander Danylyuk and United States Government officials, including, but not limited to, then-National Security Advisor John Bolton, Secretary Perry, Ambassador Volker, and Ambassador Sondland, to include at least a meeting in Ambassador Bolton's office and a subsequent meeting in the Ward Room;

(iv) a meeting at the White House on or around August 30, 2019, involving President Trump, Secretary of State Mike Pompeo, and Secretary of Defense Mark Esper;

(v) a planned meeting, later cancelled, in Warsaw, Poland, on or around September 1, 2019 between President Trump and President Zelensky, and subsequently attended by Vice President Pence; and

(vi) a meeting at the White House on or around September 11, 2019, involving President Trump, Vice President Pence, and Mr. Mulvaney concerning the lifting of the hold on security assistance for Ukraine;

(F) meetings, telephone calls or conversations related to any occasions in which National Security Council officials reported concerns to National Security Council lawyers, including but not limited to National Security Council Legal Advisor, John Eisenberg, regarding matters related to Ukraine, including but not limited to—

(i) the decision to delay military assistance to Ukraine;

(ii) the July 10, 2019 meeting at the White House with Ukrainian officials;

(iii) the President's July 25, 2019 call with the President of Ukraine;

(iv) a September 1, 2019 meeting between Ambassador Sondland and a Ukrainian official; and

(v) the President's September 7, 2019 call with Ambassador Sondland;

(G) any internal review or assessment within the White House regarding Ukraine

matters following the September 9, 2019, request for documents from the House Permanent Select Committee on Intelligence, the House Committee on Oversight and Reform, and the House Committee on Foreign Affairs, including, but not limited to, documents collected that pertain to the hold on military and other security assistance to Ukraine, the scheduling of a White House meeting for the president of Ukraine, and any requests for investigations by Ukraine;

(H) the complaint submitted by a whistleblower within the Intelligence Community on or around August 12, 2019, to the Inspector General of the Intelligence Community;

(I) all meetings or calls, including requests for or records of meetings or telephone calls, scheduling items, calendar entries, White House visitor records, and email or text messages using personal or work-related devices between or among—

(i) current or former White House officials or employees, including but not limited to President Trump; and

(ii) Rudolph W. Giuliani, Ambassador Sondland, Victoria Toensing, or Joseph diGenova; and

(J) former United States Ambassador to Ukraine Marie “Masha” Yovanovitch, including but not limited to the decision to end her tour or recall her from the United States Embassy in Kiev; and

(2) the Sergeant at Arms is authorized to utilize the services of the Deputy Sergeant at Arms or any other employee of the United States Senate in serving the subpoena authorized to be issued by this section.

The CHIEF JUSTICE. The majority leader is recognized.

Mr. MCCONNELL. Mr. Chief Justice, I ask the Court for a brief 15-minute recess before the parties are recognized to debate the Schumer amendment.

RECESS SUBJECT TO THE CALL OF THE CHAIR

Mr. MCCONNELL. Mr. Chief Justice, I ask unanimous consent that the Senate stand in recess subject to the call of the Chair.

There being no objection, at 2:49 p.m., the Senate, sitting as a Court of Impeachment, recessed until 3:16 p.m.; whereupon the Senate reassembled when called to order by the Chief Justice.

The CHIEF JUSTICE. There are now 2 hours of argument on Senator SCHUMER’s amendment.

Mr. SCHIFF, do you wish to be heard on the amendment, and as the proponent or as the opponent?

Mr. Manager SCHIFF. Mr. Chief Justice, we wish to be heard and are a proponent of the amendment.

The CHIEF JUSTICE. Very well. Mr. Cipollone.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, we are an opponent of the amendment.

The CHIEF JUSTICE. Mr. SCHIFF, you have an hour.

Mr. Manager SCHIFF. Thank you, Mr. Chief Justice.

In a moment, I will introduce House Manager LOFGREN from California to respond on the amendment, but I did want to take this opportunity, before certain representations became congealed, to respond to my colleagues’ argument on the resolution at large.

First, it is worth noting they said nothing about the resolution. They said nothing about the resolution. They made no effort to defend it. They made no effort to even claim that this was like the Senate trial in the Clinton proceeding. They made no argument that, well, this is different here because of this or that. They made no argument about that whatsoever. They made no argument that it makes sense to try the case and then consider documents. They made no argument about why it makes sense to have a trial without witnesses.

And why? Because it is indefensible. It is indefensible. No trial in America has ever been conducted like that, and so you heard nothing about it. And that should be the most telling thing about counsel’s argument.

They had no defense of the McConnell resolution because there is none. They couldn’t defend it on the basis of setting precedent. They couldn’t defend it on the basis of Senate history, traditionally. They couldn’t defend it on the basis of the Constitution. They couldn’t defend it at all.

And so what did they say? Well, first they made the representation that the House is claiming there is no such thing as executive privilege. That is nonsense. No one here has ever suggested there is no such thing as executive privilege, but the interesting thing here is they have never claimed executive privilege. Not once during the House investigation did they ever say that a single document was privileged or a single witness had something privileged to say.

And why didn’t they invoke privilege? Why are we now? And even now they haven’t quite invoked it? Why are we now? Why not in the House?

Because in order to claim privilege, as they know, because they are good lawyers, you have to specify which document, which line, which conversation, and they didn’t want to do that because to do that the President would have to reveal the evidence of his guilt. That is why they made no invocation of privilege.

Now they make the further argument that the House should only be able to impeach after they exhaust all legal remedies, as if the Constitution says: The House shall have the sole power of impeachment, asterisk, but only after it goes to court in the district court, then the court of appeals, then the en banc, then the Supreme Court. Then it is remanded, and they go back up the chain, and it takes years.

Why didn’t the Founders require the exhaustion of legal remedies? Because they didn’t want to put the impeachment process in the courts.

And you know what is interesting is that while these lawyers for the President are here before you today saying the House should have gone to court, they were in court saying the House may not go to court to enforce subpoenas. I kid you not.

Other lawyers—maybe not the ones at this table—but other lawyers for the

President are in court saying the exact opposite of what they are telling you today. They are saying: You cannot enforce congressional subpoenas. That is nonjusticiable. You can’t do it.

Counsel brings up the case involving Charles Kupperman, who was a deputy to John Bolton on the National Security Council, and says: He did what he should do. He went to court to fight us.

Well, the Justice Department took the position that he can’t do that. So these lawyers are saying he should, and then those lawyers are saying he shouldn’t. They can’t have it both ways.

Now, interestingly, while Mr. Kupperman—Dr. Kupperman—went to court—and they applaud him for doing that—his boss, John Bolton, now says there is no necessity for him to go to court. He doesn’t have to do it. He is willing to come and talk to you. He is willing to come and testify and tell you what he knows. The question is, Do you want to hear it? Do you want to hear it? Do you want to hear from someone who was in the meetings, someone who described what the President did—this deal between Mulvaney and Sondland—as a drug deal? Do you want to know why it was a drug deal? Do you want to ask him why it was a drug deal? Do you want to ask him why he repeatedly told people: Go talk to the lawyers?

You should want to know. They don’t want you to know. They don’t want you to know. The President doesn’t want you to know.

Can you really live up to the oath you have taken to be impartial and not know? I don’t think you can.

Now, they also made the argument that you will hear more later on from, apparently, Professor Dershowitz that, well, abuse of power is not an impeachable offense. It is interesting that they had to go outside the realm of constitutional lawyers and scholars to a criminal defense lawyer to make that argument, because no reputable constitutional law expert would do that. Indeed, the one they called in the House—that Republicans called in the House—Jonathan Turley, said exactly the opposite. There is a reason that Jonathan Turley is not sitting at the table, much to his dismay, and that is because he doesn’t support their argument. So they will cite him for one thing, but they will ignore him for the other.

Now they say: Oh, the President is very transparent. He may have refused every subpoena, every document request, but he released two documents—the document on the July 25 call and the document on the April 21 call.

Well, let’s face it. He was forced to release the record of the July 25 call when he got caught, when a whistleblower filed a complaint, when we opened an investigation. He was forced because he got caught. You don’t get credit for transparency when you get caught. And what is more, what is revealed in that, of course, is damning.

Now they point to the only other record he has apparently released, the