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Senate

The Senate met at 1:03 p.m. and was called to order by the Chief Justice of the United States.

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

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

The Chaplain will lead us in prayer.

PRAYER

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

Let us pray.

O God, You are our rock of safety. Protect us in an unsafe world. Guard us from those who smile but plan evil in their hearts. Use our Senators to bring peace and unity to our world. May they permit Godliness to make them bold as lions. Give them a clearer vision of your desires for our Nation. Remind them that they borrow their heartbeats from You each day. Provide them with such humility, hope, and courage that they will do Your will.

Lord, grant that this impeachment trial will make our Nation stronger, wiser, and better.

We pray in Your strong Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

THE JOURNAL

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

Without objection, it is so ordered.

The Sergeant at Arms will make the proclamation.

The Sergeant at Arms, Michael C. Stenger, made 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, we expect several hours of session today, with probably one quick break in the middle.

The CHIEF JUSTICE. Thank you. Pursuant to the provisions of S. Res 483, the counsel for the President have 15 hours and 33 minutes remaining to make the presentation of their case, though it will not be possible to use the remainder of that time before the end of the day.

The Senate will now hear you.

Mr. Counsel CIPOLLONE. Mr. Chief Justice, Members of the Senate, just to give you a very quick, brief overview of today, we do not intend to use much of that time today. Our goal is to be finished by dinnertime and well before. We will have three presentations. First will be Pat Philbin, Deputy White House counsel. Then, Jay Sekulow will give a presentation. We will take a break, if that is OK with you, Mr. Leader. And then, after that, I will finish with a presentation. That is our goal for the day. With that, I will turn it over to Pat Philbin.

Mr. Counsel PHILBIN. Mr. Chief Justice, Members of the Senate, Majority Leader McCONNELL, Minority Leader SCHUMER, I would like to start today by making a couple of observations related to the abuse of power charge in the first Article of Impeachment. I wouldn't presume to elaborate on Professor Dershowitz' presentation from yesterday evening, which I thought was complete and compelling, but I wanted to add a couple of very specific points in support of the exposition of the Constitution and the impeachment clause that he set out.

It begins from a focus on the point in the debate about the impeachment

clause at the Constitutional Convention where maladministration was offered by George Mason as a grounds for impeachment, and James Madison responded that that was a bad idea, and he said: "So vague a term will be equivalent to a tenure during the pleasure of the Senate." That evinced the deep-seated concern that Madison had, and it is part of the whole design of our Constitution for ways that can lead to exercises of arbitrary power.

The Constitution was designed to put limits and checks on all forms of government power. Obviously, one of the great mechanisms for that is the separation of powers—the structural separation of powers in our Constitution. But it also comes from defining and limiting powers and responsibilities and a concern that vague terms, vague standards are themselves an opportunity for the expansion of power and the exercise of arbitrary power. We see that throughout the Constitution and in the impeachment clause as well. This is why, as Gouverneur Morris argued in discussing the impeachment clause, that only few offenses—he said few offenses—ought to be impeachable, and the cases ought to be enumerated and defined.

Many terms had been included in earlier drafts, when it was narrowed down to treason and bribery, and there was a suggestion to include maladministration, which had been a ground for impeachment in English practice. The Framers rejected it because it was too vague; it was too expansive. It would allow for arbitrary exercises of power.

We see throughout the Constitution, in terms that relate and fit in with the impeachment clause, the same concern. One is in the definition of "treason." The Framers were very concerned that the English practice of having a vague concept of treason that was malleable and could be changed even after the fact to define new concepts of treason was dangerous. It was one of the things that they wanted to reject from the English system. So

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



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